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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 02–108–2]

Unshu Oranges from Honshu Island, Japan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with two changes, an interim rule that amended the regulations governing the importation of citrus fruit to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to States that are not commercial citrus-producing States. We will continue to require fumigation if the fruit is distributed to commercial citrus-producing States. This final rule amends the regulations to include a reference to the island of Shikoku, along with the islands of Honshu and Kyushu, as an island from which Unshu oranges may be exported to the United States in accordance with the requirements of the regulations.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanne VanDersal, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6799.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a disease that affects citrus and is caused by the infectious bacterium *Xanthomonas campestris* pv. *citri* (Hasse) Dye. The strain of citrus canker that occurs in Japan infects the twigs, leaves, and fruit of a wide spectrum of citrus species.

In an interim rule effective and published in the **Federal Register** on March 3, 2003 (68 FR 9851–9854, Docket No. 02–108–1), we amended the regulations governing the importation of citrus fruit in 7 CFR 319.28 (referred to below as the regulations) to allow Unshu oranges grown on Honshu Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States was limited to non-citrus-producing States.

Comments on the interim rule were required to be received on or before May 2, 2003. We received one comment by that date. It was from a Japanese government official and is discussed below.

The commenter asked if Unshu oranges grown on the island of Shikoku were eligible for entry under the same conditions included in the interim rule for Honshu-grown Unshu oranges.

Previously, the regulations provided for the importation of Unshu oranges from approved, canker-free growing areas in Japan without specifying any particular islands or geographic areas in Japan. However, when we amended the regulations to provide for the importation of fumigated fruit into citrus-producing States (see 67 FR 4873–4877, Docket No. 99–099–2, published February 1, 2002), it was necessary to name the islands from which fruit could be exported, given the differing conditions that apply based on the origin and destination of the fruit. In that February 2002 final rule, we named only Honshu and Kyushu islands. Although Shikoku Island contains canker-free growing areas, there had been no exports of Unshu oranges to the United States from that island for several years, so we did not include a reference to Shikoku. This comment called our attention to our oversight; therefore, we are amending the regulations in this final rule to allow Unshu oranges grown in approved growing areas on Shikoku Island, Japan, to be imported without fumigation if the distribution of the fruit within the United States is limited to States that are not commercial citrus-producing States. As is the case with Unshu oranges from Honshu Island, we will require fumigation if the fruit is distributed to commercial citrus-producing States.

The commenter also asked when Hawaii was added to the list of commercial citrus-producing States, noting that the addition was never clearly explained. The commenter requested specific documentation of the rule in which Hawaii was added.

Hawaii was listed in both the February 2002 final rule cited previously and in the proposed rule that preceded it, which was published in the **Federal Register** on April 18, 2001 (66 FR 19892–19898, Docket No. 99–099–1). Hawaii was added to the list of commercial citrus-producing areas in § 301.75–5 of our domestic citrus canker regulations in a final rule published in the **Federal Register** on December 13, 1985 (50 FR 51228–51234, Docket No. 85–381).

The commenter requested that Japan have the opportunity to discuss specific details regarding box marking and the marking of individual fruit when Japan and the United States meet to prepare the bilateral (operational) workplan [1] for the export of Japanese Unshu oranges to the United States.

With respect to box labeling requirements, the regulations provide some flexibility by requiring only that the individual boxes in which the oranges are shipped be stamped or printed with a statement specifying the States into which the Unshu oranges may be imported, and from which they are prohibited removal under a Federal plant quarantine. The specific manner in which the required box marking will be accomplished will be covered in the bilateral workplan. With respect to individual fruit marking, the regulations currently contain no provisions for the marking of individual fruit. We understand that Japan may wish to mark individual fruit that has been fumigated,

[1] A bilateral workplan is a written agreement between the Animal and Plant Health Inspection Service (APHIS) and a foreign plant protection organization that clarifies the responsibilities of each organization in enforcing APHIS regulations that pertain to preclearance export programs. The workplan also clarifies how specific aspects of the program operate, and may include directives as to how certain pest problems must be remedied. The workplan goes into more detail regarding the day-to-day operation of the program than do the regulations and, because of their separation from the regulations, workplans are flexible and can be revised as needed within the framework established by the regulations based on changing circumstances in the exporting country. Failure of the exporting country to abide by the conditions of the workplan is grounds for suspension, and possibly cancellation, of the export program.

and is thus eligible for entry into commercial citrus-producing States, to distinguish such fruit from non-fumigated Unshu oranges. We will discuss this matter with Japan when we meet to prepare the bilateral workplan:

Miscellaneous

In a final rule published in the **Federal Register** on April 27, 2001 (see 66 FR 21049–21064), paragraph (a) of § 319.28 was divided into paragraphs (a)(1) through (a)(3). Prior to that final rule, those same provisions ran together in a single, undivided paragraph (a). At the end of what is now paragraph (a)(3) are two sentences that read "Seeds and processed peel of fruits designated in this section are excluded from this prohibition. Such seeds, however, are subject to the requirements of §§ 319.37 through 319.37–27." Before we divided paragraph (a), it was clear that the exclusion for seeds and processed peel applied to the entire paragraph. However, now that those sentences are located at the end of paragraph (a)(3), it may appear that the exclusion applies only to paragraph (a)(3). Therefore, for the sake of clarity, we are removing those two sentences from paragraph (a)(3) and placing them in a new paragraph (a)(4).

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, this final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, the interim rule amending 7 CFR part 319 that was published at 68 FR 9851–9854 on March 3, 2003, is adopted as a final rule with the following changes:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.28 is amended as follows:

■ a. In paragraph (a)(3), by removing the last two sentences of the paragraph.

■ b. By adding a new paragraph (a)(4) to read as set forth below.

■ c. In paragraph (b)(5), first and third sentences, and paragraphs (b)(7)(i) and (b)(7)(ii), by adding the words "or Shikoku Island" after the words "Honshu Island."

§ 319.28 Notice of quarantine.

(a) * * *

(4) Seeds and processed peel of fruits designated in this section are excluded from this prohibition. Such seeds, however, are subject to the requirements of §§ 319.37 through 319.37–27.

* * * * *

Done in Washington, DC, this 26th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–4600 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 783

RIN 0560–AG83

Tree Assistance Program

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: This rule provides for implementation, subject to the availability of funds, of the Tree Assistance Program (TAP) authorized by the Farm Security and Rural Investment Act of 2002 (2002 Act). TAP provides assistance to eligible orchardists to replant trees, bushes and vines that were grown for the production of an annual crop and were lost due to a natural disaster.

EFFECTIVE DATE: March 1, 2004.

FOR FURTHER INFORMATION CONTACT: Eloise Taylor, Production, Emergencies and Compliance Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), Stop 0517, 1400 Independence Avenue SW., Washington, DC 20250–0517. Telephone: (202) 720–9882; e-mail: *Eloise.Taylor@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Sections 10201–10205 of the 2002 Act (7 U.S.C. 8201 *et seq.*) authorized, but did not fund, a Tree Assistance Program (TAP) to provide payments to eligible tree, bush and vine owners who incurred losses due to natural disasters. The statute authorizes payments only for eligible owners who actually replant eligible trees, bushes and vines and who produce annual crops from trees, bushes or vines for commercial purposes. Nursery tree stock and Christmas trees are not covered under TAP because annual crops are not produced from nursery tree stock and Christmas trees. Instead, nursery tree stock and Christmas trees are the crops themselves. The statute also limits payments by specifying that qualifying acres for a person may not exceed 500 in number for all payments under TAP.

Despite the lack of funding at the time, FSA published a proposed TAP rule on August 11, 2003 (68 FR 47499). The Agency received one timely-filed postcard containing one comment. The respondent was of the opinion that it would be easy for applicants to receive TAP benefits based on fraudulent claims.

TAP must be implemented as authorized by Congress. The final rule sets forth the requirements for, and limitations on, receiving TAP benefits. Only applicants with qualifying losses on claims for which appropriations have been made will be paid. The amount of compensation will be based on actual costs. The agency safeguards are believed to be adequate.

Changes From the Proposed Rule

Several revisions were made for greater clarity or effectiveness. The provision in the proposed rule indicating that, in lieu of payments in cash, qualifying losses may be compensated using seedlings sufficient to reestablish a stand, has been removed. FSA does not have seedlings available to be distributed for such a purpose.

Clarifying changes have been made and greater flexibility has been added to the pro-ration provisions of the rule. In the event the total amount of claims as submitted exceeds the available funds, payments will be prorated. Such payment reductions shall be applied after the imposition of applicable per-person payment limitation provisions.

A provision relating to a gross revenue test has been removed in the absence of a specific statutory provision for it. TAP is authorized by Title X of the 2002 Act, which does not have such a limit, unlike other farm programs

authorized by Title I of that act, which does have such a limit.

Delaying this rule would serve no purpose. Accordingly, this rule is effective upon publication so that eligible applications may be acted upon.

Executive Order 12866

This rule has been determined to be not significant under Executive Order 12866 and has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any law to publish a notice of proposed rule making for the subject matter of this rule.

Environmental Evaluation

The environmental impacts of this final rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. This rule preempts State laws to the extent such laws are inconsistent with it. Before judicial action may be brought concerning provisions of this rule, all administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. The rule contains no Federal mandates, as defined by title II of UMRA. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted a request to OMB for the approval of the information collections required for the Tree Assistance Program and the application necessary for the proper functioning of the program.

Part 783 is updated accordingly, and changes are made for clarity, structure and readability.

List of Subjects in 7 CFR Part 783

Disaster assistance, Emergency assistance, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 783 is added as follows:

PART 783—TREE ASSISTANCE PROGRAM

Sec.

Authority: 7 U.S.C. 8201 *et seq.*

§ 783.1 Applicability.

This part governs and provides the requirements and authorities for administration of the Tree Assistance Program (TAP) of the Farm Service Agency. This program shall operate only to the extent funds are appropriated for this program. Payments will be limited to lost eligible trees, bushes or vines, and all claims are subject to the availability of funds.

§ 783.2 Administration.

(a) The program will be administered under the general supervision and direction of the Administrator, Farm Service Agency (FSA), and the Deputy Administrator for Farm Programs, FSA. In the field, the regulations in this part will be administered by the FSA State and county committees.

(b) State and county committees, and representatives and their employees, do not have authority to modify or waive any of the provisions of the regulations of this part.

(c) The State committee shall take any action required by the regulations of this part that the county committee has not taken. The State committee shall also:

(1) Correct, or require a county committee to correct any action taken by such county committee that is not in accordance with the regulations of this part; or

(2) Require a county committee to withhold taking any action that is not in accordance with this part.

(d) No provision or delegation to a State or county committee shall preclude the Deputy Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(e) The Deputy Administrator may authorize State and county committees to waive or modify deadlines, except statutory deadlines, and other non-statutory requirements in cases where lateness or failure to meet such other requirements does not adversely affect operation of the program.

(f) Data furnished by the applicants will be used to determine eligibility for program benefits. Although participation in TAP is voluntary, program benefits will not be provided unless the participant furnishes all requested data.

§ 783.3 Definitions.

(a) The definitions in part 718 of this chapter apply to TAP except when they conflict with paragraph (b) of this section.

(b) The following definitions apply to TAP:

Cutting means a vine, which was planted in the ground for commercial production of grapes, kiwi fruit, or passion fruit or similar fruit as approved by the Deputy Administrator.

County office means the FSA or USDA Service Center that is responsible for servicing the farm on which the trees, bushes or vines are located.

Deputy Administrator means the Deputy Administrator for Farm Programs, FSA, or a designee.

Eligible bush means, a low, branching, woody plant from which an annual fruit or vegetable crop is produced for commercial purposes, such as a blueberry bush.

Eligible orchardist means an individual, or legal entity, including an Indian tribe as defined under the Indian Self-Determination and Education Assistance Act; an Indian organization or entity chartered under the Indian Reorganization Act; a tribal organization as defined under the Indian Self-Determination Education and Assistance Act; or, an economic enterprise as defined under the Indian Financing Act of 1974, which owns a tree, bush or vine as defined in this part.

Eligible tree means, a tall, woody plant having comparatively great height, as determined by the Deputy Administrator, and a single trunk from which an annual crop is produced for commercial purposes, such as maple tree for syrup, papaya tree, or orchard tree. Plantain and banana plants are also included. Trees used for pulp or timber are not considered eligible trees under this part.

Eligible vine means a plant with a flexible stem supported by climbing, twining, or creeping along a surface and from which an annual fruit or vegetable crop is produced for commercial purposes, such as grape, kiwi fruit, or passion fruit.

Individual stand means an area of trees, bushes or vines that are tended by an owner as a single operation, whether or not such trees, bushes or vines are planted in the same field or similar location. Trees, bushes or vines in the same field or similar area may be considered separate individual stands if the county committee determines that the trees, bushes or vines are susceptible to losses at significantly differing levels.

Lost means with respect to the extent of damage to a tree or other plant that the damage is such that it would, as determined by FSA, be more economically beneficial to replace the plant rather than to leave it in its deteriorated, low producing state.

Natural disaster means plant disease, insect infestation, drought, fire, freeze, flood, earthquake, lightning, or other natural occurrence of such magnitude or severity so as to be considered disastrous, as determined by FSA.

Normal mortality means the percentage, as established by the State Committee, of lost trees, bushes or vines in the individual stand that normally occurs in a 12-month period.

Program year means a calendar year for which funding is available.

Seedling means a tree, bush or vine which was planted in the ground for commercial purposes.

§ 783.4 Eligibility.

(a) To be considered an eligible loss:

(1) Eligible trees, bushes or vines must have been located and lost as a result of natural disasters determined and announced by FSA as set forth in the TAP application.

(2) The individual stand must have sustained a loss in excess of 15 percent after adjustment for normal mortality;

(3) The loss could not have been prevented through reasonable and available measures; and

(4) The tree, bush or vine, in the absence of a qualifying disaster, would not normally have been rehabilitated or replanted within the 12-month period following the loss.

(b)(1) The damage must be visible and obvious to the county committee except that if the damage is no longer visible, the county committee may accept other evidence of the loss as it determines is reasonable.

(2) The county committee may require information from an expert in the case of plant disease or insect infestation.

(c)(1) To be eligible for TAP benefits the eligible orchardist must:

(i) Own the stand on which the claim for benefits is based;

(ii) Have owned the stand at the time the natural disaster occurred;

(iii) Have continuously owned the stand until the TAP application is submitted; and

(iv) Not exceed or be in violation of any other limitations on payments.

(2) Federal, State, and local governments and agencies and political subdivisions thereof are not eligible for benefits under this part.

(d)(1) A new owner of an orchard is allowed to receive TAP benefits in an amount not to exceed those approved for the predecessor owner of the orchard and not paid to the predecessor owner, if the predecessor owner of the orchard agrees to the succession in writing and if the new owner:

(i) Acquires ownership of trees, bushes or vines for which benefits have been approved;

(ii) Agrees to complete all approved practices which the original owner has not completed; and

(iii) Otherwise meets and assumes full responsibility for all provisions of this part, including refund of payments made to the previous owner, if applicable.

(2) In the case of death, incompetence or disappearance of an eligible orchardist, successors may be eligible to receive TAP payments as specified in part 707 of this chapter.

§ 783.5 Application.

(a) A complete application for TAP benefits and related supporting documentation must be submitted to the county office prior to the deadline FSA announces.

(b) A complete application includes all of the following:

(1) A form provided by FSA;

(2) A written estimate of the number of trees, bushes or vines lost or damaged which is prepared by the owner or someone who is a qualified expert, as determined by the county committee;

(3) The number of acres on which the loss was suffered; and

(4) Sufficient evidence of the loss to allow the county committee to calculate whether an eligible loss occurred.

(c) Before requests will be approved, the county committee:

(1) Must make recommendations and an eligibility determination based on a complete application on those requests that it wants to refer to a higher approval official.

(2) Must verify actual qualifying losses and the number of acres involved by on-site visual inspection of the land and trees, bushes or vines.

(3) May request additional information and may consider all relevant information in making its determination, including its members own knowledge about the applicant's normal operations.

§ 783.6 Benefits.

(a) Subject to the availability of TAP funds, an approved eligible orchardist shall be reimbursed in an amount not to exceed 75 percent of the eligible costs for the qualifying loss (that loss over and above the calculated 15% mortality). The payment shall be the lesser of the 75% of actual costs for the replanting or the amount calculated using rates established by the State committee (not to exceed the maximum amount the Deputy Administrator establishes). The costs permitted shall only be approved for:

(1) Seedlings or cuttings, for tree, bush or vine replanting;

(2) Site preparation and debris handling within normal cultural practices for the type of individual stand being re-established and necessary to ensure successful plant survival;

(3) Chemicals and nutrients necessary for successful establishment;

(4) Labor to plant seedlings or cuttings as determined reasonable by the county committee; and

(5) Labor used to transplant existing seedlings established through natural regeneration into a productive tree stand.

(b) Costs for fencing, irrigation, irrigation equipment, protection of seedlings from wildlife, general improvements, re-establishing structures, windscreens and other costs as determined by the Deputy Administrator are not eligible for reimbursement benefits.

(c) When lost stands are replanted, the types planted may be different than those originally planted if the new types have the same general end use, as the county committee determines and approves. Payments will be based on the lesser of rates established to plant the types actually lost or the cost to establish the alternative used. If the species of plantings, seedlings or cuttings differs significantly from the species lost then, except as the county

committee determines, the costs may not be reimbursed.

(d) Eligible orchardists may elect not to replant the entire eligible stand. If so, the county committee shall calculate payment based on the number of qualifying trees, bushes or vines actually replanted.

(e) The cumulative total quantity of acres planted to trees, bushes or vines for which a person may receive assistance at any time under this part shall not exceed 500 acres.

(f) The cumulative amount of TAP benefits which any person, as defined in accordance with part 1400 of this title, may receive under this part shall not exceed $75,000.

(g) In the event the total amount of claims submitted under this part during a sign-up period exceeds the applicable funds available for such period, such payments shall be reduced by a uniform national percentage or by such other method deemed appropriate by the Deputy Administrator. Such payment reductions shall be applied after the imposition of applicable payment limitation provisions.

§ 783.7 Obligations of a participant.

(a) Eligible orchardists must execute all required documents and complete the TAP funded practice within 12 months of application approval.

(b) If a person was erroneously determined to be eligible or becomes ineligible for all or part of a TAP benefit, the person and successor shall refund any payment paid under this part together with interest from the date of disbursement at a rate in accordance with part 1403 of this title.

(c) Participants must allow representatives of FSA to visit the site for the purposes of certifying compliance with TAP requirements.

§ 783.8 Multiple benefits.

Persons may not receive or retain payments for production losses from trees, vines and bushes under this part if they have been compensated under another program for the same loss. However, this restriction does not apply to emergency Federal loans or payments resulting from purchase of the additional coverage insurance, as defined in 7 CFR 400.651. However, in no case shall the total amount received from all sources exceed the amount of the owner's actual loss, unless the Deputy Administrator shall approve an exemption in writing.

§ 783.9 Miscellaneous.

(a) Any payment or portion thereof due any person under this part shall be allowed without regard to questions of title under State law, and without regard to any claim or lien in favor of any person except agencies of the U.S. Government.

(b) Persons shall be ineligible to receive or retain assistance under this program if they have:

(1) Adopted any scheme or device intended to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(c) TAP benefits paid to a person as a result of misrepresentation shall be refunded to FSA with interest and costs of collection. The party engaged in acts prohibited by this part and the party receiving payment and their successors shall be jointly and severally liable for any amount due. The remedies provided to FSA in this part shall be in addition to other civil, criminal, or administrative remedies which may apply.

(d) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

(e) A minor who is an owner that has met all other eligibility criteria shall be eligible for TAP assistance if:

(1) The minor establishes that the right of majority has been conferred on the minor by court proceedings or by statute; or

(2) A guardian has been appointed to manage the minor's property and the applicable program documents are executed by the guardian; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

(f) The regulations regarding reconsideration's and appeals at part 11 of this title and part 780 of this chapter apply to this part.

Signed in Washington DC on February 13, 2004.

Michael W. Yost,

Acting Administrator, Farm Service Agency.

[FR Doc. 04–4524 Filed 3–01–04; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 01–015–1]

Brucellosis In Cattle; State and Area Classifications; Missouri

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Missouri from Class A to Class Free. We have determined that Missouri meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Missouri.

DATES: This interim rule was effective February 26, 2004. We will consider all comments that we receive on or before May 3, 2004.

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

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 01–015–1, 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. 01–015–1.
- *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. 01–015–1" on the subject line.
- *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

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

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

FOR FURTHER INFORMATION CONTACT: Dr. Debra A. Donch, Senior Staff Veterinarian, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella*.

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class A and Class B fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percentage of all brucellosis reactor cases found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Missouri was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the consecutive 12-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

The last brucellosis-infected cattle herd in Missouri was depopulated in October 2002. Since then, no brucellosis-affected herds have been detected.

After reviewing the brucellosis program records for Missouri, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Missouri from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a). This action relieves certain restrictions on moving cattle interstate from Missouri.

Immediate Action

Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Missouri. 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.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Missouri from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Missouri, as well as buyers and importers of cattle from this State.

There are an estimated 61,500 cattle operations in Missouri that may be affected by this rule. About 99 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save owners of cattle operations approximately $3 to $4 per head.

Therefore, we believe that changing the brucellosis status of Missouri will not have a significant economic effect on the small entities affected by this interim rule.

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 interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict 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.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping

requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 78

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

■ Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

■ 1. The authority citation for part 78 continues to read as follows:

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

§ 78.41 [Amended]

■ 2. Section 78.41 is amended as follows:
■ a. In paragraph (a), by adding "Missouri," in alphabetical order.
■ b. In paragraph (b), by removing the word "Missouri,".

Done in Washington, DC, this 26th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–4599 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–112–2]

Cattle From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the animal importation regulations to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. The regulations have prohibited the importation of Holstein steers and Holstein spayed heifers from Mexico due to the high incidence of bovine tuberculosis in that breed, but have not placed any special restrictions on the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of bovine tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to the incidence of tuberculosis in Holstein steers and Holstein spayed heifers, this action is necessary to protect the health of domestic livestock in the United States.

EFFECTIVE DATE: April 1, 2004.

FOR FURTHER INFORMATION CONTACT: Dr. Roger Perkins, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–8419.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 prohibit or restrict the importation of certain animals, birds, and poultry into the United States in order to prevent the introduction of communicable diseases of livestock and poultry. Subpart D of part 93 (§§ 93.400 through 93.435, referred to below as the regulations) governs the importation of ruminants. Section 93.427 of the regulations contains restrictions on the importation of ruminants from Mexico.

On June 3, 2003, we published in the **Federal Register** (68 FR 33028–33030, Docket No. 00–112–1) a proposal to amend the regulations in § 93.427 to prohibit importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of bovine tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to that of bovine tuberculosis in Holstein steers and Holstein spayed heifers, which have been prohibited entry from Mexico since May 1994, we believed it was necessary to prohibit the importation of those Holstein cross animals in order to eliminate a pathway for the introduction of bovine tuberculosis into the United States.

We solicited comments concerning our proposal for 60 days ending August 4, 2003. We received three comments by that date. They were from a State agricultural agency, a foreign animal health agency, and a domestic milk producers organization. Two of the commenters supported the proposal.

The remaining commenter expressed concern that the identification criteria adopted by inspectors on the United States-Mexico border could create disagreement, since it may prove difficult to differentiate Holsteins or Holstein crosses from other cattle that simply resemble Holsteins or Holstein crosses.

Personnel at U.S. ports, both veterinarians and non-veterinarian inspectors, are thoroughly trained and experienced in identifying all types of breeds and breed crosses. We do not, therefore, believe it is necessary to make any changes in this final rule in response to that comment.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the animal importation regulations to prohibit the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. The regulations have prohibited the importation of Holstein steers and Holstein spayed heifers from Mexico due to the high incidence of tuberculosis in that breed, but have not placed any special restrictions on the importation of Holstein cross steers and Holstein cross spayed heifers from Mexico. Given that the incidence of tuberculosis in Holstein cross steers and Holstein cross spayed heifers from Mexico is comparable to the incidence of tuberculosis in Holstein steers and Holstein spayed heifers, this action is necessary to protect the health of domestic livestock in the United States.

Given the size of U.S. livestock inventories and the volume of animal and animal product sales, consequences of a large tuberculosis outbreak in the United States could be catastrophic. Cattle in U.S. herds in 2000 were valued at $67 billion, with 1999 cash receipts of $36.5 billion from the sale of cattle, calves, beef, and veal. Cash receipts from the sale of milk and cream in 1999 reached $23.2 billion. The value of fresh beef and veal exports by the United States totaled $2.7 billion in 1999 and $3 billion in 2000. A widespread bovine tuberculosis outbreak in the United States could potentially cause significant production and trade losses.

The value of cattle imported from Mexico in 1998 through 2001 represented less than 1 percent of the value of the total U.S. domestic cattle supply. Further, the volume of U.S. imports of live cattle from Mexico has generally increased since 1997. Imports of Holstein cross-bred steers and spayed heifers have generally increased during the same period.

Effect on Small Entities

Under the Regulatory Flexibility Act, agencies are required to analyze the economic effects of their regulations on small businesses and to use flexibility to provide regulatory relief when regulations create economic disparities between different-sized entities. According to the Small Business Administration's (SBA's) Office of

Advocacy, regulations create economic disparities based on size when they have a significant economic impact on a substantial number of small entities.

U.S. livestock importers, breeders, and producers would be entities that are directly affected by this rule. There are no specific data available on numbers of cattle importers; however, there are approximately 2,000 wholesale livestock traders (North American Industry Classification System [NAICS] code 422520), many of whom may also be cattle importers. It is likely that the majority of these firms are small entities according to the SBA's criterion of 100 or fewer employees. There are approximately 1 million livestock producers and breeders (NAICS code 112111) in the United States, approximately 99 percent of which are small entities according to SBA's criterion of annual receipts of $750,000 or less.

However, given that (1) imported Mexican cattle account for less than 1 percent of the value of the U.S. cattle supply, and (2) the volume of Holstein cross steers and Holstein cross spayed heifers imported from Mexico is believed to represent a small fraction of total cattle imports from Mexico, we expect that the economic effects on the U.S. livestock industry of the prohibition will be negligible. The prohibition also will not have a significant effect on U.S. cattle importers, breeders, or producers because such persons may easily substitute other breeds of cattle for Mexican Holstein cross steers and spayed heifers.

This prohibition on the importation of Holstein cross steers and Holstein cross spayed heifers will benefit the U.S. livestock industry and U.S. consumers by helping to prevent the introduction of bovine tuberculosis into the United States.

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 12988

This final 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.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 93

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

■ Accordingly, we are amending 9 CFR part 93 as follows:

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

■ 1. The authority citation for part 93 continues to read as follows:

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

■ 2. In § 93.427, paragraph (c)(4) is revised to read as follows:

§ 93.427 Cattle from Mexico.

* * * * *

(c) * * *

(4) The importation of Holstein steers, Holstein spayed heifers, Holstein cross steers, and Holstein cross spayed heifers from Mexico is prohibited.

* * * * *

Done in Washington, DC, this 26th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–4598 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–22–AD; Amendment 39–13504; AD 2003–22–07 R1]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd., MU–2B Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: The FAA is revising Airworthiness Directive (AD) 2003–22–07, which applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. AD 2003–22–07 requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before flight into known or forecast icing conditions after a certain date. AD 2003–22–07 resulted from the development of a new training video that includes information that is critical to safety of the MU–2B series airplanes. This AD revision is the result of the FAA incorrectly stating in the actions required by AD 2003–22–07 that on or before June 15, 2004 (the effective date of AD 2003–22–07), no person may serve as pilot-in-command (PIC) of a MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the required training. Consequently, this AD will correct the actions required in AD 2003–22–07 to require those actions on or after June 15, 2004. We are issuing this AD to ensure that the Icing Awareness Training (IAT) requirement continues after June 15, 2004, in order to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

DATES: This AD becomes effective on April 16, 2004.

ADDRESSES: You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–22–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: Contact one of the following for questions or more information related to this subject:

—*For General Icing Related Questions:* Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097;

—*For Questions Relating to Airplanes on Type Certificate Data Sheet (TCDS) A2PC:* Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; or

—*For Questions Relating to Airplanes on TCDS A10SW:* Mr. Werner Koch, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–

0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? Analysis that the training level of the pilots-in-command (PIC) of the MU–2B series airplanes made it difficult for them to recognize adverse operating conditions and operate safely while flying in icing conditions caused FAA to issue AD 97–20–14, Amendment 39–10150, and AD 2003–22–07, Amendment 39–13355.

AD 97–20–14 required incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date.

AD 2003–22–07 also requires incorporating information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date based on a new training video developed by Mitsubishi.

What has happened since AD 2003–22–07 to initiate this action? We incorrectly stated in the AFM Limitation that on or before June 15, 2004 (the effective date of AD 2003–22–07), no person may serve as pilot-in-command (PIC) of a MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the required training.

Stating on or before June 15, 2004, means that after June 15, 2004, there is no longer a requirement to get the IAT training. This was not the intent of the FAA or Mitsubishi.

The correct statement in the AFM Limitation should be that on or after June 15, 2004, no person may serve as pilot-in-command (PIC) of a MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the required training.

What is the potential impact if FAA took no action? If the language in the AFM Limitation Section is not corrected, no one would be required to have the mandatory pilot IAT training after June 15, 2004. Lack of mandatory pilot IAT training could result in an increased chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

FAA's Determination and Requirements of the 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.

Since the unsafe condition described previously is likely to exist or develop in Mitsubishi MU–2B series airplanes when the PIC is not proficient in the operating conditions of these airplanes, we are issuing this AD to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

What does this AD require? This AD requires you to incorporate information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date. That AFM limitation consists of the following:

> On or after June 15, 2004, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi Icing Awareness Training (IAT) video YET–01295. One exception is that if training mandated by AD 97–20–14 has been received in the 24 months before June 15, 2004, then the new training must be done no later than 24 months after the date of the AD 97–20–14 training. This two-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost, as part of the Mitsubishi Systems Review (MSR) program. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 934–5480. Training is also available at the Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Pilot logbook endorsements are available after completing this training from: Sim Com, Reese Howell Enterprises, Turbine Aircraft Services (TAS), an FAA Aviation Safety Inspector, or other FAA authorized personnel. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.

Changes to 14 CFR Part 39—Affect on the AD

How does the revision to 14 CFR part 39 affect this 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.

Compliance Time of This AD

What will be the compliance time of this AD? The compliance time of this AFM incorporation is "within the next 10 days after the effective date of this AD." The actual viewing of the training video will be incorporated into the current schedule of the video required by AD 97–20–14.

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The unsafe condition described in this AD is not a direct result of airplane design or operation, but is attributed to the expertise and knowledge of the PIC. For this reason, FAA has determined that a compliance time based upon calendar time will be used instead of a certain number of hours TIS.

Comments Invited

Will I have the opportunity to comment before you issue the rule? This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–CE–22–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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. 2003–CE–22–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, 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 removing Airworthiness Directive (AD) 2003–22–07, Amendment 39–13355 (68 FR 61613, October 29, 2003), and by adding a new AD to read as follows:

2003–22–07 R1 Mitsubishi Heavy Industries, Ltd.: Amendment 39–13504; Docket No. 2003–CE–22–AD; Revises AD 2003–22–07, Amendment 39–13355.

When Does This AD Become Effective?

(a) This AD becomes effective on April 16, 2004.

What Other ADs Are Affected by This Action?

(b) This AD revises AD 2003–22–07, Amendment 39–13355.

What Airplanes Are Affected by This AD?

(c) This AD affects Models MU–2B, MU–2B–10, MU–2B–15, MU–2B–20, MU–2B–25, MU–2B–26, MU–2B–26A, MU–2B–30, MU–2B–35, MU–2B–36, MU–2B–36A, MU–2B–40, and MU–2B–60 airplanes, all serial numbers, that are certificated in any category.

Note: This AD also applies to owners and operators who are operating an MU–2B that is under the Alternative Method of Compliance (AMOC) to Item (d)(2) of AD 2000–09–15 R1, for non-air carrier pilots, that requires *annual* viewing of the Icing Awareness Video YET–01295. This AMOC stated that Mitsubishi Heavy Industries America (MHIA) produced icing training video referenceYET–97336A may optionally be used as an alternative to the YET 01295 until November 24, 2004, provided it is a valid method of compliance to AD 97–20–14. As of June 15, 2004, YET–97336A will now no longer be a valid method of compliance for this AMOC.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of Mitsubishi developing a new training video that includes information that is critical to safety of the MU–2B series airplanes. The actions specified in this AD are intended to decrease the chance of icing-related incidents or accidents of the MU–2B series airplanes due to pilot error.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Incorporate information into the Limitations Section of the Airplane Flight Manual (AFM) that requires pilot training before further flight into known or forecast icing conditions after a certain date. This AFM limitation consists of the following: "On or after June 15, 2004, no person may serve as pilot-in-command (PIC) of a Mitsubishi MU–2B series airplane in a flight into known or forecast icing conditions, unless the PIC has received the following training since the beginning of the 24th calendar month before the scheduled flight: FAA-approved Mitsubishi Icing Awareness Training (IAT) video YET–01295. One exception is that if training mandated by AD 97–20–14 has been received in the 24 months before June 15, 2004, then the new training must be done no later than 24 months after the date of the AD 97–20–14 training. This two-hour training has been available since July 2, 2002, and is provided by Mitsubishi Heavy Industries at no cost. To sign up for the planned training schedules or to arrange training at a more convenient time and location, contact Turbine Aircraft Services at (972) 934–5480. Training is also available at Sim Com and Reese Howell Enterprises training facilities and some local Flight Standards District Offices (FSDOs). Pilot logbook endorsements are available after completing this training from: Sim Com, Reese Howell Enterprises, Turbine Aircraft Services (TAS), an FAA Aviation Safety Inspector, or other FAA authorized personnel. Please note that all operators of the affected airplanes must initiate action to notify and ensure that flight crewmembers are aware of this requirement.".	Do the AFM incorporation within the next 10 days after April 16, 2004 (the effective date of this AD).	The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may accomplish the AFM incorporation requirement of this AD. Make an entry into the aircraft records showing compliance with this portion of the AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). Inserting a copy of this AD into the Limitations Section of the AFM accomplishes this portion of the AD.

What About Alternative Methods 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, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4110; facsimile: (816) 329–4090.

(1) For information on any already approved alternative methods of compliance, contact Mr. Paul Pellicano, Aerospace Engineer (Icing Specialist), Atlanta Aircraft Certification Office, FAA, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6064; facsimile: (770) 703–6097.

(2) Alternative methods of compliance approved in accordance with AD 2003–22–07, which is revised by this AD, are approved as alternative methods of compliance with this AD.

Issued in Kansas City, Missouri, on February 24, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4512 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Levamisole Powder for Oral Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA revises the description of various internal parasites in labeling for levamisole powder, used to make a drench solution for oral administration to cattle and sheep.

DATES: This rule is effective March 2, 2004.

FOR FURTHER INFORMATION CONTACT: Janis R. Messenheimer, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: *jmessenh@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed a supplement to NADA 112–051 for LEVASOLE (levamisole) Soluble Drench Powder revising the description of various internal parasites in labeling for levamisole powder, used to make a drench solution for oral administration to cattle and sheep. The supplemental NADA is approved as of December 23, 2003, and the regulations are revised in 21 CFR 520.1242a to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1242a is revised to read as follows:

§ 520.1242a Levamisole powder for oral solution.

(a) *Specifications.* Each package of powder contains 9.075, 11.7, 18.15, 46.8, or 544.5 grams (g) levamisole hydrochloride.

(b) *Sponsors.* See sponsors in § 510.600(c) for use as follows:

(1) No. 000061 for use of 46.8- and 544.5-g packages as in paragraph (e)(1)(i), (e)(1)(ii)(B), and (e)(1)(iii) of this section; for 11.7-, 46.8-, and 544.5-g packages as in paragraph (e)(2)(i), (e)(2)(ii)(B), and (e)(2)(iii) of this section; and for an 18.15-g package as in paragraph (e)(3) of this section.

(2) No. 053501 for use of a 46.8-g package as in paragraph (e)(1)(i), (e)(1)(ii)(a), and (e)(1)(iii) of this section; for 11.7- and 46.8-g packages as in paragraph (e)(2)(i), (e)(2)(ii)(A), and (e)(2)(iii) of this section; and for 9.075- and 18.15-g packages as in paragraph (e)(3) of this section.

(3) No. 057561 for use of 46.8- and 544.5-g packages as in paragraphs (e)(1)(i), (e)(1)(ii)(A), and (e)(1)(iii) and (e)(2)(i), (e)(2)(ii)(A), and (e)(2)(iii) of this section.

(4) No. 059130 for use of an 18.15-g package as in paragraph (e)(3) of this section.

(c) *Related tolerances.* See § 556.350 of this chapter.

(d) *Special considerations.* See § 500.25 of this chapter.

(e) *Conditions of use.* It is used as an anthelmintic as follows:

(1) *Cattle*—(i) *Amount.* 8 milligrams per kilogram (mg/kg) body weight as a drench.

(ii) *Indications for use*—(A) Effective against the following nematode infections: Stomach worms (*Haemonchus, Trichostrongylus, Ostertagia*); intestinal worms (*Trichostrongylus, Cooperia, Nematodirus, Bunostomum, Oesophagostomum*); and lungworms (*Dictyocaulus*).

(B) Effective against the following adult nematode infections: Stomach worms (*Haemonchus placei, Ostertagia ostertagi, Trichostrongylus axei*); intestinal worms (*T. longispicularis, Cooperia oncophora, C. punctata, Nematodirus spathiger, Bunostomum phlebotomum, Oesophagostomum radiatum*); and lungworms (*Dictyocaulus viviparus*).

(iii) *Limitations.* Do not slaughter for food within 48 hours of treatment. Not for use in dairy animals of breeding age. Conditions of constant helminth exposure may require retreatment 2 to 4 weeks after the first treatment. Consult your veterinarian before using in severely debilitated animals.

(2) *Sheep*—(i) *Amount.* 8 mg/kg body weight as a drench.

(ii) *Indications for use*—(A) Effective against the following nematode infections: Stomach worms (*Haemonchus, Trichostrongylus, Ostertagia*); intestinal worms (*Trichostrongylus, Cooperia, Nematodirus, Bunostomum, Oesophagostomum, Chabertia*); and lungworms (*Dictyocaulus*).

(B) Effective against the following adult nematode infections: Stomach worms (*Haemonchus contortus, Trichostrongylus axei, Teladorsagia circumcincta*); intestinal worms (*Trichostrongylus colubriformis, Cooperia curticei, Nematodirus spathiger, Bunostomum trigonocephalum, Oesophagostomum columbianum, Chabertia ovina*), and lungworms (*Dictyocaulus filaria*).

(iii) *Limitations.* Do not slaughter for food within 72 hours of treatment. Conditions of constant helminth exposure may require retreatment 2 to 4 weeks after the first treatment. Consult veterinarian before using in severely debilitated animals.

(3) *Swine*—(i) *Amount.* 8 mg/kg body weight in drinking water.

(ii) *Indications for use.* Effective against the following nematode infections: Large roundworms (*Ascaris suum*), nodular worms (*Oesophagostomum* spp.), intestinal thread worms (*Strongyloides ransomi*) and lungworms (*Metastrongylus spp.*).

(iii) *Limitations.* Do not administer within 72 hours of slaughter for food. Pigs maintained under conditions of constant exposure to worms may require retreatment within 4 to 5 weeks after the first treatment. Consult your veterinarian before administering to sick swine.

Dated: February 12, 2004.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 04–4518 Filed 3–1–04; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7629–2]

RIN 2060–AG12

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency.

ACTION: Notice of denial of petition.

SUMMARY: This action notifies the public that the Agency received a petition pursuant to section 612(d) of the Clean Air Act, under the Significant New Alternatives Policy (SNAP) Program, and that EPA is denying the petition. SNAP implements section 612 of the Clean Air Act Amendments of 1990, which requires EPA to evaluate substitutes for ozone-depleting substances (ODSs) and to regulate the use of substitutes where other alternatives exist that reduce overall risk to human health and the environment. Through these evaluations, EPA generates lists of acceptable and unacceptable substitutes for each of the major industrial use sectors that use ODSs, including the refrigeration and air-conditioning sector. OZ Technology, Inc. submitted HC–12a, previously referenced as Hydrocarbon Blend B, as a CFC–12 substitute in a variety of end-uses on July 19, 1994. In a June 13, 1995 final SNAP rulemaking (60 FR 31092), EPA found the use of HC–12a unacceptable as a substitute for CFC–12 in all end-uses other than industrial process refrigeration. This determination was based on a lack of adequate data demonstrating that HC–12a could be used safely in these end-uses; the most recent petition from OZ does not provide any additional information to address this issue. In addition, numerous other acceptable alternatives to ODSs exist in these end-uses.

EFFECTIVE DATE: March 2, 2004.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, 1301 Constitution Avenue, NW., U.S. Environmental Protection Agency, Mail Code 6102T; Washington, DC 20460. The docket reading room is located at the address above in room B102 in the basement. Reading room telephone: (202) 566–1744, facsimile: (202) 566–1749 Air docket staff telephone: (202) 566–1742 and facsimile: (202) 566–1741 You may inspect the docket between 8:30 a.m. and 4:30 p.m. weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Dave Godwin by telephone at (202) 343–9324, by facsimile at (202) 343–2316, by e-mail at *Godwin.Dave@epa.gov*, or by mail at U.S. Environmental Protection Agency, Mail Code 6205J, Washington, DC 20460.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/*.

SUPPLEMENTARY INFORMATION: Since the publication of this unacceptability determination, OZ Technology, Inc. ("OZ") has petitioned EPA four times. The following table provides information about each of the previous petitions and EPA's denials.

Item	Date	Location (within docket A–91–42)	FR Notice
OZ Petition 1	November 4, 1994	VI–D–75	N/A
EPA Denial of Petition 1	July 25, 1995	VI–C–7	60 FR 49407
OZ Petition 2	December 5, 1995	VI–D–135	N/A
EPA Denial of Petition 2	August 30, 1996	VI–C–20	61 FR 51018
OZ Petition 3	May 1, 1998	VI–D–229	N/A
EPA Denial of Petition 3	November 13, 1998	VI–C–28	64 FR 3272

On July 8, 2003, OZ petitioned EPA for the fourth time, once again requesting that EPA remove HC–12a from the unacceptable list and add it to the acceptable list as an ODS substitute in all refrigeration and air-conditioning end-uses, except the industrial process refrigeration end-use, where EPA has already found the use of HC–12a as acceptable. The petition is in Air Docket A–91–42, file number VI–D–306. On January 14, 2004, EPA notified the company that it has denied the petition on the basis that the information included in the petition did not adequately address safety issues regarding the use of HC–12a as a CFC–12 substitute in the subject end-uses. The denial and the accompanying documentation are in Air Docket A–91–42, file number VI–C–31. This Notice

publicizes EPA's denial of the fourth petition.

Contact the Stratospheric Protection Hotline at 1–800–296–1996, Monday-Friday, between the hours of 10 a.m. and 4 p.m. (Eastern Time) weekdays. For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the SNAP final rulemaking published in the **Federal Register** on March 18, 1994 (59 FR 13044). **Federal Register** notices can be ordered from the Government Printing Office Order Desk (202) 783–3238; the citation is the date of publication. This Notice may also be obtained on the World Wide Web at *http://www.epa.gov/docs/ozone/title6/snap/.*

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Reporting and recordkeeping requirements.

Dated: February 20, 2004.

Michael O. Leavitt,

Administrator.

[FR Doc. 04–4627 Filed 3–1–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7827]

Suspension of Community Eligibility

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

ACTION: Final rule.

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

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

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

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

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

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

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

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

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

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

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

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

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

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

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

PART 64—[AMENDED]

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

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

§ 64.6 [Amended]

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

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Region V				
Ohio:				
Fayette County, Unincorporated Areas	390164	February 17, 1993, Emerg.; June 1, 1995, Reg.; March 2, 2004, Susp.	Mar. 2, 2004	Mar. 2, 2004.
Jeffersonville, Village of, Fayette County.	390165	October 14, 1975, Emerg.; March 5, 1990, Reg.; March 2, 2004, Susp.	.....do	Do.
Washington Court House, City of, Fayette County.	390166	March 12, 1975, Emerg.; August 15, 1978, Reg.; March 2, 2004, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Anthony Township of, Lycoming County	420971	December 6, 1973, Emerg.; December 1, 1986, Reg.; March 16, 2004, Susp.	Mar. 16, 2004 ...	Mar. 16, 2004.
Armstrong, Township of, Lycoming County.	420635	March 30, 1973, Emerg.; September 28, 1979, Reg.; March 16, 2004, Susp.	.....do	Do.
Bastress, Township of, Lycoming County.	422472	February 3, 1980, Emerg.; September 24, 1984, Reg.; March 16, 2004, Susp.	.....do	Do.
Brady, Township of, Lycoming County	421169	April 30, 1974, Emerg.; July 16, 1979, Reg.; March 16, 2004, Susp.	.....do	Do.
Brown, Township of, Lycoming County	420636	May 11, 1973, Emerg.; March 2, 1981, Reg.; March 16, 2004, Susp.	.....do	Do.
Cascade, Township of, Lycoming County.	421837	July 29, 1976, Emerg.; December 1, 1986, Reg.; March 16, 2004, Susp.	.....do	Do.
Clinton, Township of, Lycoming County	420637	April 10, 1973, Emerg.; September 28, 1979, Reg.; March 16, 2004, Susp.	.....do	Do.
Cogan House, Township of, Lycoming County.	421838	February 5, 1981, Emerg.; June 1, 1987, Reg.; March 16, 2004, Susp.	.....do	Do.
Cummings, Township of, Lycoming County.	420638	June 6, 1973, Emerg.; September 17, 1980, Reg.; March 16, 2004, Susp.	.....do	Do.
Duboistown, Borough of, Lycoming County.	420639	December 22, 1972, Emerg.; March 1, 1977, Reg.; March 16, 2004, Susp.	.....do	Do.
Eldred, Township of, Lycoming County	421839	June 20, 1974, Emerg.; September 17, 1980, Reg.; March 16, 2004, Susp.	.....do	Do.
Fairfield, Township of, Lycoming County.	420972	September 25, 1973, Emerg.; June 1, 1981, Reg.; March 16, 2004, Susp.	.....do	Do.
Franklin, Township of, Lycoming County.	420973	January 28, 1974, Emerg.; June 1, 1987, Reg.; March 16, 2004, Susp.	.....do	Do.
Gamble, Township of, Lycoming County	420974	August 1, 1973, Emerg.; September 30, 1980, Reg.; March 16, 2004, Susp.	.....do	Do.
Hepburn, Township of, Lycoming County.	420640	June 19, 1973, Emerg.; February 17, 1982, Reg.; March 16, 2004, Susp.	.....do	Do.
Hughesville, Borough of, Lycoming County.	420641	January 21, 1974, Emerg.; October 15, 1981, Reg.; March 16, 2004, Susp.	.....do	Do.
Jackson, Township of, Lycoming County.	422601	January 19, 1989, Emerg.; January 1, 1991, Reg.; March 16, 2004, Susp.	.....do	Do.
Jersey Shore, Borough of, Lycoming County.	420642	October 27, 1972, Emerg.; March 5, 1976, Reg.; March 16, 2004, Susp.	.....do	Do.
Jordan, Township of, Lycoming County	422596	January 27, 1976, Emerg.; December 1, 1986, Reg.; March 16, 2004, Susp.	.....do	Do.
Lewis, Township of, Lycoming County ..	420643	June 14, 1973, Emerg.; March 2, 1983, Reg.; March 16, 2004, Susp.	.....do	Do.
Limestone, Township of, Lycoming County.	422588	June 5, 1980, Emerg.; June 1, 1987, Reg.; March 16, 2004, Susp.	.....do	Do.
Loyalsock, Township of, Lycoming County.	421040	February 5, 1974, Emerg.; May 16, 1977, Reg.; March 16, 2004, Susp.	.....do	Do.
Lycoming, Township of, Lycoming County.	420644	May 4, 1973, Emerg.; September 17, 1980, Reg.; March 16, 2004, Susp.	.....do	Do.
McHenry, Township of, Lycoming County.	420975	September 7, 1973, Emerg.; August 15, 1980, Reg.; March 16, 2004, Susp.	.....do	Do.
McIntyre, Township of, Lycoming County.	420645	June 6, 1973, Emerg.; November 4, 1981, Reg.; March 16, 2004, Susp.	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
McNett, Township of, Lycoming County	422597	September 26, 1975, Emerg.; December 23, 1983, Reg.; March 16, 2004, Susp.	.....do	Do.
Mifflin, Township of, Lycoming County	422590	September 15, 1975, Emerg.; April 17, 1985, Reg.; March 16, 2004, Susp.	.....do	Do.
Mill Creek, Township of, Lycoming County.	421845	October 14, 1975, Emerg.; March 2, 1979, Reg.; March 16, 2004, Susp.	.....do	Do.
Montgomery, Borough of, Lycoming County.	420646	September 1, 1972, Emerg.; June 15, 1978, Reg.; March 16, 2004, Susp.	.....do	Do.
Montoursville, Borough of, Lycoming County.	420648	February 9, 1973, Emerg.; August 15, 1977, Reg.; March 16, 2004, Susp.	.....do	Do.
Moreland, Township of, Lycoming County.	421846	June 15, 1976, Emerg.; March 2, 1981, Reg.; March 16, 2004, Susp.	..... do	Do.
Muncy Creek, Township of, Lycoming County.	420650	August 23, 1974, Emerg.; September 30, 1980, Reg.; March 16, 2004, Susp.	..... do	Do.
Muncy, Borough of, Lycoming County ..	420649	June 30, 1972, Emerg.; February 16, 1977, Reg.; March 16, 2004, Susp.	..... do	Do.
Muncy, Township of, Lycoming County	421847	May 9, 1980, Emerg.; August 19, 1987, Reg.; March 16, 2004, Susp.	..... do	Do.
Nippenose, Township of, Lycoming County.	420651	May 1, 1973, Emerg.; April 15, 1980, Reg.; March 16, 2004, Susp.	..... do	Do.
Old Lycoming, Township of, Lycoming County.	420652	January 19, 1973, Emerg.; April 15, 1977, Reg.; March 16, 2004, Susp.	..... do	Do.
Penn, Township of, Lycoming County ..	421848	March 7, 1977, Emerg.; August 15, 1990, Reg.; March 16, 2004, Susp.	..... do	Do.
Piatt, Township of, Lycoming County	420653	April 10, 1973, Emerg.; April 1, 1980, Reg.; March 16, 2004, Susp.	..... do	Do.
Picture Rocks, Borough of, Lycoming County.	420654	March 21, 1975, Emerg.; September 5, 1990, Reg.; March 16, 2004, Susp.	..... do	Do.
Pine, Township of, Lycoming County	420954	October 4, 1973, Emerg.; September 17, 1980, Reg.; March 16, 2004, Susp.	..... do	Do.
Plunketts Creek, Township of, Lycoming County.	420655	March 2, 1973, Emerg.; August 2, 1982, Reg.; March 16, 2004, Susp.	..... do	Do.
Porter, Township of, Lycoming County	420656	March 9, 1973, Emerg.; January 14, 1977, Reg.; March 16, 2004, Susp.	..... do	Do.
Salladasburg, Borough of, Lycoming County.	420657	September 12, 1975, Emerg.; January 5, 1979, Reg.; March 16, 2004, Susp.	..... do	Do.
Shrewsbury, Township of, Lycoming County.	421148	April 9, 1974, Emerg.; December 15, 1990, Reg.; March 16, 2004, Susp.	..... do	Do.
South Williamsport, Borough of, Lycoming County.	420658	January 7, 1974, Emerg.; April 15, 1977, Reg.; March 16, 2004, Susp.	..... do	Do.
Susquehanna, Township of, Lycoming County.	420659	April 19, 1973, Emerg.; September 28, 1979, Reg; March 16, 2004 Susp.	.....do	Do.
Upper Fairfield, Township of, Lycoming County.	420660	May 15, 1973, Emerg.; September 28, 1979, Reg; March 16, 2004 Susp.	.....do	Do.
Washington, Township of, Lycoming	422613	September 15, 1975, Emerg.; December 1, 1986, Reg; March 16, 2004 Susp.	.....do	Do.
Watson, Township of, Lycoming County	420661	May 4, 1973, Emerg.; October 15, 1980, Reg; March 16, 2004 Susp.	.....do	Do.
Williamsport, City of, Lycoming County	420662	November 24, 1972, Emerg.; December 1, 1977, Reg; March 16, 2004 Susp.	.....do	Do.
Wolf, Township of, Lycoming County	420663	March 30, 1973, Emerg.; December 2, 1980, Reg; March 16, 2004 Susp.	.....do	Do.
Woodward, Township of, Lycoming County.	420664	June 4, 1973, Emerg.; September 28, 1979, Reg.; March 16, 2004 Susp.	.....do	Do.
Region V				
Ohio				
Bexley, City of, Franklin County	390168	November 21, 1973; Emerg.; November 15, 1978, Reg; March 16, 2004 Susp.	.....do	Do.
Columbus, City of, Fairfield County, Franklin County.	390170	May 21, 1971, Emerg.; July 5, 1983, Reg; March 16, 2004 Susp.	.....do	Do.
Dublin, City of, Delaware County, Franklin County.	390673	June 21, 1974, Emerg.; June 4, 1980, Reg; March 16, 2004 Susp.	.....do	Do.
Franklin County, Unincorporated Areas	390167	April 19, 1973, Emerg.; July 5, 1983, Reg; March 16, 2004 Susp.	.....do	Do.
Grandview Heights, City of, Franklin County.	390172	June 6, 1975, Emerg.; August 15, 1980, Reg; March 16, 2004 Susp.	.....do	Do.
Grove City, City of, Franklin County	390173	October 15, 1974, Emerg.; May 1, 1984, Reg; March 16, 2004 Susp.	.....do	Do.
Marble Cliff, Village of, Franklin County	390896	August 2, 1995, Reg; March 16, 2004 Susp	.....do	Do.

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in special flood hazard areas
Obetz, Village of, Franklin County	390176	March 23, 1978, Emerg.; January 16, 1981, Reg; March 16, 2004 Susp.	.....do	Do.
Upper Arlington, City of, Franklin County.	390178	August 8, 1973, Emerg.; April 15, 1980 Reg; March 16, 2004 Susp.	.....do	Do.

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

Anthony S. Lowe,
Mitigation Division Director, Emergency Preparedness and Response Directorate.
[FR Doc. 04–4544 Filed 3–1–04; 8:45 am]
BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket Number MARAD–2004–17185]

RIN 2133–AB57

Amended Service Obligation Reporting Requirements for U.S. Merchant Marine Academy and State Maritime Academy Graduates

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim final rule with request for comments.

SUMMARY: In this interim final rule, the U.S. Maritime Administration (MARAD, we, us, or our) will change the service obligation reporting requirements for United States Merchant Marine Academy (USMMA) graduates and State maritime academy graduates who receive Student Incentive Payments (SIP). Prior to this regulation, each graduate was required to submit an employment report form thirteen (13) months following his or her graduation and each succeeding twelve (12) months for a total of five (5) consecutive years.

The amended obligation will require each graduate to file a report on March 31 following graduation and six (6) consecutive years thereafter. Each graduate will file a total of seven (7) reports in order to give information on all six (6) years of service obligation. This new reporting date will create a standard reporting period for all graduates and will coincide with the U.S. Naval Reserve/Merchant Marine Reserve (USNR/MMR) service reporting date. This rulemaking will also provide for the electronic submission of reports as the primary means for submission to MARAD.

DATES: This interim final rule is effective March 2, 2004. However, MARAD will consider comments received not later than April 1, 2004.

ADDRESSES: Comments should refer to the docket number that appears on the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit.* Note that all comments received will be posted without change including any personal information provided in the comment. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Brenda Reed-Perry, Office of Policy and Plans, Maritime Administration, MAR–410, Room 7123, 400 Seventh Street, SW., Washington, DC 20590; telephone: (202) 366–0845; FAX: (202) 366–7403 and e-mail: *maritime.graduate@marad.dot.gov.*

SUPPLEMENTARY INFORMATION: The USMMA and State maritime academies require a midshipman/cadet who is a U.S. citizen and who enters the USMMA or a State maritime academy in the SIP program after April 1, 1982, to sign a service obligation contract which obligates the midshipman/cadet to certain post-graduate employment. Prior to this interim final rule, a USMMA or State maritime academy SIP graduate was required to submit his or her service obligation report thirteen (13) months following his or her graduation and each succeeding twelve (12) months for a total of five (5) consecutive years for USMMA graduates and for a total of three (3) years for State maritime academy SIP graduates.

However, MARAD is now establishing the same service obligation reporting date that the USNR/MMR requires. This interim final rule will require each graduate to file a report on March 31 following graduation and six (6) consecutive years thereafter. Each graduate will file a total of seven (7) reports in order to give information on all six (6) years of service obligation. This new reporting date not only will coincide with the USNR/MMR's service reporting date but also will create a standard reporting period for all graduates. This rulemaking will also provide for the electronic submission of reports as the primary means for submission. Graduates must submit annually the Maritime Administration Service Obligation Compliance Report and Merchant Marine Reserve, U.S. Naval Reserve (USNR), Annual Report (Form MA–930). Graduates may submit their Service Obligation Reports electronically via the Maritime Service Compliance System at *https://mscs.marad.dot.gov.*

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12886 and, therefore, was not reviewed by the Office of Management and Budget. This interim final rule is not likely to result in an annual effect on the economy of $100 million or more. This interim final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The costs and benefits associated with this rulemaking are considered to be so minimal that no further analysis is necessary. The economic impact, if any, should be minimal; therefore, further regulatory evaluation is not necessary. Additionally, this interim final rule is intended only to allow timely as well as fair and efficient use of electronic submission technologies for the information collection identified in this interim final rule.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to the

notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for not providing notice and comment since this interim final rule only changes the service obligation reporting date of graduates to March 31 following graduation and thereafter for six (6) consecutive years for a total of seven (7) reports. The USNR/MMR also requires a March 31 reporting date for its service obligation reports. Additionally, we find good cause under 5 U.S.C. 553(d) to make this interim final rule effective upon publication because this rule is noncontroversial and allows timely and efficient reporting criteria. An immediate effective date of this final rule will provide USMMA and State maritime academy SIP graduates with equal reporting dates irrespective of graduation date. However, MARAD will accept comments as indicated in the Comments section above.

Regulatory Flexibility Act

MARAD certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. This interim final rule only changes the service obligation reporting date for graduates to March 31 following graduation and for six (6) consecutive years thereafter. Only individuals and not businesses are affected by this interim final rule.

Federalism

We have analyzed this interim final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this interim final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this interim final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, "Procedures for Considering Environmental Impacts," 50 FR 11606 (March 22, 1985), the preparation of an Environmental Assessment, and an Environmental Impact Statement, or a Finding of No Significant Impact for this interim final rule is not required. This interim final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This interim final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This interim final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This interim final rule contains information collection requirements covered by the Office of Management and Budget approval number 2133–0509.

List of Subjects in 46 CFR Part 310

Grant programs-education, Reporting and recordkeeping requirements, Schools, Seamen.

■ Accordingly, for the reasons discussed in the preamble, 46 CFR part 310, is amended as follows:

PART 310—[AMENDED]

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. In § 310.58, paragraph (d) is revised to read as follows:

§ 310.58 Service obligation for students enrolled after April 2, 1982.

* * * * *

(d) Reporting requirements. (1) Each graduate must submit a service obligation report form on March 31 following graduation and six (6) consecutive years thereafter. Each graduate will file a total of seven (7) reports in order to give information on all six (6) years of service obligation. Graduates are encouraged to submit the service obligation report to MARAD using the web-based Internet system at *https://mscs.marad.dot.gov*. You may also continue to mail the service obligation report to: Compliance Specialist, Maritime Administration, Office of Policy and Plans, Room 7123, 400 7th St., SW., Washington, DC 20590.

(i) *Example 1:* Midshipman/cadet graduates on June 30, 2004. His first reporting date is March 31, 2005 and thereafter on March 31 for six (6) consecutive years for a total of seven (7) reports.

(ii) *Example 2:* Midshipman/cadet has a deferred graduation to November 30, 2004. His first reporting date is March 31, 2005 and thereafter for six (6) consecutive years for a total of seven (7) reports.

(iii) *Example 3:* Midshipman/cadet graduated in June 2002 and has already begun his service obligation reporting. His reports are now due on March 31 of each reporting year.

(2) The Maritime Administration will provide reporting forms upon request. However, non-receipt of such form will not exempt a graduate from submitting service obligation information as required by this paragraph. Graduates are encouraged to submit their service obligation reports electronically at *https://mscs.marad.dot.gov*. The reporting form has been approved by the Office of Management and Budget (2133–0509).

* * * * *

Dated: February 26, 2004.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4553 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 040223066–4066–01; I.D. 012204D]

RIN 0648–AR94

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Authorization for Commercial Fisheries; Correction

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

ACTION: Final rule; correcting amendment.

SUMMARY: The purpose of this document is to correct unintended errors in definitions contained in the Code of Federal Regulations.

DATES: Effective March 2, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia Lawson, NMFS, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The definitions that are the subject of this correction are part of the regulations that implement the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), which, among other things, restricts the taking, possession, transportation, selling, offering for sale, and importing of marine mammals. The definition of "Marine mammal" in 50 CFR 216.3 provides that the term means specimens and any part thereof of animals of certain orders, including "Cetacea (whales and porpoises)." To avoid confusion, Dolphins should be included in the parenthesis as a general type of animals in the order Cetacea. The definition of "Regional Director" in 50 CFR 216.3 refers only to the Director of the Southwest Region of NMFS, although it should refer to Regional Administrator for any regional office of NMFS.

Corrections

This document corrects unintended errors in 50 CFR 216.3. The definition of "Marine mammal" is amended to expressly clarify that dolphins are a type of marine mammal in the Order Cetacea and the definition of "Regional Director" is amended to provide that the term includes the Regional Administrator for any regional office of NMFS rather than just the Director of the Southwest Region.

Classification

The Assistant Administrator for Fisheries, National Marine Fisheries Service (AA) finds that good cause exists to waive the requirement to provide prior notice and the opportunity for comment, pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be unnecessary. Prior notice and opportunity for comment are unnecessary because this amendment merely corrects and clarifies the subject definitions and will have a de minimis effect, if any, on the regulated community. These corrections do not increase the scope of the regulated community nor add new requirements. In addition, because this rule corrects and clarifies provisions and makes non-substantive or de minimis changes to the regulations, the AA finds good cause under 5 U.S.C. 553(d) not to delay the effective date for 30 days.

Because a general notice of proposed rulemaking is not required under 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 inapplicable.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood,Transportation.

Dated: February 26, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reason set out in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S. C. 1361 *et seq.*, unless otherwise noted.

■ 2. In § 216.3, the definitions of "Marine mammal" and "Regional Director" are revised to read as follows:

§ 216.3 Definitions.

* * * * *

Marine mammal means those specimens of the following orders, which are morphologically adapted to the marine environment, and whether alive or dead, and any part thereof, including but not limited to, any raw, dressed or dyed fur or skin: Cetacea (whales, dolphins, and porpoises) and Pinnipedia, other than walrus (seals and sea lions).

* * * * *

Regional Director means the Regional Administrator, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930; or Regional Administrator, Northwest Regional Office, NMFS, 7600 Sandpoint Way, N.E., Building 1, Seattle, WA 98115; or Regional Administrator, Southeast Regional Office, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; or Regional Administrator, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802; or Regional Administrator, Pacific Islands Regional Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814; or Regional Administrator, Alaska Regional Office, NMFS, PO Box 21668, Juneau, AK 99802.

* * * * *

[FR Doc. 04–4609 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–4072–06; I.D. 022004A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations make changes to the area for restrictions that were provided in a temporary rule published in the **Federal Register** on February 25, 2004, and apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,896 square nautical miles (nm2) in February, and 1,580 nm^2(5,419 km^2) in March, east of Portsmouth, NH, for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours March 1, 2004, through 2400 hours March 12, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction

planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/.*

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm^2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm2 (1.85 km^2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 12, 2004, NMFS Aerial Survey Team reported a sighting of six right whales in the proximity of 42° 41.56′ N lat. and 70° 02.03′ W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS reviewed the factors and management options noted above relative to the DAM under consideration. As a result of this review, NMFS published a temporary rule on February 25, 2004 (65 FR 8570), to prohibit lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone identified in the **Federal Register** on February 25, 2004, was bound by the following coordinates:

43°03′N, 70°32′W (NW Corner)
43°03′N, 69°32′W
42°20′N, 69°32′W
42°20′N, 70°32′W

The effective dates for this DAM zone coincide with the implementation of SAM West on March 1 and, as of that date, the southeast corner of the DAM zone will overlap SAM West. Inadvertently, however, the area NMFS identified as the DAM Zone did not omit SAM West from the designated DAM zone. Therefore, pursuant to NMFS policy concerning the relationship of DAM to other regulated waters, such as SAM, on March 1, 2004, the boundaries of the DAM zone will change to reflect the establishment of SAM West. Accordingly, as of March 1, 2004, the DAM zone will be bound by the following coordinates:

43°03′N, 70°32′W (NW Corner)
43°03′N, 69°32′W
42°30′′N, 69°3′W
42°30′N, 70°15′W
42°2′0′N, 70°15′W
42°20′N, 70°32′W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per trawl; and

4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;

2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;

3. Fishermen are allowed to use two buoy lines per string;

4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and

5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

These restrictions will remain in effect as provided in the temporary rule published February 25, 2004 until 0001 hour March 1, 2004 at which time these restrictions will become effective in the DAM zone with the coordinates provided by this temporary rule through 2400 hours March 12, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EAs prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS made the restrictions in the DAM zone that were provided in the **Federal Register** on February 25, 2004, effective 2 days after the date of publication of notice in the **Federal Register**. NMFS also provided notice of that action to fishermen through other means as soon as the AA approved it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processed the document for publication. The action in this **Federal Register** notice lifts restrictions from the February 25, 2004, **Federal Register** notice that would have overlapped with SAM West. Therefore, no further delay in effective date is necessary or appropriate.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 26, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 04–4621 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 41
Tuesday, March 2, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

[Docket No. AO–14–A72, et al.; DA–03–08]

Milk in the Northeast and Other Marketing Areas; Tentative Decision on Proposed Amendments and Opportunity To File Written Exceptions to Tentative Marketing Agreements and to Orders

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO– 14–A72
1005	Appalachian	AO–388–A13
1006	Florida	AO–356–A36
1007	Southeast	AO–366–A42
1030	Upper Midwest	AO–361–A37
1032	Central	AO–313–A46
1033	Mideast	AO–166–A70
1124	Pacific Northwest	AO–368–A33
1126	Southwest	AO–231–A66
1131	Arizona-Las Vegas.	AO–271–A38

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This tentative decision adopts, on an interim final and emergency basis, proposals to amend the classification of milk use provisions in the current 10 Federal milk marketing orders. Specifically, this decision will reclassify milk used to produce evaporated milk in consumer-type packages or sweetened condensed milk in consumer-type packages from Class III to Class IV. This decision requires determination of whether dairy producers approve the issuance of the amended orders on an interim basis. Additionally, public comments on these adopted provisions and the proposal to reclassify ending bulk milk inventory, which is not adopted by this tentative final decision, are requested.

DATES: Comments are due on or before May 3, 2004.

ADDRESSES: Comments (6 copies) should be filed with the Hearing Clerk, United States Department of Agriculture, Room 1083–STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, and you may also send your comments by the electronic process available at Federal eRulemaking portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Room 2968—STOP 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *antoinette.carter@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During June 2003—the most recent representative period used to determine the number of small entities associated with Federal milk orders—there were a total of 60,096 dairy producers whose milk was pooled under Federal milk orders. Of the total, 56,818 dairy producers—or about 95 percent—were considered small businesses based on the above criteria. During this same period, there were about 1,622 plants associated with Federal milk orders. Specifically, there were approximately 387 fully regulated plants (of which 143 were small businesses), 92 partially regulated plants (of which 41 were small businesses), 44 producer-handlers (of which 23 were considered small businesses), and 108 exempt plants (of which 98 were considered small businesses). Consequently, 950 of the 1,622 plants meet the definition of a small business.

Total pounds of milk pooled under all Federal milk orders was 10.498 billion for June 2003 which represents 73.5 percent of the milk marketed in the United States. Of the 10.498 billion

pounds of milk pooled under Federal milk orders during June 2003, 1.78 million pounds—or 1.7 percent—was used to produce evaporated milk and sweetened condensed milk products in consumer-type packages. Additionally, during this same period, total pounds of Class I milk pooled under Federal milk orders was 3.475 billion pounds, which represents 82.3 percent of the milk used in Class I products (mainly fluid milk products) that were sold in the United States.

This decision adopts, on an interim basis, proposals that will reclassify milk used to produce evaporated milk or sweetened condensed milk in consumer-type packages from Class III to Class IV in all Federal milk orders. This decision is consistent with the Agricultural Agreement Act of 1937 (Act), which authorizes Federal milk marketing orders. The Act specifies that Federal milk orders classify milk "in accordance with the form for which or purpose for which it is used."

Currently, the Federal milk order system provides for the uniform classification of milk in provisions that define four classes of use for milk (Class I, Class II, Class III, and Class IV). Each Federal milk order sets minimum prices that processors must pay for milk based on how it is used and computes weighted average or uniform prices that dairy producers receive.

Under the milk classification provisions of all Federal milk orders, Class I consists of those products that are used as beverages (whole milk, low fat milk, skim milk, flavored milk products like chocolate milk, etc.) [1] Class II includes soft or spoonable products such as cottage cheese, sour cream, ice cream, yogurt, and milk that is used in the manufacture of other food products. Class III includes all skim milk and butterfat used to make hard cheeses—types that may be grated, shredded, or crumbled; cream cheese; other spreadable cheeses; plastic cream; anhydrous milkfat; and butteroil. Class III also consists of evaporated milk and sweetened condensed milk in consumer-type packages. Class IV includes, among other things, butter and any milk product in dried form such as nonfat dry milk.

Evaporated milk and sweetened condensed milk in consumer-type packages should be classified as Class IV because of their product characteristics and because their product yields are tied directly to the raw milk used to make these products. Like other Class IV products, evaporated milk and sweetened condensed milk in consumer-type packages have a relatively long shelf-life (*i.e.*, the products can be stored for more than one year without refrigeration). These products also may be substituted for other Class IV products (*e.g.*, nonfat dry milk) and compete over a wide geographic area with products made from non-federally regulated milk. Additionally, like other Class IV products, evaporated milk and sweetened condensed milk in consumer-type packages are competitive outlets for milk surplus to the Class I needs of the market.

The proposed amendments adopted in this decision should not have a significant economic impact on dairy producers or handlers associated with Federal milk orders. Since the reclassification of evaporated milk and sweetened condensed milk in consumer-type packages will be uniform in all Federal milk orders, dairy producers and handlers associated with the orders will be subject to the same provisions. The classification change should have only a minimal impact on the price dairy producers receive for their milk due to the small quantity of milk pooled under Federal milk orders that is used to produce evaporated milk or sweetened condensed milk in consumer-type packages. For example, using the Department's production data provided in the record for milk, skim milk, and cream used to produce evaporated milk and sweetened condensed milk in consumer-type packages by handlers regulated under Federal milk orders for the three years of 2000 through 2002, the reclassification of the milk used to produce these products from Class III to Class IV would have affected the statistical uniform price for all Federal milk orders combined by only $0.0117 per hundredweight.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). It is determined that these proposed amendments will have no impact on reporting, recordkeeping, or other compliance requirements because they will remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This notice does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Interested parties are invited to submit comments on the probable regulatory and informational impact of this proposed rule on small entities. Also, parties may suggest modifications of this proposal for the purpose of tailoring their applicability to small businesses.

Prior Documents in this Proceeding

Notice of Hearing: Issued September 2, 2003; published September 8, 2003 (68 FR 52860).

Correction of Notice of Hearing: Issued October 9, 2003; published October 16, 2003 (68 FR 59554).

Since this proceeding commenced, the Western order has been terminated, effective April 1, 2004, as published in the **Federal Register** on February 24, 2004 (69 FR 8327). The termination is based on producers' disapproval of the issuance of the Western order as amended by a tentative final decision issued in August 2003 and published in the **Federal Register** on August 18, 2003 (68 FR 49375), and comments received in response to the proposed termination—published January 13, 2004 (69 FR 1957). The termination removed all of the operating provisions of the order. The remaining administrative provisions of the order will be terminated at a later date.

Preliminary Statement

Notice is hereby given of the filing with the Hearing Clerk of this tentative final decision with respect to proposed amendments to the tentative marketing agreements and the orders regulating the handling of milk in the northeast and all other Federal order marketing areas. This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Interested parties may file written exceptions to this decision with the Hearing Clerk, U.S. Department of Agriculture, Room 1083–STOP 9200, 1400 Independence Avenue, SW., Washington, DC 20250–9200, by May 3, 2004. Six (6) copies of the exceptions

[1] Federal milk orders do not classify products but instead classify the milk (skim milk and butterfat) disposed of in the form of a product or used to produce a product. This decision references "Class I products," "Class II products," "Class III products," and "Class IV products" to simplify the findings and conclusions.

should be filed. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The hearing notice specifically invited interested persons to present evidence concerning the probable regulatory and informational impact of the proposals on small businesses. While no evidence was received that specifically addressed these issues, some of the evidence encompassed entities of various sizes.

The proposed amendments set forth below are based on the record of a public hearing held at Alexandria, Virginia, on October 21, 2003, pursuant to a notice of hearing issued September 2, 2003, and published September 8, 2003 (68 FR 52860), and a correction of notice of hearing issued October 9, 2003, and published October 16, 2003 (68 FR 59554).

The material issues on the record of the hearing relate to:

1. Classification of evaporated milk and sweetened condensed milk in consumer-type packages;
2. Classification of monthly bulk milk ending inventory; and
3. Determination as to whether emergency marketing conditions exist that would warrant the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Classification of Evaporated Milk and Sweetened Condensed Milk in Consumer-Type Packages

This tentative decision adopts, on an interim basis, proposed amendments that will reclassify evaporated milk and sweetened condensed milk in consumer-type packages from Class III to Class IV. The proposed amendments are consistent with the statutory authority for Federal milk orders, which specifies that milk should be classified "in accordance with the form in which or purpose for which it is used."

A proposal by O–AT–KA Milk Products Cooperative, Inc. (O–AT–KA), published in the hearing notice as Proposal 1, seeks to reclassify evaporated milk in consumer-type packages (canned evaporated milk) from Class III to Class IV. Proposal 2, published in the hearing notice as proposed by Diehl, Inc., and Milnot Holding Corporation, would reclassify sweetened condensed milk in consumer-type packages (canned sweetened condensed milk) from Class III to Class IV. The proponents for Proposals 1 and 2 ask that they be considered on an emergency basis and, in this regard, that a recommended decision be omitted.

A witness appearing on behalf of O–AT–KA testified in support of the reclassification of evaporated milk from Class III to Class IV and supported the reclassification of sweetened condensed milk from Class III to Class IV. The witness stated that O–AT–KA is owned by over 2,000 dairy producers who are members of Upstate Farms Cooperative, Inc., Niagara Milk Cooperative, Inc., and Dairylea Cooperative Inc. In 2002, the witness noted that over 700 million pounds of milk was processed by O–AT–KA.

The witness estimated that O–AT–KA is the second largest manufacturer of canned evaporated milk products in the United States. According to the witness, the largest manufacturer of canned evaporated milk is Nestle Foods Company, which produces its product in California from milk likely pooled on the California State order. Other Federal order manufacturers of canned evaporated milk, the witness indicated, include Diehl, Inc., based in Ohio, and Milnot Holding Corporation, located in Missouri.

The O–AT–KA witness also provided a historical background on the classification of canned evaporated milk. The O–AT–KA witness explained that milk used to produce canned evaporated milk products had traditionally been classified in the lowest use class of Federal milk orders. The witness cited the uniform classification decision of 1974 in which USDA stated (referencing a 3-class system): "A Class II classification should not apply to evaporated or condensed milk or skim milk in consumer-type containers as the cooperatives proposed. Such storable products should remain in the lowest price class. A Class III classification for milk in these products will permit such uses to remain as a competitive outlet for milk surplus to the needs of the Class I market. Such products made from milk regulated under these orders must compete over wide areas with the same products processed from ungraded milk or other graded milk that is often priced at no more than the Minnesota-Wisconsin price. Comparable pricing should prevail under these 32 orders." published March 5, 1974 (39 FR 8461–8462). The witness noted that the Class III classification determination of canned evaporated milk was left unchanged when the national uniform classification of Federal milk marketing orders was reviewed in 1993.

The O–AT–KA witness explained that the reform of Federal milk marketing orders, effective in January 2000, continued to classify milk used to produce canned evaporated milk as Class III even though the lowest use manufacturing classes—Class III and Class IV—were definitively split. He stated that Class III became a cheese use class based on a cheese yield and cheese pricing formula. According to the witness, the reclassification of canned evaporated milk to a more appropriate Class IV milk use was simply overlooked.

The O–AT–KA witness testified that the characteristics and composition of canned evaporated milk—including the production yields, nonfat solids content, and shelf life—all support a Class IV classification of the product. The witness explained that evaporated milk products are made by the evaporation of water resulting in a milk solids content of a minimum of 6.5 percent butterfat and 23 percent total solids. Like nonfat dry milk, the witness stressed, the product yields of evaporated milk products are impacted by the nonfat solids content of the raw milk used to produce the products. Thus, the witness asserted, the higher the nonfat solids content of the raw milk used to produce the product the less water needs to be evaporated and the more cans of the product can be made. In addition, the witness stated that evaporated milk products are packaged in steel cans so that the products are sterile with a shelf life that can exceed 12 months. Accordingly, the witness contended that canned evaporated milk products are more appropriately classified as a Class IV rather than Class III milk use.

The O–At–KA witness testified that the current Class III classification contributes to improper pricing and potential raw milk product cost inequity because the yields of evaporated milk products are nonfat-solids based rather than protein-based. Also, the witness stated, evaporated milk products are not a substitute for cheese products but may be substituted for nonfat dry milk. Additionally, the witness stressed evaporated milk products can be and are produced from reconstituted nonfat dry milk, stressing that these products cannot be produced from cheese.

The O–AT–KA witness provided actual price data from January 1998 through September 2003 and forecasted price data from October 2003 through December 2004. According to the witness, the higher raw milk costs dictated by the higher minimum Class III prices of late cannot be competitively

recovered in the marketplace for canned evaporated milk products. The witness also speculated that the disadvantageous price relationship was likely to continue into the foreseeable future and threatens the continued production of these products at their associated plants.

The O–AT–KA witness also indicated that label recognition, competing handlers who are supplied by non-federally regulated milk sources, and the contract bidding processes are exacerbating the disadvantageous conditions that are now being borne by O–AT–KA members in the form of reduced returns. If the mis-classification is allowed to continue, the witness forecasted evaporated milk plants like O–AT–KA could ultimately be forced out of producing these products, which would likely cause raw milk to be ultimately diverted to nonfat dry milk and butter (Class IV classification). Thus, the witness indicated that a reclassification to Class IV would deter such unfavorable potential outcomes.

The O–AT–KA witness was of the opinion that blend prices to producers would not be significantly affected if Proposal 1 was adopted because of the relatively low volume of pooled milk used to produce evaporated milk products when compared to the higher volumes of milk used to produce all other dairy products. The witness contended that the current competitive disparity between Federal milk order manufacturers and non-Federal order manufacturers of these products will continue until this classification issue is resolved. The witness concluded by asking that USDA consider this proposal on an emergency basis and take immediate action by issuing a final decision.

O–AT–KA filed a post-hearing brief reiterating its support for the reclassification of canned evaporated milk and canned sweetened condensed milk from Class III to Class IV.

A witness representing the Milnot Holding Corporation (Milnot) testified in support of Proposals 1 and 2 to reclassify canned evaporated milk and canned sweetened condensed milk as Class IV. The witness testified that Milnot is a small business that employs about 422 employees and processes approximately 200 million pounds of raw milk annually into evaporated milk and sweetened-condensed milk in consumer-type packages. The witness stated that milk used to make these products should be classified in the lowest manufacturing use class because of the products' shelf-life and characteristics.

The Milnot witness stated that canned evaporated milk and canned sweetened condensed milk products are packaged in shelf-stable packages that provide a shelf life of a year or more without refrigeration. The witness stressed that canned evaporated milk and canned sweetened-condensed milk products are driven by the nonfat solids composition of the raw milk used to produce the products which is similar to nonfat dry milk—a Class IV product. Similar to the O–AT–KA representative, the Milnot witness explained that the higher the nonfat solids content of the raw milk, the less water needs to be removed and the more cans of product result from the raw milk. Thus, the witness concluded that canned evaporated milk and canned sweetened condensed milk products are closely related and that such products, therefore, should be classified as Class IV since "the production of these milk items is not related to the protein-driven curd development" associated with cheese production.

The Milnot witness also cited the 1974 uniform classification decision, published March 5, 1974 (38 FR 8461–8462), which stated that evaporated milk or condensed milk or skim milk products in consumer-type containers are storable products that should remain in the lowest price class (Class III). Like the O–At–KA witness, the witness pointed out that the reform of milk marketing orders provided a definitive split between Class III and Class IV and overlooked canned evaporated milk and canned sweetened condensed milk products by continuing the Class III classification for milk used to make these products.

The Milnot witness also testified that the disadvantageous price relationship between Class III and Class lV had become increasingly acute over the past year, and it is now especially critical that the Department handle the matter expeditiously.

A witness representing Eagle Family Foods (Eagle) also testified in support of reclassifying milk used to produce canned evaporated milk products, as well as canned sweetened condensed milk, as a Class IV use of milk. The witness explained that Eagle is a small business, employing about 300 people and operating two manufacturing plants located in Wellsboro, Pennsylvania, and Starkville, Mississippi. According to the witness, the primary business of the company is manufacturing sweetened condensed milk products for national distribution.

The Eagle witness explained that the milk purchased by their plants for manufacturing canned sweetened condensed milk products is pooled on Federal milk orders. The cost of the raw milk, the witness contended, makes it more difficult to compete and can drastically affect the viability of their business. The witness also asserted that sweetened condensed milk products are solids-based rather than protein-based products and therefore should be classified as Class IV use of milk. As did the O–AT–KA and Milnot witnesses, the Eagle witness asked that the issue be handled on an emergency basis.

A witness appearing on behalf of Diehl, Inc. (Diehl), testified in support of reclassifying milk used to produce both canned evaporated milk and canned sweetened condensed milk products from Class III to Class IV because milk used to produce such products are solids-based products versus protein-based products. The witness testified that Diehl is a family-owned and operated small business which manufactures canned dairy products, including canned evaporated milk and canned sweetened condensed milk products. The witness stated that Diehl has plants in Ohio, Michigan, and Idaho that purchase milk pooled under Federal milk orders. The witness also asked that the proposals be handled on an emergency basis due to what they view as the improper classification of milk used to make these products.

A witness appearing on behalf of Association of Dairy Cooperatives of the Northeast (ADCNE) testified in favor of the proponents' proposals concerning the reclassification of canned evaporated milk and canned sweetened condensed milk products as Class IV. According to the witness, ADCNE is comprised of several cooperatives that collectively represent more than 65 percent of the producers pooled under the northeast milk order.

The ADCNE witness testified that it is important for Federal milk orders to appropriately classify products. Canned evaporated milk and canned sweetened condensed milk, the witness asserted, are long-shelf-life products that fit best in Class IV under the current system of product classification and end-product pricing. He pointed out that large price differences between Class III and Class IV can place Federal order manufacturers of canned evaporated milk and canned sweetened condensed milk products—which are distributed nationally—at a substantial competitive disparity with non-Federal order manufacturers. The witness supported USDA adopting Proposals 1 and 2 on an emergency basis.

ADCNE also filed a post-hearing brief reiterating their position and asserting that the mis-classification of canned

evaporated milk and canned sweetened condensed milk products in Class III (cheese use category) has resulted in a $4.00 per hundredweight price discrepancy between Class III and Class IV that is extremely burdensome to Federal order processors of these products, including the ADCNE member O–AT–KA. ADCNE stated that it is imperative the changes be made on an expedited basis to restore order to the national market for these products.

A witness appearing on behalf of New York State Dairy Foods, Inc. (NYSDF), testified in support of Proposal 1. The witness contended that O–AT–KA can no longer effectively compete in evaporated milk markets without incurring very large losses due to the current price disparity between federally regulated milk used to produce evaporated milk consumer products and non-federally regulated milk used to make such products.

The NYSDF witness also testified that a Class IV classification is appropriate since evaporated milk, like dried milk powders, is a product end use involving extensive special processing and the removal of the water from milk. The witness asserted that evaporated milk is similar to nonfat milk powder and butter because it has a relatively long storage capability. The witness also supported the reclassification of milk used to produce canned sweetened condensed milk from Class III to Class IV.

The National Milk Producers Federation (NMPF) filed a brief in support of the reclassification of canned evaporated milk and canned sweetened condensed milk from Class III to Class IV. NMPF represents nearly 60,000 dairy farmers that produce the majority of the United States milk supply.

NMPF's brief asserted that Class III is fundamentally for cheese products, which is consistent with the Class III cheese based pricing formula, whereas Class IV is a class for milk ingredients such as butter and milk powders. NMPF beleives evaporated and sweetened condensed milk products are more appropriately associated with products such as milk powders and butter rather than cheese products.

NMPF encouraged USDA to consider, with respect to adopting Proposals 1 and 2, the compatibility with State regulations, which would contribute to more orderly marketing both in and outside of Federal milk marketing order areas. The federation also supported the handling of the action on an emergency basis to remove the competitive disadvantage currently imposed on Federal order manufacturers of canned evaporated milk and canned sweetened condensed milk products.

There was no opposition testimony for the adoption of Proposals 1 and 2 given at the hearing or contained in post-hearing briefs.

Findings and Conclusions

The record evidence clearly supports the reclassification of milk used to produce evaporated milk in consumer-type packages or sweetened condensed milk in consumer-type packages from Class III to Class IV. The proposed amendments adopted in this decision reclassify milk used to produce canned evaporated milk or canned sweetened condensed milk products to a Class IV use of milk. The milk used to produce these products, like other Class IV products, has a relatively long shelf life, may be stored without refrigeration, is sold over a wide geographic area and competes for sales with milk from non-federally regulated sources, and remains an outlet for milk not needed for fluid use. Most importantly, the yields of these products are based directly on the nonfat solids content of the raw milk used to make these products. Thus, the reclassification will appropriately classify and price under all Federal milk orders milk used to produce evaporated milk or sweetened condensed milk products in consumer-type packages.

The Agricultural Marketing Agreement Act of 1937 specifies that Federal milk marketing orders classify milk "in accordance with the form in which or the purpose for which it is used." Currently, Federal milk orders establish uniform classification of milk provisions for all Federal milk orders consisting of four classes of use (Class I, Class II, Class III, and Class IV) for pricing milk.

The classes of use can be categorized as a fluid/beverage class and three manufacturing classes of milk. Class I consists of those products that are used for fluid/beverage use with certain exceptions for formulas especially prepared for infant feeding or dietary use in hermetically-sealed containers. Class II includes soft or spoonable products such as cottage cheese, sour cream, ice cream, yogurt, and milk that is used in the manufacture of other food products. Class III consists of milk used in hard cheeses, cream cheese, and other spreadable cheese. Class IV consists of butter or any milk product in dried form and bulk milk that is in inventory at the end of the month.

Federal milk marketing orders establish and maintain orderly marketing conditions for dairy farmers and handlers through classified pricing (pricing milk based on use) and the pooling of the proceeds of milk used in a marketing area. These provisions allow Federal milk marketing orders to establish minimum prices that handlers must pay for milk based on use and return a weighted average or uniform price that dairy farmers receive for their milk. These provisions ensure that all dairy farmers supplying a market share in the benefit that arises from classified pricing through marketwide pooling of milk.

Federal milk orders provide a pricing system for manufactured dairy products that is based on end-product price formulas. Under this system of pricing, the Class III price for milk is derived from the price of butterfat, protein, and other nonfat/non-protein milk solids (other solids). The butterfat, protein, and other solids prices are dependent upon the wholesale prices of butter, cheese, and dry whey, respectively, and make allowances and yield factors for the dairy products. The Class IV price is derived from the price of butterfat and nonfat solids. The price of butter and nonfat solids are dependent upon the wholesale price of butter and nonfat dry milk, respectively, and make allowances and yield factors for the products.

The record evidence clearly indicates that product yields for canned evaporated milk and canned sweetened condensed milk products are based exclusively on the solids content of the raw milk used to make the product. The record indicates that evaporated milk must have a minimum of 6.5 percent butterfat and 23 percent total solids and that sweetened condensed milk must have a minimum of 8 percent butterfat and 28 percent total solids. The higher the milk solids content of the raw milk used to make canned evaporated milk or canned sweetened condensed milk the less water needs to be removed, which results in more cans of these products produced at the above standards. The protein content of the raw milk is not relevant to the production of these condensed milk products. Accordingly, the reclassification of milk used to produce evaporated and sweetened condensed milk products as a Class IV use will ensure that the milk used to produce these products is properly classified and priced.

The uniform classification of milk decision of 1974 stated that canned evaporated milk and canned sweetened condensed milk are storable products that should remain in the lowest manufacturing use class based on a 3-class system. The 1974 decision further states that "A Class III classification for producer milk in these products will permit such uses to remain as a competitive outlet for milk surplus to

the needs of the Class I market." The decision also states such products made from milk regulated under these orders must compete over wide areas with the same products processed from ungraded milk or other graded milk." These characteristics of evaporated and sweetened condensed milk products remain applicable today, some 30 years later.

The Class III classification determination of canned evaporated milk and canned sweetened condensed milk was left unchanged during the review of the national uniform classification of milk provisions for Federal milk marketing orders in 1993. During the reform of the Federal milk order program the classification of milk used to produce canned evaporated milk and canned sweetened condensed milk products remained as Class III milk use products even though Federal order reform resulted in a definitive split between milk used to produce Class III and Class IV products. The Class III designation in all Federal milk orders was determined for milk used to produce cheese with the corresponding Class III price based primarily on cheese prices, the make allowance for cheese, and cheese yields from a hundredweight of milk.

The product characteristics of evaporated milk and sweetened condensed milk are more similar to nonfat dry milk (a Class IV product) rather than cheese (a Class III product). Like dry milk powder, these products can be stored for long periods of time without refrigeration. These products also are competitive outlets for milk that is surplus to the Class I needs of a market and thereby provide a balancing function for Federal order marketing areas. Most importantly, the product yields for evaporated and sweetened condensed milk products are tied directly to the yields of milk solids contained in the raw milk used to produce these products.

The record evidence provided historical data of class prices covering the period since Federal milk orders were reformed in January 2000 through September 2003. According to this data, the Class IV price exceeded the Class III price by an average of $2.13 per hundredweight in 2000, $0.91 per hundredweight in 2001, and $0.42 per hundredweight in 2002. However, the Class III price for the period of January 2003 through September 2003 has exceeded the Class IV price by an average of $1.07 per hundredweight. The monthly Class III price for milk generally was below the Class IV price from the implementation of Federal milk marketing order reform in January 2000 through June 2003. The monthly Class III price increased above the Class IV price beginning in July 2003, and the price difference increased to a level of $4.25 per hundredweight in September 2003. This data clearly demonstrates that the Class III and Class IV price relationship has shifted since the reform of Federal milk orders in 2000 and that the Class III and Class IV prices move independently of each other.

The price difference between Class III and Class IV gave rise to proponents' concerns of competitive inequities. The predictions of competitive inequities that would likely continue if the Department determined that milk used to produce such products remain classified as a Class III use of milk may or may not be valid. These concerns alone do not provide adequate rationale for determining if the milk used to produce such products are properly classified under the Federal milk order system. What is most important is that milk is properly classified in accordance with form and use and in doing so promotes orderly marketing conditions.

All of the proponents of Proposals 1 and 2 are handlers who operate nonpool plants and, accordingly, are not regulated by any Federal milk marketing order. However, the record reveals that these entities purchase and receive milk that is pooled and priced under a Federal milk marketing order. Unlike pool handlers, nonpool handlers do not pool their milk receipts or share in the returns that are determined through the marketwide pooling of milk. Nonpool handlers are not required to purchase milk already pooled and priced under the terms of an order. In this regard, the price paid by nonpool handlers is not known if purchased through nonpool sources, and even if purchased through pool sources, such purchase may or may not have transacted at minimum class prices. Such is especially true when a nonpool handler receives milk through diversion from pool handlers. A pooled handler diverting milk to a nonpool plant is the entity that incurs the payment obligation to dairy farmers and accounts to the marketwide pool for the volume of milk at the classified use value of milk so diverted. Consequently, the price a nonpool handler actually pays for such milk is not known. Therefore, it cannot be determined whether a competitive advantage or disadvantage may arise in those times when the Class III price for milk rises above the Class IV price, which results in the Class IV price being the lowest valued use of milk.

Hearing participants expressed concern about price disparities that result from the improper classification of milk used to produce evaporated milk and sweetened condensed milk products as Class III with entities that do not use milk priced under a Federal milk marketing order. This decision does not rely on findings with respect to such concerns as a reason for changing the classification of milk used to produce these products from the current Class III milk use classification to a Class IV use.

As indicated by the record. milk used to produce canned evaporated milk and canned sweetened condensed milk products is directly tied to the value of the milk solids content of raw milk and resulting product yields based on the solids content of raw milk. The current inappropriate classification of milk used to produce canned evaporated milk or canned sweetened condensed milk products as a Class III use of milk has implications affecting both handlers and producers. From the handler perspective, the mis-classification of milk may affect the price they pay for milk in these uses and may affect their competitive position with milk from non-Federally regulated sources. From the producer viewpoint, the mis-classification of milk affects the total value of the marketwide pool of milk and thus affects the blend price dairy farmers receive for their milk. Analysis of production data from 2000 to 2002 for canned evaporated milk and canned sweetened condensed milk reveals that the blend price for all orders would have increased by $0.0117 per hundredweight. From either viewpoint, all market participants should be assured that orderly marketing conditions are advanced by properly classifying milk in accordance with form and use.

Based upon the official record it is therefore concluded that milk used to produce evaporated milk or sweetened condensed milk in consumer-type packages should be classified as a Class IV use of milk and that the associated amendments to the orders should be effective immediately.

2. Classification of Monthly Bulk Milk Ending Inventory

Proposal 3 of the hearing notice, seeking to classify milk in bulk ending inventory each month to the lowest priced class of Class III or Class IV, is not adopted. Currently, bulk fluid milk products and bulk fluid cream products in inventory at the end of the month are classified as a Class IV use of milk.

A witness testifying on behalf of New York State Dairy Foods, Inc. (NYSDF), testified that the classification of bulk ending inventories beginning with Class IV often tends to increase the volume of

other source milk assigned to a higher-valued class at the transferee plants than is accorded producer milk pooled on an order. The witness asserted that this was not the intent of the present provision dealing with the proper classification of milk in ending inventory. The witness presented data and testimony which indicated that class prices often fluctuate independently and do not always maintain a constant relationship to one another. According to the witness, the typically higher-valued classes can experience a price inversion resulting in a negative producer price differential. The witness asserted that a more equitable sharing of pool proceeds would result from bulk ending inventories being classified at the lowest-valued class. There was no opposing testimony provided at the hearing.

The Association of Dairy Cooperatives in the Northeast (ADCNE) filed a post-hearing brief in opposition to the proposal to change the classification of monthly bulk ending inventory. The ADCNE brief stated that testimony supporting the adoption of the proposal was only provided by northeast milk order handlers even though the proposal would affect all Federal milk orders in the United States. According to ADCNE, the "tilt" in USDA/Commodity Credit Corporation butter/powder support price purchase prices will continue into the foreseeable future thus mitigating the need to reclassify milk in ending inventories as a Class IV use of milk. ADCNE indicated there could be unintended consequences of making such a change that could result in losses of producer income. Accordingly, ADCNE concluded that the proposal is not critical and should not be adopted without further input and a complete examination of the issue.

The National Milk Producers Federation (NMPF) also filed a post-hearing brief in opposition to the adoption of Proposal 3 on an emergency basis. According to NMPF, the impact of the proposal to reclassify monthly bulk ending inventory of fluid milk products and fluid cream products from Class IV to the lowest-priced class of Class III or Class IV cannot be analyzed without knowledge of the specific conforming changes to other affected sections.

The NMPF brief stated that Proposal 3 seemed reasonable in that it would allow processors to avoid advancing money to the pool that could be returned for ultimate use in a lower priced class. The NMPF brief argued that the "lower-of" concept for classifying inventories is supportable as an analog to the "higher-of" principle for Class I milk. Accordingly, the NMPF brief requested that interested parties be provided ample opportunity to comment on the proposed rule should Proposal 3 be recommended for adoption.

Findings and Conclusions

The hearing record does not provide sufficient evidence to adopt a change in the classification rules applicable to monthly bulk ending inventory. Specifically, the hearing record does not provide information on the potential impact of the proposed amendment on affected parties. Accordingly, the bulk ending inventory reclassification proposal is not adopted.

3. Determining Whether Emergency Marketing Conditions Exist That Would Warrant the Omission of a Recommended Decision and the Opportunity to File Written Exceptions

The proposed amendments to reclassify milk used to produce evaporated milk or sweetened condensed milk in consumer-type packages from Class III to Class IV should be adopted on an emergency basis. Record evidence clearly establishes that milk used to produce these products is currently inappropriately classified as a Class III milk use. The hearing record indicates that the milk used to produce these products should be classified as Class IV and should be priced under Federal milk orders accordingly.

Milk used to produce canned evaporated milk or canned sweetened condensed milk products is more appropriately related to the solids content of the raw milk used to make these products, which has a direct bearing on the production yields of these products. The current Class III classification of milk is tied to a value determined primarily to reflect the protein content of milk, which distorts the basis for determining the appropriate value of milk used to produce canned evaporated milk and canned sweetened condensed milk products where the solids content determines the appropriate milk value. Thus, the mis-classification of milk results in improper pricing of such milk under Federal milk orders which causes disorderly marketing conditions affecting both handlers and producers.

Accordingly, it is determined that emergency marketing conditions exist, and therefore the issuance of a recommended decision is omitted. Based on the hearing record, as noted above, this decision adopts the proposed reclassification amendments on an interim basis and provides interested parties an opportunity to file written exceptions to the proposed order amendments. Thus, an interim final rule amending the orders will be issued if it is determined that producers approve the orders, as amended on an interim basis.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the northeast and other marketing orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The interim marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the interim marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The interim marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Interim Marketing Agreement and Interim Order Amending the Orders

Annexed hereto and made a part hereof are two documents, an interim Marketing Agreement regulating the

handling of milk, and an Interim Order amending the orders regulating the handling of milk in the northeast and all other marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered that this entire decision and interim order and the interim marketing agreement annexed hereto be published in the **Federal Register.**

Referendum Order To Determine Producer Approval; Determination of Representative Period; and Designation of Referendum Agent

It is hereby directed that referenda be conducted and completed on or before the 30th day from the date this decision is published in the **Federal Register,** in accordance with the procedure for the conduct of referenda (7 CFR 900.300–311), to determine whether the issuance of the order(s) as amended and as hereby proposed to be amended, regulating the handling of milk in the Northeast and Mideast marketing areas is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended), who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

The representative period for the conduct of such referenda is hereby determined to be June 2003.

The agents of the Secretary to conduct such referenda are hereby designated to be the respective market administrators of the aforesaid orders.

Determination of Producer Approval and Representative Period

June 2003 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the Appalachian, Florida, Southeast, Upper Midwest, Central, Pacific Northwest, Southwest, and Arizona Las-Vegas marketing areas, is approved or favored by producers, as defined under the terms of the orders as amended and as hereby proposed to be amended, who during such representative period were engaged in the production of milk for sale within the aforesaid marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131

Milk marketing orders.

Dated: February 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Interim Order Amending the Orders Regulating the Handling of Milk in the Northeast and Other Marketing Areas

(This interim order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.)

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders as hereby amended regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial or commercial activity specified in, marketing agreements upon which a hearing has been held.

Order Relative To Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the northeast and other marketing are as shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

1. The authority citation for 7 CFR parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, and 1131 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

2. In § 1000.40, revise paragraph (c)(1)(ii), remove paragraph (c)(1)(iii), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

* * * * *

(d) * * *

(1) * * *

(ii) Evaporated or sweetened condensed milk in a consumer-type package; and

* * * * *

This marketing agreement will not appear in the Code of Federal Regulations.

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ _____[1] to _____, all inclusive, of the order regulating the handling of milk in the (_____Name of order _____) marketing area (7 CFR PART _____[2]) which is annexed hereto; and

II. The following provisions: § _____[3] Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____[4], _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy

[1] First and last sections of order.

[2] Appropriate Part number.

[3] Next consecutive section number.

[4] Appropriate representative period for the order.

Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ _____ [3] Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature
By (Name) _____
(Title) _____
(Address) _____
(Seal)
Attest

[FR Doc. 04–4724 Filed 2–27–04; 2:04 pm]
BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–165579–02]

RIN 1545–BB80

Corporate Reorganizations; Transfers of Assets or Stock Following a Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to the effect of certain asset and stock transfers on the qualification of certain transactions as reorganizations under section 368(a). This document also contains proposed regulations that provide guidance relating to the continuity of business enterprise requirement and the definition of a party to a reorganization. These regulations affect corporations and their shareholders.

DATES: Written or electronic comments and requests for a public hearing must be received by June 1, 2004.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–165579–02), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–165579–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Rebecca O. Burch, (202) 622–7550; concerning submissions and the hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

To quality as a reorganization under section 368 of the Internal Revenue Code, a transaction must satisfy certain statutory requirements and nonstatutory requirements, including continuity of business enterprise (COBE). Section 368(a)(2)(C) provides that a transaction otherwise qualifying as a reorganization under section 368(a)(1)(A), (B), (C), or (G) will not be disqualified by reason of the fact that part or all of the acquired assets or stock are transferred to a corporation controlled by the acquiring corporation.

Section 354(a) provides that, in general, no gain or loss shall be recognized if stock or securities in a corporation a party to a reorganization are, in pursuance of the plan of reorganization, exchanged solely for stock or securities in such corporation or in another corporation a party to the reorganization. Section 368(b) provides that the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations, in the case of a reorganization resulting from the acquisition by one corporation of stock or properties of another. Section 368(b) further provides that, in the case of a reorganization qualifying under section 368(a)(1)(B) or (C), if the stock exchanged for the stock or properties is stock of a corporation which is in control of the acquiring corporation, the term "a party to a reorganization" includes the corporation so controlling the acquiring corporation. In the case of a reorganization qualifying under section 368(a)(1)(A), (B), (C), or (G) by reason of section 368(a)(2)(C), the term "a party to a reorganization" includes the corporation controlling the corporation to which the acquired assets or stock are transferred. In the case of a reorganization qualifying under section 368(a)(1)(A) or (G) by reason of section 368(a)(2)(D), the term "a party to a reorganization" includes the controlling corporation. Finally, in the case of a reorganization qualifying under section 368(a)(1)(A) by reason of section 368(a)(2)(E), the term "a party to a reorganization" includes the controlling corporation.

On January 28, 1998, final regulations providing guidance regarding the COBE requirement, the definition of "a party to the reorganization," and the effect of certain transfers of acquired assets or stock on the qualification of a transaction as a reorganization under section 368(a)(1)(A), (B), (C), or (G) were published in the **Federal Register** (63 FR 4174). Sections 1.368–1(d) and 1.368–2(f) and (k) were among those regulations.

Section 1.368–1(d) generally provides that, for a transaction to satisfy the COBE requirement, the issuing corporation must either continue a significant historic business of the target corporation or use a significant portion of the target corporation's assets in a business. For this purpose, the term issuing corporation generally means the acquiring corporation, but, in the case of a triangular reorganization, it means the corporation in control of the acquiring corporation. In addition, the issuing corporation is treated as holding all of the businesses and assets of all of the members of the qualified group. For this purpose, the qualified group is one or more chains of corporations connected through stock ownership with the issuing corporation, but only if the issuing corporation owns directly stock meeting the requirements of section 368(c) in at least one other corporation, and stock meeting the requirements of section 368(c) in each of the corporations (except the issuing corporation) is owned directly by one of the other corporations.

Section 1.368–2(f) provides that the term "a party to a reorganization" includes a corporation resulting from a reorganization, and both corporations in a transaction qualifying as a reorganization where one corporation acquires stock or properties of another corporation. In the case of a triangular reorganization, a corporation controlling an acquiring corporation is a party to the reorganization when the stock of such controlling corporation is used in the acquisition of properties. Section 1.368–2(f) further provides that, if a transaction otherwise qualifies as a reorganization, a corporation remains a party to the reorganization even though stock or assets acquired in the reorganization are transferred in a transaction described in § 1.368–2(k).

Section 1.368–2(k) provides that, except as otherwise provided, a transaction otherwise qualifying as a reorganization under section 368(a)(1)(A), (B), (C), or (G) (where the requirements of sections 354(b)(1)(A) and (B) are met) will not be disqualified

[3] Next consecutive section number.

by reason of the fact that part or all of the assets or stock acquired in the transaction are transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation. For this purpose, a corporation is a controlled corporation if the transferor corporation owns stock of such corporation constituting control within the meaning of section 368(c). Furthermore, a transaction qualifying under section 368(a)(1)(A) by reason of application of section 368(a)(2)(E) is not disqualified by reason of the fact that part or all of the stock of the surviving corporation is transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation, or because part or all of the assets of the surviving corporation or the merged corporation are transferred or successively transferred to one or more corporations controlled in each transfer by the transferor corporation. Again, for this purpose a corporation is controlled by the transferor corporation if the transferor corporation owns stock of such corporation constituting control within the meaning of section 368(c).

The preamble to the January 28, 1998, regulations explains that assets or stock acquired in certain reorganizations may be transferred among members of a qualified group, and in certain cases to partnerships, without preventing the reorganization from satisfying COBE. It also states that the IRS and Treasury Department believe that the COBE requirements adequately address the remote continuity of interest issues raised in *Gorman* v. *Commissioner,* 302 U.S. 82 (1937), and *Helvering* v. *Bashford,* 302 U.S. 454 (1938), and, therefore, that the final regulations do not separately articulate rules for remote continuity. The preamble also states that § 1.368–1(d), being limited to a discussion of the COBE requirement, does not address satisfaction of the explicit statutory requirements of a reorganization, which is the subject of § 1.368–2. Finally, the preamble states that no inference is to be drawn as to whether transactions not described in § 1.368–2(k) otherwise qualify as reorganizations.

In Rev. Rul. 2001–1 C.B. 1290, and Rev. Rul. 2002–85, 2002–52 I.R.B. 986, the IRS addressed the effect of certain transfers not described in § 1.368–2(k) on certain transactions that otherwise qualify as reorganizations. In Rev. Rul. 2001–24, the IRS considered whether a transfer of the stock of the acquiring corporation to a corporation wholly owned by the issuing corporation following a transaction that otherwise qualified as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D) (a forward triangular merger) prevented the transaction from qualifying as such. The IRS ruled that the transfer of stock of the acquiring corporation did not cause the issuing corporation to be treated as not in control of the acquiring corporation for purposes of section 368(a)(2)(D), and did not cause the issuing corporation to fail to be treated as a party to the reorganization. In arriving at these conclusions, the ruling notes that section 368(a)(2)(C) and § 1.368–2(k) do not specifically address the facts of the ruling and section 368(a)(2)(C) does not preclude the transaction from qualifying as a reorganization. The ruling states that, by its terms, section 368(a)(2)(C) is a permissive, rather than an exclusive or restrictive, section. therefore, the transfer of acquiring corporation stock to the issuing corporation's wholly owned subsidiary did not prevent the transaction from qualifying as a forward triangular merger.

In Rev. Rul. 2002–85, the IRS considered whether an acquiring corporation's transfer of acquired assets to a subsidiary controlled by the acquiring corporation would prevent the acquiring corporation's acquisition of those assets from qualifying as a reorganization under section 368(a)(1)(D). After noting that section 368(a)(2)(C) is permissive rather than exclusive or restrictive, the ruling reasons that, because § 1.368–2(k) restates and interprets section 368(a)(2)(C), § 1.368–2(k) also should be viewed as permissive and not exclusive or restrictive. The ruling concludes that the absence of section 368(a)(1)(D) from § 1.368–2(k) does not prevent a corporation from remaining a party to a reorganization even if the acquired stock or assets are transferred to a controlled subsidiary. The ruling states that, like reorganizations under sections 368(a)(1)(A) and 368(a)(1)(C), reorganizations under section 368(a)(1)(D) are asset reorganizations. In reorganizations under sections 368(a)(1)(A) and reorganizations under section 368(a)(1)(C), the original transferee is treated as a party to a reorganization, even if the acquired assets are transferred to a controlled subsidiary of the original transferee. Because the differences between reorganizations under section 368(a)(1)(D) on the one hand and reorganizations under sections 368(a)(1)(A) and (C) on the other hand do not warrant treating the original transferee in a transaction that otherwise satisfies the requirements of a reorganization under section 368(a)(1)(D) differently from the original transferee in a reorganization under section 368(a)(1)(A) or (C) for purposes of section 368(b), the ruling concludes that the original transferee in a transaction that otherwise satisfies the requirements of a reorganization under section 368(a)(1)(D) is treated as a party to the reorganization, notwithstanding the original transferee's transfer of acquired assets to a controlled subsidiary of the original transferee. The ruling concludes that the transaction qualifies as a reorganization under section 368(a)(1)(D).

Explanation of Provisions

As described above, in the regulations under section 368 and in revenue rulings, the IRS and Treasury Department have considered the effect of transfers of assets or stock to controlled corporations on the qualification of a transaction as a reorganization in a variety of situations not addressed by section 368(a)(2)(C). In each of these cases, the IRS and Treasury Department have concluded that the transfers did not cause the transaction to fail to qualify as a reorganization. These conclusions reflect the fact that, in all of the situations considered, the transactions, in form, satisfy the statutory requirements of a reorganization and, in substance, constitute readjustments of continuing interests in the reorganized business in modified corporate form. None of the transactions involve the transfer of the acquired stock or assets to a "stranger," a result inconsistent with reorganization treatment. H.R. Rep. No. 83–1337, A134 (1954).

The IRS and Treasury believe that certain transfers of stock and assets to controlled corporations are consistent with reorganization treatment, even though in some cases the transfers involve a type of reorganization not included in section 368(a)(2)(C). The effect of transferring stock or assets to a controlled corporation on the qualification of a transaction as a reorganization should not depend on the specific reorganization provision at issue. Given that section 368(a)(2)(C) was intended to be permissive rather than exclusive with respect to certain transfers of stock or assets to a controlled corporation following a transaction that would qualify as a reorganization without regard to the transfer, the IRS and Treasury believe it is appropriate to extend its principles to certain transfers of stock and assets after all types of reorganizations.

Accordingly, these regulations propose to amend § 1.368–2(k) to provide that a transaction otherwise

qualifying as a reorganization under section 368(a) will not be disqualified as a result of the transfer or successive transfers to one or more corporations controlled in each transfer by the transferor corporation of part or all of (i) the assets of any party to the reorganization, or (ii) the stock of any party to the reorganization other than the issuing corporation. In addition, these proposed regulations include amendments to the COBE regulations under § 1.368–1(d) and amendments to the definition of a party to a reorganization under § 1.368–2(f) that reflect § 1.368–2(k) as proposed.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impost a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Requests for a Public Hearing

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

Drafting Information

The principal author of these proposed regulations is Rebecca O. Burch of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

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

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

2. Section 1.368–1 is amended as follows:

1. Paragraph (d)(4)(i) is redesignated as paragraph (d)(4)(i)(A) and revised.

2. New paragraph (d)(4)(i)(B) is added.

3. Paragraph (d)(5), introductory text, is redesignated as paragraph (d)(5)(i), and revised.

4. In newly designated paragraph (d)(5)(i), Examples, 7, 8, 9, 10, 11, and 12 are redesignated as Examples 8, 9, 10, 11, 12, and 13, respectively.

5. In newly designated paragraph (d)(5)(i), the first sentence in redesignated Examples 9, 10, and 12 is revised.

6. In newly designated paragraph (d)(5)(i), a new *Example 7* is added.

7. New paragraph (d)(5)(ii) is added.

The revisions and additions read as follows:

§ 1.368–1 Purpose and scope of exception of reorganization exchanges.

* * * * *

(d) * * *

(4) * * *

(i) *Businesses and assets of members of a qualified group*—(A) *In general.* The issuing corporation is treated as holding all of the businesses and assets of all of the members of the qualified group, as defined in paragraph (d)(4)(ii) of this section.

(B) *Special rule.* The issuing corporation is treated as holding all of the businesses and assets of the surviving corporation after a reorganization that otherwise satisfies the requirements of a reverse triangular merger (as defined in § 1.358–6(b)(2)(iii)), the acquired corporation after a reorganization that otherwise satisfies the requirements of section 368(a)(1)(B), and the acquiring corporation after a reorganization that otherwise satisfies the requirements of a forward triangular merger (as defined in § 1.358–6(b)(2)(i)), a triangular B reorganization (as defined in § 1.358–6(b)(2)(iv)), a triangular C reorganization (as defined in § 1.358–6(b)(2)(ii)), or a reorganization under section 368(a)(1)(G) by reason of section 368(a)(2)(D), provided that members of the qualified group own, in the aggregate, stock of the surviving, or acquiring corporation meeting the requirements of section 368(c). This paragraph (d)(4)(i)(B) applies to transactions occurring after the date this regulations are published as final regulations in the **Federal Register.**

* * * * *

(5) *Examples.* (i) The following examples illustrate this paragraph (d). All the following corporations have only one class of stock outstanding.

* * * * *

Example 7. (i) *Facts.* The facts are the same as in *Example 6*, except that, instead of P acquiring the assets of T, HC acquires all of outstanding stock of T in exchange solely for voting stock of P. In addition, as part of the plan of reorganization, HC transfers 10 percent of the stock of T to each of subsidiaries S–1 through S–10. Finally, T will continued to operate an auto parts distributorship. Without regard to whether the transaction satisfies the COBE requirement, the transaction qualifies as a triangular B reorganization.

(ii) *Continuity of business enterprise.* Under paragraph (d)(4)(i)(B) of this section, P is treated as holding all of the assets and conducting the business of T because S–1 through S–10, members of the qualified group, own stock of T meeting the requirements of section 368(c). Therefore, the COBE requirement of paragraph (d)(1) of this section is satisfied because P is treated as continuing T's business.

* * * * *

Example 9. * * * (i) *Facts.* The facts are the same as *Example 8*, except that S–3 transfers the historic T business to PRS in exchange for a 1 percent interest in PRS.

* * * * *

Example 10. * * * (i) *Facts.* The facts are the same as *Example 8*, except that S–3 transfers the historic T business to PRS in exchange for a 33⅓ percent interest in PRS, and no member of P's qualified group performs active and substantial management functions for the ski boot business operated in PRS.

* * * * *

Example 12. * * * (i) *Facts.* The facts are the same as *Example 11*, except that S–1 transfers all the T assets to PRS and P and X each transfer cash to PRS in exchange for partnership interests. * * *

* * * * *

(ii) *Effective dates.* Paragraph (d)(5) *Example 6*, and *Example 8* through *Example 13* apply to transactions occurring after January 28, 1998, except that they do not apply to any transaction occurring pursuant to a written agreement which is binding on January 28, 1998, and at all times thereafter. Paragraph (d)(5) *Example 7* applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register.**

* * * * *

3. Section 1.368–2 is amended by:

1. Adding three sentences at the end of paragraph (f).

2. Revising paragraph (k).

The additions and the revision read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(f) * * * If a transaction otherwise qualifies as a reorganization under section 368(a)(1)(B) or as a reverse triangular merger (as defined in § 1.358–6(b)(2)(iii)), the target corporation (in the case of a transaction that otherwise qualifies as a reorganization under section 368(a)(1)(B)) or the surviving corporation (in the case of a transaction that otherwise qualifies as a reverse triangular merger) remains a party to the reorganization even though its stock or assets are transferred in a transaction described in paragraph (k) of this section. If a transaction otherwise qualifies as a forward triangular merger (as defined in § 1.358–6(b)(2)(i)), a triangular B reorganization (as defined in § 1.358–6(b)(2)(iv)), a triangular C reorganization (as defined in § 1.358–6(b)(2)(ii)), or a reorganization under section 368(a)(1)(G) by reason of section 368(a)(2)(D), the acquiring corporation remains a party to the reorganization even though its stock is transferred in a transaction described in paragraph (k) of this section. The two preceding sentences apply to transactions occurring after the date these regulations are published as final regulations in the **Federal Register.**

* * * * *

(k) *Certain transfers of assets or stock in reorganizations*—(1) *General rule.* A transaction otherwise qualifying as a reorganization under section 368(a) shall not be disqualified as a result of the transfer or successive transfers to one or more corporations controlled in each transfer by the transferor corporation in part or all of—

(i) The assets of any party to the reorganization; or

(ii) The stock of any party to the reorganization other than the issuing corporation (as defined in § 1.368–1(b)).

(2) *Control.* Control is defined under section 368(c).

(3) *Examples.* The following examples illustrate the application of this paragraph (k). P is the issuing corporation and T is the target corporation. P has only one class of stock outstanding. The examples are as follows:

Example 1. Transfers of acquired assets to controlled corporations after a reorganization under section 368(a)(1)(C). (i) *Facts.* T operates a bakery that supplies delectable pastries and cookies to local retail stores. The acquiring corporate group produces a variety of baked goods for nationwide distribution. P owns 80 percent of the stock of S–1. Pursuant to a plan of reorganization, T transfers all of its assets to S–1 solely in exchange for P stock, which T distributes to its shareholders. S–1 owns 80 percent of the stock of S–2, and S–2 owns 80 percent of the stock of S–3, which also makes and supplies pastries and cookies. Pursuant to the plan of reorganization, S–1 transfers all of the T assets to S–2, and S–2 transfers all of the T assets to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by reason of the fact of the successive transfers of all of the T assets to S–2, and from S–2 to S–3 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

Example 2. Transfers of acquired assets to controlled corporations after a reorganization under section 368(a)(1)(D). (i) *Facts.* The facts are the same as *Example 1* except that P also owns 100 percent of the stock of T before the transaction, and T transfers all of its assets to S–1 solely in exchange for S–1 stock, which T distributes to P.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(D), is not disqualified by reason of the fact of the successive transfers of all of the acquired assets from S–1 to S–2, and from S–2 to S–3 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

Example 3. Transfer of acquiring stock to controlled corporation after a reorganization under section 368(a)(1)(A). (i) *Facts.* The facts are the same as *Example 1* except that P owns 80 percent of the stock of S–4 and, pursuant to the plan of reorganization, S–1 acquires all of the T assets as a result of the merger of T with and into S–1. In addition, in the merger, the T shareholders receive consideration 50 percent of which is stock of P and 50 percent of which is cash. Finally, pursuant to the plan of reorganization, P transfers all of the S–1 stock to S–4.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of all of the S–1 stock to S–4 because, in the transfer, the transferee corporation is controlled by the transferor corporation.

Example 4. Transfers of acquired stock to controlled corporations after a reorganization under section 368(a)(1)(B). (i) *Facts.* The facts are the same as *Example 1* except that S–1 acquires all of the T stock rather than the T assets, and as part of the plan of reorganization, S–1 transfers 50 percent of the T stock to S–2, and S–2 transfers that T stock to S–3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by the successive transfers of part of the acquired stock from S–1 to S–2, and from S–3 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

Example 5. Transfers of acquiring corporation stock to controlled corporations after a reorganization under section 368(a)(1)(B). (i) *Facts.* The facts are the same as *Example 4* except that P owns 80 percent of the stock of S–4, and S–4 owns 80 percent of the stock of S–5, and, as part of the plan of reorganization, following the acquisition of T stock by S–1, P transfers 10 percent of its S–1 stock to S–4, and S–4 transfers that S–1 stock to S–5.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by reason of the successive transfers of S–1 stock to S–4, and from S–4 to S–5 because, in each transfer, the transferee corporation is controlled by the transferor corporation.

Example 6. Transfer of acquired stock to a partnership. (i) *Facts.* The facts are the same as in *Example 4*. However, as part of the plan of reorganization, S–2 and S–3 form a new partnership, PRS. Immediately thereafter, S–3 transfers all of its T stock to PRS in exchange for an 80 percent partnership interest, and S–2 transfers cash to PRS in exchange for a 20 percent partnership interest.

(ii) *Analysis.* This paragraph (k) describes the successive transfers of T stock to S–3, but does not describe S–3's transfer of T stock to PRS. Therefore, the characterization of this transaction must be determined under the relevant provisions of law, including the step transaction doctrine. See § 1.368–1(a). The transaction fails to meet the control requirement of a reorganization described in section 368(a)(1)(B) because immediately after the acquisition of the T stock, the acquiring corporation does not have control of T.

(4) *Effective date.* This paragraph (k) applies to transactions occurring after the date these regulations are published as final regulations in the **Federal Register.**

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 04–4483 Filed 3–1–04; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 402

[Docket No. SLSDC 04–17202]

RIN 2135–AA19

Tariff of Tolls

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Saint Lawrence Seaway Development Corporation (SLSDC) and

the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC will be revising its regulations to reflect the fees and charges charged by the SLSMC in Canada starting in the 2004 navigation season, which are effective only in Canada. The SLSDC also proposes an amendment to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since this latter proposed amendment would be of applicability in the United States, comments are invited on only on this. (See **SUPPLEMENTARY INFORMATION.**)

DATES: Any party wishing to present views on the proposed amendment may file comments with the Corporation on or before April 1, 2004.

ADDRESSES: Signed, written comments should refer to the docket number appearing at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Written comments may also be submitted electronically at *http://dmses.dot.gov/submit/BlankDSS.asp.* All comments received will be available for examination between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–6823.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation (SLSDC) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. (The Tariff is called the Schedule of Fees and Charges in Canada.) The proposed amendments are described in the following summary.

The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the SLSDC and the SLSMC. The SLSDC is proposing to revise § 402.8, "Schedule of Tolls," to reflect the fees and charges charged by the SLSMC in Canada starting in the 2004 navigation season. With one exception, the changes affect the tolls for commercial vessels and are applicable only in Canada as the collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)). Accordingly, no notice and comment is necessary on these amendments. The SLSDC also proposes an amendment to increase the minimum charge per lock transited for full or partial transit of the Seaway to be charged by the SLSDC for transit through the U.S. locks of vessels that are not pleasure craft or vessels subject in Canada to the tolls under items 1 and 2 of the Tariff. Since only this latter proposed amendment would be of applicability in the United States, comments are invited on only on this. The specific change proposed is to amend § 402.8, "Schedule of Tolls", to increase the per lock charge for transit through a U.S. lock from $16.44 to $16.77. This increase is due to higher operating costs at the locks.

Regulatory Evaluation

This proposed regulation involves a foreign affairs function of the United States and therefore Executive Order 12866 does not apply and evaluation under the Department of Transportation's Regulatory Policies and Procedures is not required.

Regulatory Flexibility Act Determination

The Saint Lawrence Seaway Development Corporation certifies that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The St. Lawrence Seaway Tariff of Tolls primarily relates to commercial users of the Seaway, the vast majority of whom are foreign vessel operators. Therefore, any resulting costs will be borne mostly by foreign vessels.

Environmental Impact

This proposed regulation does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321, *et reg.*) because it is not a major Federal action significantly affecting the quality of human environment.

Federalism

The Corporation has analyzed this proposed rule under the principles and criteria in Executive Order 13132, Dated August 4, 1999, and has determined that it does not have sufficient federalism implications to warrant a Federalism Assessment.

Unfunded Mandates

The Corporation has analyzed this proposed rule under title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48) and determined that it does not impose unfunded mandates on State, local, and tribal governments and the private sector requiring a written statement of economic and regulatory alternatives.

Paperwork Reduction Act

This proposed regulation has been analyzed under the Paperwork Reduction Act of 1995 and does not contain new or modified information collection requirements subject to the Office of Management and Budget review.

List of Subjects in 33 CFR Part 402

Vessels, Waterways.

Accordingly, the Saint Lawrence Seaway Development Corporation proposes to amend 33 CFR part 402, Tariff of Tolls, as follows:

PART 402—TARIFF OF TOLLS

1. The authority citation for part 402 would continue to read as follows:

Authority: 33 U.S.C. 983(a), 984(a)(4), and 988, as amended; 49 CFR 1.52.

2. Section 402.8 would be revised to read as follows:

§ 402.8 Schedule of tolls.

Item	Description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
	Column 1	Column 2	Column 3
1.	Subject to item 3, for complete transit of the Seaway, a composite toll, comprising:		

Item	Description of charges	Rate ($) Montreal to or from Lake Ontario (5 locks)	Rate ($) Welland Canal—Lake Ontario to or from Lake Erie (8 locks)
	Column 1	Column 2	Column 3
	(1) A charge per gross registered ton of the ship, applicable whether the ship is wholly or partially laden, or is in ballast, and the gross registered tonnage being calculated according to prescribed rules for measurement in the United States or under the International Convention on Tonnage Measurement of Ships, 1969, as amended from time to time.	0.0912	0.1482.
	(2) A charge per metric ton of cargo as certified on the ship's manifest or other document, as follows:		
	(*a*) Bulk cargo	0.9461	0.6268.
	(*b*) General cargo	2.2795	1.0031.
	(*c*) Steel slab	2.0630	0.7181.
	(*d*) Containerized cargo	0.9461	0.6268.
	(*e*) Government aid cargo	N/A	N/A.
	(*f*) Grain	0.5812	0.6268.
	(*g*) Coal	0.5585	0.6268.
	(3) A charge per passenger per lock	1.3449	1.3449.
	(4) A charge per lock for transit of the Welland Canal in either direction by cargo ships:		
	(*a*) Loaded	N/A	500.61.
	(*b*) In ballast	N/A	369.87.
2.	Subject to item 3, for partial transit of the Seaway ..	20 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).	13 per cent per lock of the applicable charge under items 1(1) and (2) plus the applicable charge under items 1(3) and (4).
3.	Minimum charge per ship per lock transited for full or partial transit of the Seaway.	16.77	16.77.
4.	A rebate applicable for the 2004 navigation season to the rates of item 1 to 3.	Rebate of 0%	Rebate of 0%.
5.	A charge per pleasure craft per lock transited for full or partial transit of the Seaway, including applicable Federal taxes [1].	20.00	20.00.

[1] The applicable charge at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) for pleasure craft is $20 U.S. or $30 Canadian per lock. The applicable charge under item 3 at the Saint Lawrence Seaway Development Corporation's locks (Eisenhower, Snell) will be collected in U.S. dollars. The other amounts are in Canadian dollars and are for the Canadian share of tolls. The collection of the U.S. portion of tolls for commercial vessels is waived by law (33 U.S.C. 988a(a)).

Issued at Washington, DC, on February 26, 2004.

Saint Lawrence Seaway Development Corporation.

Marc C. Owen,

Chief Counsel.

[FR Doc. 04–4546 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–61–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–162–1–7598; FRL–7629–4]

Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown and Malfunction Activities; and Notice of Resolution of Deficiency for Title V Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve rule revisions into the Texas State Implementation Plan (SIP). In this rulemaking, we are proposing two separate actions. First, we are proposing to approve two SIP revisions submitted on September 12, 2002, and January 5, 2004, by the State of Texas. These revisions pertain to Texas' excess emissions rule, 30 TAC Chapter 101, General Air Quality Rules, specifically, the reporting and recordkeeping requirements, and enforcement actions for excess emissions during startup, shutdown, and malfunction (SSM) activities. Second, we are proposing to find that Texas has corrected all deficiencies identified in our January 7, 2002, Notice of Deficiency (NOD). See section 1 of this document for more information concerning our action on the NOD. The EPA is proposing approval of these two separate actions as meeting the requirements of the Federal Clean Air Act (the Act).

DATES: Comments must be received on or before April 1, 2004.

ADDRESSES: Comments may be submitted by mail to: Mr. Thomas Diggs (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in the General Information section of this document. Copies of the State's request and other supporting information used in developing this action are available for inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Texas Commission on Environmental Quality (TCEQ), Office of Air Quality,

12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, for General Rule 101 questions, of the Air Planning Section (6PD–L) at (214) 665–6691, or *shar.alan@epa.gov.* Mr. Stanley M. Spruiell, for NOD questions, of the Air Permits Section (6PD–R), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733 at (214) 665–7212, or *spruiell.stanley@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

Throughout this document "we," "us," and "our" mean EPA.

1. What Are We Proposing To Approve?

The 30 TAC, General Air Quality Rule 101

On September 12, 2002, the Governor of Texas submitted rule revisions to 30 TAC, General Air Quality Rule 101, Subchapter A and Subchapter F, concerning the reporting and recordkeeping requirements and enforcement action for excess emissions during SSM activities. The September 12, 2002, submittal concerned amendments to Definitions (101.1), repeal of Upset Reporting and Recordkeeping Requirements (101.6), Maintenance, Startup and Shutdown Reporting, Recordkeeping, and Operational Requirements (101.7), Demonstrations (101.11), Temporary Exemptions During Drought Conditions (101.12), Petition for Variance (101.15), Effect of Acceptance of Variance or Permit (101.16), Transfers (101.17), and addition of new sections: Emissions Event Reporting and Recordkeeping Requirements (101.201), Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements (101.211), Operational Requirements (101.221), Demonstrations (101.222), Actions to Reduce Excessive Emissions (101.223), Temporary Exemptions During Drought Conditions (101.224), Petition for Variance (101.231), Effect of Acceptance of Variance or Permit (101.232), and Variance Transfers (101.233). See our Technical Support Document (TSD) for more details. Texas submitted the September 12, 2002, rule revision as a result of adoption of Texas House Bill 2912, sections 5.01 and 18.14, 77th Legislature, 2001. In a letter dated June 10, 2002, EPA submitted comments on those rule revisions to the State.

On January 5, 2004, the TCEQ submitted additional rule revisions to 30 TAC, General Air Quality Rule 101, Subchapter F, Division 3, sections 101.221–223.

The January 5, 2004, rule revisions concerned Operational Requirements (101.221), Demonstrations (101.222), and Actions to Reduce Excessive Emissions (101.223). See our TSD for more details. The January 5, 2004, submittal establishes an affirmative defense to civil and administrative enforcement actions, other than actions for injunctive relief, for certain violations of emission limitations, provided specific criteria are met. The January 5, 2004, submittal makes clear that there is no automatic exemption from compliance with the emissions and opacity limitations during SSM activities and that the proposed amendments will not limit EPA or citizen authority to take enforcement action. Thus, determinations made by the State under section 101.222 will not bar enforcement actions for exceedances of emissions limitations brought by EPA or citizens under the Act.

The January 5, 2004, submittal also contains "sunset provisions" in subsections 101.221(g), 101.222(h), and 101.223(e) of the rule. The sunset provisions state that the sections 101.221, 101.222, and 101.223 will expire on June 30, 2005.

The January 7, 2002, NOD

On January 7, 2002 (67 FR 732), we published an NOD for Texas' title V Operating Permit Program. We based the NOD upon our finding that several State requirements did not meet the minimum Federal requirements of 40 CFR part 70 and the Act. The TCEQ adopted rule revisions to resolve the deficiencies we identified in the NOD and submitted the changes to EPA as revisions to its title V Operating Permit Program on December 9, 2002. The December 9, 2002, submittal also included revisions to the Texas SIP concerning potential to emit requirements necessary for resolving the NOD.

On July 9, 2003, we proposed to approve the revisions to the Texas title V Operating Permit Program and to find that, upon final SIP approval of sections 101.201, 101.211, 101.221, 101.222, and 101.223, the revisions satisfy Texas' requirement to correct the program deficiencies identified in the NOD (68 FR 40871).

On December 17, 2003, the TCEQ adopted the changes to sections 101.201, 101.211, 101.221, 101.222, and 101.223, reporting, recordkeeping and enforcement requirements for excess emissions during startup, shutdown, and malfunction activities, and submitted them to EPA for approval into the SIP on January 5, 2004.

We also approved SIP revisions concerning potential to emit requirements identified in the NOD on November 14, 2003 (68 FR 64543). Today, we are proposing to approve sections 101.201, 101.211, 101.221, 101.222, and 101.223 as revisions to the Texas SIP.

We have reviewed the TCEQ's actions to resolve the shortcomings identified in the NOD, and we have proposed approval of all of the corrections. Based upon today's proposed approval of sections 101.201, 101.211. 101.221, 101.222, 101.223; our July 9, 2003 proposed approval of revisions to the Texas title V program; and our November 14, 2003 final SIP approval of potential to emit requirements in this rulemaking action, we are proposing to find those revisions satisfy all of Texas' requirements to correct the program deficiencies identified in our January 7, 2002, NOD.

2. Why Are We Approving This Rule?

In this rulemaking action, we are proposing to approve the September 12, 2002, and January 5, 2004, submittals as revisions to the Texas SIP. These revisions primarily address violations of SIP requirements caused by periods of excess emissions due to SSM activities. Generally, since SIPs must provide for attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), all periods of excess emissions must be considered violations. As a result, EPA cannot approve any SIP revisions that provide automatic exemptions for periods of excess emissions. In addition, excess emissions above applicable emission limitations in title V permits are deviations subject to title V reporting requirements.

We are approving these revisions to the Texas SIP as consistent with the requirements of the Act and EPA's interpretation of those requirements as expressed in EPA **Federal Register** notices and policy documents, and because the revisions clarify: (a) That there is no automatic exemption from compliance with the emissions and opacity limitations, (b) that the

proposed amendments will not limit EPA or citizen authority to take enforcement action, and (c) that for each occurrence the source or operator has the burden of proof to demonstrate that emissions were not excessive, and the identified criteria outlined in the rule have been met.

This rulemaking would temporarily adopt the affirmative defense clause of General Rule 101, Subchapter F, section 101.222, which states that certain emissions activities and opacity activities are subject to an affirmative defense to all claims in enforcement actions, other than claims for administrative technical orders or actions for injunctive relief, for which the source or operator proves all of the listed criteria. If approved into the SIP, the affirmative defense would be available until June 30, 2005, to a source or operator in an enforcement action seeking penalties brought by the State, EPA, or citizens. Determinations made by the State under section 101.222 will not bar EPA or citizen enforcement actions. We are proposing to find this revision consistent with EPA's interpretation of the Act as discussed in guidance, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown." This action is consistent with our recent reviews of affirmative defense clauses in other states, such as approvals of revisions to the Michigan, Arizona, Arkansas and other states' SIPs.

As stated previously, the January 5, 2004, SIP submittal contains sunset provisions in sections 101.221, 101.222, and 101.223 of the rule. The sunset provisions state that three sections of the rule will expire on June 30, 2005. The EPA is required to ensure that SIP revisions fully comply with enforceability and other requirements of section 110 of the Act. The EPA has approved rules with sunset provisions or expiration dates only under very limited circumstances. We are here proposing to approve sections 101.221, 101.222, and 101,223, which expire of their own terms on June 30, 2005, as requested by the State, because they strictly meet the requirements of section 110(l) of the Act.

Under EPA's interpretation of the Act, a SIP can provide an affirmative defense to certain actions for penalties brought for excess emissions that arise during SSM episodes, provided defined criteria are demonstrated by the source. However, EPA cannot approve an affirmative defense clause into a SIP that would undermine the fundamental requirement of attainment and maintenance of the NAAQS, or any other applicable requirement of the Act, including the State's enforcement authority or the effectiveness of a State's programs. As stated previously, we are proposing to find Texas' affirmative defense clause consistent with EPA's interpretation of the Act. We will consider the temporary effect of this rule in any future review of the State's attainment demonstrations or other rulemaking actions involving excess emissions during SSM activities. The EPA does not consider sunset provisions in SIP rulemakings under section 110(l) of the Act appropriate except in very narrow and limited circumstances.

If the State fails to revise these temporary sections and EPA does not approve them into the Texas SIP on or before June 30, 2005, the affirmative defense clause will no longer exist in the Texas SIP. A source or operator could no longer assert an affirmative defense to Federal or citizen enforcement actions for violations which occur after the SIP provisions expire. The EPA considers all periods of excess emissions as violations of the applicable emissions limitation. However, under Section 113 of the Act, EPA has discretion to refrain from taking an enforcement action for excess emissions resulting from SSM activities, such as those caused by circumstances entirely beyond the control of the source or operator. Unless the pertinent sections of the State rule are revised and approved by EPA, after June 30, 2005, all emissions in excess of applicable emission limitations during SSM activities would be violations of the Texas SIP and subject to EPA or citizen enforcement.

3. What Documents Did We Use in the Evaluation of This Rule?

The EPA's interpretation of the Act on excess emissions occurring during startup, shutdown or malfunction is set forth in the following documents: a memorandum dated September 28, 1982, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, entitled "Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions;" EPA's clarification to the above policy memorandum dated February 15, 1983, from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation; EPA's policy memorandum reaffirming and supplementing the above policy, dated September 20, 1999, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance and Robert Perciasepe, Assistant Administrator for Air and Radiation, entitled "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown;" and EPA's final rule for Utah's sulfur dioxide control strategy (Kennecott Copper), 42 FR 21472 (April 27, 1977). The latest clarification of EPA's policy was issued on December 5, 2001. See the policy or clarification of policy at *http://www.epa.gov/ttn/oarpg/t1pgm.html*.

To find the latest federally approved Texas SIP concerning excess emissions see 65 FR 70792 (November 28, 2000).

4. What Is a State Implementation Plan?

Section 110 of the Act requires States to develop air pollution regulations and control strategies to ensure that state air quality meets the NAAQS that EPA has established. Under section 109 of the Act, EPA established the NAAQS to protect public health. The NAAQS address 6 criteria pollutants. These criteria pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each State must submit these regulations and control strategies to us for approval and incorporation into the federally enforceable SIP. Each State has a SIP designed to protect air quality. These SIPs can be extensive, containing State regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

5. What Is the Federal Approval Process for a SIP?

When a State wants to incorporate its regulations into the federally enforceable SIP, the State must formally adopt the regulations and control strategies consistent with State and Federal requirements. This process includes a public notice, a public hearing, a public comment period, and a formal adoption by a State-authorized rulemaking body.

Once a State adopts a rule, regulation, or control strategy, the State may submit the adopted provisions to us and request that we include these provisions in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice on this action, and seek additional public comment regarding this action. If we receive adverse comments, we must address them prior to a final action.

Under section 110 of the Act, those State regulations and supporting information become a part of the federally approved SIP upon our approval. You can find records of these SIP actions in the CFR at title 40, part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations that we approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that we have approved a given State regulation with a specific effective date.

6. What Does Federal Approval of a SIP Mean to Me?

A State may enforce State regulations before and after we incorporate those regulations into a federally approved SIP. After we incorporate those regulations into a federally approved SIP, both EPA and the public may also take enforcement action against violators of these regulations.

7. What Areas in Texas Will the Proposed SIP Revision Affect?

The proposed SIP revision will affect all sources of air emissions operating within the State of Texas.

General Information

A. What Is the Public Rulemaking File?

The EPA is committed to ensuring public access to the information used to inform the Agency's decisions regarding the environment and human health and to ensuring that the public has an opportunity to participate in the Agency's decision-making process. The official public rulemaking file consists of the documents specifically referenced in a particular agency action, any public comments received, and other information related to the action. The public rulemaking file does not include Confidential Business Information (CBI) or other information for which disclosure is restricted by statute, although such information is a part of the Agency's official administrative record for the action.

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

1. *An official public rulemaking file is available for inspection at the Regional Office.* The Regional Office has established an official public rulemaking file for this action under Identification Number (ID No.) TX–162–1–7598. The public rulemaking file is available for viewing at the Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. If possible, schedule the appointment two working days in advance of your visit. Official hours of business for the Regional Office are Monday through Friday, 8:30 a.m. to 4 p.m. excluding Federal holidays. Copies of any State submittals and EPA's technical support document are also available for public inspection at the State Air Agency during official business by appointment:

Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

2. *You may access this* ***Federal Register*** *document electronically through the Regulations.gov Web site located at http://www.regulations.gov.* The Regulations.gov Web site is the central online rulemaking portal of the United States government and is a public service to increase participation in the government's regulatory activities by offering a central point for submitting comments on regulations.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, through hand delivery/courier or by facsimile. Instructions for submitting comments by each method are discussed below. To ensure proper receipt by EPA, identify the appropriate ID No. in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section D below.

1. *Electronically.* To submit comments electronically (via e-mail, Regulations.gov, or on disk or CD–ROM), EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comments. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the public rulemaking file and may be made available in EPA's public Web sites. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be submitted by electronic mail (e-mail) to *Diggs.Thomas@epa.gov*, Attention "Public comment on ID No. TX–162–1–7598." In contrast to the *Regulations.gov* Web site, EPA's e-mail system is not an "anonymous" system. If you send an e-mail comment directly to EPA, your e-mail address will be automatically captured and included as part of the comment that is placed in the official public rulemaking file.

ii. *Regulations.gov.* Comments may be submitted electronically at the Regulations.gov Web site, the central online rulemaking portal of the United States government. Every effort is made to ensure that the Web site includes all rule and proposed rule notices that are currently open for public comment. You may access the Regulations.gov Web site at *http://www.regulations.gov.* Select "Environmental Protection Agency" at the top of the page and click on the "Go" button. The list of current EPA actions available for comment will be displayed. Select the appropriate action and follow the online instructions for submitting comments. Unlike EPA's e-mail system, the *Regulations.gov* Web site is an "anonymous" system, which means that any personal information, e-mail address, or other contact information will not be collected unless it is provided in the text of the comment. See the Privacy Notice at the Regulations.gov Web site for further information. Please be advised that EPA cannot contact you for any necessary clarification unless your contact information is included in the body of comments submitted through the *Regulations.gov* Web site.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to: Thomas H. Diggs, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Please include the text "Public comment on ID No. TX–162–1–7598" on the disk or CD–ROM. These electronic submissions will be accepted in WordPerfect, Word, or ASCII file format. You should avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Thomas H. Diggs (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas

75202–2733. Please include the text "Public comment on ID No. TX–162–1–7598" in the subject line of the first page of your comments.

3. *By Hand Delivery or Courier.* Deliver your written comments or comments on a disk or CD–ROM to: Mr. Thomas H. Diggs, Chief (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. Attention "Public comment on ID No. TX–162–1–7598." Such deliveries are only accepted during official hours of business, which are Monday through Friday, 8:30 a.m. to 4 p.m., excluding Federal holidays.

4. *By Facsimile.* Fax your comments to: (214) 665–7263, Attention "Public comment on ID No. TX–162–1–7598." Please notify the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this document that a Fax has been sent.

D. How Should I Submit CBI to the Agency?

You may assert a business confidentiality claim covering CBI information included in comments submitted by mail or hand delivery in either paper or electronic format. CBI should not be submitted via e-mail or at the Regulations.gov Web site. Clearly mark any part or all of the information submitted which is claimed as CBI at the time the comment is submitted to EPA. CBI should be submitted separately, if possible, to facilitate handling by EPA. Submit one complete version of the comment that includes the properly labeled CBI for EPA's official administrative record and one copy that does not contain the CBI to be included in the public rulemaking file. If you submit CBI on a disk or CD–ROM, mark the outside of the disk or the CD–ROM that it contains CBI and then identify the CBI within the disk or CD–ROM. Also submit a non-CBI version if possible. Information which is properly labeled as CBI and submitted by mail or hand delivery will be disclosed only in accordance with procedures set forth in 40 CFR part 2. For comments submitted by EPA's e-mail system or through the Regulations.gov Web site, no CBI claim may be asserted. Do not submit CBI to the Regulations.gov Web site or via EPA's e-mail system. Any claim of CBI will be waived for comments received through the Regulations.gov Web site or EPA's e-mail system. For further advice on submitting CBI to the Agency, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

8. To ensure proper receipt by EPA, identify the appropriate ID No. in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

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.*).

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

List of Subjects in 40 CFR Part 52

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

Dated: February 23, 2004.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 04–4625 Filed 3–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–7628–9]

RIN 2040–AE58

National Primary Drinking Water Regulations: Minor Corrections and Clarification to Drinking Water Regulations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This rule proposes minor changes to clarify and correct the Environmental Protection Agency's (EPA) Drinking Water regulations. This proposal would clarify typographical errors, inadvertent omissions, editorial errors, and outdated language in the final Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), the Surface Water Treatment Rule, and other rules. In addition to these clarifications, EPA is proposing optional monitoring for disinfection profiling and an earlier compliance date for some requirements in the LT1ESWTR, and a detection limit for the Uranium Methods. These three changes are discussed first. This action proposes no new monitoring or reporting requirements.

DATES: Submit comments on or before May 3, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Send comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0066. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section I.C.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding legal holidays, from 9 a.m. to 5:30 p.m., eastern time. For technical inquiries, contact Tracy Bone, Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone: (202) 564–5257.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Who Is Regulated by This Action?

Entities potentially regulated by this action are public water systems (PWS). The following table provides examples of the regulated entities under this rule. A public water system, as defined by section 1401 of Safe Drinking Water Act (SDWA), is "a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves at least 25 individuals." EPA defines "regularly served" as receiving water from the system 60 or more days per year. Categories and entities potentially regulated by this action include the following:

Category	Examples of potentially regulated entities
State, Tribal and Local Government.	State, Tribal or local government-owned/operated water supply systems using ground water, surface water or mixed ground water and surface water.
Federal Government.	Federally owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.
Industry	Privately owned/operated community water supply systems using ground water, surface water or mixed ground water and surface water.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in §§ 141.2 and 141.3 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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

1. Docket

EPA has established an official public docket for this action under Docket ID No. OW–2003–0066. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. If you would like to schedule an appointment for access to docket material, please call (202) 566–2426.

2. Electronic Access

You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in section I.B.1.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment

contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically

If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select "search," and then key in Docket ID No. OW–2003–0066. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

b. E-mail. Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No. OW–2003–0066. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. By Mail

Send an original and three copies of your comments and any enclosures to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0066.

3. By Hand Delivery or Courier

Deliver your comments to: Water Docket, Environmental Protection Agency, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2002–0066. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

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

II. Changes and Clarifications

Today's notice proposes clarifications of typographical errors, outdated language, editorial errors and inadvertent omissions in the text of the Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR), the Surface Water Treatment Rule (SWTR), and other rules. Each clarification is discussed under the heading of the drinking water rule that it amends (*e.g.*, LT1ESWTR).

In addition to these clarifications, EPA is proposing optional monitoring for disinfection profiling and an earlier compliance date for some requirements in the LT1ESWTR, and a detection limit for the Uranium Methods. These three changes are discussed first.

A. LT1ESWTR Compliance Date Change and Optional Monitoring for Disinfection Profiling

The Final LT1ESWTR was published on January 14, 2002 (67 FR 1812). In § 141.502, of the LT1ESWTR, EPA directed PWSs to "comply with these requirements in this subpart beginning January 14, 2005, except where otherwise noted." In today's rule, EPA proposes to change the compliance date from January 14, 2005, to January 1, 2005, in § 141.502 as well as in endnote 8 of subpart Q, Appendix B.

As stated in both § 141.73 (the Surface Water Treatment Rule) and § 141.551 (LT1ESWTR), systems must meet a specified turbidity limit "in at least 95 percent of the turbidity measurements taken each month." Under SWTR, which is currently effective, this limit is 0.5 NTU. Under LT1ESWTR, which will be effective in January 2005, this limit is 0.3 NTU. With the current LT1ESWTR date, the month of January 2005 has two specified turbidity limits that the system would have to meet in the measurements taken that month

(one for the SWTR and one for the LT1ESWTR).

In addition, the Consumer Confidence Report (CCR) requires community water systems to produce reports containing data collected in a calendar year (§ 141.152(b)). Specifically regarding turbidity, the CCR requires reporting of "the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in § 141.73 or § 141.173 or § 141.551 for the filtration technology being used." *See* § 141.153(d)(4)(v)(C). Shifting the compliance date of the LT1ESWTR to January 1, 2005, allows systems to report only one specified turbidity limit for calendar year 2005 (versus two under the current compliance date) thus easing implementation and readability of the CCR.

In general, regulations promulgated under the Safe Drinking Water Act (SDWA) are implemented 3 years after the date of promulgation. Section 1412(b)(10) directs EPA to make national primary drinking water regulations "take effect on the date that is 3 years after the date on which the regulation is promulgated unless the Administrator determines that an earlier date is practicable. * * *" For the reasons stated earlier, EPA is proposing to move this date 2 weeks earlier than the 3 year time frame. EPA believes it is practicable for PWSs to meet this earlier date. For the combined filter effluent requirements, systems will not need to install any new equipment because systems are already monitoring their combined filter effluent. For the individual filter effluent requirements, systems will need to install new equipment—turbidimeters, but they are readily available. In addition, EPA considered the benefits of moving the compliance date to January 1, 2005, in concluding that this two week shift in the date is practicable. EPA is also changing the date in the public notification rule, subpart Q Appendix B, endnote 8—to be consistent with the new compliance date of the LT1SWTR. By changing § 141.502, the following 12 requirements will have a compliance deadline of January 1, 2005: §§ 141.520, 141.521, 141.522, 141.550, 141.551, 141.552, 141.553, 141.560, 141.561, 141.562, 141.563, and 141.564. July 1, 2003 (or January 1, 2004, for systems serving fewer than 500 persons), remains the compliance date for §§ 141.530–536. March 15, 2002, remains the compliance date for §§ 141.511.

In addition to changing the compliance date, EPA is proposing to add a sentence to § 141.531 to clarify that States may approve a more representative TTHM and HAA5 data set (optional monitoring) to avoid the disinfection profile monitoring required in § 141.530. EPA's intent was to allow this flexibility as evidenced by the discussion in the preamble (67 FR 1820, January 14, 2002) which states "EPA agrees that systems and States should be allowed the opportunity to use more representative samples, and today's final rule affords States the opportunity to allow more representative data for optional monitoring and profiling." In addition, States are required in § 142.16(j)(2)(i) to describe as part of their primacy applications how they will "approve a more representative data set for optional TTHM and HAA5 monitoring." Section 142.16(j) is being redesignated as § 142.16(p), *see* discussion in II.D, please refer to the rule as promulgated, 67 FR 1820, January 14, 2002. EPA would not have required States to describe their procedure if EPA did not also intend to allow a more representative data set for optional TTHM and HAA5 monitoring. While EPA's intent was to allow this flexibility, EPA failed to make this flexibility explicit in the regulation. Therefore, EPA is proposing to correct § 141.531 to explicitly allow States to approve a more representative TTHM and HAA5 data set by adding the sentence "Your State may approve a more representative TTHM and HAA5 data set to determine these levels."

B. Detection Limit for Compliance Monitoring of Uranium

EPA is proposing to specify a detection limit for compliance determinations of uranium in drinking water at one microgram per liter (1 µg/L) to ease the monitoring burden on public water systems. This amendment is needed for systems to take advantage of the initial monitoring and repeat monitoring waiver provisions at § 141.26(a)(3)(i). For gross alpha, radium-226, radium-228 or uranium, these provisions provide the flexibility for the State to waive the final two quarters of initial monitoring at a sampling point if the results of the samples from the previous two quarters are below the detection limit for a radionuclide. Also, the repeat monitoring frequency will decrease to once every 9 years for entry points which are below detection.

The December 7, 2000, final Radionuclides Rule (65 FR 76708) included a detection limit for gross alpha, radium-226 and radium-228, and reserved a place for a uranium detection limit in Table B at § 141.25(c)(1). EPA did not specify a detection limit in the December 2000 final rule for uranium because no detection limit was discussed in the 1991 rule that proposed maximum contaminant limits (MCLs) and monitoring requirements for several radionuclides (56 FR 33050, July 18, 1991). However, the preamble of the December 2000 final rule states that EPA would "propose a detection limit for uranium in a future rulemaking before the compliance date of this rule" (65 FR 76724). Commenters on this issue stated that EPA should be consistent with other regulated radionuclides and set a detection limit for uranium that is consistent with the sensitivity measures used for other radionuclides (65 FR 76724).

In today's action, EPA is proposing to amend Table B at § 141.25(c)(1) to add a detection limit of 1 µg/L for uranium. EPA is proposing the detection limit as 1 µg/L because it is achievable by all current and proposed methods, within the capability of a substantial majority of laboratories, and well below the MCL of 30 µg/L. Establishing a uranium detection limit permits States the flexibility to substantially reduce the number of compliance samples and the frequency of repeat monitoring for uranium. For systems with initial monitoring results below detection for two quarters, repeat monitoring would be reduced to a nine-year frequency. Accordingly, EPA believes that a 1 µg/L detection limit serves two purposes: It assures a reliable measurement technique is used and allows systems with a fraction, *i.e.* less than one-thirtieth of the MCL, to reduce their monitoring frequency. EPA requests that commenters suggesting any other detection limit provide any available research, testing results, data, or other information that supports an alternative approach.

C. Radionuclide Rule Clarifications

In addition to proposing a detection limit for uranium, EPA proposes to make two clarifications to the final Radionuclide Rule (December 7, 2000, 65 FR 76708). In § 141.26(b)(2)(iv), EPA proposes to add "screening level" to the first sentence. (Note also, that the second "beta" in this sentence is a typographical error, and under today's rule would be removed.) With these revisions, the sentence will read, "If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to every 3 years." This clarifies that the 15 pCi/L is a screening

level for systems just as 50 pCi/L is a screening level for systems in § 141.26(b)(1)(i) (see 65 FR 76726). These are the same two numerical screening levels that were in effect for many years in the 1976 rule; EPA intended to retain them. Similarly, EPA proposes to clarify in 141.26(b)(5), that there are two screening levels by adding the word "appropriate" to the first sentence so that it reads "...exceeds the appropriate screening level...".

In § 141.26(b)(6), EPA proposes to revise the citation "(b)(1)(ii)" to read "(b)(1)(i)", and revise citation "(b)(2)(i)" to read "(b)(2)(iv)." These were typographical errors and should have been (b)(1)(i) and (b)(2)(iv) which refer to meeting the screening level requirements until the system meets the requirements for reduced monitoring.

D. LT1ESWTR Clarifications

In addition to changing the date in § 141.502 to reduce monitoring burden as well as to allow States to approve alternative data sets for optional monitoring in § 141.531, EPA is proposing to clarify typographical errors in the final LT1ESWTR. In subpart Q Appendix B, in endnotes 4 and 8, the year of publication for the Long Term 1 Enhanced Surface Water Treatment Rule is incorrectly identified as 2001 when it should be 2002. Also in endnote 4, the word "monthly" is misspelled.

In § 141.530 EPA is proposing to remove the grammatically incorrect, plural "s" from "systems" in the sentence "If you are a subpart H community or non-transient non-community water systems which serves fewer * * *"

Section 141.534 has two typographical errors. In the introductory paragraph for § 141.534, EPA inadvertently omitted a reference to § 141.74(b)(3)(v), which provides tables for determining the appropriate CT99.9 value to calculate the inactivation ratio. These tables for CT99.9 are referred to in other drinking water regulations (for example, *see* the IESWTR, § 141.172(b)(2)). EPA proposes to change the introductory paragraph of § 141.534 to: "Use the tables in § 141.74(b)(3)(v) to determine the appropriate CT99.9 value. Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia*:"

In the table in § 141.534(a)(2), EPA proposes to change the "3" to "Σ" in the CT calculation formula. EPA inadvertently changed the "Σ" to a "3" during a text file conversion. This clarification will assure consistency with the IESWTR, *see* § 141.172(b)(4)(i)(B).

In § 141.551(a)(2), EPA proposes to add a "t" to the "no" in "A value determined by the State (no to exceed 1 NTU) * * *" In § 141.551(b)(2), EPA proposes to add the word "Filtration" to the phrase "All other "Alternative" which will match related language in § 141.551(a)(2).

In the table in § 141.563(b), the last sentence in the second column is redundant. The last sentence reads: "If a self-assessment is required, the date that it was triggered and the date that it was completed." EPA proposes to delete this sentence. This sentence is properly included in the description of reporting requirements in the table in § 141.570(b)(3) but should not be included in the regulation describing a follow-up action that a system must take if it exceeds a turbidity limit. Also in the same table in § 141.563(c), the first column contains a typographical error. The acronym "BTU" should read "NTU" (Nephelometric Turbidity Units).

In the table in § 141.570(b)(2) there is an omission. EPA is proposing to add the phrase: "and the cause (if known) for the exceedance(s)" to the description of information to report under § 141.570(b)(2). As a result, the entire paragraph would read: "The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, and the cause (if known) for the exceedance(s), but only if 2 consecutive measurements exceeded 1.0 NTU." This will make the wording in the table at 141.570(b)(2) consistent with 141.563(a).

In the LT1ESWTR, EPA placed the special primacy requirements for States in § 142.16 (j), however that paragraph designation was already reserved for a previously promulgated (though not yet effective) drinking water rule (66 FR 6976, January 22, 2001). This action proposes to redesignate the LT1ESWTR special primacy text as § 142.16(p). In addition, EPA proposes to revise a citation in 142.(p)(2)(ii) to "141.536" to read "141.535." This was a typographical error and should have been "141.535" which refers to calculating inactivation.

E. Stage 1 Disinfectants and Disinfection Byproducts Rule

The Stage 1 Disinfectants and Disinfection Byproducts Rule was promulgated on December 16, 1998 (63 FR 69390). This rule required systems to measure and report, among other things, violations of maximum residual disinfectant levels (MRDLs), *see* 141.134(c)(1)(iv) (*see* 63 FR 69422 and 69472). However, EPA failed to add compliance with the applicable MRDL to the compliance requirements in § 141.133(a)(3). EPA proposes to correct this. The language in § 141.133(a)(3) would now read "If, during the first year of monitoring under § 141.132, any individual quarter's average will cause the running annual average of that system to exceed the MCL for total trihalomethanes, haloacetic acids (five), or bromate; or the MRDL for chlorine or chloramine, the system is out of compliance at the end of that quarter." The burden for this requirement was already accounted for in the approved Information Collection Request No. 1895.02.

Also, in the final Stage 1 Disinfectants and Disinfection Byproducts Rule, EPA incorrectly cited in § 142.14(d)(12)(iv) and 142.14(d)(13) a reference to 142.16(f). The reference for both sections should be § 142.16(h)(2) and § 142.16(h)(5) respectively. Section 142.16 (f)(2) refers to reports required under the Consumer Confidence Report Rule; however, §§ 142.14(d)(12)(iv) and 142.14(d)(13) clearly intend to refer the reader to requirements concerning disinfectants and disinfectant byproducts.

F. Surface Water Treatment Rule

The Surface Water Treatment Rule (SWTR) was promulgated on June 29, 1989 (54 FR 27486). In that final rule, EPA incorrectly cited in § 141.74(b)(4)(ii) a reference to § 142.72(a). This citation should read § 141.72(a), which refers to disinfection requirements for public water systems rather than requirements for tribal eligibility (§ 142.72(a)).

Also, EPA is proposing to clarify requirements concerning the calibration of turbidimeters in §§ 141.174(a) (IESWTR) and in 141.560(b) (LT1ESWTR) by adding the phrase already used in § 141.74(a)(1), "using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994." Section 141.174(a) would now end, "must calibrate turbidimeters using the procedure specified by the manufacturer and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994." Section 141.560(b) would have equivalent language so that it now ends, "must calibrate turbidimeters using the procedure specified by the manufacturer and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994."

EPA proposes to change all citations to § 141.74(a)(3) or (4) to § 141.74(a)(1), and all citations to § 141.74(a)(5) to

§ 141.74(a)(2). The SWTR, as published in 1989, had paragraphs § 141.74(a)(3)–(7). The original (a)(3) described HPC methods, (a)(4) described turbidity methods, (a)(5) described residual disinfectant concentration methods, (a)(6) described temperature methods, and (a)(7) described pH methods. On December 5, 1994 (59 FR 62470), EPA revised the SWTR at § 141.74. In that rule, EPA revised paragraphs (a)(1) and (2) and removed paragraphs (a)(3) through (a)(7). EPA subsequently modified § 141.74(a)(1) by moving the temperature method listed in the table § 141.74(a)(1) to the text of § 141.74(a)(1) (June 29, 1995, 60 FR 34086). As a result of these two notices (1994 and 1995) the requirements in (a)(1)–(7) were all combined into paragraphs (a)(1) and (a)(2), however; EPA failed to make corresponding changes to the following cross references elsewhere in part 141:

TABLE 1.—REFERENCES TO THE SURFACE WATER TREATMENT RULE

SWTR provisions with incorrect cross references	Proposed amendment
141.71(a)(2)	"(a)(4)" to (a)(1)
141.71(c)(2)(i)	"(a)(4)" to (a)(1)
141.72(a)(3)	"(a)(5)" to (a)(2)
141.72(a)(4)(i)	"(a)(3)" to (a)(1) and "(a)(5)" to (a)(2)
141.72(a)(4)(ii)	"(a)(3)" to (a)(1)
141.72(b)(2)	"(a)(5)" to (a)(2)
141.72(b)(3)(i)	"(a)(5)" to (a)(2) and, "(a)(3)" to (a)(1)
141.72(b)(3)(ii)	"(a)(3)" to (a)(1)
141.73(a)(1)	"(a)(4)" to (a)(1)
141.73(a)(2)	"(a)(4)" to (a)(1)
141.73(b)(1)	"(a)(4)" to (a)(1)
141.73(b)(2)	"(a)(4)" to (a)(1)
141.73(c)(1)	"(a)(4)" to (a)(1)
141.73(c)(2)	"(a)(4)" to (a)(1)
141.74(b)(6)(ii)	"(a)(3)" to (a)(1)
141.74(c)(3)(i)	"(a)(3)" to (a)(1)
141.74(c)(3)(ii)	"(a)(3)" to (a)(1)
141.75(a)(2)(viii)(G)	"(a)(3)" to (a)(1)
141.75(b)(2)(iii)(G)	"(a)(3)" to (a)(1)

G. Filter Backwash Recycling Rule

The Filter Backwash Recycling Rule (FBRR) was promulgated on June 8, 2001 (66 FR 31086). EPA inadvertently provided incomplete citations in subpart Q, Appendix A of the Public Notification rule for the FBRR violations. In entry I.A.(8) of 40 CFR part 141, subpart Q, Appendix A, EPA is proposing to add a "(c)" to the "MCL/MRDL/TT violations Citation" column of § 141.76; and, in the "Monitoring & testing procedure violations Citation" column EPA is proposing to add "(b), (d)" to § 141.76. This will clarify which FBRR violations require public notice and what type of notice is required.

The FBRR preamble (66 FR 31086, 31094) explicitly states that violations of the recordkeeping and reporting portions of this treatment technique trigger public notification (PN) obligations under 40 CFR part 141, subpart Q. Normally, recordkeeping and reporting violations do not trigger PN. The preamble to the PN rule, as well as the rule text, state that reporting and recordkeeping violations do not trigger PN. For example, *see* § 141, subpart Q, Appendix A, Endnote 1. Moreover, the table listing categories of violations that trigger PN—§ 141.201 Table 1—does not list reporting or recordkeeping. However, the recordkeeping and reporting requirements of the FBRR are an integral part of the treatment technique itself and thus do trigger PN.

EPA is clarifying this by making the following changes to the PN rule: striking the reference to reporting violations in Appendix A, endnote 1, and explicitly adding §§ 141.76(b), (c) and (d) to the list of categories requiring reporting in Appendix A (current references are just to § 141.76). These changes will harmonize the two rules/preambles and help to clarify where the FBRR recordkeeping and reporting requirements fit under the list of categories in § 141.201 Table 1.

H. Bottled Water

In a November 1995 final rule (60 FR 57132), the Food and Drug Administration (FDA) moved their standards of quality for bottled water from § 103.35 (21 CFR 103.35) to § 165.110. EPA proposes to correct a reference in our regulations in § 142.62(g)(2) to this updated citation of these FDA regulations.

I. Information Collection Rule

The Information Collection Rule (ICR) was promulgated on May 14, 1996 (61 FR 24354). The requirements promulgated in the ICR expired on December 31, 2000. As a result, the ICR requirements (referred to as subpart M—Information Collection Requirements (ICRs) for Public Water Systems) were removed from the Code of Federal Regulations in 2001. However, there are remaining references to the data collected as a result of the ICR in other sections of part 141 that refer to "subpart M". EPA proposes to delete, "or subpart M of this part" from § 141.132(a)(5). EPA is not proposing to delete or revise the other references to subpart M because the data collected under the ICR are still being used.

J. Phase V Rule

In the final Phase V Rule (July 17, 1992, 57 FR 31776), EPA published a list of Best Available Technologies (BATs) for cyanide, *see* § 141.62(c). Subsequently, EPA identified the need for a rule revision relating to one of the three BATs for cyanide, specifically chlorine. EPA should have been more specific (*see* 57 FR 31089 of the final rule and 55 FR 30419 of the proposed rule (July 25, 1990, 55 FR 30370)) as to the type of chlorination and instead listed "alkaline chlorination." EPA discussed this issue in a public memorandum, "Public Water System Warning" Memo, March 7, 1994. EPA also listed "alkaline chlorination" rather than chlorination in the *Small System Compliance Technology List for the Non-microbial Contaminants Regulated Before 1996, see* August 6, 1998, 63 FR 42039, Table 4 and 5. EPA proposes to delete the "10" (code for chlorination) from the cyanide BAT list and replace

it with "13" (new code for alkaline chlorination). In addition, the new code for alkaline chlorination is added to the table key.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to Executive Order 12866.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action modifies and clarifies existing regulations. It does not add monitoring, recordkeeping or reporting requirements.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the 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 regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment 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 government jurisdictions.

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment. 5 U.S.C. 601(3)–(5). In addition to the above, to establish an alternative small business definition, agencies must consult with the Small Business Administration's (SBA's) Chief Counsel for Advocacy.

For purposes of assessing the impacts of today's proposed rule on small entities, EPA considered small entities to be public water systems serving 10,000 or fewer persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. In accordance with the RFA requirements, EPA proposed using this alternative definition in the **Federal Register** (63 FR 7620, February 13, 1998), requested public comment, consulted with the Small Business Administration (SBA), and expressed its intention to use the alternative definition for all future drinking water regulations in the Consumer Confidence Reports regulation (63 FR 44511, August 19, 1998). As stated in that final rule, the alternative definition would be applied to this proposed regulation as well.

This proposed rule imposes no cost on any entities over and above those imposed by previously published drinking water rules. This action corrects and clarifies existing regulations. The optional monitoring for disinfection profiling provides flexibility for PWSs complying with LT1ESWTR. The earlier compliance date will not increase the cost of complying with LT1ESWTR since the monitoring and reporting requirements are unchanged. By specifying the detection limit for uranium, States have the flexibility to waive some monitoring for PWSs with samples below the detection limit. This action does not add new requirements.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. This proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This action corrects and clarifies existing regulations. The optional monitoring for disinfection profiling provides flexibility for PWSs to comply with LT1ESWTR. The earlier compliance date will not increase the cost of complying with LT1ESWTR since the monitoring and reporting requirements are unchanged. By specifying the detection limit for uranium, States have the flexibility to waive some monitoring for PWSs with samples below the detection limit. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rule imposes no enforceable duty on any State, local or tribal governments or the private sector. This action corrects and clarifies existing regulations. Thus, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. There is no cost to State and local governments, and the proposed rule does not preempt State law. This action corrects and clarifies existing regulations. The optional monitoring for disinfection profiling provides flexibility for PWSs to comply with LT1ESWTR. The earlier compliance date will not increase the cost of complying with LT1ESWTR since the monitoring and reporting requirements are unchanged. By specifying the detection limit for uranium, States have the flexibility to waive some monitoring for PWSs with samples below the detection limit. Thus, Executive Order 13132 does not apply to this proposed rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and 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. There is no cost to tribal governments, and the proposed rule does not preempt tribal law. This action corrects and clarifies existing regulations. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 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 the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve any new technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects

40 CFR Part 141

Chemicals, Environmental protection, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Administrative practice and procedure, Chemicals, Indians-lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

Dated: February 24, 2004.

Michael O. Leavitt,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 141.25 [Amended]

2. Section 141.25(c)(1) is amended in the entry for uranium in Table B by revising the word "reserved" to read "1 μg/L".

§ 141.26 [Amended]

3. Section 141.26 is amended as follows:

a. Revise paragraph (b)(2)(iv) and (b)(5); and

b. In paragraph (b)(6) revise the citation "(b)(1)(ii)" to read "(b)(1)(i)" and revise the citation "(b)(2)(i)" to read "(b)(2)(iv)" as follows:

§ 141.26 Monitoring frequency and compliance requirements for radionuclides in community water systems.

* * * * *

(b) * * *

(2) * * *

(iv) If the gross beta particle activity minus the naturally occurring potassium–40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the State may reduce the frequency of monitoring at that sampling point to every 3 years. Systems must collect the same type of samples required in paragraph (b)(2) of this section during the reduced monitoring period.

* * * * *

(5) If the gross beta particle activity minus the naturally occurring potassium–40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample and the appropriate doses must be calculated and summed to determine compliance with § 141.66(d)(1), using the formula in § 141.66(d)(2), or Table E in § 141.66(d). Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

* * * * *

§ 141.62 [Amended]

4. Section 141.62(c) is amended as follows:

a. In the Table "BAT for inorganic compounds listed in section 141.62(b)" amend the entry for "cyanide" by replacing the "10" with "13"; and

b. In the list "Key to BATS in Table 1", add to the end of the list as follows: "13 = Alkaline Chlorination (pH ≥ 8.5)".

§ 141.71 [Amended]

5. Section 141.71 is amended as follows:

a. In paragraph (a)(2) introductory text revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)"; and

b. In paragraph (c)(2)(i) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)".

§ 141.72 [Amended]

6. Section 141.72 is amended as follows:

a. In paragraph (a)(3) revise the citation "§ 141.74(a)(5)" to read "§ 141.74(a)(2)";

b. In paragraph (a)(4)(i) revise the citation "§ 141.74(a)(5)" to read "§ 141.74(a)(2)" and revise the citation "§ 141.74(a)(3)" to read "§ 141.74(a)(1)";

c. In paragraph (a)(4)(ii) revise the citation "§ 141.74(a)(3)" to read "§ 141.74(a)(1)";

d. In paragraph (b)(2) revise the citation "§ 141.74(a)(5)" to read "§ 141.74(a)(2)";

e. In paragraph (b)(3)(i) revise the citation "§ 141.74(a)(5)" to read "§ 141.74(a)(2)", and revise the citation "§ 141.74(a)(3)" to read "§ 141.74(a)(1)"; and

f. In paragraph (b)(3)(ii) revise the citation "§ 141.74(a)(3)" to read "§ 141.74(a)(1)".

§ 141.73 [Amended]

7. Section 141.73 is amended as follows:

a. In paragraph (a)(1) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)";

b. In paragraph (a)(2) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)";

c. In paragraph (b)(1) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)";

d. In paragraph (b)(2) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)";

e. In paragraph (c)(1) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)"; and

f. In paragraph (c)(2) revise the citation "§ 141.74(a)(4)" to read "§ 141.74(a)(1)".

§ 141.74 [Amended]

8. Section 141.74 is amended as follows:

a. In paragraph (b)(4)(ii) revise the citation "§ 142.72(a)" to read "§ 141.72(a)";

b. In paragraph (b)(6)(ii) revise the citation "(a)(3)" to read "(a)(1)";

c. In paragraph (c)(3)(i) revise the citation "(a)(3)" to read "(a)(1)"; and

d. In paragraph (c)(3)(ii) revise the citation "(a)(3)" to read "(a)(1)".

§ 141.75 Amended

9. Section 141.75 is amended as follows:

a. In paragraph (a)(2)(viii)(G) revise the citation "§ 141.74(a)(3)" to read "§ 141.74(a)(1)"; and

b. In paragraph (b)(2)(iii)(G) revise the citation "§ 141.74(a)(3)" to read "§ 141.74(a)(1)".

10. Section 141.132 is amended in paragraph (a)(5) by removing the reference to "or subpart M of this part".

11. In § 141.133 revise paragraph (a)(3) to read as follows:

§ 141.133 Compliance requirements.

(a) * * *

(3) If, during the first year of monitoring under § 141.132, any individual quarter's average will cause the running annual average of that system to exceed the MCL for total trihalomethanes, haloacetic acids (five), or bromate; or the MRDL for chlorine or chloramine, the system is out of compliance at the end of that quarter.

* * * * *

12. In § 141.174 revise the first sentence of paragraph (a) to read as follows:

§ 141.174 Filtration sampling requirements.

(a) * * * In addition to monitoring required by § 141.74, a public water system subject to the requirements of this subpart that provides conventional filtration treatment or direct filtration must conduct continuous monitoring of turbidity for each individual filter using an approved method in § 141.74(a) and must calibrate turbidimeters using the procedure specified by the manufacturer and by using analytical test procedures contained in *Technical Notes on Drinking Water Methods*, EPA–600/R–94–173, October 1994. * * *

* * * * *

13. In subpart Q, Appendix A is amended as follows:

a. In entry I.A.(8) revise the citation in the third column "141.76" to read "141.76(c)" and the citation in the fifth column "141.76" to read "141.76 (b), (d)".

b. Amend endnote 1 by removing the words "reporting violations and" from the first parenthetical phrase.

14. In subpart Q, Appendix B revise endnotes 4 and 8 to read as follows:

Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification

* * * * *

[4] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, and the 1989 Surface Water Treatment Rule, the 1998 Interim Enhanced Surface Water Treatment Rule and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU for systems that are required to filter but have not yet installed filtration (40 CFR 141.13).

* * * * *

[8] There are various regulations that set turbidity standards for different types of systems, including 40 CFR 141.13, the 1989 Surface Water Treatment Rule (SWTR), the 1998 Interim Enhanced Surface Water Treatment Rule (IESWTR) and the 2002 Long Term 1 Enhanced Surface Water Treatment Rule (LT1ESWTR). For systems subject to the IESWTR (systems serving at least 10,000 people, using surface water or ground water under the direct influence of surface water), that use conventional filtration or direct filtration, after January 1, 2002, the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the IESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency. For systems subject to the LT1ESWTR (systems serving fewer than 10,000 people, using surface water or ground water under the direct influence of surface water) that use conventional filtration or direct filtration, after January 1, 2005 the turbidity level of a system's combined filter effluent may not exceed 0.3 NTU in at least 95 percent of monthly measurements, and the turbidity level of a system's combined filter effluent must not exceed 1 NTU at any time. Systems subject to the LT1ESWTR using technologies other than conventional, direct, slow sand, or diatomaceous earth filtration must meet turbidity limits set by the primacy agency.

* * * * *

15. Revise § 141.502 to read as follows:

§ 141.502 When must my system comply with these requirements?

You must comply with these requirements in this subpart beginning January 1, 2005, except where otherwise noted.

16. In § 141.530 in the second sentence, revise "water systems" to read "water system".

17. Amend § 141.531 by adding the following sentence to the end of the section, to read as follows:

§ 141.531 What criteria must a State use to determine that a profile is unnecessary?

* * * Your State may approve a more representative TTHM and HAA5 data set to determine these levels.

18. Section 141.534 is amended as follows:

a. By revising the introductory paragraph,

b. In the table in paragraph (a)(2), revise the "3" to read "Σ".

§ 141.534 How does my system use this data to calculate an inactivation ratio?

Use the tables in § 141.74(b)(3)(v) to determine the appropriate CT99.9 value. Calculate the total inactivation ratio as follows, and multiply the value by 3.0 to determine log inactivation of *Giardia lamblia:*

* * * * *

§ 141.551 [Amended]

19. Section 141.551 is amended as follows:

a. In paragraph (a)(2) revise "no" to read "not"; and

b. In paragraph (b)(2) revise ""Alternative"" to read "Alternative Filtration".

20. In § 141.560, revise paragraph (b) to read as follows:

§ 141.560 Is my system subject to individual filter turbidity requirements?

* * * * *

(b) Calibration of turbidimeters must be conducted using procedures specified by the manufacturer and by analytical test procedures contained in *Technical Notes on Drinking Water Methods,* EPA–600/R–94–173, October 1994.

* * * * *

141.563 [Amended]

21. Section 141.563 is amended as follows:

a. In paragraph (b) remove the last sentence in the second column of the table, and

b. In paragraph (c) revise "BTU" to read "NTU" in the first column of the table.

22. In § 141.570, revise paragraph (b)(2) in the table to read as follows:

§ 141.570 What does subpart T require that my system report to the State?

* * * * *

Corresponding requirement	Description of information to report	Frequency
* * * * * * *		
(b) Individual Filter Turbidity Requirements (§§141.560–141.564).	(2) The filter number(s), corresponding date(s), and the turbidity value(s) which exceeded 1.0 NTU during the month, and the cause (if known) for the exceedance(s), but only if 2 consecutive measurements exceeded 1.0 NTU.	By the 10th of the following month.
* * * * * * *		

PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

23. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

§ 142.14 [Amended]

24. Section 142.14 is amended as follows:

a. In paragraph (d)(12)(iv) revise the citation "§ 142.16(f)(2)" to read "§ 142.16(h)(2)"; and

b. In paragraph (d)(13) revise the citation "§ 142.16(f)(5)" to read "§ 142.16(h)(5)".

§ 142.16 [Amended]

25. Section 142.16 is amended as follows:

a. In paragraph (l)(2) revise the citation "§ 142.16 (e)(5)" to read "§ 142.16 (e)(2)";

b. Redesignate paragraph (j) which was added on January 14, 2002, at 67 FR 1812 as paragraph (p); and

c. In paragraph (p)(2)(ii) revise the citation "141.536" to read "141.535".

26. Section 142.62(g)(2) is amended by revising the citation "103.35" to read "165.110".

[FR Doc. 04–4464 Filed 3–1–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–376, MB Docket No. 04–32, RM–10851]

Digital Television Broadcast Service; Apalachicola, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Liberty County Educational Foundation proposing the allotment of DTV channel 3 to Apalachicola, Florida, as the community's first local commercial television service. DTV Channel 3 can be allotted to Apalachicola, Florida, at reference coordinates 29–45–05 N. and 84–52–19 W.

DATES: Comments must be filed on or before April 12, 2004, and reply comments on or before April 27, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings,* GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Tannenwald, Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, NW., Suite 200, Washington, DC 20036–3101 (Counsel for Liberty County Educational Foundation).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–32, adopted February 12, 2004, and released February 20, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Florida is amended by adding Apalachicola, DTV channel 3.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–4619 Filed 3–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–231; MB Docket No. 04–20; RM–10842]

Radio Broadcasting Services; Cambridge and St. Michaels, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by CWA Broadcasting, Inc., licensee of Station WINX–FM, Channel 232A, St. Michaels, Maryland. The petition proposes to upgrade Station WINX–FM from Channel 232A to Channel 232B1 and to reallot Channel 232B1 from St. Michaels to Cambridge, Maryland, thus providing Cambridge with its third local aural transmission service. The coordinates for Channel 232B1 at Cambridge are 38–29–39 NL and 76–13–21 WL, with a site restriction of 15.1 kilometers (9.4 miles) southwest of Cambridge.

Petitioner's reallotment proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 232B1 at Cambridge, Maryland, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before April 5, 2004, and reply comments on or before April 20, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the

petitioners' counsel, as follows: Barry A. Friedman, Esq., Thompson Hine LLP; 1920 N Street, NW., Suite 800; Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–20, adopted February 11, 2004, and released February 13, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

The provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *See* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maryland, is amended by adding Channel 232B1 at Cambridge and by removing St. Michaels, Channel 232A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–4616 Filed 3–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–375, MB Docket No. 04–31, RM–10852]

Television Broadcast Service; Gainesville, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Gainesville Channel 61 Associates, LLC proposing the substitution of channel 29 for channel 61+ at Gainesville, Florida. TV Channel 29 can be allotted to Gainesville with a zero offset at reference coordinates 29–37–47 N. and 82–34–24 W.

DATES: Comments must be filed on or before April 12, 2004, and reply comments on or before April 27, 2004.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. The Commission's contractor, Natek, Inc., Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman, 2300 N Street, NW., Washington, DC 20037–1128 (Counsel for Gainesville Channel 61 Associates, LLC).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–31, adopted February 12, 2004, and released February 20, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Florida, is amended by removing channel 61+ and adding channel 29 at Gainesville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 04–4620 Filed 3–1–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 69, No. 41
Tuesday, March 2, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 04–018–1]

Declaration of Extraordinary Emergency Because of Avian Influenza in Texas

Avian influenza (AI) has been confirmed in a broiler chicken flock in Gonzales County, TX. AI viruses, which can infect chickens, turkeys, pheasants, quail, ducks, geese, and guinea fowl, as well as a wide variety of other birds, can be classified into low pathogenic and highly pathogenic strains based on the severity of the illness they cause. Most AI virus strains are low pathogenic and typically cause mild clinical signs and low mortality in infected birds. However, some low pathogenic virus strains are capable of mutating under field conditions into highly pathogenic viruses, which cause more illness and high mortality in infected birds.

Exposure of poultry to migratory waterfowl and the international movement of poultry, poultry equipment, and people pose risks for introducing highly pathogenic avian influenza (HPAI) into U.S. poultry. Once introduced, the disease can be spread from bird to bird by direct contact. HPAI viruses can also be spread by manure, equipment, vehicles, egg flats, crates, and people whose clothing or shoes have come in contact with the virus.

On February 17, 2004, routine surveillance samples taken from the Gonzales County flock and sent to the Texas Veterinary Medical Diagnostic Laboratory were identified as preliminarily positive for an H5 type AI virus. Upon learning that the flock of broilers had elevated death rates, the Texas Animal Health Commission (TAHC), in accordance with standard practice in such situations, dispatched a foreign animal disease diagnostician to collect additional samples and information from the farm. These samples were sent to the Texas State laboratory and to the U.S. Department of Agriculture's National Veterinary Services Laboratories in Ames, IA, which is the U.S. national reference laboratory for foreign animal diseases.

On February 19, 2004, test results indicated that the flock had H5N2 avian influenza. Since H5 and H7 strains can be either low pathogenic or highly pathogenic, additional tests were conducted. Genetic sequencing was completed on February 23, 2004, the results of which indicated a highly pathogenic form of AI. International standards mandate reporting these sequencing results to the Office International des Epizooties, the world animal health organization. The Department is conducting further laboratory testing to confirm the pathogenicity.

The flock of approximately 6,600 broiler chickens was depopulated. The Department and the TAHC are in the process of conducting an epidemiological investigation and surveillance testing within a 10-mile radius of the affected property.

The existence of HPAI in Texas represents a threat to the U.S. poultry and bird industries. It constitutes a real danger to the national economy and a potential serious burden on interstate and foreign commerce. The Department has reviewed the measures being taken by Texas to control and eradicate HPAI and has consulted with the appropriate State Government and Indian tribal officials in Texas. Based on such review and consultation, the Department has determined that the measures being taken by the State are inadequate to control or eradicate HPAI. Therefore, the Department has determined that an extraordinary emergency exists because of HPAI in Texas.

This declaration of extraordinary emergency authorizes the Secretary to (1) hold, seize, treat, apply other remedial actions to, destroy (including preventative slaughter), or otherwise dispose of, any animal, article, facility, or means of conveyance if the Secretary determines the action is necessary to prevent the dissemination of HPAI and (2) prohibit or restrict the movement or use within the State of Texas, or any portion of the State of Texas, of any animal or article, means of conveyance, or facility if the Secretary determines that the prohibition or restriction is necessary to prevent the dissemination of HPAI. The appropriate State Government and Indian tribal officials in Texas have been informed of these facts.

Effective Date: This declaration of extraordinary emergency shall become effective February 23, 2004.

Ann M. Veneman,
Secretary of Agriculture.

[FR Doc. 04–4587 Filed 3–1–04; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–013–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the regulations for the importation of poultry meat and products and live poultry from the Mexican States of Campeche, Quintana Roo, and Yucatan.

DATES: We will consider all comments that we receive on or before May 3, 2004.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 04–013–1, 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. 04–013–1. If you use 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. 04–013–1" on the subject line.

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.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding the importation of poultry meat and products and live poultry from the Mexican States of Campeche, Quintana Roo, and Yucatan, contact Dr. Hatim Gubara, Senior Staff Veterinarian, Regionalization Evaluation Services Staff, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Exotic Newcastle Disease; Importation of Poultry Meat and Products and Live Poultry from the Mexican States of Campeche, Quintana Roo, and Yucatan.

OMB Number: 0579–0228.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301–8317), the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, regulates the importation of animals and animal products into the United States to prevent the introduction of animal diseases, such as exotic Newcastle disease (END), into the United States.

The regulations in 9 CFR part 94 allow the importation of poultry meat and products and live poultry from the Mexican States of Campeche, Quintana Roo, and Yucatan under conditions designed to ensure that the poultry meat and products and live poultry will not transmit END. This disease is not present in those States but exists in other parts of Mexico. The conditions for importation require, among other things, certification from a full-time salaried veterinary officer of the Government of Mexico that the poultry meat or products or live poultry originated in an END-free region and have not been commingled with poultry meat or products or live poultry from END-affected regions.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, 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 information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Federal animal health authorities in Mexico.

Estimated annual number of respondents: 5.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 50.

Estimated total annual burden on respondents: 50 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–4589 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–100–2]

Public Meeting; Veterinary Biologics

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is the second notice to producers and users of veterinary biological products, and other interested individuals, that we will be holding our 12th public meeting to discuss regulatory and policy issues related to the manufacture, distribution, and use of veterinary biological products. This notice provides information on the agenda, as well as the dates, times, and place of the meeting. It also indicates a contact person for obtaining registration forms, lodging information, and copies of the agenda.

DATES: The public meeting will be held Wednesday, April 7, through Friday, April 9, 2004, from 1 p.m. to approximately 5 p.m. on Wednesday, 8 a.m. to approximately 5 p.m. on Thursday, and from 8 a.m. to approximately noon on Friday.

ADDRESSES: The public meeting will be held in the Scheman Building at the Iowa State Center, Iowa State University, Ames, IA.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Clark, Center for Veterinary Biologics, VS, APHIS, 510 South 17th Street, Suite 104, Ames, IA 50010–8197; phone (515) 232–5785, fax (515) 232–7120; or e-mail *Kathryn.K.Clark@aphis.usda.gov.*

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on November 14, 2003 (68 FR 64585, Docket No. 03–100–1), we announced that we would be holding our 12th annual veterinary biologics public meeting and requested that interested persons submit suggestions for agenda topics. Based on the responses and on other considerations, the agenda for the 12th public meeting will include, but is not limited to, the following:

- Biologics use and role in emergency management;
- Bovine spongiform encephalopathy (BSE) experience, epidemiology aspects, and impact on veterinary biologics;
- Animal health safeguarding;
- Autogenous biologics;
- Possession, use, and transfer of biological agents and toxins, 9 CFR part 121, implementation and impact;
- Research and development of biologics;

• Vaccine storage bank and vaccine discontinuance update;

• Center for Veterinary Biologics (CVB) regulatory initiatives;

• Harmonization issues; and

• Animal care.

In addition, we will provide updates on regulations, quality assurance, the Ames Information Management System, document processing (outlines, labels), CVB shipment of select agents and reagents, the Agricultural Bioterrorism Protection Act of 2002, export certificates, the APHIS Science Fellows Project, and the National Centers for Animal Health.

Registration forms, lodging information, and copies of the agenda for the 12th public meeting may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.** This information is also available on the Internet at *http://www.aphis.usda.gov/vs/cvb.*

The registration deadline is March 27, 2004. A block of hotel rooms has been set aside for this meeting until March 24, 2004. Early reservation of rooms is strongly encouraged.

Done in Washington, DC, this 25th day of February 2004.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–4588 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Utah, Duck Creek Fuels Treatment Analysis

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA Forest Service will prepare an Environmental Impact Statement (EIS) to implement fuels treatments in the Duck Creek area, within the Cedar City Ranger District, Dixie National Forest, Utah. The original Notice of Intent for this project was published in the **Federal Register** May 23, 2002 (page 44587). A revised Notice of Intent was published July 18, 2003 (page 42677). This second revised Notice of Intent is published to change the dates of the EIS and modify the Purpose and Need statement of the EIS to include crown fuels reduction. The agency confirms the continuing environmental analysis and decision-making process.

DATES: Comments concerning the analysis must be received within thirty days after publication of this revised Notice Of Intent in the **Federal Register**. The draft environmental impact statement is expected in June, 2004. The final environmental impact statement is expected in October, 2004.

ADDRESSES: Send written comments to: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720.

FOR FURTHER INFORMATION CONTACT: Duck Creek Fuels Treatment Analysis Coordinator, Cedar City Ranger District, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720.

SUPPLEMENTARY INFORMATION: The proposed treatments will implement direction in the National Fire Plan and Healthy Forest Initiative and Healthy Forests Restoration Act, efforts to reduce impacts of wildfires on people and resources. The National Fire Plan directs Federal agencies within USDA/USDI to engage states and local communities in reducing forest fuels, using a variety of fuel reduction treatments (mechanical, prescribed fire and intensive manual treatment). Hazardous fuel reduction is a critical investment necessary to reduce fire risk and fire suppression costs into the future and is focused on areas near communities and interface areas that the States have judged to be in harm's way of a wildfire.

The analysis area of 25,741 acres of National Forest System lands is located thirty miles east of Cedar City, Utah. The analysis area includes six tracts of private lands which are surrounded by National Forest lands. The tracts are subdivided into residential lots and contain an estimated 1,900 homes and 10 businesses. The specific subdivisions are as follows:

Subdivision	Legal location (approximate) Salt Lake base meridian
1. Meadow View Heights	T38S R7W Sec 6
2. Mirror Lake	T38S R7W Sec 5, 8
3. Movie Ranch	T38S R7W Sec 7
4. Movie Ranch South	T38S R7W Sec 7
5. Color Country	T38S R7W Sec 8, 17
6. Timber Trails	T38S R7W Sec 7, 17, 18
7. Ponderosa Villa	T38S R7W Sec 16
8. Strawberry Valley	T38S R7W Sec 20, 21
9. Swains Creek	T38S R7W Sec 26, 2
10. Blackman Hill	T38S R7W Sec 26, 27
11. Harris Springs	T38S R7W Sec 26
12. Swains Creek Pines	T38S R7W Sec 33, 34
13. Ponderosa Ranch	T38S R7W Sec 24; T38S R6W Sec 19
14. Zion View Mtn Estates	T38S R8W Sec 2
15. Duck Creek Pines	T38S R7W Sec 7

The private lands were designated an "urban interface community at risk from wildfires on National Forest lands" by the Chief of the Forest Service (**Federal Register**, August 17, 2001 / Notices). This designation meant that Federal funds from the National Fire Plan could be spent to reduce fuels on National Forest lands adjacent to the private lands.

Historic prevention and suppression of wildfire has resulted in ever-increasing accumulations of forest fuels. These buildups of forest fuels increase the risk of high intensity fires to the National Forest and to large private subdivisions within the forest boundary. The extensive development and high recreation use have also increased the threat of human-caused fires. A high intensity fire occurring within this area would cause significant damage to property and natural resources. Reducing the risk of wildfires in these areas would provide the best opportunity to protect National Forest lands and adjacent private properties.

Purpose and Need for Action

The purpose of this project is to modify existing, high fuel loads that influence fire behavior on National

Forest lands adjacent to private lands in the Duck Creek area. Fuel loads and the potential for high intensity surface and crown fires, sustained fire spread, and resultant threat to firefighter and public safety as well as cost of suppression are reduced by manipulating vegetation. Eliminating the high surface fuel loads, ladder fuels, and reducing crown fuels would help reduce the risk of property damage and allow sufficient time for firefighters to directly attack and control a fire before housing and other developments are threatened or destroyed. The difference between the existing condition and desired condition describes the need for action and is defined by "elements" that describe how the need for action is measured.

Element 1—Ground Fuels Reduction. Currently, the increasing buildup and continuity of fuels on National Forest lands pose a serious risk to the adjacent subdivisions on private lands within the Duck Creek area. As these fuel loads have increased, the residential population of the private subdivisions has also increased. Increased recreation use is also occurring, increasing the risk that a human-caused fire may occur. The risk of high intensity wildfire is a threat to the large subdivisions of private homes, businesses and other private land developments, as well as a threat to the people who live and recreate in the area. A high intensity fire would cause significant damage to these properties, as well as to the natural resources in the area. Current fuel loads adjacent to private lands range from 20 to 50 tons per acre; most forests exhibit conditions of a Fuel Model 10.

The desired condition of the area surrounding the subdivisions, the DFS, or Defensible Fire Space (a zone around the subdivisions up to 2,000 feet wide), is to have fuel loads reduced to 5–10 tons per acre, which would convert the forest to a Fuel Model 8, a level that would not sustain a high intensity fire event and a width which would allow fire embers from areas outside the DFS to land without causing a significant spot fire hazard.

Outside of the DFS, the current fuel loads range from 20 to 50 tons per acre. Reducing the fuel loads in the general forest area would slow the spread of fire and would reduce the potential for a fire to spread into the crowns of the trees. The desired condition of the general forest area, which is the area outside of the DFS, is to have fuel loads reduced to 10–15 tons per acre, a level that would lessen the potential for and slow the spread of a high intensity fire event. The element of Ground Fuels Reduction will be measured by total fuel loads (tons/acre) in the DFS and General Forest Area.

Element 2—Ladder Fuels Reduction. Currently, ladder fuels have increased dramatically as ponderosa pine trees with small crowns and few lower branches have been replaced by fir and spruce that have large crowns and branches extending to the ground. Fire suppression has also resulted in a dense understory of young trees that contribute to the ladder a fire would climb to reach higher crowns. Lower branches, small trees and other ladder fuels currently extend from the ground upward. The desired condition within the DFS is to effectively prevent a ground fire from climbing. Therefore, small diameter trees should be infrequent and with all trees the branches or ladder fuels should be at least eight feet above the ground within the DFS.

The element of ladder fuels will be measured by acres of DFS that do not have trees nine inches dbh and less, with remaining trees limbed to eight feet high.

Element 3—Crown Fuels Reduction. Currently, dense, continuous crowns (tree canopy), exist in conifer stands south and west of the subdivisions within the Duck Creek area. A fire starting in this area under normal summer weather conditions could easily reach the crowns via high surface fuel loads and ladder fuels that exist throughout the area and then be carried through the dense canopy by a combination of winds, slope, and atmospheric conditions. This dense crown fuel condition provides a ready avenue for a high intensity fire to spread rapidly and significantly increases long-range spotting as well. The desired conditions are a thinned canopy where typical wind/slope/atmosphere interaction could not sustain fire spread through the canopy along with breaks in the forest canopy that would reduce the continuity of aerial fuels adjacent to those areas having denser canopies.

The element of crown fuels will be measured by crown fire index and by acres treated to effectively prevent a fire from spreading through the crowns.

Element 4—Retention of Fire Tolerant Species. Currently, aspen stands within the watershed are being encroached upon by tree species such as spruce and fir, which are fire intolerant species. Stands with a high density of aspen, a fire tolerant species, act as natural firebreaks or areas where fire activity is slowed. Aspen is a short-lived species that requires disturbance in order to regenerate; without disturbance, these stands will eventually be taken over by conifers, eliminating the aspen from the area. Conifer encroachment increases fire susceptibility and fire behavior within these stands. Historically, 60 to 70% of the watershed contained stands with an aspen component. Restoring and maintaining aspen stands would help slow the spread of fires that may occur. The desired condition is to regenerate and maintain aspen stands, such that at least 60% of the stands within the watershed contain aspen.

The element of retention of fire tolerant species will be measured by the acreage of stands that retain or develop an aspen component.

Proposed Action: The Forest Service proposes to treat fuels in timber stands located in Kane County, Utah, Salt Lake Base Meridian, T38S R8W, T38S R7W, T39S R8W, T39S R7W and T38S R6W. The specific fuels treatments are as follows:

1. Defensible fire space (DFS) treatments. A defensible fire space will be established in National Forest lands from 500′–2000′ wide immediately surrounding private lands with subdivisions. The DFS area is approximately 2,724 acres. Ground fuels will be reduced by disposing of limbs, existing ground fuels and slash by piling/burning or chipping. Ladder fuels will be reduced by pruning limbs under eight feet high on conifer trees. Crown fuels will be reduced by cutting all conifer trees under nine inches in diameter.

2. Mixed conifer treatments. Fuel loads will be reduced and the establishment of ponderosa pine will be favored on approximately 7,352 acres of mixed conifer stands in National Forest lands south and west of the private subdivisions. Mixed conifer stands currently have major components of ponderosa pine, white fir and Douglas-fir with minor components of subalpine fir, Engelmann spruce and Colorado blue spruce. Ground fuels will be reduced by piling/burning or chipping limbs, other ground fuels and slash. Ladder and crown fuels will be reduced by cutting white fir, Douglas-fir, subalpine fir, Engelmann spruce and Colorado blue spruce trees under nine inches in diameter.

3. Spruce treatments. Fuels treatments will conducted in approximately 947 acres of spruce conifer stands in National Forest lands south and west of the private subdivisions. Spruce stands have major components of Engelmann spruce and subalpine fir with minor components of ponderosa pine, Colorado blue spruce, Douglas-fir and white fir. Ground fuels will be reduced by disposing of limbs, existing ground fuels and slash by piling/burning or chipping. Ladder and crown Fuel loads

will be reduced by cutting subalpine fir, white fir and Douglas-fir under nine inches in diameter. Engelmann spruce, Colorado blue spruce and ponderosa pine trees under nine inches in diameter will be retained in this area in order to maintain a spruce component into the future.

4. Aspen treatments. Stands dominated by aspen will be regenerated and maintained in approximately 2,366 acres of National Forest lands south and west of the private subdivisions by cutting Engelmann spruce, Colorado blue spruce, subalpine fir and white fir trees under nine inches in diameter and underburning fuels. Slash will be pulled away from mature (over 18" diameter) ponderosa pine and Douglas-fir trees to provide partial protection from prescribed fire. Aspen, a short-lived species that acts to slow the spread of wildfire, requires periodic disturbance to induce new growth. Underburning will result in stimulating and regenerating the aspen. A prescribed fire plan will be developed prior to underburning. The plan will outline appropriate burning conditions and fire control methods to be implemented to insure the prescribed fire is confined to the area to be treated.

Fuels and slash piling may be done by machine, except where Forest Plan standards for soils or slope dictate otherwise. Piles will be burned. The transportation system required to treat or remove fuels is in place. No new roads would be constructed with this project. Riparian areas along perennial streams would be protected with a 300-foot no-treatment buffer along the edges. Riparian areas along ephemeral streams would be thinned, but piling and burning would occur at least 50 feet away from the channel. No treatment would occur within 100 feet of springs in order to protect water sources, soils that are wet and sensitive to compaction, and riparian habitat.

The project will be implemented in accordance with direction in the Dixie National Forest Land and Resource Management Plan.

Possible Alternatives: Three or more alternatives will be considered in the analysis.

No action. Under this alternative, the proposed fuels treatments will not be completed. The current forest fuels conditions would not be substantially changed and natural processes would continue. This alternative will be fully evaluated and described.

Proposed Action (as described above).

Additional Alternatives—Additional alternatives may be developed in response to issues and resource conditions evaluated through the analysis.

Responsible Official: The responsible official for this EIS and the Record of Decision is: Robert A. Russell, Forest Supervisor, Dixie National Forest, 1789 Wedgewood, Cedar City, Utah 84720; FAX: (435) 865–3791.

Decision To Be Made: The Responsible Official will decide whether forest fuels treatment would be conducted to reduce risks from wildfires to the National Forest and to private lands; and, if so, what extent and types of treatments should be done.

Scoping Process: Public participation was initiated through scoping in October, 2001. Comments and issues were received in response to these public contacts. Scoping will continue. Public participation is especially important during scoping and review of the draft EIS. Individuals, organizations, federal, state, and local agencies who are interested in or affected by the decision are invited to participate in the scoping process. This information will be used in the preparation of the draft EIS.

Preliminary Issues. The following issues were identified through public scoping and internal resource analyses:

1. The proposed fuels treatments would reduce travel corridors for big game (*e.g.* elk and deer) and birds and small mammals (*e.g.* turkey, grouse, red squirrels and flying squirrels) by substantially fragmenting habitat throughout the project area.

2. The proposed fuels treatments would remove understory trees and limbs, which are used by juvenile goshawks within nest areas and flammulated owls as roosting habitat.

3. The proposed fuels treatments would create openings in the forest and increase sight distance from the homes within the subdivision into the forest. This would change the visuals/aesthetics of the area by reducing or eliminating the "vegetative screening" that many residents value.

4. Older stands of aspen would be regenerated and replaced by younger stands of aspen, reducing and/or changing the aesthetic value of these stands. Older trees with large, white boles would be replaced by thickets of seedlings and saplings in the short term. Fall color viewing would also be impacted.

5. The proposed fuels treatments would remove young trees and seedlings from the spruce/fir stands, resulting in the eventual loss of the timber stand due to lack of regeneration.

6. The proposed fuels treatments are too costly to implement.

7. The proposed fuels treatment would reduce or eliminate understory vegetation that serves as a barrier to off-road motorized vehicles, especially by ATV's (All Terrain Vehicles).

Comments Requested. Comments will continue to be received and considered throughout the analysis process. Comments received in response to this notice and through scoping, including names and addresses of those who comment, will be considered part of the public record of this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The draft EIS is expected to be filed with the EPA (Environmental Protection Agency) and to be available for public review. At that time the EPA will publish a notice of availability of the draft EIS in the **Federal Register**. The comment period for the draft environmental impact statement will be forty-five days from the date the EPA's notice of availability appears in the **Federal Register**. Comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (Reviewers may wish to refer to the *Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act* at 40 CFR 1503.3 in addressing these points).

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First,

reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp.1334. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at the time it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns about the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the final EIS, the Forest Service is required to respond to substantive comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal. The Responsible Official will document the decision and rationale for the decision in a Record of Decision. The final EIS is scheduled for completion in September, 2004. The decision will be subject to review under Forest Service Appeal Regulations.

Dated: February 23, 2004.

Robert A. Russell,

Forest Supervisor, Dixie National Forest.

[FR Doc. 04–4586 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Snohomish County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The Snohomish County Resource Advisory Committee (RAC) has scheduled two upcoming meetings at the Snohomish County Administration Building, 3000 Rockefeller Ave., Everett, WA 98201. The first meeting will be Tuesday, March 23, 2004, in the Willis Tucker Conference Room, 3rd floor. The second meeting will be Tuesday, March 30, 2004, in the Planning Conference Room, 4th Floor.

Both meetings will begin at 9 a.m. and continue until about 4 p.m. The agenda item to be covered at both meetings is the review and recommendation of Title II projects for FY 2004.

All Snohomish County Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The Snohomish County Resource Advisory Committee advises Snohomish County on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The Snohomish County Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Barbara Busse, Designated Federal Official, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 74920NE. Stevens Pass Hwy, P.O. Box 305, Skykomish, WA 98288 (phone: 360–677–2414) or Terry Skorheim, District Ranger, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 1405 Emens St., Darrington, WA 98241 (phone: 360–436–1155).

Dated: February 23, 2004.

Barbara Busse,

Designated Federal Official.

[FR Doc. 04–4556 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan (NFP) and to provide advice to federal land managers in the Province. The specific topics to be covered at the meeting include planning for the 2004 Province Implementation monitoring; the FS and BLM status in meeting the terms of the Settlement Agreement of the lawsuit American Forest Resource Council v. BLM involving the Northwest Forest Plan, and the eighth year evaluation of BLM Resource Management Plans.

DATES: The meeting will be held March 18, 2004.

ADDRESSES: The meeting will be held at the Red Lion Hotel, 3301 Market Street, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, P.O. Box 10607, Eugene, Oregon 97440, (541) 225–6436 or electronically to *nforrester@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Neal Forrester, Willamette National Forest, (541) 225–6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: February 24, 2004.

H. "Woody" Fine,

Acting Forest Supervisor, Willamette National Forest.

[FR Doc. 04–4557 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue one (1) new conservation practice standards in Section IV of the FOTG. The new standard is: Drainage Water Management (554). This practice may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: February 19, 2004.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 04–4602 Filed 3–1–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Task Force on Agricultural Air Quality

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of meeting; correction.

Correction

In FR Doc. 04–3457, in the issue of February 18, 2004, make the following correction to the **ADDRESSES.** On page 7616, in the third column, in the second through fourth lines of the **ADDRESSES** section, correct "Sheraton Imperial Hotel, Page Road, Research Triangle Park, North Carolina 27709; telephone: (919) 941–5050" to read "EPA Headquarters Campus, Room 111 A, B, & C, 109 T.W. Alexander Drive, Research Triangle Park, North Carolina 27711; telephone: (919) 541–5436."

Dated: February 26, 2004.

Helen V. Huntington,

Federal Register Liaison, Natural Resources Conservation Service.

[FR Doc. 04–4603 Filed 3–1–04; 8:45 am]

BILLING CODE 1310–16–U

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602–805, A-484–802, A-419–802, A-588–864, A-791–818, A-570–889]

Notice of Termination of Antidumping Duty Investigations: Electrolytic Manganese Dioxide From Australia, Greece, Ireland, Japan, South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 2, 2004.

SUMMARY: On February 20, 2004, Kerr-McGee Chemical LLC (Kerr-McGee or Petitioner) withdrew its antidumping petitions, filed on July 31, 2003, regarding Electrolytic Manganese Dioxide (EMD) from Australia, Greece, Ireland, Japan, South Africa. Based on this withdrawal, the Department of Commerce (the Department) is now terminating these investigations.

FOR FURTHER INFORMATION CONTACT: Joseph Welton (Australia) at 202–482–0165, Doug Kirby (Greece) at 202–482–3782, John Drury (Ireland) at 202–482–0195, Mark Flessner (Japan) at 202–482–6312, Matthew Renkey (South Africa) at 202–482–2312, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Case History

On July 31, 2003, the Department received antidumping duty petitions (petitions) filed in proper form by Kerr-McGee. The Petitioner is a domestic producer of EMD. The Department initiated these investigations on August 20, 2003. *See Notice of Initiation of Antidumping Duty Investigation: Electrolytic Manganese Dioxide From Australia, Greece, Ireland, Japan, South Africa and the People's Republic of China*, 68 FR 51551 (August 27, 2003) (Initiation Notice). On September 22, 2003, the United States International Trade Commission (the ITC) preliminarily determined "that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Australia, Greece, Ireland, Japan, and South Africa of electrolytic manganese dioxide." *See* Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa, 68 FR 55062 (September 22, 2003). On February 20, 2004, Kerr-McGee withdrew its antidumping petitions by putting on the record of the investigation a letter to the Department. The only other two U.S. companies which are known to produce EMD, Energizer Battery Manufacturing Inc. (Energizer) and Erachem Comilog (Erachem,) both filed letters dated February 20, 2004, stating that each "has no interest in the continuation of these investigations."

Scope of the Investigation

This investigation covers all manganese dioxide (MnO2) that has been manufactured in an electrolysis process, whether in powder, chip or plate form. Excluded from the scope are natural manganese dioxide (NMD) and chemical manganese dioxide (CMD), including high-grade chemical manganese dioxide (CMD-U). The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States (HTSUS) at subheading 2820.10.0000. The tariff classifications are provided for convenience and U.S. Customs and Border Protection (CBP) purposes; however, the written description of the scope of the investigation is dispositive.

Termination of the Investigation

On February 20, 2004 the Department received a letter from the Petitioner notifying the Department that the Petitioner is no longer interested in seeking relief and is withdrawing its antidumping petitions, filed on July 31, 2003, regarding EMD from Australia, Greece, Ireland, Japan, South Africa. Under section 734(a)(1)(A) of the Tariff Act of 1930 (the Tariff Act), upon withdrawal of a petition, the administering authority may terminate an investigation after giving notice to all parties to the investigation. We have notified all parties to the investigation and the ITC of Petitioner's withdrawal and our intention to terminate. Section 351.207(b)(1) of the Department's regulations states the Department may terminate provided it concludes that termination is in the public interest. We have determined that termination would be in the public interest given that the Petitioner is no longer interested in seeking relief.

Based on information currently on the record, the Department is terminating the antidumping duty investigations regarding EMD from Australia, Greece, Ireland, Japan, South Africa.

This action is taken pursuant to section 734(a)(1)(A) of the Tariff Act and section 351.207(b)(1) of the Department's regulations.

Dated: February 25, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4615 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–848

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to a request from Shanghai Ocean Flavor International Trading Co., Ltd. (Shanghai Ocean Flavor). The period of review (POR) is September 1, 2002 through February 28, 2003. The preliminary results are listed below in the "Preliminary Results of Review" section. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: March 2, 2004

FOR FURTHER INFORMATION CONTACT: Addilyn Chams–Eddine or Thomas Gilgunn, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0648 or (202) 482–4236, respectively.

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the People's Republic of China on September 15, 1997. *See Notice of Amendment to Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Freshwater Crawfish Tail Meat from the People's Republic of China*, 62 FR 48218. On March 31, 2003, the Department received a timely request for a new shipper review under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations from Shanghai Ocean Flavor. In its request, Shanghai Ocean Flavor identified Jiangxi Quanfu Aquatic Food Co., Ltd. (Jiangxi Quanfu) as the sole company that produced the crawfish tail meat exported for its new shipper sales. On April 30, 2003, the Department initiated this new shipper review for the period September 1, 2002 through February 28, 2003. (*See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 68 FR 23962 (May 6, 2003).)

On May 12, 2003 we issued a questionnaire to Shanghai Ocean Flavor. On June 17, 2002, we received its sections A, C, and D questionnaire response. On August 5, 2003, we issued a supplemental questionnaire to Shanghai Ocean Flavor. We received the response to this questionnaire on August 19, 2003. On November 7, 2003, we issued a second supplemental questionnaire to Shanghai Ocean Flavor. We received its response to the second supplemental questionnaire on November 18, 2003. We issued a third supplemental questionnaire to Shanghai Ocean Flavor on November 14, 2003. We received its response to the third supplemental questionnaire on November 20, 2003.

On August 22, 2003, we requested information from the U.S. importer of Shanghai Ocean Flavor's new shipper sales. We received its response to the questionnaire on September 11, 2003. We issued a supplemental questionnaire on November 7, 2003, to the U. S. importer of Shanghai Ocean Flavor's new shipper shipments. We received its response to the supplemental questionnaire December 4, 2003.

On September 15, 2003, the Department extended the preliminary results of this new shipper review by 120 days until February 24, 2004. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Extension of Time Limit of Preliminary Results of New Shipper Review*, 68 FR 53960 (September 15, 2003).

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of Shanghai Ocean Flavor. We used standard verification procedures, including on–site inspection of the exporter's and manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Freshwater Crawfish Tail Meat (tail meat) from the People's Republic of China (PRC) (A–570–848): Sales and Factors Verification Report for Shanghai Ocean Flavor International Trading Co., Ltd.*, dated February 19, 2004 (*Shanghai Ocean Flavor Verification Report*). A public version of this report is on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building.

Separate Rates

The Department has treated the PRC as a non–market-economy (NME) country in all past antidumping investigations and in prior segments of this proceeding. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000). A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to

government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be eligible for a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in NMEs are eligible for separate, company–specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

Shanghai Ocean Flavor requested a separate, company–specific rate. Shanghai Ocean Flavor provided separate rates information in its questionnaire response. Accordingly, we performed separate–rate analysis to determine whether Shanghai Ocean Flavor is independent from government control. *See Notice of Final Determination of Sales at Less than Fair Value: Bicycles From the People's Republic of China*, 61 FR 56570 (April 30, 1996).

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by Shanghai Ocean Flavor that its export activities are not controlled by the government. Shanghai Ocean Flavor submitted evidence of its legal right to set prices independently of all government oversight. The business license of Shanghai Ocean Flavor indicates that the company is permitted to engage in the exportation of crawfish. We found no evidence of *de jure* government control restricting this company's exportation of crawfish.

There are no export quotas that apply to crawfish. Prior verifications have confirmed that there are no commodity–specific export licenses required and no quotas for the seafood category "Other," which includes crawfish, in *China's Tariff and Non–Tariff Handbook* for 1996. In addition, we have previously confirmed that crawfish is not on the list of commodities with planned quotas in the 1992 PRC Ministry of Foreign Trade and Economic Cooperation document entitled *Temporary Provisions for Administration of Export Commodities. See e.g., Freshwater Crawfish Tail Meat From The People's Republic of China; Preliminary Results of New Shipper Review*, 64 FR 8543 (February 22, 1999) and *Freshwater Crawfish Tail Meat From the People's Republic of China; Final Results of New Shipper Review*, 64 FR 27961 (May 24, 1999).

Shanghai Ocean Flavor submitted a copy of the *Company Law of the People's Republic of China* (*Company Law*), adopted by the Fifth Meeting of the Standing Committee of the Eighth National People's Congress (effective July 1, 1994). The *Company Law* indicates a lack of *de jure* government control over privately–owned companies, such as Shanghai Ocean Flavor, and indicates that control over this enterprise rests with the enterprise itself. The *Company Law* states that, "a company shall enjoy the rights to the entire property of the legal person formed by the investments of the shareholders and shall possess civil rights and bear the civil liabilities in accordance with the law." Additionally, Shanghai Ocean Flavor submitted, for the record of this review, the *Foreign Trade Law of the People's Republic of China* (*Foreign Trade Law*), adopted by the Seventh Meeting of the Standing Committee of the Eighth National People's Congress (effective on July 1, 1994). The *Foreign Trade Law* also indicates a lack of *de jure* government control over privately–owned companies, such as Shanghai Ocean Flavor. The Foreign Trade Law regulations state that "foreign trade operators shall in accordance with law enjoy full autonomy in their management and shall be responsible for their own profits and losses." *See Notice of Final Determination of Sales at Less Than Fair Value; Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995). At verification, we examined the business license for Shanghai Ocean Flavor, which indicates that the license was granted in accordance with these laws. The results of verification support the information provided regarding the *Company Law* and the *Foreign Trade Law*. (*See Shanghai Ocean Flavor Verification Report*, at 2.) Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to Shanghai Ocean Flavor.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification indicates that the management of Shanghai Ocean Flavor is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The general manager of Shanghai Ocean Flavor has the right to negotiate and enter into contracts, and may delegate this authority to employees within the company. There is no evidence that this authority is subject to any level of governmental approval. Shanghai Ocean Flavor reported that its management is selected by a board of directors and there is no government involvement in the selection process. Finally, decisions made by the respondent concerning purchases of subject merchandise from suppliers are not subject to government approval. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's export activities, we preliminarily determine that a separate rate should be applied to Shanghai Ocean Flavor. For

further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Memorandum for Dana Mermelstein from Addilyn Chams–Eddine entitled *Separate Rates in the 2002–2003 New Shipper Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated February 24, 2004. This memorandum is on file in the CRU.

Normal Value Comparisons

To determine whether the respondent's sales of the subject merchandise to the United States were made at a price below normal value, we compared its United States price to normal value, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

Based on the information we have gathered to date, we preliminarily find Shanghai Ocean Flavor's sales to be *bona fide*. However, we will continue to analyze this issue for purposes of the final results of review. For a discussion of our analysis *see* Memorandum to the File through Dana Mermelstein from Addilyn Chams–Eddine entitled *Bona Fide Nature of the New Shipper Review Sales of Shanghai Ocean Flavor International Trading Co., Ltd.*, dated February 24, 2004. A public version of this Memorandum is on file in the CRU.

We based the United States price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight, international freight and foreign brokerage and handling expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

We calculated normal value based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and the subsequent administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. *See* Memorandum to the File from Addilyn Chams–Eddine through Dana Mermelstein: *Surrogate Values Used for the Preliminary Results of the Antidumping Duty New Shipper Review of Freshwater Crawfish Tailmeat from the People's Republic of China*, dated February 24, 2004 (*Factor Values Memo*). This Memorandum is on file in the CRU.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors–of–production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of normal value using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We used the verified factors of production for materials, energy, labor, and packing. We valued all the input factors using publicly available information, as discussed in the "Surrogate Country≥section of this notice.

With the exceptions of the whole live crawfish input and the crawfish shell scrap by–product, we valued the factors of production using publicly available information from India. We adjusted the Indian import prices by adding foreign inland freight expenses to make them delivered prices. For reasons which are discussed below in more detail, the live crawfish input was valued using Spanish import data and the crawfish shell scrap was valued using an Indonesian price quote. *See Factor Values Memo.*

In accordance with 19 CFR 351.301(c)(3)(ii), for the final results of an administrative review and a new shipper review, interested parties may submit publicly available information to value the factors of production no later than 20 days following the date of publication of these preliminary results.

3. Factor Valuations

We applied surrogate values to the factors of production to determine normal value. We valued the factors of production as follows:

Materials

Crawfish

To value the input of whole live crawfish, we used publicly available data on Spanish imports of whole live crawfish from Portugal. Based on our research in prior reviews we used Spanish import data because: (1) there is no crawfish industry in India or in any of the other countries identified in the list of countries at a level of economic development comparable to that of the PRC (*see Antidumping New Shipper Review of Freshwater Crawfish Tailmeat from the People's Republic of China: Request for a List of Surrogate Countries*, dated February 11, 2004, on file in the CRU (*Surrogate Countries Memo*)); and (2) Spain is the only country which the Department determined has both a comparable product and publicly available import statistics. *See e.g., Notice of Preliminary Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat from the People's Republic of China*, 68 FR 7976 (February 19, 2003) (*Weishan Zhenyu Prelim*). We adjusted the values of whole live crawfish to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on whole live crawfish, we added a surrogate freight cost using the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. *See Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China*, 62 FR 51410 (October 1, 1997) (*Roofing Nails*).

Crawfish Shell Scrap

To value the by–product of crawfish shell scrap, we used a price quote from Indonesia for wet crab and shrimp shells, because (1) there is no Indian data suitable for valuing the crawfish scrap factor and (2) Indonesia is among the countries identified as an appropriate surrogate. *See* Memorandum to Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, through Maureen Flannery, Program Manager, from Christian Hughes and

Adina Teodorescu, Case Analysts: *Surrogate Valuation of Shell Scrap: Freshwater Crawfish Tail Meat from the People's Republic of China (PRC), Administrative Review 9/1/00–8/31/01 and New Shipper Reviews 9/1/00–8/31/01 and 9/1/00–10/15/01* (August 5, 2002) and Memorandum to file from Barbara E. Tillman entitled *Summary of Telephone Discussion with Official of Indo Chitosan International* (July 15, 2002). These documents are included in Attachment 5 to the *Factor Values Memo. See also Surrogate Countries Memo.*

Energy

Coal

To value coal, we relied upon Indian import data for steam coal from the internet version of the online publication, *World Trade Atlas.* We adjusted the cost of coal to include an amount for transportation. To value electricity, we used the average of the total cost per kilowatt hour (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Key World Energy Statistics* (2003). For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank.

Water

To achieve comparability of water prices to the factor reported for the crawfish tail meat processing period applicable to the company under review, we adjusted this factor value to reflect inflation during the POR using the Wholesale Price Index (WPI) for India, as published in the *International Financial Statistics* (IFS) by the International Monetary Fund (IMF).

Packing Material

To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon the most recent Indian import data for the period as reported in the *World Trade Atlas.* We adjusted the values of packing materials to include freight costs incurred between the supplier and the factory. For transportation distances used in the calculation of freight expenses on packing materials, we used the the shorter of (a) the distances between the closest PRC port and the factory, or (b) the distance between the domestic supplier and the factory. (*See Roofing Nails.*)

Labor

For labor, we used the PRC regression–based wage rate found on Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003 (updated in February 2004). See http://www.ia.ita.doc.gov/wages/01wages/01wages.html Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations require the use of a regression–based wage rate. The source of these wage rate data on the Import Administration's web site is the *Year Book of Labour Statistics 2002*, International Labour Organization (ILO), (Geneva: 2002), Chapter 5B: Wages in Manufacturing.

Factory Overhead, SG&A, and Profit

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we continued to use a simple average derived from the publicly available financial statements of four Indian seafood processing companies. We applied these rates to the calculated cost of manufacture. *See Factor Values Memo*, at 6.

Transportation Expenses

We valued movement expenses as follows: to value truck freight expenses we used nineteen price quotes as reported in the February 14, 2000 issue of the Indian publication, *The Financial Express*, which was used in the antidumping duty investigation of certain circular welded carbon–quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon–Quality Steel Pipe from the People's Republic of China* , 67 FR 36570 (May 24, 2002). We adjusted the rates to reflect inflation to the month of the sales of the finished product using the WPI for India from the *International Financial Statistics* (IFS) by the International Monetary Fund (IMF).

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Exporter/Manufacturer	Time Period	Margin
Shanghai Ocean Flavor International Trading Co., Ltd./ Jiangxi Quanfu Aquatic Food Product Co., Ltd..	9/1/02–2/28/03	45.70%

Cash Deposit Requirements

Upon completion of the review, bonding will no longer be permitted and cash deposits will be required. If the final results of the review remain the same as the preliminary results, the cash deposit rate for shipments exported by Shanghai Ocean Flavor that were produced by Jiangxi Quanfu will be the total amount of antidumping duties divided by the total quantity exported during the POR. *See* Memorandum to file dated February 24, 2002, which places on the record of this review the *Memorandum to Barbara E. Tillman through Maureen Flannery, from Mark Hoadley: Collection of Cash Deposits and Assessment of Duties on Freshwater Crawfish from the PRC*, dated August 27, 2001. This cash deposit rate will be effective upon publication of the final results of this new shipper review for all shipments of freshwater crawfish tail meat from the PRC exported by Shanghai Ocean Flavor that were produced by Jiangxi Quanfu and entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided for by section 751(a)(2)(C) of the Act. This per kilogram cash deposit rate will be equivalent to the company–specific dumping margin established in this review. For crawfish tail meat exported by Shanghai Ocean Flavor, but not produced by Jiangxi Quanfu, we will apply the PRC–wide rate, which is currently 223.01 percent, as the cash deposit rate.

Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the CBP upon completion of this review. For assessment purposes, we calculated importer–specific assessment rates for freshwater crawfish tail meat from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for the importer by the total quantity of subject

merchandise sold to that importer during the POR. Upon completion of this review, we will direct CBP to assess antidumping duties on a per kilogram basis equivalent to the company–specific dumping margin established in this review for each entry of subject merchandise made by the importer during the POR that was produced by Jiangxi Quanfu and exported by Shanghai Ocean Flavor during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Schedule for Final Results of Review

Pursuant to19 CFR 351.224(b), the Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Unless the time limit is extended, the Department will issue the final results of this new shipper review no later than 90 days after the signature date of the preliminary results. The final results will include the analysis of issues raised in the briefs.

Notification to Importers

At the completion of this new shipper review, the Department will notify the CBP that bonding will no longer be permitted to fulfill security requirements for shipments exported by Shanghai Ocean Flavor and produced by Jiangxi Quanfu of freshwater crawfish tail meat from the PRC that are entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of the final results in the **Federal Register**, and that a cash deposit should be collected for any entries exported by Shanghai Ocean Flavor.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (I)(1) of the Act.

Dated: February 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4614 Filed 3–1–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

A–570–836

Notice of Preliminary Results of Antidumping Duty New Shipper Review: Glycine from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review (NSR) of the antidumping duty order on glycine from the People's Republic of China (PRC) in response to a request from Hebei New Donghua Amino Acid Co. Ltd. (New Donghua). The period of review (POR) is March 1, 2002, through February 28, 2003. The preliminary results are listed below in the "Preliminary Results of Review" section. Interested parties are invited to comment on these preliminary results. (*See* the "Preliminary Results of Review" section of this notice.)

EFFECTIVE DATE: March 2, 2004.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Matthew Renkey, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0190 or (202) 482–2312, respectively.

Background

On March 29, 1995, the Department published in the **Federal Register** an antidumping duty order on glycine from the PRC. *See Antidumping Duty Order: Glycine from the People's Republic of China*, 60 FR 16116 (March 29, 1995). In accordance with section 351.214(b) of the Department's regulations, on March 26, 2003, the Department received a timely request for a new shipper review from New Donghua. On May 6, 2003, the Department published its initiation of this new shipper review for the period March 1, 2002, through February 28, 2003. *See Glycine from the People's Republic of China: Initiation of Antidumping New Shipper Review*, 68 FR 23962.

On May 20, 2003, we issued a questionnaire to New Donghua. On July 10, 2003, New Donghua submitted copies of the Chinese laws and regulations that apply to the export activities of New Donghua. On July 10, 2003, we received New Donghua's response to Sections A, C, and D of the Department's questionnaire.

Due to the complex nature of the case, on November 4, 2003, the Department decided to extend the time limit for the completion of the preliminary results to 300 days after the date of initiation, in accordance with section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and section 351.214(i)(2) of the Department's regulations. *See Glycine from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty New Shipper Review*, 68 FR 62430 (November 4, 2003). On November 26, 2003, we issued a supplemental questionnaire to New Donghua. We received the response to

the supplemental questionnaire on December 19, 2003. On December 31, 2003, the Department sent New Donghua a second supplemental questionnaire and released the verification outline. On January 7, 2004, we received New Donghua's second supplemental response. On February 5, 2004, we sent New Donghua a third supplemental questionnaire, which included a request for information from New Donghua's U.S. importer. We received the response to the supplemental questionnaire on February 12, 2004. We have not had sufficient time to consider this response for purposes of these preliminary results; however, we will evaluate the information contained therein for the purposes of the final results of this new shipper review.

SUPPLEMENTARY INFORMATION:

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is glycine, which is a free–flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS). This order covers glycine of all purity levels.

Verification

As provided in section 782(i) of the Act, we conducted verification of the questionnaire responses of New Donghua. We used standard verification procedures, including on–site inspection of the production and sales facilities, and an examination of relevant sales and financial records. Our verification results are outlined in the *New Shipper Review of Glycine from the People's Republic of China: Sales and Factors Verification Report for Hebei New Donghua Amino Acid Co., Ltd.*, dated February 23, 2004. A public version of this report is on file in the Central Records Unit located in room B–099 of the Main Commerce Building. At verification, certain information on related companies was presented to the Department for the first time. While we have not been able to fully analyze this information for purposes of the preliminary results, we intend to fully examine this information for the final results.

Application of Facts Available

At verification, New Donghua reported, for the first time, that, in addition to producing its own industrial grade glycine, it also purchased industrial grade glycine from one of its related companies. Company officials provided the total amount of industrial grade glycine purchased from its related company during the POR. However, this information was not reported in New Donghua's original response to the Department's questionnaire, nor in any subsequent supplemental questionnaire response. Thus, New Donghua's responses were incomplete because it failed throughout to report the factors of production for the factory from which New Donghua purchased the industrial grade glycine.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. New Donghua failed to provide accurate and complete factor values for the POR in a timely manner.

Section 782(c)(1) of the Act provides that if an interested party "promptly after receiving a request from {the Department} for information, notifies {the Department} that such party is unable to submit the information requested in the requested form and manner," the Department may modify the requirements to avoid imposing an unreasonable burden on that party. Throughout the course of this review, New Donghua had several opportunities to correct the reported data. However, at no time, prior to the verification, did New Donghua notify the Department that it had any difficulty in obtaining accurate and complete factors of production (FOP) information for the relevant POR. At no point during the review did New Donghua seek guidance on alternative reporting requirements, or propose an alternate form for submitting the required data, as contemplated in section 782(c)(1) of the Act.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate. In its original questionnaire, the Department asked New Donghua to provide production and FOP data for the POR. Prior to the verification, the Department had no means of determining whether the FOP data submitted by New Donghua was complete, and therefore could not inform the respondent that its response was deficient. On the other hand, New Donghua could have acquired the necessary FOP information for the industrial grade glycine it purchased. In addition, New Donghua had ample opportunities to report that it purchased industrial grade glycine and, in doing so, New Donghua could have reported complete FOP data for industrial grade glycine prior to verification. However, New Donghua did not report this information.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties. From the time it received the original questionnaire until verification, New Donghua had ample time to submit accurate and complete FOP information for glycine. However, New Donghua never reported, at any point in the proceeding, that it had purchased industrial grade glycine from one of its related companies and, consequently, failed to report a complete and accurate FOP data for its glycine.

New Donghua did not act to the best of its ability to comply and report all necessary data in response to the Department's requests for information; New Donghua should have been able to report complete and accurate FOP data. New Donghua's failure to provide essential information, namely, complete and accurate FOP data for industrial grade glycine it purchased, hindered the Department's ability to accurately calculate a dumping margin. Thus, the information that New Donghua reported for its FOP data for industrial grade glycine is incomplete. At no time did New Donghua report that it purchased industrial grade glycine or report that it had trouble obtaining or submitting a complete and accurate FOP data.

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that

a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department finds that an adverse inference is warranted, pursuant to section 776(b) of the Act, because the Department has determined that New Donghua has failed to cooperate to the best of its ability. New Donghua did not report significant data regarding its FOP. Furthermore, the Department issued, in all, three supplemental requests for information to New Donghua, which required New Donghua to examine the information it had submitted to the Department. Nevertheless, on none of these three occasions did New Donghua ever report that it purchased industrial grade glycine or revise its FOP data to reflect the FOP of this purchased industrial grade glycine, nor did it indicate that it had not included this information. We therefore determine that New Donghua did not cooperate to the best of its ability within the meaning of 776(b) of the Act, and the application of adverse facts available is warranted.

Although the failure to report that it purchased industrial grade glycine and its failure to report a complete and accurate FOP data for industrial grade glycine purchased warrants the application of adverse facts available, we do not find that the application of total adverse facts available is appropriate since New Donghua responded to the Department's questionnaires; New Donghua allowed for verification; its reported sales information was verified; and the FOP for glycine produced in its own factory were verified. *See New Donghua Verification Report.* As such, the Department has determined that partial adverse facts available should be applied to account for New Donghua not reporting that it purchased industrial grade glycine from a related company nor reporting complete and accurate FOP data for purchased industrial grade glycine.

As partial adverse facts available, we are applying the highest monthly factor usage rates that were reported by New Donghua, and multiplying those by their corresponding surrogate values. In addition, for those factors for which we used Indian import statistics from the *World Trade Atlas* as surrogate values, we are using the highest non–aberrational monthly data from the POR. For monochloroacetic acid, we used the highest reported price during the POR from *Chemical Weekly.* These measures are applied to the production of industrial grade glycine. For further details, see the memorandum entitled "Analysis for the Preliminary Results of the New Shipper Review of Glycine from the People's Republic of China: Hebei New Donghua Amino Acid Co., Ltd. (New Donghua)," dated February 24, 2004.

Separate Rates

The Department has treated the PRC as a non–market-economy (NME) country in all past antidumping investigations (*see*, e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China*, 65 FR 33805 (May 25, 2000), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non–Frozen Apple Juice Concentrate from the People's Republic of China*, 65 FR 19873 (April 13, 2000)), and in prior segments of this proceeding. A designation as an NME remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. Accordingly, there is a rebuttable presumption that all companies within the PRC are subject to government control and, thus, should be assessed a single antidumping duty rate.

It is the Department's standard policy to assign all exporters of the merchandise subject to review in NME countries a single rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. To establish whether a company is sufficiently independent to be eligible for a separate, company–specific rate, the Department analyzes each exporting entity in an NME country under the test established in the *Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (Silicon Carbide).

Under this policy, exporters in NME countries are eligible for separate, company–specific margins when they can demonstrate an absence of government control, in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: 1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; 2) any legislative enactments decentralizing control of companies; and 3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: 1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; 2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; 3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and 4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the company reviewed, evidence on the record supports the claim made by New Donghua that its export activities are not controlled by the government. New Donghua submitted evidence of its legal right to set prices independently of all government oversight. The business license of New Donghua indicates that the company is permitted to engage in the exportation of glycine. We found no evidence of *de jure* government control restricting this company's exportation of glycine.

There are no export quotas that apply to glycine. *The Administrative Regulations of the People's Republic of China for Controlling the Registration of Enterprises as Legal Persons* (*Legal Persons Law*), issued on June 13, 1988 by the State Administration for Industry and Commerce of the PRC, the *Company Law of the People's Republic of China* (*Company Law*), adopted by the National People's Congress, promulgated by the President on December 29, 1993 and effective on July 1, 1994, and the *Foreign Trade Law of the People's Republic of China* (*Foreign Trade Law*), adopted by the National People's Congress, promulgated by the President on May 12, 1994 and effective on July 1, 1994, provided in the record of this review, all indicate a lack of *de jure* government control over privately–owned companies, such as New Donghua. They demonstrate that control over the company rests with the enterprise itself. The *Legal Persons Law*, *Company Law*, and *Foreign Trade Law* provide that, to qualify as legal entities, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These laws also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See Notice of Final Determination of Sales at Less Than Fair Value; Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*).

At verification, company officials provided New Donghua's business license and they demonstrated that it was granted in accordance with these laws. *See New Donghua Verification Report* at 4. Compliance with these laws supports a finding of *de jure* absence of central control. Therefore, we preliminarily determine that there is an absence of *de jure* control with respect to New Donghua.

De Facto Control

With respect to the absence of *de facto* control over export activities, the information submitted on the record and reviewed at verification indicates that the management of New Donghua is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on the use of export earnings. The general manager of New Donghua has the authority to negotiate, set prices and enter into contracts, and may delegate this authority to employees within the company.[1] There is no evidence that this authority is subject to any level of governmental approval. New Donghua stated that its management is selected by the shareholders and there is no government involvement in the selection process. Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over the company's activities, we preliminarily determine that a separate rate should be applied to New Donghua.

Normal Value Comparisons

To determine whether the respondent's sale of the subject merchandise to the United States was made at a price below normal value (NV), we compared its United States Price to NV, as described in the "United States Price" and "Normal Value" sections of this notice.

United States Price

Based on the information we have gathered to date, we preliminarily find New Donghua's sale to be bona fide. However, we will continue to analyze this issue for purposes of the final results of review. For a discussion of our analysis *see* Memorandum to the File through Maureen Flannery from Matthew Renkey entitled *Bona Fide Nature of the Sale in the New Shipper Review of Hebei New Donghua Amino Acid Co., Ltd.*, dated February 24, 2004. A public version of this memo is on file in the Central Records Unit located in room B–099 of the Main Commerce Building.

We based the United States price on export price (EP), in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated purchaser in the United States. We deducted foreign inland freight expenses from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

1. Surrogate Country

When investigating imports from an NME country, section 773(c)(1) of the Act directs the Department to base normal value, in most circumstances, on the NME producer's factors of production valued in a surrogate market–economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, in valuing the factors of production, the Department shall use, to the extent practicable, the prices or costs of factors of production in one or more market–economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the "Factor Valuations" section below.

We calculated normal value based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original

investigation of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise.[2]

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine NV using a factors–of-production methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home–market prices, third–country prices, or constructed value under section 773(a) of the Act. Factors of production include the following elements: (1) hours of labor required, (2) quantities of raw materials employed, (3) amounts of energy and other utilities consumed, and (4) representative capital costs. We valued all the input factors using publicly available information.

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results of an administrative review and a new shipper review, interested parties may submit publicly available information to value the factors of production no later than 20 days following the date of publication of these preliminary results.

3. Factor Valuations

As discussed above, we are applying partial adverse facts available to determine factor values and FOP for industrial grade glycine production. For the FOP, we used the highest monthly factor usage reported by New Donghau. We applied surrogate values to the FOP to determine NV, and where the information was available, we used the highest non–aberrational surrogate value identified during the POR. We valued the factors of production as follows:

Materials and Energy

To value chloroacetic acid (also known as monochloroacetic acid), we used the highest price concurrent with the POR as reported in *Chemical Weekly*. To value liquid ammonia, formaldehyde, and methanol, we used the highest non–aberrational monthly import value derived from Indian import statistics in the *World Trade Atlas* for the period March 2002 through February 2003. To value activated carbon and hydrogen peroxide, we used the weighted–average unit import value derived from Indian import statistics in the *World Trade Atlas* for the period March 2002 through February 2003. To value electricity, we used the total cost per kilowatt hr (KWH) for "Electricity for Industry" as reported in the International Energy Agency's publication, *Key World Energy Statistics, 2003*. For water, we relied upon public information from the October 1997 *Second Water Utilities Data Book: Asian and Pacific Region*, published by the Asian Development Bank. To value steam, we used a calculated per metric ton value for low–

[1] *See New Donghua Verification Report* at 5.

[2] *See Surrogate Values Used for the Preliminary Results of the Antidumping Duty New Shipper Review of Glycine from the People's Republic of China*, dated February 24, 2004 (*Factor Values Memo*).

pressure steam based on publicly available company data as was used in *Hot–Rolled Steel from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value*, 66 FR 22183 (May 3, 2001).

To achieve comparability of steam and water prices to the factors reported for the POR, we adjusted these factor values to reflect inflation through the POR using the Wholesale Price Index (WPI) for India, as published in the 2003 *International Financial Statistics* (*IFS*) by the International Monetary Fund (IMF).

To value packing materials (inner plastic bags, outer woven bags, and nylon thread), we used the weighted–average unit import value derived from Indian import statistics in the *World Trade Atlas* for the period March 2002 through February 2003.

Labor

For labor, we used the PRC regression–based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2003 and updated in February 2004. *See* http://www.ia.ita.doc.gov/wages/01wages/01wages.html Because of the variability of wage rates in countries with similar per capita gross domestic products, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. The source of these wage rate data on the Import Administration's web site is the *Yearbook of Labour Statistics 2002*, International Labour Office (Geneva: 2002), Chapter 5B: Wages in Manufacturing.

Factory Overhead, SG&A, and Profit

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we used financial information from the 2001–2002 financial statement of an Indian pharmaceutical producer, Torrent Pharmaceuticals Limited (Torrent). We applied these rates to the calculated cost of manufacture. *See Factor Values Memo.*

Transportation Expenses

To value truck freight expenses, we used Indian freight rates as reported in the February 14, 2000 issue of *The Financial Express* (an Indian business publication), which were used in the antidumping duty investigation of certain circular welded carbon–quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon–Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). We adjusted the rates to reflect inflation through the POR using the WPI for India from the *IFS*.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Time Period	Margin
Hebei New Donghua Amino Acid Co., Ltd.	3/1/02–2/28/03	8.89%

Cash Deposit Requirements

Upon completion of the review, bonding will no longer be permitted. If these preliminary results are not modified in the final results of this review, a cash deposit rate of 8.89 percent will be effective upon publication of the final results of this new shipper review for all shipments of glycine from the PRC produced and exported by New Donghua and entered, or withdrawn from warehouse, for consumption on or after publication date, as provided for by section 751(a)(2)(c) of the Act. This cash deposit rate will only be effective for merchandise that is both produced and exported by New Donghua. If New Donghua exports merchandise produced by any other company, the applicable cash deposit rate will be the PRC–wide rate, which is currently 155.89 percent.

Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to CBP upon completion of this review. For assessment purposes, we will calculate importer–specific assessment rates for glycine from the PRC. We divided the total dumping margins (calculated as the difference between NV and EP) for the importer by the total quantity of subject merchandise sold to that importer during the POR. Upon the completion of this review, we will direct CBP to assess antidumping duties on a per kilogram basis equivalent to the company–specific dumping margin established in this review for each entry of subject merchandise made by New Donghua during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

Schedule for Final Results of Review

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days of the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of signature of these preliminary results, unless the time limit is extended.

Notification to Importers

At the completion of this new shipper review, the Department will notify the CBP that bonding will no longer be permitted to fulfill security requirements for shipments of glycine

from the PRC exported and produced by New Donghua that are entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of the final results in the **Federal Register**, and that a cash deposit should be collected for any entries produced and exported by New Donghua.

This notice also serves as a preliminary reminder to importers of their responsibility under 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777 (i)(1) of the Act.

Dated: February 24, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4613 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022004D]

Endangered and Threatened Wildlife and Plants: Updated Status Review of Eastern North Pacific Southern Resident Killer Whales

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

ACTION: Status review; request for information.

SUMMARY: Following receipt of a petition to list of the eastern North Pacific Southern Resident stock of killer whales (Orcinus orca) as threatened or endangered under the Endangered Species Act (ESA), NMFS conducted a status review and determined that the petitioned action was not warranted at the time because Southern Resident killer whales did not constitute a species, subspecies, or distinct population segment (DPS) under the ESA. However, a court set aside NMFS' finding and remanded the matter back to NMFS for re-evaluation of whether the Southern Resident killer whales should be listed under the ESA. NMFS has reconvened a Biological Review Team (BRT) to consider the most recent scientific and commercial information available on Southern Resident killer whales in this re-evaluation. NMFS is requesting that interested parties submit pertinent information to assist NMFS with updating its status review.

DATES: Information must be received by May 3, 2004.

ADDRESSES: Information on this action should be submitted to Chief, Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232. Information may also be submitted electronically by sending an e-mail message to *SRKWstatus.nwr@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Garth Griffin, Northwest Regional Office, NMFS, Portland, OR (503) 231–2005, or Dr. Thomas Eagle, Office of Protected Resources, NMFS, Silver Spring, MD (301) 713–2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Electronic Access

A list of the references used in this notice and other information related to this stock of killer whales is available on the Internet at:*http://www.nwr.noaa.gov/mmammals/whales/index.html*

Background

On May 2, 2001, NMFS received a petition from the Center for Biological Diversity and 11 co-petitioners (CBD, 2001a) to list Southern Resident killer whales as threatened or endangered under the ESA. On August 13, 2001, NMFS provided notice of its determination that the petition presented substantial information that a listing may be warranted and requested information to assist with a status review to determine if Southern Resident killer whales warranted listing under the ESA (66 FR 42499). To assist in the status review, NMFS formed a BRT comprised of scientists from the agency's Alaska, Northwest, and Southwest Fisheries Science Centers. NMFS convened a meeting on September 26, 2001, to gather technical information from co-managers, scientists, and individuals having research or management expertise pertaining to killer whale stocks in the north Pacific Ocean. Additionally, the BRT discussed its preliminary scientific finding with Tribal, State and Canadian co-managers on March 25, 2002. The BRT considered information from the petition, the September and March meetings, and comments submitted in response to NMFS' information request to prepare a final scientific document on Southern Resident killer whales (NMFS, 2002).

After conducting the status review, NMFS determined that listing Southern Resident killer whales as a threatened or endangered species was not warranted because Southern Resident killer whales did not constitute a species as defined by the ESA. The finding was announced on July 1, 2002 (67 FR 44133), and the notice contained additional information on the finding, including DPS status of Southern Residents under existing killer whale taxonomy and the conclusions of the BRT. The status review and other documents supporting the finding are available on the Internet (see Electronic Access) or from NMFS (see **ADDRESSES**). Along with the finding, NMFS announced that it would reconsider the taxonomy of killer whales within 4 years.

The scientific information evaluated during the ESA status review indicated that Southern Resident killer whales may be depleted under the Marine Mammal Protection Act (MMPA). NMFS initiated consultation with the Marine Mammal Commission (Commission) in a letter dated June 25, 2002 and published an advance notice of proposed rulemaking (ANPR) on July 1, 2002 (67 FR 44132) to request pertinent information regarding the status of the stock and potential conservation measures that may benefit these whales. After considering comments received in response to the ANPR and from the Commission, NMFS published a proposed rule to designate the Southern Resident stock of killer whales as depleted (68 FR 4747, January 30, 2003) and solicited comments on the proposal. Based on the best scientific information available and consultation with the Commission, NMFS determined that the Southern Resident stock of killer whales was depleted under the MMPA (68 FR 31980, May 29, 2003) and announced its intentions to prepare a Conservation Plan.

On December 18, 2002, the Center for Biological Diversity (and other plaintiffs) initiated a lawsuit in U.S. District Court challenging NMFS' not warranted finding. The U.S. District Court for the Western District of Washington issued an order on December 17, 2003, which set aside NMFS's not warranted finding and remanded the matter back to NMFS for redetermination of whether the Southern Resident killer whales should be listed under the ESA. Pursuant to the court's order, NMFS will make this determination by December 17, 2004.

Information Solicited

For the original status review, NMFS solicited information concerning the status of killer whale populations world wide with emphasis in the Eastern North Pacific Ocean from California to Alaska (66 FR 42499, August 13, 2001). Specifically, the agency requested available information on: (1) historical and current known ranges of resident (fish eating) and transient (mammal-eating) killer whales; (2) spatial and seasonal distribution with particular focus on current and historical habitat utilization; (3) genetic variability in resident, transient, and offshore killer whale populations; (4) demographic movements among resident or transient killer whales; (5) trends in killer whale foraging habits and seasonal prey abundance; (6) trends in environmental contamination by persistent organic pollutants (e.g., polychlorinated-biphenyls (PCBs) including congener specific data) as well as other contaminants (e.g. toxic metals); (7) contaminant burdens in prey species, especially salmonids; (8) impacts caused by human recreational activities (e.g., whale watching, boating); (9) historic removals of killer whales including human caused mortality associated with live capture operations, military activities, or fisheries interactions; (10) current or planned activities and their possible impacts on this species (e.g., removals or habitat modifications); (11) efforts being made to protect resident killer whales or improve their habitat; and (12) non-human related factors that may have contributed to the recent decline of the Southern Resident killer whale (i.e., climatic or oceanographic regime shifts, diseases, biotoxins).

NMFS also requested information describing the quality and extent of marine habitats for Southern Resident killer whales, as well as information on areas that may qualify as critical habitat. Information on areas that include the physical and biological features essential to the recovery of the species was requested. Essential features include, but are not limited to the following: (1) habitat for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS also requested information and maps describing natural and manmade changes within the species' current and historical range in the Eastern North Pacific Ocean from California to Alaska. For areas potentially qualifying as critical habitat, NMFS requested information describing (1) the activities that affect the area or could be affected by the designation, and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. Comments on Southern Resident killer whales and critical habitat were received through October 12, 2001.

To ensure that the current status review update is comprehensive and based on the best available data, NMFS is soliciting information obtained since October 2001 on the above topics, as well as information available on resident, transient and offshore killer whale (1) behavior; (2) communication; (3) reproductive biology and dispersal patterns; (4) genetics; (5) skeletal and color pattern morphology; (6) potential impacts of additional human related activities (e.g., marine noise, oil spills); and (7) cetacean taxonomy, as they relate to the status of killer whales in the North Pacific and in a global context.

References

A complete list of all references used in this notice and other information related to the status of this stock of killer whales is available via the Internet (see Electronic Access) or upon request (see **ADDRESSES**).

Dated: February 25, 2004.

P. Michael Payne,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–4610 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 021904A]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches

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

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a 1–year letter of authorization (LOA) has been issued to the 30th Space Wing, U.S. Air Force to harass seals and sea lions incidental to rocket and missile launches on Vandenberg Air Force Base (VAFB), California. The LOA was issued on February 25, 2004.

ADDRESSES: The letter of authorization and supporting documentation are available for review during regular business hours in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, or Monica DeAngelis, NMFS, (562) 980–4023.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of seals and sea lions incidental to missile and rocket launches, aircraft flight test operations, and helicopter operations at Vandenberg Air Force Base, CA were published on February 06, 2004 (69 FR 5720), and remain in effect until February 06, 2009.

Issuance of this letter of authorization is based on a finding, made in the final rulemaking, that the total takings will have no more than a negligible impact on the seal and sea lion populations off

the Vandenberg coast and on the Northern Channel Islands.

Dated: February 25, 2004.

Laurie K. Allen,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 04–4611 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022404B]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Law Enforcement Advisory Panel (LEAP).

DATES: This meeting will be held on Tuesday, March 16, 2004 from 1 p.m. to 5 p.m.

ADDRESSES: This meeting will be held at the Holiday Inn Chateau LeMoyne, 301 Rue Dauphine, New Orleans, LA 70112; telephone: 1–800–747–3279.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The LEAP will convene to review possible changes to the NMFS 2005 commercial shark fishing seasons. The LEAP will also review scoping documents that would potentially limit access in the commercial king mackerel and reef fish fisheries to replace the existing moratoria. A scoping document that would potentially allow marine aquaculture will also be reviewed along with a scoping document to potentially extend the existing moratorium on the issuance of new charter vessel permits. The LEAP will also review draft amendments that would establish rebuilding plans for red snapper and vermilion snapper in the Gulf, and scoping options for a variety of management measures pertaining to the Coastal Migratory Pelagics Fishery Management Plan.

The LEAP consists of principal law enforcement officers in each of the Gulf states as well as NMFS, the U.S. Coast Guard, and NOAA General Counsel. A copy of the agenda and related materials can be obtained by calling the Council office at 813–228–2815.

Although other non-emergency issues not on the agendas may come before the LEAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during this meetings. Actions of the LEAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Trish Kennedy at the Council (see **ADDRESSES**) by March 9, 2004.

Dated: February 25, 2004.

Peter H. Fricke,

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

[FR Doc. 04–4607 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022404C]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Research Set Aside (RSA) Committee, Executive Committee, and Fisheries Issues Focus Committee will hold public meetings.

DATES: The meetings will be held Tuesday, March 16, through Thursday, March 18, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Shell Island Resort Hotel, 2700 N. Lumina Avenue, Wrightsville Beach, NC; telephone: 910–256–8696.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION:

Tuesday, March 16, 2004

10 a.m. until noon The Council will tour a local area Summer Flounder and Black Sea Bass Mariculture Facility.

1 p.m. to 3:30 p.m. The Research Set Aside Committee will meet.

3:30 p.m. to 5 p.m. The Executive Committee will meet.

6:30 p.m. to 9 p.m. There will be a New England Council Scoping Hearing on its Omnibus Essential Fishing Habitat (EFH) Amendment.

Wednesday, March 17, 2004

8 a.m. to 10 a.m. The Fisheries Issues Focus Committee will meet.

10 a.m. until 3:30 p.m. The Council will meet.

4 p.m. to 8 p.m. The Council will visit the Wrightsville Beach U.S. Coast Guard (USCG) Station.

Thursday, March 18, 2004

8 a.m. until noon The Council will meet.

Agenda items for the Council's committees and the Council itself are: Describe and discuss the RSA program and 2005 Request for Proposal (RFP), review RSA grants review/approval process, discuss possible RSA program improvements, discuss how the RSA program should be incorporated into NMFS science and management programs; Review the Council's selection criteria for industry advisors, and address future committee items; Discuss how slot sizes may be used in recreational fisheries, address using market forces to mitigate impacts of restrictive fishery regulations, discuss Marine Recreational Fishery Statistics Survey (MRFSS) Program and its implications for future, review and discuss Council's October 2003 action regarding summer flounder petition; Review Framework 5 options regarding multi-year setting of specifications for summer flounder, scup and black sea bass; Receive a presentation on seafood labeling and an overview of current USCG operations and issues; the Council will also receive and discuss organizational and committee reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting, the South

Atlantic Council report, and act on any new and/or old business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: February 25, 2004.

Peter H. Fricke,

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

[FR Doc. 04–4608 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

Science Advisory Board; Meeting

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under Secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Tuesday, March 16, 2004, from 1 p.m. to 5 p.m. and Wednesday, March 17, 2004, from 8:30 a.m. to 5 p.m. These times and the agenda topics described below may be subject to change. Refer to the Web page listed below for the most up-to-date meeting agenda.

Place: The meeting will be held both days at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA.

Status: The meeting will be open to public participation with a 30-minute time period set aside on Tuesday, March 16, for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by March 8, 2004, to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 8, 2004, will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come, first-served basis.

Matters To Be Considered: The meeting will include the following topics: (1) NOAA Research Review, (2) NOAA Social Science Research Activities, (3) Reports of Cooperative Institute reviews, (4) Ocean Modeling review, (5) FY 2005 budget requests, and (6) public statements.

FOR FURTHER INFORMATION CONTACT: Dr. Michael Uhart, Executive Director, Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910. (Phone: 301–713–9121, Fax: 301–713–0163, E-mail: *Michael.Uhart@noaa.gov*); or visit the NOAA SAB Web site at *http://www.sab.noaa.gov.*

Dated: February 25, 2004.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 04–4592 Filed 3–1–04; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Defense Security Service.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Service (DSS) announces the proposed continuation of a public information collection affecting cleared DoD contractors and seeks public comments on the provision thereof. Comments are invited on: (a) Whether the proposed collection shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the information to be collected; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 29, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Security Service, Chief Program Integration Branch, ATTN: Mr. Richard L. Lawhorn, 1340 Braddock Place, Alexandria, VA 22314–1650.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed data collection or obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Defense Security Service, (703) 325–5327.

Title, Associated Form, and OMB Number: "Department of Defense Security Agreement", "Appendage to Department of Defense Security Agreement" "Certificate Pertaining to Foreign Interests"; DD Forms, 441, 441–1 and SF 328; 0704–0194.

Needs and Uses: Executive Order (EO) 12829, "National Industrial Security Program (NISP)" stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access, to or who store or will store classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. The specific requirements necessary to protect classified information released to private industry are set forth in DoD 5200.22M, "National Industrial Security Program Operating Manual (NISPOM)"; Respondents must execute DD Form 441, "Department of Defense Security Agreement", which is the initial contract between industry and the government. This legally binding document details the responsibility of both parties and obligates the contractor to fulfill requirements outlined in DoD 5220.22M. The DD Form 441–1, "Appendage to Department of Defense Security Agreement," is used to extend the agreement to branch offices of the contractor. SF Form 328, "Certificate

Pertaining to Foreign Interests" must be submitted to provide certification regarding elements of Foreign Ownership, Control or Influence (FOCI) as stipulated in paragraph 2–302b of the NISPOM.

Affected Public: Business, or profit and non-profit organizations.

Total Annual Burden Hours: 9,107.75.

Number of Respondents: 3,070.

Responses Per Respondent: 2.

Average Burden Per Respondent: 1.5.

Frequency: One time and/or on occasion (*e.g.* initial facility clearance processing, when the respondent changes: name, organizational structure, moves; or upon request, *etc.*)

SUPPLEMENTARY INFORMATION: Summary of Information Collection: The execution of the DD Form 441, 441–1 and SF 328 is a factor in making a determination as to whether a contractor is eligible to have a facility security clearance. It is also a legal basis for imposing NISP security requirements on eligible contractors. These requirements are necessary in order to preserve and maintain the security of the United States through establishing standards to prevent the improper disclosure of classified information.

Dated: February 24, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–4566 Filed 3–1–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0012]

Federal Acquisition Regulation; Information Collection; Termination Settlement Proposal Forms (Standard Forms 1435 through 1440)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0012).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning termination settlement proposal forms (Standard Forms 1435 through 1440). The clearance currently expires on June 30, 2004.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Acquisition Policy Division, GSA (202) 501–4082.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405. Please cite OMB Control Number 9000–0012, Termination Settlement Proposal (SF's 1435 through 1440), in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The termination settlement proposal forms (Standard Forms 1435 through 1440) provide a standardized format for listing essential cost and inventory information needed to support the terminated contractor's negotiation position. Submission of the information assures that a contractor will be fairly reimbursed upon settlement of the terminated contract.

B. Annual Reporting Burden

Respondents: 864.

Responses Per Respondent: 2.4.

Total Responses: 2,074.

Hours Per Response: 2.5.

Total Burden Hours: 5,185.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection from the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0012, Termination Settlement Proposal Forms (SF's 1435 through 1440), in all correspondence.

Dated: February 19, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 04–4590 Filed 3–1–04; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Office of Indian Education; Overview Information; Professional Development; Notice Inviting Applications for New Discretionary Program Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299B.

DATES:

Applications Available: March 3, 2004.

Deadline for Transmittal of Applications: April 5, 2004.

Deadline for Intergovernmental Review: June 1, 2004.

Eligible Applicants: Eligible applicants for this program are an institution of higher education, including an Indian institution of higher education; a State or local educational agency, in consortium with an institution of higher education; an Indian tribe or organization, in consortium with an institution of higher education; and a Bureau-funded school.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application. Letters of support do not meet the consortium requirements.

In order to be considered an eligible entity, applicants, including institutions of higher education, must be eligible to provide the level and type of degree proposed in the application or must apply in consortium with an institution of higher education that is eligible to grant the target degree.

Applicants that apply as an "Indian organization" must demonstrate in the application how they meet all criteria of this term as defined in 34 CFR 263.3 in order to be considered an eligible Indian organization.

We will reject any application that does not meet these requirements.

Estimated Available Funds: $6,791,630.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $424,476.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months during the first 24 months of the project. The last 12-month budget period of a 36-month award will be limited to induction services only, at a cost not to exceed $75,000. The Deputy Under Secretary may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Professional Development program are to: (1) Increase the number of qualified Indian individuals in professions that serve Indian people; (2) provide training to qualified Indian individuals to become teachers, administrators, teacher aides, social workers, and ancillary educational personnel; and (3) improve the skills of qualified Indian individuals who serve in the education field. Activities may include, but are not limited to, continuing programs, symposia, workshops, conferences, and direct financial support.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these absolute priorities are from the regulations for this program (34 CFR 263.5(c)(1) and (2)). These priorities are designed to meet two primary goals of the No Child Left Behind Act of 2001, Pub. L. 107–110.

Absolute Priorities: For FY 2004 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or both of these priorities.

These priorities are:

Pre-Service Training for Teachers

A project that provides support and training to Indian individuals to complete a pre-service education program that enables these individuals to meet the requirements for full State certification or licensure as a teacher through—

(1)(i) Training that leads to a bachelor's degree in education before the end of the award period;

(ii) For States allowing a degree in a specific subject area, training that leads to a bachelor's degree in the subject area as long as the training meets the requirements for full State teacher certification or licensure; or

(iii) Training in a current or new specialized teaching assignment that requires at least a bachelor's degree and in which a documented teacher shortage exists; and

(2) One year induction services after graduation, certification, or licensure provided during the award period to graduates of the pre-service program while they are completing their first year of work in schools with significant Indian student populations.

Note: In working with various institutions of higher education and State certification/licensure requirements, we found that states requiring a degree in a specific subject area (*e.g.*, specialty areas or teaching at the secondary level) generally require a master's degree or fifth-year requirement before an individual can be certified or licensed as a teacher. These students would be eligible to participate as long as their training meets the requirements for full State certification or licensure as a teacher.

Pre-Service Administrator Training

A project that provides—

(1) Support and training to Indian individuals to complete a master's degree in education administration that is provided before the end of the award period and that allows participants to meet the requirements for State certification or licensure as an education administrator; and

(2) One year of induction services during the award period to participants after graduation, certification or licensure, while they are completing their first year of work as administrators in schools with significant Indian student populations.

Competitive Preference Priorities: Within each of the absolute priorities, we give competitive preference to applications that address the following priorities. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the regulations for this program (34 CFR 263.5(a) and (b)). These priorities are:

Competitive Preference Priority One

We award five points to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education that is eligible to participate in the Professional Development program. A consortium application of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 of EDGAR and includes an Indian tribe, Indian organization or Indian institution of higher education will be considered eligible to receive the five (5) priority points.

Competitive Preference Priority Two

We award five points to an application submitted by a consortium of eligible applicants that includes a tribal college or university and that designates that tribal college or university as the fiscal agent for the application. The consortium application of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129 of EDGAR to be considered eligible to receive the five (5) priority points. These points are in addition to the five (5) competitive preference points we may award under Competitive Preference One.

Note: The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application. Letters of support do not meet the consortium requirements. We will reject any application that does not meet these requirements.

Note: Tribal colleges and universities are those institutions cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), or Dine College (formerly Navajo Community College), authorized in the Navajo Community College Act (25 U.S.C. 640a *et seq.*).

Program Authority: 20 U.S.C. 7442.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98 and 99; and (b) 34 CFR part 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $6,791,630.

Estimated Range of Awards: $300,000 to $500,000.

Estimated Average Size of Awards: $424,476.

Maximum Award: We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months during the first 24 months of the project. The last 12-month budget period of a 36-month award will be limited to induction services only, at a cost not to exceed $75,000. The Deputy Under Secretary may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program are an institution of higher education, including an Indian institution of higher education; a State or local educational agency, in consortium with an institution of higher education; an Indian tribe or organization, in consortium with an institution of higher education; and a Bureau-funded school.

An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application. Letters of support do *not* meet the consortium requirements.

In order to be considered an eligible entity, applicants, including institutions of higher education, must be eligible to offer the level and type of degree proposed in the application or must apply in consortium with an institution of higher education that is eligible to grant the target degree.

Applicants that apply as an "Indian organization" must demonstrate in the application how they meet all criteria of this term as defined in 34 CFR 263.3 in order to be considered an eligible Indian organization.

We will reject any application that does not meet these requirements.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) *Indian institution of higher education.* The term "Indian institution of higher education" means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Act (25 U.S.C. 640a *et seq.*).

(b) *Budget Requirement.* Projects funded under this competition must budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299B.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** elsewhere in this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that are used by reviewers in evaluating the application. You must limit the narrative to the equivalent of no more than 50 double-spaced pages, using the following standards:

- A "page" is 8.5" × 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*

Applications Available: March 3, 2004.

Deadline for Transmittal of Applications: April 5, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 1, 2004.

4. *Deadline for Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We will reject any application that proposes a budget exceeding $500,000 for a single budget period of 12 months during the first 24 months of the project. The last 12-month budget period of a 36-month award will be limited to induction services only, at a cost not to exceed $75,000.

Stipends may be paid only to full-time students. For the payment of stipends to project participants being trained, the Secretary expects to set the stipend maximum at $1,775 per month for full-time students and provide for a $275 allowance per month per dependent during an academic term. The terms "stipend," "full-time student," and "dependent allowance" are defined in 34 CFR 263.3.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications: We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant

competitions. The Professional Development program—CFDA Number 84.299B—is one of the programs included in the pilot project. If you are an applicant under the Professional Development program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-APPLICATION, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Professional Development program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Professional Development program at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this program are in the application package and 34 CFR 263.6.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under this grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Professional Development program: To increase the percentages of the teacher and principal workforces serving American Indian and Alaska Native students who are themselves American Indian and Alaska Native. The program target is to increase the percentage of American Indian and Alaska Native principals and teachers in public schools with 25 percent or more American Indian and Alaska Native students.

Under the selection criteria "Quality of project services" and "Quality of the project evaluation," we will consider the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators.

All grantees will be expected to submit, as part of their performance report, information documenting their progress with regard to these performance measures.

VII. Agency Contact

For Further Information Contact: Victoria Vasques, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W205, Washington, DC 20202–6335. Telephone: (202) 260–3774 or by e-mail: *oiegrant@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

VII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department

published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 25, 2004.

Victoria Vasques,

Deputy Under Secretary for Indian Education.

[FR Doc. 04–4554 Filed 3–01–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Indian Education, Overview Information; Demonstration Grants for Indian Children; Notice Inviting Applications for New Discretionary Program Awards for Fiscal Year (FY) 2004

Catalog of Federal Domestic Assistance (CFDA) Number: 84.299A.

DATES: Applications Available: March 3, 2004.

Deadline for Transmittal of Applications: April 2, 2004.

Deadline for Intergovernmental Review: June 1, 2004.

Eligible Applicants: Eligible applicants for this program include a State educational agency (SEA); a local educational agency (LEA); an Indian tribe; an Indian organization; a federally supported elementary or secondary school for Indian students; an Indian institution, including an Indian institution of higher education; or a consortium of such institutions that meet the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application. Letters of support do not meet the consortium requirements. The Secretary will reject any application that does not meet these requirements.

Estimated Available Funds: $4,527,754.

Estimated Range of Awards: $150,000 to $400,000.

Estimated Average Size of Awards: $323,411.

Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Deputy Under Secretary may change the maximum amount through a notice published in the **Federal Register.**

Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Demonstration Grants for Indian Children program is to provide financial assistance to projects to develop, test, and demonstrate the effectiveness of services and programs to improve the educational opportunities and achievement of preschool, elementary, and secondary Indian students. To meet the purposes of the No Child Left Behind Act of 2001, this program will focus project services on increasing school readiness skills of three- and four-year-old American Indian and Alaska Native children; and enabling American Indian and Alaska Native high school graduates to transition successfully to postsecondary education by increasing their competency and skills in challenging subject matter, including mathematics and science.

Priorities: In accordance with 34 CFR 75.105(b)(2)(ii), these absolute priorities are from the regulations for this program (34 CFR 263.21(c)(1) and (3)).

Absolute Priorities: For FY 2004 these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or both of these priorities. These priorities are:

Absolute Priority 1. School readiness projects that provide age appropriate educational programs and language skills to three- and four-year-old Indian students to prepare them for successful entry into school at the kindergarten level.

Absolute Priority 2. College preparatory programs for secondary school students designed to increase competency and skills in challenging subject matter, including mathematics and science, to enable Indian students to transition successfully to postsecondary education.

Competitive Preference Priorities: Within the absolute priorities, we give competitive preference to applicants that address the following priorities.

Competitive Preference Priority 1. In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 7121 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), 20 U.S.C. 7441(d)(1)(B). Five (5) competitive preference priority points will be awarded to an application that presents a plan for combining two or more of the activities described in section 7121(c) of the ESEA over a period of more than one year.

Competitive Preference Priority 2. In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 7143 of the ESEA, 20 U.S.C. 7473. Five (5) competitive preference priority points will be awarded to an application submitted by an Indian tribe, Indian organization, or Indian institution of higher education, including a consortium of any of these entities with other eligible entities. An application from a consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian tribe, Indian organization, or Indian institution of higher education will be considered eligible to receive the five (5) priority points.

These competitive preference points are in addition to the five competitive preference points that may be given under Competitive Preference Priority 1.

Note: The consortium agreement, signed by all parties, must be submitted with the application in order to be considered a consortium application. Letters of support do not meet the consortium requirements. The Secretary will reject any application that does not meet these requirements.

Note: The term "Indian institutions of higher education" means an accredited college or university within the United States cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled College or University Assistance Act of 1978 (25 U.S.C. 1801 *et seq.*), and Dine College (formerly Navajo Community College), authorized in the Navajo Community College Act (25 U.S.C. 640a *et seq.*).

Program Authority: 20 U.S.C. 7441.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99; and (b) 34 CFR part 263.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.
Estimated Available Funds: $4,527,754.
Estimated Range of Awards: $150,000 to $400,000.
Estimated Average Size of Awards: $323,411.
Maximum Award: We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. The Deputy Under Secretary may change the maximum amount through a notice published in the **Federal Register**.
Estimated Number of Awards: 14.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. *Eligible Applicants:* Eligible applicants for this program include a SEA; a LEA; an Indian tribe; an Indian organization; a federally supported elementary or secondary school for Indian students; an Indian institution, including an Indian institution of higher education; or a consortium of such institutions that meets the requirements of 34 CFR 75.127 through 75.129. An application from a consortium of eligible entities must meet the requirements of 34 CFR 75.127 through 75.129. The consortium agreement, signed by all parties, must be submitted with the application in order to be considered as a consortium application. Letters of support do not meet the consortium requirements. The Secretary will reject any application that does not meet these requirements.

2. *Cost Sharing or Matching:* This program does not involve cost sharing or matching.

3. *Other:*

(a) *Indian Organization.* Applicants that apply as an "Indian organization" must demonstrate in the application how they meet all criteria for this term as defined in 34 CFR 263.20 in order to be considered an eligible Indian organization.

(b) *Budget Requirement.* Projects funded under this competition must budget for a one-and-one-half day Project Directors' meeting in Washington, DC, during each year of the project period.

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.299A.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed elsewhere in this notice under For Further Information Contact.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative is where you, the applicant, addresses the selection criteria reviewers use to evaluate your application. An applicant must limit the narrative to the equivalent of no more than 50 double-spaced pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

Our reviewers will not read any pages of your application that—

- Exceed the page limit if you apply these standards; or
- Exceed the equivalent of the page limit if you apply other standards.

3. *Submission Dates and Times:*
Applications Available: March 3, 2004.
Deadline for Transmittal of Applications: April 2, 2004. The dates and times for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this competition. The application package also specifies the hours of operation of the e-Application Web site.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: June 1, 2004.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* We will reject any application that proposes a budget exceeding $400,000 for a single budget period of 12 months. We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Instructions and requirements for the transmittal of applications by mail or by hand (including a courier service or commercial carrier) are in the application package for this program.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

We are continuing to expand our pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Demonstration Grants for Indian Children program—CFDA Number 84.299A—is one of the programs included in the pilot project. If you are an applicant under the Demonstration Grants for Indian Children program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). If you use e-Application, you will be entering data online while completing your application. You may not e-mail an electronic copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you

enter online will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right-hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.

Application Deadline Date Extension in Case of System Unavailability: If you elect to participate in the e-Application pilot for the Demonstration Grants for Indian Children program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

1. You are a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system is unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Demonstration Grants for Indian Children program at: *http://e-grants.ed.gov.*

V. Application Review Information

Selection Criteria: The selection criteria for this program are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under this grant.

3. *Reporting.* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Demonstration Grants for Indian Children program: (1) Increasing percentages of pre-school American Indian and Alaska Native students will possess school readiness skills gained through a scientifically based, research-based curriculum that prepares them for kindergarten; and (2) the percentage of American Indian and Alaska Native high school graduates who increase their competency and skills in challenging subject matter, including mathematics and science, to enable successful transition to postsecondary education will increase.

Under the selection criteria "Quality of project services" and "Quality of the project evaluation," we will consider the extent to which the applicant demonstrates a strong capacity to provide reliable data on these indicators.

All grantees will be expected to submit, as part of their performance report, information documenting their progress with regard to these performance measures.

VII. Agency Contact

For Further Information Contact: Victoria Vasques, Office of Indian Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W205, Washington, DC 20202–6335. Telephone: (202) 260–3774 or by email: *oiegrant@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: February 25, 2004.

Victoria Vasques,

Deputy Under Secretary for Indian Education.

[FR Doc. 04–4555 Filed 3–1–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Announcement Number DE–PS36–04GO94000]

Hydrogen Safety, Codes and Standards Research

AGENCY: Golden Field Office, U.S. Department of Energy.

ACTION: Notice of issuance of announcement for financial assistance applications.

SUMMARY: The U.S. Department of Energy (DOE), Golden Field Office is announcing its intention to seek financial assistance applications for specific categories of research projects that will support the goals and objectives of the Hydrogen Safety, Codes and Standards Program. The three eligible research projects involved include Hydrogen System Sensors, Pipeline Materials and Sensors, and Process Plant Sensors. The effect of these projects is to ensure that research and development activities under this Program bring hydrogen systems into the marketplace.

DATES: The Funding Opportunity Announcement is anticipated to be issued on February 24, 2004.

ADDRESSES: To obtain a copy of the Announcement, interested parties should access the DOE Golden Field Office Home page at *http://www.go.doe.gov/funding.html,* click on the word "access." The link will open the Industry Interactive Procurement System (IIPS) Web site and provide links to all Golden Field Office Announcements. The Announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contracting Activity, for those Announcements issued by the Golden Field Office. DOE will not issue paper copies of the Announcement.

IIPS provides the medium for disseminating Announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application must be submitted in IIPS by the applicant or a designated representative that receives authorization from the applicant. The application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding contract or agreement. The applicant or the designated representative must first register in IIPS. For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751, Option 1.

FOR FURTHER INFORMATION CONTACT: Cheri Schmitt, Financial Assistance Specialist, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393 or via facsimile to Cheri Schmitt at (303) 275–4753, or electronically to Cheri Schmitt at *cheri.schmitt@go.doe.gov.*

SUPPLEMENTARY INFORMATION: The Hydrogen, Fuel Cells, and Infrastructure Technologies Program of DOE's Office of Energy Efficiency and Renewable Energy is soliciting financial assistance applications with the objective of contributing to industry efforts and the President's Hydrogen Fuel Initiative in developing a path to a hydrogen economy. DOE intends to provide financial support for this effort under authority of the Hydrogen Future Act of 1996, Public Law 104–271. Section 103 of this Act requires DOE to conduct a hydrogen research and development program relating to production, storage, transportation, and the use of hydrogen, with the goal of enabling the private sector to demonstrate the technical feasibility of using hydrogen for industrial, residential, transportation, and utility applications. See 42 U.S.C 12403. Under the President's Hydrogen Fuel Initiative, DOE will initiate or accelerate research in technologies that will ultimately contribute to the development of more economical hydrogen production, storage, and utilization. Awards under this Announcement will be Grants or Cooperative Agreements that will have terms of up to three years. Possible funding into Years 2 and 3 will depend on the outcome of a DOE go/no-go decision point at the end of each year of each project. Awards will be for the complete project period, with funding provided by DOE during each year, as applicable. Subject to the availability of appropriations, DOE funding is anticipated to be available for awards under this Announcement from Fiscal Year (FY) 2005 through FY 2007. The available DOE funding in FY 2005, FY 2006 and FY 2007 is anticipated to be approximately $2,000,000 per Fiscal Year. Individual awards under this Announcement will not exceed $400,000 in DOE funding for Year 1 of the project. Specific DOE funding limits per award will not be imposed for Years 2 and 3. Applicants will be asked to propose the required DOE funding for these two Years to achieve the proposed project objectives. It is anticipated that up to a total of five awards will be made.

All types of applicants are eligible to apply, except other Federal agencies, Federally Funded Research and Development Centers (FFRDCs), and nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code of 1986 that engage in lobbying activities. FFRDC contractors, although not eligible for an award, may be proposed as a team member as specified under this Announcement. A minimum required applicant cost share contribution is 20% of the total project cost.

Issued in Golden, Colorado, on February 24, 2004.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 04–4581 Filed 3–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a funding opportunity announcement.

SUMMARY: Notice is hereby given of the intent to issue Funding Opportunity Announcement No. DE–PS26–04NT42067 entitled "Pilot Scale Demonstrations of Cost Effective NO_X Control for Coal-Fired Electric Utility Boilers in Response to Multi-Pollutant Legislation". The Department of Energy (DOE), National Energy Technology Laboratory (NETL), through its Innovations for Existing Plants (IEP) Program is seeking applications for cost-shared research and development of advanced pulverized coal NO_X control technologies at the pilot-scale and field testing-scale. The focus of these technologies is to reduce energy consumption and balance of plant issues and improve the associated capital and operating costs while burning a high volatile bituminous coal when compared to current state-of-the-art NO_X control technologies. This

research is to be innovative when compared to technologies that are currently being implemented and demonstrated at the commercial-scale. Additionally, the offered projects need to have successfully completed laboratory/bench-scale or prior pilot-scale testing and these results are required to clearly demonstrate the technology's capabilities and cost benefits. The applications should address the NO_X research priorities identified by the joint Department of Energy, the Electric Power Research Institute, and the Coal Utilization Research Council Clean Coal Technology Roadmap: *http://www.netl.doe.gov/coalpower/ccpi/pubs/CCT-Roadmap.pdf.*

DATES: The funding opportunity announcement will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about February 13, 2004. Applicants can obtain access to the funding opportunity announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the "Submit Question" feature of IIPS at *http://e-center.doe.gov.* Locate the announcement on IIPS and then click on the "Submit Question" button. You will receive an electronic notification that your question has been answered. Responses to questions may be viewed through the "View Questions" feature. If no questions have been answered, a statement to that effect will appear. You should periodically check "View Questions" for new questions and answers.

FOR FURTHER INFORMATION CONTACT: Mary Price, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, 626 Cochrans Mill Road, E-mail Address: *Mary.Price@netl.doe.gov,* Telephone Number: 412–386–6179.

SUPPLEMENTARY INFORMATION: The funding opportunity announcement addresses the need for strategic research, development, and testing of efficient, cost-effective NO_X control technologies, processes and concepts that are to be retrofitted to existing pulverized coal-fired electric utility boilers. This effort is to focus primarily on combustion systems capable of controlling NO_X emissions to a level below 0.15 lbs/million Btu and advanced SCR concepts that achieve 90% NO_X reductions based on inlet NO_X levels of 0.10 to 0.40 lbs/million Btu. A levelized cost savings on a dollar-per-ton of NO_X removed of at least 25% over the current state-of-the-art SCR should be demonstrated by these technologies. The applications should also address the impact of these advanced technologies on related issues such as unburned carbon, waterwall wastage, heat transfer surface fouling, sulfur trioxide generation, and mercury speciation and capture where appropriate.

In conducting this development effort, data is sought to: (1) Verify technology performance in terms of NO_X reduction, (2) determine preliminary process/equipment and operating costs, (3) quantify potential balance-of-plant (BOP) impacts, (4) develop process monitoring/control tools to assist in management of NO_X control equipment, and (5) measure and assess potential mercury control associated with multiple pollutant or co-control technology.

This announcement focuses on the following program areas of interest: (1) Advanced Combustion Concepts; (2) SCR Catalyst Developments; and (3) Enhanced Mercury Oxidation in the Combustor. Applications can only be submitted to one of these three areas of interest. Approximately $3,500,000 in total funding is expected to be available under this announcement and the DOE anticipates awarding between three and six cooperative agreements. A cost share commitment of at least 25 percent from non-federal sources is required for research and development projects.

Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov.* The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the funding opportunity announcement will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the announcement. The actual funding opportunity announcement document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA on February 18, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–4582 Filed 3–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Funding Opportunity Announcement

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Funding Opportunity Announcement.

SUMMARY: Notice is hereby given of the intent to issue, on behalf of the DOE Office of Energy Assurance (OEA), Funding Opportunity Announcement No. DE–PS26–04NT42071 entitled Development of Technologies for Assurance of the U.S. Energy Infrastructure. The funding opportunity announcement will request applicants to submit proposals in any of three Areas of Interest: 1. Physical Security, 2. Cyber Security, and 3. Modeling, Simulation and Analysis. Technologies proposed in the Areas of Interest should protect the critical energy infrastructure. Critical infrastructures are systems, such as the United States' energy system, whose extensive incapacity or destruction would have a debilitating impact on the defense and economic security of our Nation. For the purposes of this funding opportunity announcement, the scope of the energy infrastructure shall be limited to the following: *Electrical Delivery Assets* (Non-nuclear central generation facilities, including fossil-fired and hydroelectric plants; High-voltage transmission equipment, including critical substations, switchyards and transmission towers; Low-voltage distribution assets, including related substations and switchyards; End user & on-site generation equipment; Control-and-command assets, such as SCADA (Supervisory Control and Data Acquisition) and communications and monitoring systems associated with electrical delivery). *Fuel Processing & Storage Assets* (Refineries; Mid-stream natural gas processing plants located at the end of gathering systems and interstate pipelines; Natural gas storage facilities, including underground areas (aquifers, depleted oil and gas fields, and salt caverns); Liquid storage facilities, including above-ground facilities for storing LNG (liquid natural gas), facilities for storing LPG (liquid

petroleum gases)-propane, ethane, etc., retail gasoline facilities and oil/gas tank farms; and, Control-and-command assets, such as SCADA and communications and monitoring systems associated with fuel processing and storage). *Delivery Systems* (Natural gas pipelines, including compression stations and hubs; Liquid pipelines and pumping stations delivering/pumping crude oil, refined products, or LPG; Control-and-command assets, such as SCADA and communications and monitoring systems associated with delivery systems). *Exploration and Production* (Onshore production facilities and Offshore production facilities).

DATES: The funding opportunity announcement will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about March 6, 2004. Applicants can obtain access to the funding opportunity announcement from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business*.

ADDRESSES: Questions and comments regarding the content of the announcement should be submitted through the "Submit Question" feature of IIPS at *http://e-center.doe.gov*. Locate the announcement on IIPS and then click on the "Submit Question" button. You will receive an electronic notification that your question has been answered. Responses to questions may be viewed through the "View Questions" feature. If no questions have been answered, a statement to that effect will appear. You should periodically check "View Questions" for new questions and answers.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Reger, U.S. Department of Energy, National Energy Technology Laboratory, 3610 Collins Ferry Road, P.O. Box 880, Morgantown WV 26507–0880, E-mail Address: *Patricia.Reger@netl.doe.gov*, Telephone Number: 304–285–4084.

SUPPLEMENTARY INFORMATION: National Laboratories are not permitted to participate as prime contractors in response to this funding opportunity announcement. Participation by National Laboratories as subcontractors shall be limited to 10% of the award value. Once released, the funding opportunity announcement will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The funding opportunity announcement will only be made available in IIPS, no hard (paper) copies of the funding opportunity announcement and related documents will be made available.

Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the funding opportunity announcement package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the funding opportunity announcement. The actual funding opportunity announcement document will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV, on February 19, 2004.

Dale A. Siciliano,

Director, Acquisition and Assistance Division.

[FR Doc. 04–4583 Filed 3–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

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), Oak Ridge. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, March 10, 2004, 6 p.m.

ADDRESSES: DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the web site at *http://www.oakridge.doe.gov/em/ssab*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

The meeting presentation will feature an overview of the covenant deferral process at the East Tennessee Technology Park.

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 Pat Halsey 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. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling (865) 576–4025.

Issued at Washington, DC on February 26, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–4584 Filed 3–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. 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: Thursday, March 18, 2004, 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy

Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve February Minutes; Review Agenda
6:05 p.m.—DDFO's Comments
6:25 p.m.—Ex-officio Comments
6:35 p.m.—Federal Coordinator Comments
6:45 p.m.—Public Comments and Questions
6:55 p.m.—Break
7:05 p.m.—Task Forces/Presentations
- Conflict of Interest
- Waste Operations Task Force
- Water Task Force
- Long Range Strategy/Stewardship

8:05 p.m.—Public Comments and Questions
8:15 p.m.—Administrative Issues
- Review of Workplan
- Review of Next Agenda
- Annual Planning Retreat

8:35 p.m.—Review of Action Items
8:50 p.m.—Subcommittee Reports
- Community Concerns
- Public Involvement/Membership

9:15 p.m.—Final Comments
9:30 p.m.—Adjourn

Copies of the final agenda will be available at 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 David Dollins at the address listed below or by telephone at (270) 441–6819. 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 comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling (270) 441–6819.

Issued at Washington, DC on February 26, 2004.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 04–4585 Filed 3–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

February 25, 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: March 3, 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.

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# AD04–3, 000, Presentation by the Information Assessment Team

Markets, Tariffs and Rates—Electric

E–1.
DOCKET# RM02–1, 001, Standardization of Generator Interconnection Agreements and Procedures
E–2.
OMITTED
E–3.
OMITTED
E–4.
DOCKET# ER04–383, 000, Southern California Edison Company
OTHER#S ER04–384, 000, Southern California Edison Company
ER04–384, 001, Southern California Edison Company
ER04–385, 000, Southern California Edison Company
ER04–386, 000, Southern California Edison Company
E–5.
OMITTED
E–6.
OMITTED
E–7.
DOCKET# ER03–580, 000, Midwest Independent Transmission System Operator, Inc.
OTHER#S EL03–119, 000, Midwest Independent Transmission System Operator, Inc.
ER03–580, 001, Midwest Independent Transmission System Operator, Inc.
ER03–580, 002, Midwest Independent Transmission System Operator, Inc.
ER03–580, 003, Midwest Independent Transmission System Operator, Inc.
ER03–580, 004, Midwest Independent Transmission System Operator, Inc.
E–8.
OMITTED
E–9.
DOCKET# ER02–2458, 000, Midwest Independent Transmission System Operator, Inc.
OTHER#S ER02–2458, 001, Midwest Independent Transmission System Operator, Inc.
E–10.
OMITTED
E–11.
DOCKET# ER01–3034, 003, Duke Energy Oakland, LLC
E–12.
DOCKET# EL01–93, 008, Mirant Americas Energy Marketing, LP, Mirant New England, LLC, Mirant Kendall, LLC, and Mirant Canal, LLC v. ISO New England Inc.
E–13.
DOCKET# EL02–63, 002, Constellation Power Source, Inc. v. California Power Exchange Corporation
E–14.
OMITTED
E–15.
DOCKET# EL00–95, 081, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent system Operator and the California Power Exchange
OTHER#S EL00–98, 069, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
E–16.
DOCKET# EL01–22, 003, Idaho Power Company

E–17.
OMITTED
E–18.
DOCKET# EL03–34, 001, Midwest Independent Transmission System Operator, Inc.
E–19.
DOCKET# EL03–223, 001, California Power Exchange Corporation
E–20.
DOCKET# ER03–1138, 001, Idaho Power Company
E–21.
DOCKET# ER03–458, 001, American Electric Power Service Corporation
E–22.
DOCKET# EL00–111, 007, Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation
OTHER#S EL01–84, 003, Salt River Project Agricultural Improvement and Power District v. California Independent System Operator Corporation
ER01–607, 005, California Independent System Operator Corporation
E–23.
OMITTED
E–24.
DOCKET# EL03–40, 001, Wisconsin Public Service Corporation v. Midwest Independent Transmission System Operator, Inc.
E–25.
DOCKET# ER03–942, 002, California Independent System Operator Corporation
E–26.
DOCKET# ER93–465, 032, Florida Power & Light Company
OTHER#S OA96–39, 009, Florida Power & Light Company
ER96–417, 001, Florida Power & Light Company
ER96–1375, 002, Florida Power & Light Company
OA97–245, 002, Florida Power & Light Company
E–27.
OMITTED
E–28.
OMITTED
E–29.
DOCKET# EL04–33, 000, KES Kingsburg, L.P.
OTHER#S QF86–155, 004, KES Kingsburg, L.P.
E–30.
DOCKET# EL00–89, 000, Southern California Edison Company
OTHER#S EL00–89, 001, Southern California Edison Company
E–31.
OMITTED
E–32.
DOCKET# EL04–43, 000, Tenaska Power Services Co., v. Midwest Independent Transmission System Operator, Inc.
OTHER#S EL04–46, 000, Cargill Power Markets, LLC v. Midwest Independent Transmission System Operator, Inc.
E–33.
OMITTED
E–34.
DOCKET# EL04–31, 000, Quest Energy, L.L.C. v. The Detroit Edison Company
E–35.
DOCKET# EL03–138, 000, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
OTHER#S EL03–181, 000, Aquila Merchant Services, Inc. (f/k/a Aquila, Inc.)
E–36.
OMITTED
E–37.
OMITTED
E–38.
DOCKET# EL03–170, 000, Reliant Resources, Inc., Reliant Energy Power Generation, Inc., and Reliant Energy Services, Inc.
E–39.
OMITTED
E–40.
DOCKET# EL03–160, 000, Morgan Stanley Capital Group
OTHER#S EL03–195, 000, Morgan Stanley Capital Group
E–41.
DOCKET# EL03–191, 000, Las Vegas Cogeneration L.P.
OTHER#S EL03–194, 000, Montana Power Company
EL03–198, 000, PECO Energy Company
EL03–203, 000, Valley Electric Association, Inc.
E–42.
DOCKET# EL03–156, 000, Idaho Power Company
E–43.
DOCKET# EL03–163, 000, PacifiCorp
E–44.
DOCKET# EL03–165, 000, Portland General Electric Company
E–45.
DOCKET# EL03–140, 000, Automated Power Exchange, Inc.
E–46.
DOCKET# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices
E–47.
DOCKET# ER02–136, 004, Allegheny Power
E–48.
DOCKET# ER03–409, 001, Pacific Gas and Electric Company
OTHER#S ER03–666, 001, Pacific Gas and Electric Company
E–49.
DOCKET# EL00–66, 000, Louisiana Public Service Commission and the Council of the City of New Orleans v. Entergy Corporation
OTHER#S EL95–33, 002, Louisiana Public Service Commission v. Entergy Services, Inc.
ER00–2854, 000, Entergy Services, Inc.
E–50.
DOCKET# ER04–14, 002, Detroit Edison Company

Miscellaneous Agenda

M–1.
DOCKET# RM99–5, 000, Regulations Under the Outer Continental Shelf Lands Act Governing the Movement of Natural Gas on Facilities on the Outer Continental Shelf

Markets, Tariffs and Rates—Gas

G–1.
OMITTED
G–2.
OMITTED
G–3.
DOCKET# RP02–340, 003, ANR Pipeline Company
G–4.
DOCKET# RP96–200, 118, CenterPoint Energy Gas Transmission Company
OTHER#S RP96–200, 113, CenterPoint Energy Gas Transmission Company
RP96–200, 092, CenterPoint Energy Gas Transmission Company
RP96–200, 097, CenterPoint Energy Gas Transmission Company
RP96–200, 101, CenterPoint Energy Gas Transmission Company
RP96–200, 102, CenterPoint Energy Gas Transmission Company
RP96–200, 103, CenterPoint Energy Gas Transmission Company
RP96–200, 104, CenterPoint Energy Gas Transmission Company
RP96–200, 105, CenterPoint Energy Gas Transmission Company
RP96–200, 106, CenterPoint Energy Gas Transmission Company
RP96–200, 107, CenterPoint Energy Gas Transmission Company
RP96–200, 108, CenterPoint Energy Gas Transmission Company
RP96–200, 110, CenterPoint Energy Gas Transmission Company
RP96–200, 111, CenterPoint Energy Gas Transmission Company
G–5.
OMITTED
G–6.
OMITTED
G–7.
DOCKET# RP04–24, 002, Algonquin Gas Transmission Company
OTHER#S RP04–24, 001, Algonquin Gas Transmission Company
G–8.
DOCKET# RP03–544, 003 Texas Gas Transmission, LLC
G–9.
DOCKET# RP02–515, 002, Texas Gas Transmission Corporation
G–10.
OMITTED
G–11.
DOCKET# RP00–336, 016, El Paso Natural Gas Company
OTHER#S RP00–139, 006, KN Marketing, L.P. v. El Paso Natural Gas Company
RP00–336, 015, El Paso Natural Gas Company
RP01–484, 004, Aera Energy LLC, Amoco Production Company, BP Energy Company, Burlington Resources Oil & Gas Company LP, Conoco Inc., Coral Energy Resources LP, ONEOK Energy Marketing & Trading Company, L.P., Pacific Gas and Electric Company, Panda Gila River L.P., the Public Utilities Commission of the State of California, Southern California Edison Company, Southern California Gas Company and Texaco Natural Gas Inc.
RP01–486, 004, Texas, New Mexico and Arizona Shippers v. El Paso Natural Gas Company
G–12.
DOCKET# RP03–545, 003, Dominion Cove Point LNG, LP

OTHER#S RP03–545, 002, Dominion Cove Point LNG, LP
G–13.
DOCKET# RP04–64, 001, Indicated Shippers v. Trunkline Gas Company, LLC
G–14.
DOCKET# RP04–130, 000, Fidelity Exploration & Production Company v. Southern Star Central Gas Pipeline, Inc.
G–15.
DOCKET# OR96–2, 000, ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation v. SFPP
OTHER#S OR92–2, 002, Ultramar Diamond Shamrock Corporation and Ultramar, Inc. v. SFPP
OR96–2, 002, SFPP, L.P.
OR96–10, 000, ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation v. SFPP
OR96–10, 002, SFPP, L.P.
OR96–15, 000, Ultramar Diamond Shamrock Corporation and Ultramar, Inc. v. SFPP
OR96–17, 000, Ultramar Diamond Shamrock Corporation and Ultramar, Inc. v. SFPP
OR96–17, 002, SFPP, L.P.
OR97–2, 000, Ultramar Diamond Shamrock Corporation and Ultramar, Inc. v. SFPP
IS98–1, 000, SFPP, L.P.
OR98–1, 000, ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation v. SFPP
OR98–2, 000, Ultramar Diamond Shamrock Corporation and Ultramar, Inc. v. SFPP
OR98–13, 000, Tosco Corporation v. SFPP
OR00–4, 000, ARCO Products Co. a Division of Atlantic Richfield Company, Texaco Refining and Marketing Inc., and Mobil Oil Corporation v. SFPP
OR00–7, 000, Navajo Refining Corporation v. SFPP
OR00–9, 000, Ultramar Diamond Shamrock Corporation and Ultramar, Inc. v. SFPP
OR00–10, 000, Refinery Holding Company v. SFPP
OR98–1, 000, Tosco Corporation v. SFPP
OR00–9,000, Tosco Corporation v. SFPP
G–16.
DOCKET# RP04–35, 001, Williston Basin Interstate Pipeline Company

Energy Projects—Hydro

H–1.
DOCKET# P–2493, 006, Puget Sound Energy, Inc.
H–2.
DOCKET# P–344, 015, Southern California Edison Company
H–3.
OMITTED
H–4.
OMITTED
H–5.
OMITTED
H–6.
OMITTED
H–7.
DOCKET# P–2000, 046, Power Authority of the State of New York
OTHER#S EL03–224, 001, Massachusetts Municipal Wholesale Electric Company v. Power Authority of the State of New York

Energy Projects—Certificates

C–1.
DOCKET# CP02–396, 007, Greenbrier Pipeline Company, LLC
CP02–397, 007, Greenbrier Pipeline Company, LLC
CP02–398, 007, Greenbrier Pipeline Company, LLC

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. 04–4675 Filed 2–27–04; 10:27 am]

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

February 26, 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: March 4, 2004, 9:30 A.M.

Place: 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 March 4, 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, NW., 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. 04–4676 Filed 2–27–04; 10:30 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7629–5; Docket ID No. RCRA–2004–0001]

Office of Solid Waste and Emergency Response; Announcement of Listening Sessions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold listening sessions on March 23, 2004, in State College, Pennsylvania; April 13, 2004, in Dallas, Texas; and April 22, 2004, in Vincennes, Indiana. These three listening sessions are opportunities for interested parties to provide EPA with information on the practices of placing coal combustion byproducts in coal mines and at surface impoundments and landfills, including non-coal mine sites. EPA is interested in obtaining information on benefits and problems associated with the practices. Placement of coal combustion byproducts at coal mines is currently regulated under any of three scenarios: (1) Regulated by federal or State agencies operating under authority of the federal Surface Mining Reclamation and Control Act (SMCRA) administered by the U.S. Department of the Interior; (2) regulated by State agencies operating under State mining or solid waste laws; or (3) a combination of these. EPA is in the process of considering whether Resource Conservation and Recovery Act (RCRA) subtitle D or SMCRA authorities or some combination of both are most appropriate to regulate placement at coal mines. For placement of coal combustion byproducts at surface impoundments and landfills, including non-coal mine sites, EPA is in the process of developing regulations under subtitle D of RCRA. At these listening sessions, officials from the U.S. Department of the Interior and State mining and solid waste agencies will be present, along with EPA officials.

DATES: The listening session dates are:

1. March 23, 2004, in State College, Pennsylvania.
2. April 13, 2004, in Dallas, Texas.
3. April 22, 2004, in Vincennes, Indiana.

ADDRESSES: The listening session locations are:

1. State College, Pennsylvania—the Nittany Lion Inn, 200 West Park Ave., State College, PA.

2. Dallas, Texas—Fairmont Hotel, 1717 N. Akard St., Dallas, TX.

3. Vincennes, Indiana—Quality Inn Vincennes, 600 Old Wheatland Rd., Vincennes, IN.

FOR FURTHER INFORMATION CONTACT: Bonnie Robinson, Office of Solid Waste, Mail Code 5306W, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number (703) 308–8429; fax number (703) 308–8686; e-mail address: *Robinson.Bonnie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work or live at or near facilities at which coal combustion byproducts are generated or placed, or persons who are concerned about implementation of the Federal Resource Conservation and Recovery Act (RCRA) or the Federal Surface Mining Control and Reclamation Act (SMCRA).

B. How Can I Obtain Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. RCRA–2004–0001. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OSWER Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0270.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the Federal Register listings at *http://www.epa.gov/fedrgstr/.*

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

You may access EPA information electronically at the EPA Web site *www.epa.gov/epaoswer/other/fossil/index.htm.*

II. Background

For placement of coal combustion byproducts at coal mines, EPA is in the process of considering whether RCRA subtitle D or SMCRA authorities or some combination of both are most appropriate to ensure protection of human health and the environment. For placement of coal combustion byproducts at surface impoundments and landfills, including non-coal mine sites, EPA is in the process of developing regulations under RCRA subtitle D. These EPA actions and the background for them were initially described in EPA's Notice of Regulatory Determination on Wastes From the Combustion of Fossil Fuels (65 FR 32214–32237, May 22, 2000). This Regulatory Determination, an associated Report to Congress, and other related documents may be accessed at the Web site identified above. In this process EPA has contacted State and Federal regulatory agencies, the coal mining and coal combustion industries, and the public to learn of issues associated with the several practices. These three listening sessions are further opportunity for the public to provide EPA with information on these practices involving coal combustion byproducts.

To register to speak at one of these three listening sessions, you should contact the person listed above under **FOR FURTHER INFORMATION CONTACT.** To speak at one of the listening sessions, you should register no later than seven calendar days prior to the listening session. At each listening session, speakers' speaking time will be limited according to the number of persons registering to speak. If you are unable to register to speak, EPA will attempt to accommodate you after the registered speakers have spoken. There is no limitation on the amount of written material which can be provided to EPA at the listening sessions. EPA plans for each listening session to begin at 6:30 p.m. and end at 9 p.m. If the number of registered speakers indicates the need to extend to a later hour, EPA will do so.

Authority: 42 U.S.C. 6901–6991i.

Dated: February 23, 2004.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 04–4626 Filed 3–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7629–1]

Correction: Agreement and Covenant Not To Sue: Union Pacific Railroad Company

AGENCY: Environmental Protection Agency.

ACTION: Correction of notice of Prospective Purchaser Agreement/ Agreement and Covenant Not to Sue, Request for Public Comment.

SUMMARY: This document contains a correction to the Notice which was published on Tuesday, February 17, 2004 (69 FR 7480). Language regarding a 15 day public comment period was omitted in the original **Federal Register** Notice.

This Correction and the original Notice concern a proposed Prospective Purchaser Agreement and Agreement and Covenant Not to Sue ("Agreement") between the United States, State of Colorado, and the Union Pacific Railroad Company (Union Pacific). Union Pacific desires to acquire a perpetual easement or other property interest across the Broderick Wood Products Site, the Sand Creek Site, the Chemical Sales Site, the Woodbury Chemical Site and the Koppers Site, all Superfund or RCRA sites in or near Denver, Colorado, in order to establish a more direct east-west rail corridor through the north Denver area. In consideration of and exchange for the United States and the State of Colorado's Covenant Not to Sue and Removal of Lien, Union Pacific agrees to pay for or perform the remedy repair and replacement work at the Sites and to reimburse the Environmental Protection Agency and the Colorado Department of Public Health and Environment for their oversight costs incurred in oversight of such work.

DATES: For fifteen (15) days following the date of publication of this document March 17, 2004, the Agency will receive written comments relating to the proposed Agreement.

ADDRESSES: Please send all comments on this document to Richard Sisk, Legal Enforcement Attorney (8ENF–L), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, CO 80202–2466. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202. The Agreement is subject to final approval after the comment period.

FOR FURTHER INFORMATION CONTACT: Richard Sisk, Legal Enforcement Attorney at the above mentioned address or at (303) 312–6638. Please contact Sharon Abendschan, Enforcement Specialist at (303) 312–6957 for requests for copies of the Agreement and/or repository location(s) where supporting documentation may be found and reviewed.

Dated: February 19, 2004.

Eddie A. Sierra,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, U.S. Environmental Protection Agency, Region VIII.

[FR Doc. 04–4628 Filed 3–1–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

February 23, 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 April 1, 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.: 3060–0684.

Title: Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket No. 95–157.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households and business or other for-profit.

Number of Respondents: 2,000.

Estimated Time Per Response: .50–1 hours.

Frequency of Response: On occasion and biennial reporting requirements, third party disclosure requirement.

Total Annual Burden: 1,790 hours.

Total Annual Cost: $612,800.

Needs and Uses: This information collection is necessary to effectuate the relocation of fixed microwave incumbents from the 2GHz band to clear spectrum for the development of PCS. In addition, the collections are necessary to effectuate the Commission's plan for PCS relocators and subsequent PCS licensees to share the costs of relocating existing 2 GHz microwave facilities, thus providing for a fair and efficient relocation process. This plan fosters the development of competitive broadcast PCS service throughout the country, while permitting incumbent providers to relocate to higher spectrum bands.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–4617 Filed 3–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

February 23, 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 May 3, 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:* 3060–0939.

Title: E911, Second Memorandum Opinion and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions; and state, local and tribal government.

Number of Respondents: 50.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 50 hours.

Total Annual Cost: N/A.

Needs and Uses: In an effort to minimize delays in Enhanced 911 rule implementation, the Second Memorandum Opinion and Order provides that, in the case of disputes between wireless carriers and public safety answering points regarding E911 transmission methods or other technology, the parties involved may petition for Commission assistance in resolving their dispute. Thus, in order for the Commission to participate in negotiations, petitioners will have to provide the Commission with certain data concerning the dispute.

OMB Control Number: 3060–1060.

Title: Wireless E911 Coordination Initiative Letter.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: State, local and tribal government.

Number of Respondents: 36.

Estimated Time per Response: .75 hours.

Frequency of Response: On occasion and one-time reporting requirements.

Total Annual Burden: 27 hours.

Total Annual Cost: N/A.

Needs and Uses: The Federal Communications Commission requests continued OMB clearance for an information collection requirement, implemented in a letter that was sent, following the FCC's Second E911 Coordination Initiative, to pertinent State officials who had been appointed to oversee their States' programs to implement emergency (E911) Phase II service. This is necessary for this voluntary reporting collection so that the Commission can correct serious inaccuracies and have up-to-date information to ensure the integrity of the Commission's database of Public Safety Answering Points (PSAPs) throughout the nation. The accurate compiling and maintaining of this database is an inherent part of the Commission's effort to achieve the expeditious implementation of E911 service across the nation and to ensure homeland security.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–4618 Filed 3–1–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 16, 2004.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Gerald A. Payne, LeRoy, Minnesota; to acquire additional voting shares of First LeRoy Bancorporation, Inc., LeRoy, Minnesota, and thereby indirectly acquire additional voting shares of First State Bank of LeRoy, Minnesota.

Board of Governors of the Federal Reserve System, February 25, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–4526 Filed 3–1–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 26, 2004.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. TransCommunity Bankshares Incorporated, Glen Allen, Virginia; to acquire 100 percent of the voting shares of Bank of Louisa, National Association, Louisa, Virginia, an organizing bank.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. New Regions Financial Corporation, Birmingham, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Regions Financial Corporation, and indirectly acquire Regions Bank, both of Birmingham, Alabama.

2. New Regions Financial Corporation, Birmingham, Alabama; to merge with Union Planters Corporation, Memphis, Tennessee, and thereby indirectly acquire Union Planters Holding Corporation, Memphis, Tennessee; Union Planters Bank, N.A., Memphis, Tennessee; Franklin Financial Group, Inc., Morristown, Tennessee; and Union Planters Bank of Lakeway Area, Morristown,Tennessee.

In connection with this application, Applicant also has applied to acquire Regions Morgan Keegan Trust, F.S.B., Birmingham, Alabama, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, February 25, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–4525 Filed 3–1–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Health Director's Pioneer Award (NDPA)

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH) provides notice of the establishment of the NIH Director's Pioneer Award (NDPA) program. The NIH is establishing the program to identify and fund investigators of exceptionally creative abilities and diligence for a significant term (5 years) to allow them to develop and test far-ranging ideas. Awardees are expected to commit the major portion of their effort to activities supported by the NDPA. The program is not intended to support ongoing research projects or simply expand the funding of persons who are already well supported. The only constraint on the research to be conducted with this award will be that it must be relevant to the NIH mission.

DATES: Nominations must be submitted by 12 midnight, April 1, 2004.

FOR FURTHER INFORMATION CONTACT: To learn more about the award online, please refer to the NIH Director's Pioneer Award Web site at *http://nihroadmap.nih.gov/highrisk/initiatives/pioneer/index.asp*, or e-mail your questions to *pioneer@nih.gov*. The NIH Director's Pioneer Award is among several initiatives being undertaken as a part of the NIH Roadmap Activities, *http://nihroadmap.nih.gov*.

Background

The NIH, in acknowledgment of the changing face of biomedical research,[1] is announcing a new program, the NIH Director's Pioneer Award.

History suggests that leaps in knowledge frequently result from exceptional minds willing and able to explore ideas that were considered risky at their inception, especially in the absence of strong supportive data. Such individuals are more likely to take such risks when they are assured of adequate funds for a sufficient period of time and are free to set their own research agenda. The NIH Director's Pioneer Award (NDPA) program is being established to identify and fund investigators of exceptionally creative abilities and diligence for a sufficient term (five years) to allow them to develop and test far-ranging ideas. Awardees are expected to commit the major portion of their effort to activities supported by the NDPA. The program is not intended to support ongoing research projects or simply expand the funding of persons already well supported.

The only constraint on the research to be done with this award will be that it must be relevant to the NIH mission.

The spectacular advances made in the biological and medical sciences in the last few decades have opened doors to even greater opportunities in the 21st century. The NIH has been, and will continue to be, a major player in the support of this groundbreaking research. Much of the NIH success derives from its reliance on investigator-initiated research proposals (the bedrock R01 award) and its dual system of peer review and advisory council oversight. However, there is evidence that some additional means may be necessary to further accelerate advances in medical science and the resulting gains in the health and well-being of the American people.

The face of biomedical research is changing. Many of the new opportunities for research involve crossing traditional disciplinary lines and bringing forward different conceptual frameworks as well as methodologies. These developments appear to justify support for more aggressive risk-taking and innovation. While the current NIH funding system will continue to support groundbreaking research and innovation within the context of its traditional research grant mechanisms, additional avenues seem necessary to encourage high-risk/high-impact research in this new context.

To address this issue, NIH convened a group of highly distinguished outside consultants with expertise in biomedical, behavioral and social sciences, and in physical sciences and engineering, and representing academia, foundations, business, and industry. This group proposed that NIH implement novel programs targeted specifically to identify, encourage, and support the people and projects that will produce tomorrow's conceptual and technological breakthroughs. These programs would complement the other NIH research grants programs and would provide additional opportunities to those afforded within the Institutes and Centers for research that contests the status quo across the breadth of the NIH mission. A first step in this process is the establishment of a new NIH program to support exceptionally creative individual scientists.

Summary of the Award Process

The award process is summarized briefly below and in detail online at *http://nihroadmap.nih.gov/highrisk/initiatives/pioneer/faq.asp*.

Eligibility

Nominees for the NDPA must be U.S. citizens, non-citizen nationals, or permanent residents who are currently engaged in research. The research need not be related to conventional biomedical or behavioral disciplines; if the individual's experience is in nonbiological areas there must be evidence of interest in exploring topics of biomedical relevance. If selected, individuals must show evidence of infrastructure support. Investigators at early stages of their career, as well as those who are established, will be eligible.

The Nomination Process

In the first phase of the application process, nominations are to be submitted by mentors, colleagues, institutions, or by the individuals themselves. Only a single nomination package may be submitted for each person. The nomination package is to include a letter and the nominee's resume or *curriculum vitae*, each no more than two pages in length.

The letter must explain why the nominee should be considered exceptional and therefore highly likely to pursue original avenues of inquiry directed at very challenging biomedical problems. Although creativity comes in many forms, aspects common to innovative people include an interest in, and the ability to integrate, diverse sources of information, an inclination to challenge paradigms and take intellectual risks, resilience in the face of failure, an ability to attract the right collaborators, and the diligence and concentration necessary to plan and execute effective strategies for accomplishing goals. The letter should also provide evidence of the nominee's interest in the types of biomedical problems that are particularly overdue for fresh approaches.

Nominations should be submitted via the Internet to *http://nihroadmap.nih.gov/highrisk/initiatives/pioneer/index.asp*. The Web site will be open to receive nominations from March 1, 2004, through midnight April 1, 2004, eastern standard time.

The Selection Process

All nominations will be evaluated by NIH staff for eligibility and by outside experts to identify promising candidates who will be invited formally to apply for the NDPA. In the second phase of

[1] While the term biomedical research is used throughout this notice it should be broadly interpreted to include the scientific investigations of biomedical, behavioral, social, physical, chemical, and computer scientists, engineers, and mathematicians.

this process, beginning mid-June, the candidates will be asked to provide an essay of 3–5 pages describing their views on the major challenges in biomedical and behavioral research to which they feel they can make seminal contributions. No detailed scientific plan should be provided since the research plan will be expected to evolve during the tenure of the grant. In addition, each candidate will submit a copy of his/her most significant publication or achievement and arrange for direct submission of letters of support from three individuals who may or may not have been nominators. A subset of the candidates will be interviewed in August-September 2004 by a panel of outside experts. Additional input will be provided by the Advisory Committee to the Director, NIH, and final selections will be completed and announced by the end of September 2004.

Awards

To inaugurate this program, we have set aside sufficient funds in 2004 to provide 5–10 awards. The awards will be up to $500,000 direct costs each year for five years. Although there are no stipulations on the research agenda, the awardee will be required to submit an annual report of activities conducted during the year and to participate in an annual symposium on the NIH Bethesda, Maryland, campus. This symposium will allow awardees to share their ideas, progress, and experience with each other, the research community, and NIH staff.

Dated: February 20, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 04–4531 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute (NHLBI); Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of a Novel Endotracheal Tube Cleaning System and Improved Endotracheal Tube Design and Conditions of Use

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The Pulmonary—Critical Care Medicine Branch (P–CCMB) in National Heart, Lung, and Blood Institute (NHLBI) conducts research on lung disease that includes development of new technologies for the prevention of nosocomial pneumonia and ventilator-induced injury.

The great majority of mechanically ventilated patients are intubated with an endotracheal tube (ETT). Millions of endotracheal tubes are used in the United States every year. VAP is the most common nosocomial infection in Intensive Care Unit (ICU) patients, afflicting 8 to 28% of patients receiving mechanical ventilation (MV). VAP is also the leading cause of death from hospital-acquired infection. NHLBI data indicate that improved design of the ETT and conditions of use can significantly reduce the incidence of VAP.

After a few days of MV, the lumen of an ETT is coated with a thick bacterial biofilm, which is a major source for bacterial colonization of the lower respiratory tract, and VAP. Accumulation of mucus/secretions on the interior of the ETT effectively lowers the cross section of the ETT and increases significantly the work of breathing in intubated patients, who then require increased MV support, with prolonged intubation and ICU stay.

In experimental studies, NHLBI showed that it is possible to prevent bacterial colonization of the trachea, bronchi, lungs, ETT, and ventilator circuit over a prolonged time of MV (168 hours), to decrease ETT resistance and therefore the work of breathing, and to avoid tracheal mucosal injury or decrease mucus-clearance following inflation of the cuff, when: (1) The ETT is cleaned with a novel cleaning system to remove all mucus from the lumen of the ETT; (2) the ETT is coated with bactericidal agents (silver-sulfadiazine with or without chlorhexidine in polyurethane); (3) low resistance thin-walled ETT is used; (4) the cuff of the ETT is replaced with gills; and (5) the ETT and trachea are kept horizontal, through a tilting bed that allows lateral body rotation.

This CRADA project is with the Pulmonary and Cardiac Assist Devices Section within P–CCMB in NHLBI. The NHLBI is seeking capability statements from parties interested in entering into a CRADA to further develop, evaluate, and commercialize new design and management of ETTs in patients intubated, and mechanically ventilated, that include a novel ETT cleaning device and a low resistance ultra-thin ETT coated with bactericidal agents, with gills. The goals are to use the respective strengths of both parties to achieve the following:

(1) Preparation of an IDE for FDA approval for the coating of the tube and of the mucus cleaning system;

(2) Assistance in conducting clinical trials to determine the performance of this multi-task strategy in the prevention of Ventilator-associated Pneumonia and improvement of care of patients intubated and mechanically ventilated;

(3) Manufacture of the ultra-thin coated ETT with gills, bactericidal coated tubes, and the cleaning system.

The collaborator may also be expected to contribute financial support under this CRADA for personnel, supplies, travel, and equipment to support these projects.

The tilting bed noted in the experimental studies above will be the subject of a concurrent CRADA announcement issued by NHLBI. Interested parties are encouraged to inquire using the contact information below.

CRADA capability statements should be submitted to Marianne Lynch, JD, Technology Transfer Specialist, National Heart, Lung, and Blood Institute (NHLBI), Office of Technology Transfer and Development, National Institutes of Health, 6705 Rockledge Drive, Suite 6018, MSC 7992, Bethesda, MD 20892–7992; Phone: (301) 594–4094; Fax: (301) 594–3080; e-mail: *Lynchm@nhlbi.nih.gov*. Capability statements must be received on or before May 3, 2004.

The NHLBI has applied for patents claiming the core of the technology. Non-exclusive and/or exclusive licenses for these patents covering core aspects of this project are available to interested parties.

Licensing inquiries regarding this technology should be addressed to Michael Shmilovich, JD, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804, Phone: (301) 435–5019; Fax: (301) 402–0220; e-mail: *shmilovm@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 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.

Dated: February 19, 2004.

Dr. Carl Roth,

Associate Director for Scientific Program Operations, National Heart, Lung, and Blood Institute.

[FR Doc. 04–4532 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: (301) 496–7057; fax: (301) 402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Methods for Imaging the Lymphatic System Using Dendrimer-Based Contrast Agents

Martin W. Brechbiel (NCI); U.S. Patent Application No. 10/756,948 filed 13 Jan 2004 (DHHS Reference No. E–338–2003/0–US–01); *Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

Available for licensing are methods for lymphatic system imaging using 4D Magnetic Resonance lymphography and a 240kD contract agent based on generation-6 polyamidoamine dendrimer (G6). The disclosed methods are applicable to the imaging of all lymphatic structures, but in particular embodiments are particularly suited for imaging specific parts of the lymphatic system such as lymph nodes or lymphatic vessels. The methods permit the assessment of abnormal conditions within the lymphatic system, such as lymphoma/lymphoproliferative disease, inflammation, and cancer metastasis. The dendrimer also may be used to identify and locate sentinel lymph nodes into which lymph fluid flows from a tumor. The conventional clinically approved MRI contract agent, Gd-[DTPA]-dimeglumine (<1kD) was unable (in murine models) to depict lymphatics when used in conjunction with the same imaging system. Thus, the present dendrimer provides a novel method to visualize lymphatic drainage that has not been previously reported.

Apparatus and Method for High Speed Countercurrent Chromatography of Peptides and Proteins

Yoichiro Ito (NHLBI); PCT Application No. PCT/US03/09189 filed 25 Mar 2003, which published as WO 03/087807 on 23 Oct 2003 (DHHS Reference No. E–148–2001/0–PCT–02); U.S. Provisional Application No. 60/457,058 filed 21 Mar 2003 (DHHS Reference No. E–014–2003/0–US–01); U.S. Provisional Application No. 60/464,665 filed 24 Apr 2003 (DHHS Reference No. E–046–2003/0–US–01); *Licensing Contact:* Michael Shmilovich; 301/435–5019; *shmilovm@mail.nih.gov.*

This invention is an improved column design for High Speed Counter Current Chromatography (HSCCC) that increases partition efficiency by using novel column geometries. A standard HSCCC centrifuge uses a multilayer coil as a separation column to produce a high efficiency separation with good retention of the stationary phase in many solvent systems. However, the standard HSCCC, when used for highly viscous, low interfacial tension solvent systems, is unsuccessful at retaining a suitable amount of the stationary phase. This invention greatly improves efficiency by modifying the column from a coil to spiral geometry. Therefore, this invention creates a centrifugal force gradient, which allows for distribution of the heavier phase in the peripheral and the lighter phase in the proximal parts of the column. The effect of the gradient becomes more pronounced as the pitch of the spiral is increased.

The apparatus can be stacked on a support (E–014–2003) that provides additive net spiral flow geometry. When mounted, it will produce efficient separation of proteins and peptides. Also, efficient stationary phase retention can be achieved through the use of a plate apparatus (E–046–2003) that comprises a disk shaped column support having a spiral groove formed on its surface. At least one layer of fluid flow tubing is positioned substantially within the spiral groove. The countercurrent chromatography effect is produced by rotating the disk shaped column on a planar motion device.

Dated: February 24, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–4529 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the NIH Blue Ribbon Panel on Conflict of Interest Policies. The previous notice announced the meeting on March 1–2, 2004, open session from 8:30 a.m. on March 1 until 12 noon on March 2, at NIH, 9000 Rockville Pike, Bethesda, Maryland, Building 31C, Conference Room 10, with notification of public comments due February 26.

The meeting will be open until 10 a.m. on March 2. Any person wishing to make a presentation to the panel during the public comment session should notify Charlene French, Office of Science Policy, National Institutes of Health, Building 1, Room 103, Bethesda, Maryland 20892, telephone 301–496–2122 or by e-mail: *blueribbonpanel@mail.nih.gov.*

Please note that the panel will meet in Executive Session, beginning at 10:15 a.m. on Tuesday, March 2, 2004. The public portion of the meeting will end at 10 a.m. rather than at noon as originally planned.

Dated: February 25, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4635 Filed 2–26–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel, ELSI Centers Review.

Date: March 29–30, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Hyatt Regency, Bethesda, MD.

Contact Person: Rudy O. Pozzatti, PhD, Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892. 301–402–0838.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS.)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Diretor, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4542 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Genetic Control of Limb Development.

Date: March 22, 2004.

Time: 10:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@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: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4535 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Centers of Excellence in Complex Biomedical Systems Research.

Date: March 22–24, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Laura K. Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, 301–594–3998, *moenl@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4536 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Regulation of NuMA in Cloned Pig Embryos.

Date: March 15, 2004.

Time: 10 a.m. to 11:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, 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) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4537 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Anterior Vaginal Wall Prolapse/The Function of the Urethra in Contienent Women.

Date: March 8, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, 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) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4538 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Genetic Basis of Recovery and Rehabilitation (RFA–HD–03–025).

Date: March 23, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert H. Stretch, PhD. Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E01, MSC 7510, Bethesda, MD 20892 (301) 435–6912.

(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: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4539 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel The Function of Cyclin A2 in Meiosis of the Mouse Oocyte.

Date: March 22, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, 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, 301–435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4540 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS Score and Rise.

Date: March 25, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health. Natcher Building, 45 Center Drive, Room 3AN12, Bethesda, MD 20892 (Telephone conference call).

Contact Person: Helen R. Sunshine, PhD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN12F, Bethesda, MD 20892, 301–594–2881; *sunshinh@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4541 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The 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 Mental Health Special Emphasis Panel, Developing Translation Research on Mechanisms of Extinction Learning.

Date: March 19, 2004.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. (301) 443–1513; *psherida@.mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Translational Research in Borderline Personality Disorder.

Date: March 25, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608. 301–402–8152; *mbroitma@.mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS.)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4543 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 4, 2004, 1:30 p.m. to March 4, 2004, 2:15 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on February 13, 2004, 69 FR 7240–7241.

The meeting will be held March 1, 2004, from 10 a.m. to 11 a.m. The location remains the same. The meeting is closed to the public.

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4533 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Adolescent Family Dynamics.

Date: March 2, 2004.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, 301–435–0912, *levinv@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (11): Medical Imaging: Optics & Imaging.

Date: March 3, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (13): Medical Imaging: Unltrasound.

Date: March 4, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892, (301) 435–1175, *nordstrr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemokines and T Lymphocyte Migration.

Date: March 5, 2004.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Calbert A. Laing, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, 301–435–1221, *laingc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cognitive Development and Disorders.

Date: March 17, 2004.

Time: 5 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dana Plude, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, Bethesda, MD 20892, 301–435–2309, *pluded@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MI 01 Q: Microscopic imaging: QUORUM.

Date: March 18, 2004.

Time: 8 a.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7826, Bethesda, MD 20892, 301—435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BMBl 01Q: Biomaterials and Biointerfaces: Qorum.

Date: March 18–19, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sally Ann Amero, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7849, Bethesda, MD 20892, 301–435–1159, *ameros@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BlO (40) Deciphering Enzymes Specificity.

Date: March 18, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points By Sheraton Bethesda. 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael M. Sveda, PhD, Scientific Review Administrator, Center for Scientific Review National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7842, Bethesda, MD 20892, 301–435–3565, *svedam@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Applications—Epidemiology of Chronic Diseases.

Date: March 18, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diagnosis and Treatment of Mental Disorders.

Date: March 18, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902, *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro-Bioengineering.

Date: March 19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square, 806 15th St. NW., Washington, DC 20005.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7850, Bethesda, MD 20892, 301–435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Occupational Health Small Business.

Date: March 19, 2004.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7816, Bethesda, MD 20892, 301–435–3562. *raffertc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1: SSS–7 (50): Medical Imaging: Nanotechnologies.

Date: March 19, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 4136, 5118, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, (301) 435–1167. *srinivar@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1:SSS–7 (1): Medical Imaging: MRI and Other Imaging.

Date: March 22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Robert J. Nordstrom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5118, MSC 7854, Bethesda, MD 20892 (301) 435–1175, *nordstrr@csr.nih.gov*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fogarty International Center.

Date: March 22–23, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: OMNI Shoreham Hotel, 2500 Calvert Street, Calvert Room, Washington, DC 20008.

Contact Person: Hilary Sigmon, PhD, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BDCN–F(10) Visual Systems SBIR.

Date: March 22–23, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, 301–435–2507, *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific REview Special Emphasis Panel, Member Applications—Epidemiology of Clinical Disorders and Aging.

Date: March 22, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Roon 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ventricular Remodeling Surgery.

Date: March 22, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC(4) National Resource for Imaging Mass Spectrometry.

Date: March 22–23, 2004.

Time: 4 p.m to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton of Bethesda, 8400 Wisconin Ave, Bethesda, MD 20817.

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Structure Databases and Modeling.

Date: March 23, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Peter B. Guthrie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4142, MSC 7850, Bethesda, MD 20892, (301) 435–1239, *guthriep@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Metastasis Mechanisms.

Date: March 23, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20892, 301–435–3504, *vf6n@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RUSD (02) Renal Cellular and Molecular Biology.

Date: March 23, 2004.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational.

Date: March 23, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visual System Pharmacology.

Date: March 23, 2004.

Time: 3 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Autism: Genetics and Behavior.

Date: March 23, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Anita Miller Sostek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7184, Bethesda, MD 20892, 301–435–1260, *sosteka@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Meeting.

Date: March 24–25, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hearing Mechanisms: Animal Studies.

Date: March 24, 2004.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Viral Infection and Common Variable Immunodeficiency.

Date: March 24, 2004.

Time: 10:30 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Joanna M. Pyper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3198, MSC 7808, Bethesda, MD 20892, (301) 435–1151, *pyperj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Atherosclerosis.

Date: March 24, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 RUSD (01) Renal and Urological Pathobiology.

Date: March 24, 2004.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: M. Chris Langub, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4112, MSC 7814, Bethesda, MD 20892, 301–496–8551, *langubm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN–D–04 Neurobiology of Circadian Rhythms and Sleep.

Date: March 24, 2004.

Time: 2 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gamil C. Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nlh.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 24, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4534 Filed 3–1–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2004–17080]

Local Notices to Mariners—Changes in Distribution Methods

AGENCY: Coast Guard, DHS.

ACTION: Notice.

SUMMARY: The Coast Guard is changing the way in which we make Local Notices to Mariners available to the public. We will continue to publish electronic versions of these notices and make them available free of charge via the Internet, but we will no longer print and mail copies of each notice.

DATES: This change takes effect April 1, 2004.

ADDRESSES: Although we are not requesting them, you may make comments on this change. To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility, (USCG–2004–17080), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery 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. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For further information about the substance of this notice, contact Mr. Frank Parker, Office of Aids to Navigation, Commandant (G–OPN), U.S. Coast Guard, 2100 Second Street, SW., Washington DC 20593; telephone (202) 267–0358, fax (202) 267–4222, e-mail *fparker@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Coast Guard has statutory and treaty obligations to make navigation information available to the public. Local Notices to Mariners (LNMs) are our primary means for communicating information pertaining to individual Coast Guard Districts. LNMs provide important safety information that is available nowhere else, and are distributed free of charge to subscribers. However, the cost of printing and mailing LNMs has become prohibitive. Technology now allows us to provide LNMs in a more timely and less costly manner via the Internet. The Coast Guard has published electronic (Internet) LNMs successfully for several years. Electronic LNMs appear on the Coast Guard Navigation Center's Web site at *http://www.navcen.uscg.gov/lnm/default.htm.* Recently, we revised our Aids to Navigation (ATON) Manual (COMDTINST M16500.7) to authorize elimination of printed LNMs. The last printed LNMs will be distributed April 1, 2004.

LNMs are referred to in two Coast Guard regulations, 33 CFR 62.21 and 33 CFR subpart 72.01. They relate to Coast Guard agency management and, under the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), they can be amended without public notice and comment. We expect to revise these regulations to eliminate obsolete references to print distribution, as part of our forthcoming 2004 technical amendments to Title 33 of the CFR. Moreover, insofar as these regulations pertain to LNMs, they are general policy statements without binding effect either on the public or on the Coast Guard. We intend the present Notice, along with the notices we will convey directly to our LNM print and electronic subscribers, to inform the public of the Coast Guard policy change eliminating printed distribution of LNMs, which was effected through revision of our ATON Manual.

Dated: February 20, 2004.

Jeffrey J. Hathaway,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 04–4579 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seek comments concerning the EMI Independent Study Course Enrollment Application.

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Act Pub. L. 93–288, as amended authorize training programs for emergency preparedness. The information obtained from the Emergency Management Institute (EMI) form will be used for independent study course enrollment and to provide course materials to applicants. Applicants can select as many courses as they want, but they will be actively enrolled in only one course at a time. When applicants complete each course with a passing score, new course material from the course menu selection will be sent to applicants.

Collection of Information

Title: EMI Independent Study Course Enrollment Application.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0046.

Form Numbers: 95–23.

Abstract: The purpose of this form is to collect information from individuals on what Independent Study courses they wish to enroll in. This form lists the courses available through FEMA's Independent Study Program and collections information from individuals so that these courses can be mailed to them.

Affected Public: Individuals or households.

Estimated Total Annual Burden Hours: 2,493.

FEMA form	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A × B × C)
95–23	187,000	1	2 minutes	2,493
Total	187,000	1	2 minutes	2,493

Estimated Cost to Respondents: 37 cents per respondent. The total annual burden cost for this collection of information to respondents includes a 37 cent stamp per respondent × 74,800 respondents = $27,676. No additional cost to the respondent has been identified since about 60% or 112,200 respondents use the Internet to enroll in EMI Independent Study courses, and the estimated hour burden is minimal.

Estimated Cost to the Agency: The FEMA Independent Study program costs $80,784 annually to administer. This includes processing applications, grading exams, issuing course completion certificates, mailing course materials and handling student inquiries. Also, the annual printing cost to reprint course materials is approximately $70,000. Therefore, the total costs to the Agency for this program is $150,784.

Comments: Written comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments must be received on or before May 3, 2004.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Branch, FEMA, at 500 C Street, SW., Room 316, Washington, DC 20472 or e-mail address *InformationCollections@dhs.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Vilma Schifano-Milmoe, Contract Officer's Technical Representative/Training Specialist, Independent Study Program, Emergency Management Institute, FEMA, at 301–443–2057. You may contact Ms. Anderson for copies of the proposed information collection (see addressee information above).

Dated: February 24, 2004.

George S. Trotter,

Acting Division Director, Information Resources Management Division, Information Technology Services Directorate.

[FR Doc. 04–4545 Filed 3–1–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Fiscal Year 2004 Private Stewardship Grants Program; Revision of Eligibility Requirements, and Proposal Due Date Extension

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; revision of eligibility requirements, and extension of the due date.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), issued a **Federal Register** notice on January 6, 2004 (69 FR 670), announcing the request for proposals for the fiscal year 2004 Private Stewardship Grants Program (PSGP). We are now revising the eligibility requirements to clarify, and correctly notice, that projects on lands owned by conservation organizations are eligible for funding through the PSGP. We are also extending the due date for submission of project proposals for Federal assistance under the PSGP to March 31, 2004.

DATES: Project proposals must be received by the appropriate Regional Office (see Table 1 in **SUPPLEMENTARY INFORMATION**) no later than March 31, 2004.

ADDRESSES: For additional information, contact the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur. The contact information for each Regional Office is listed in Table 1 under **SUPPLEMENTARY INFORMATION** below. Information on the PSGP is also available from the Branch of State Grants, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420, Arlington, VA 22203, or electronically at *http://endangered.fws.gov/grants/private_stewardship.html*, or by e-mail from *Privatestewardship@fws.gov*.

Send project proposals to the Service's Regional Office that has the responsibility for the State or Territory in which the proposed project would occur (see Table 1 under **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: The Program Contact in the appropriate Regional Office identified in Table 1 under **SUPPLEMENTARY INFORMATION,** or Don Morgan, Chief, Branch of State Grants (703/358–2061).

SUPPLEMENTARY INFORMATION:

Background

Congress appropriated $7.5 million from the Land and Water Conservation Fund in Fiscal Year 2004 for the PSGP. The PSGP provides grants and other assistance on a competitive basis to individuals and groups engaged in private, voluntary conservation efforts that benefit species listed or proposed as endangered or threatened under the Endangered Species Act of 1973, as amended (Act), candidate species, or other at-risk species on private lands within the United States.

On January 6, 2004, we published in the **Federal Register** (69 FR 670) a notice announcing the request for proposals for the fiscal year 2004 PSGP. In that notice, we advised potential applicants that a complete program announcement and request for proposals could be accessed by visiting Grants.gov (*www.grants.gov*). Within the

complete program announcement and request for proposals (Notice of Availability of Federal Assistance), potential applicants were provided with a set of minimum eligibility criteria. One of the eligibility criteria could be read to exclude projects on lands owned by conservation organizations from eligibility for funding under the PSGP. We are now revising the eligibility requirements to clarify, and correctly notice, that projects on lands owned by conservation organizations are eligible for funding through the PSGP. Specifically, section III (Eligibility Information), part 3 (Other), item 2, is revised now to read as follows: "The project must be on land that is privately owned and must entail new or changed management that benefits the target species. That is, the projects we seek to support should reflect new starts and should not fund management efforts already in place or ongoing."

The January 6, 2004, notice also stated that project proposals must be received by the appropriate Regional Office within 60 days of the notice. Due to the need to revise and clarify the eligibility criteria, and due to substantial interest by the public in participating in this program, we are now extending the due date for submission of project proposals for Federal assistance under the Private Stewardship Grants Program (PSGP) to March 31, 2004.

How To Apply for a PSGP Grant

A complete program announcement and request for proposals may be accessed by visiting Grants.gov (*www.grants.gov*). Grants.gov is the new single point of entry for posting Federal Government grant and other assistance opportunities. Potential applicants for the PSGP may access program overview information, the full text of the announcement, and the application package for this request for proposals by accessing Grants.gov and then using the FIND utility ("Find Grant Opportunities," or *http://fedgrants.gov/grants/servlet/SearchServlet/*) to access this information. Potential applicants may use the FIND utility by searching for the PSGP either by entering the title "Private Stewardship Grants Program" or by using the PSGP's Catalog of Federal Domestic Assistance (CFDA) number of 15.632.

TABLE 1.—WHERE TO SEND PROJECT PROPOSALS AND LIST OF REGIONAL CONTACTS

Service region	States or territory where the project will occur	Where to send your PSGP project proposal	Regional PSGP contact and phone number
Region 1	Hawaii, Idaho, Oregon, Washington, American Samoa, Guam, and Commonwealth of the Northern Mariana Islands.	Regional Director, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE. 11th Avenue, Portland, OR 97232–4181.	Heather Hollis (503/231–6241)
Region 1	California and Nevada	Office Manager, U.S. Fish and Wildlife Service, Federal Building, 2800 Cottage Way, Room W–2606, Sacramento, CA 95825–1846.	Michael Fris (916/414–6464)
Region 2	Arizona, New Mexico, Oklahoma, and Texas	Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, SW., Room 4012, Albuquerque, NM 87102.	Mike McCollum (817/277–1100)
Region 3	Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin.	Regional Director, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, MN 55111–4056.	Peter Fasbender (612/713–5343)
Region 4	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Puerto Rico, and the U.S. Virgin Islands.	Regional Director, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345.	Mike Gantt (404/679–7081)
Region 5	Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia.	Regional Director, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589.	Diane Lynch (413/253–8628)
Region 6	Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Regional Director, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, CO 80225–0486.	Pat Mehlhop (303/236–7400 ext. 225)
Region 7	Alaska	Regional Director, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503–6199.	Michael Roy (907/786–3925)

Authority: This notice is published under the authority of the Department of the Interior and Related Agencies Appropriations Act, 2004, H.R. 2691/Pub. L.108–108.

Dated: February 25, 2004.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–4686 Filed 2–27–04; 12:01 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley

Drive, Reston, Virginia 20192, or e-mail *(jcordyac@usgs.gov)*.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used:

3. The quality, utility, and clarity of the information to be collected; and

4. How 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 forms of information technology.

Title: Public perceptions of Bats in Fort Collins, Colorado.

OMB Approval No: New collection.

Abstract: The primary objective of this information collection is to investigate public perceptions, knowledge, and awareness of bats and how this could influence potential transmission of disease (*i.e.*, from bats to bats, bats to pets, bat to humans). A random sample of Fort Collins, Colorado residents and a sample of identified residents known to have had an encounter with a bat will be asked about these bat-related issues via a questionnaire. This information is a vital component for managing bats and developing effective communications protocols regarding bat disease and ecology. This is collaborative effort involving scientists from Colorado State University (CSU), the U.S. Geological Survey (USGS), and Centers for Disease Control and Prevention (CDC).

Bureau Form No: None.

Frequency: One time.

Description of Respondents: Residents of Fort Collins, Colorado.

Estimated Completion Time: 15 minutes per respondent (approximate).

Number of Respondents: 1000.

Burden hours: 250 hours.

For Additional Information please contact: Natalie Sexton, (970) 226–9313, or e-mail *Natalie_sexton@usgs.gov*.

Bureau clearance officer: John Cordyack (703) 648–7313.

Dated: February 24, 2004.

Leslie H. Bartels,

Acting, Associate Director Biology.

[FR Doc. 04–4519 Filed 3–1–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 21, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 17, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALABAMA

De Kalb County

Larmore, Vance C., House, 810 Cty Rd. 606, Hammondville, 04000232.

Jefferson County

Rosedale Historic District, Roughly bounded by 25th Court S, Central Ave., 27th Court S., Loveless/BM Montgomery St., Homewood, 04000236.

Rosedale Park Historic District, Roughly bounded by Woodcrest Place, 26th Ave. S, 18th St. S, and 25th Ct. S, Homewood, 04000235.

Madison County

New Market Historic District, Roughly bounded by Mountain Fork, College St., Davis St., Winchester Rd. to Cochran St., pts. Cochran St. & Cedar St., New Market, 04000237.

Tuscaloosa County

East Northport Historic District, Roughly bounded by 20th St., 8th Ave., Rice Mine Rd., Bridge Ave., Northport, 04000234.

Northport Historic District (Boundary Increase), Bounded by Bellwood Dr., 20th Ave., Black Warrior R, and 30th Ave., Northport, 04000238.

Walker County

Jasper Downtown Historic District, Roughly bounded by 17th St., Corona Ave., 20th St., and 8th Ave., Jasper, 04000233.

GEORGIA

Bibb County

Wesleyan College Historic District, 4760 Forsyth Rd., Macon, 04000242.

Houston County

New Perry Hotel, 800 Main St., Perry, 04000241.

Muscogee County

Lewis–Rothchild Building, (Columbus MRA), 1214 First Ave., Columbus, 04000239.

Reich Dry Goods Company, (Columbus MRA), 14 W 11th St., Columbus, 04000240.

IOWA

Hardin County

Steamboat Rock Consolidated Schools Building, 306 W. Market St., Steamboat Rock, 04000243.

KENTUCKY

Barren County

Ralph Bunche Historic District, Roughly bound by E. College St., Landrum St., Twyman Court and S. Lewis St., Glasgow, 04000247.

Bourbon County

Little Rock–Jackstown Road Rural Historic District, along Little Rock-Jackstown and Soper Rds., Little Rock, 04000246.

Fayette County

African Cemetery No. 2, 419 E. Seventh St., Lexington, 04000245.

Jefferson County

Virginia Avenue Colored School, 3628 Virginia Ave., Louisville, 04000244.

MASSACHUSETTS

Middlesex County

Alewife Brook Parkway, (Metropolitan Park System of Greater Boston MPS), Alewife Brook Parkway, Cambridge, 04000249.

Norfolk County

Furnace Brook Parkway, (Metropolitan Park System of Greater Boston MPS), Furnace Brook Parkway, Quincy, 04000248.

Hammond Pond Parkway, (Metropolitan Park System of Greater Boston MPS), Hammond Pond Parkway, Brookline, 04000250.

MONTANA

Carbon County

Bearcreek Bank, Main and Second Sts., Bearcreek, 04000251.

NEW MEXICO

Bernalillo County

Southern Union Gas Company Building, (Buildings Designed by John Gaw Meem MPS), 723 Silver Ave., SW., Albuquerque, 04000252.

WISCONSIN

Dane County

Heim Mound, Address Restricted, Middleton, 04000254.

Lower Mud Lake Archeological Complex, Address Restricted, Dunn, 04000253.

Observatory Hill Mound Group, Address Restricted, Madison, 04000255.

A request for removal has been made for the following resource:

IOWA

Keokuk County

What Cheer City Hall, Barnes and Washington Sts., What Cheer, 81000252.

[FR Doc. 04–4521 Filed 3–1–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 14, 2004. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 17, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

INDIANA

Franklin County

Hermitage, The, 650 E. 8th St., Brookville, 04000209.

Lake County

Crown Point Courthouse Square Historic District, Roughly bounded by Clark St., the alley E of Main St., Hack Ct., and Court St., Crown Point, 04000203.

Marion County

Marcy Village Apartments, 4440–4567 Marcy Ln. and 1401 E. 46th St., Indianapolis, 04000202.

Wheeler–Schebler Carburetor Company, 1234 Barth Ave., Indianapolis, 04000210.

Porter County

Bartlett Real Estate Office, 500 South Broadway, Beverly Shores, 04000208.

Rush County

Center Township Grade and High School, (Indiana's Public Common and High Schools MPS), 929 E. South St., Mays, 04000211.

Vanderburgh County

Oak Hill Cemetery, 1400 E. Virginia St., Evansville, 04000205.

Vigo County

Collett Park Neighborhood Historic District, Roughly bounded by 7th St., Maple Ave., 11th St., and Florida Ave., Terre Haute, 04000207.

Wabash County

Marshall, Thomas R., School, 603 Bond St., North Manchester, 04000206.

Stockdale Mill, (Grain Mills in Indiana MPS), IN 700 E, Stockdale, 04000204.

MISSISSIPPI

Carroll County

Abiaca Creek Bridge, Nebo Rd., about 0.3 mi. N of MS 430, near Black Hawk, Vaiden, 04000218.

Hinds County

Chambliss Building, 932 Lynch St., Jackson, 04000219.

Smith Park Architectural District (Boundary Increase II), 308 E. Pearl St., Jackson, 04000215.

Newton County

Chunky River Bridge, (Historic Bridges of Mississippi TR) Adams St., Chunky, 04000217.

Pike County

Holmes, William Frederick, House, 302 Third St., McComb, 04000216.

MISSOURI

Jackson County

Katz, Michael H. and Rose, House, 5930 Ward Pkwy., Kansas City, 04000212.

United States Post Office—Kansas City, 315 W. Pershing Rd., Kansas City, 04000213.

Moniteau County

Finke Opera House, 312 N. High St., California, 04000214.

MONTANA

Rosebud County

Bones Brothers Ranch, W of Custer National Forest, Birney, 04000220.

NEW JERSEY

Burlington County

Buzby's General Store, 3959 Cty Rd. 563, Woodland Township, 04000222.

Cape May County

Chateau Bleu Motel, (Motels of The Wildwoods) 911 Surf Ave., City of North Wildwood, 04000221.

Essex County

Community Hospital, 130 W. Kinney St., Newark, 04000224.

Hudson County

St. Anthony of Padua Roman Catholic Church, 457 Monmouth St., Jersey City, 04000225.

Passaic County

Hinchliffe Stadium, Maple and Liberty Sts., overlooking the Great Falls of the Passaic, Paterson City, 04000223.

NEW YORK

Monroe County

Main Street Historic District, Main, Market and King Sts., Brockport, 04000227.

Wayne County

St. Peter, (Shipwreck), Address Restricted, Pultneyville, 04000226.

TEXAS

Bandera County

Langford, B.F., Jr. and Mary Hay, House, 415 Fourteenth St., Bandera, 04000229.

Colorado County

Harrison–Hastedt House, 236 Preston St., Columbus, 04000231.

Kinney County

1911 Kinney County Courthouse, 501 S. Ann St., Brackettville, 04000230.

Roberts County

Roberts County Courthouse, 301 E. Commercial St., Miami, 04000228.

A request for COMMENT is made for the following:

The National Historic Landmarks Survey solicits comments on draft additional documentation that has been prepared for the Dixie Coca-Cola Bottling Company Plant. The draft additional documentation is available for review and comment until March 17, 2004 at *http://www.cr.nps.gov/nhl/cocacola.pdf*. You may also contact Daniel Vivian by phone at (202) 354–2252, or through e-mail at *dan_vivian@nps.gov* for questions about this document.

[FR Doc. 04–4522 Filed 3–1–04; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 7, 2004. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed

comments should be submitted by March 17, 2004.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ALASKA

Fairbanks North Star Borough—Census Area

F.E. Company Gold Dredge No. K, Upper Dome Creek, Fairbanks, 04000186.

MASSACHUSETTS

Middlesex County

Wheeler—Minot Farmhouse, 341 Virginia Rd., Concord, 04000190.

Plymouth County

Whitman Park, Park, Maple, Whitman, Hayden Ave., Whitman, 04000187.

Suffolk County

Nix's Mate Daybeacon, Nubble Channel, The Narrows, Boston Harbor, Boston, 04000189.

Worcester County

East Princeton Village Historic District, Roughly Main St., Leominster Rd., Princeton, 04000188.

PENNSYLVANIA

Berks County

Pine Forge Mansion and Industrial Site, (Iron and Steel Resources of Pennsylvania MPS), Pine Forge Rd. and Douglass Dr., Pine Forge, Douglas Township, 04000191.

Erie County

Park Dinor, 4019 Main St., Erie, Lawrence Park Township, 04000192.

Philadelphia County

Steppacher, Walter M. and Brother Shirt Factory, 146–150 N. 13th St., Philadephia, 04000193.

York County

Dill's Tavern, 227 N. Baltimore St., Dillsburg, 04000195.

RHODE ISLAND

Providence County

Angell—Ballou House, 49 Ridge Rd., Smithfield, 04000196.
Louttit Laundry, 93 Cranston St., Providence, 04000197.
Phillips Insulated Wire Company Complex, 413 Central Ave., Pawtucket, 04000194.

TENNESSEE

Knox County

Airplane Service Station, 6829 Clinton Hwy., Knoxville, 04000198.

WASHINGTON

Spokane County

Davenport Hotel, 807 W. Sprague Ave., Spokane, 04000201.
Moore—Turner Garden, 507 W. Seventh Ave., Spokane, 04000199.

Whitman County

Cordova Theater, (Movie Theaters in Washington State MPS), 135 N. Grand Ave., Pullman, 04000200.

A request for REMOVAL has been made for the following resource:

IOWA

Johnson County

Shambaugh, Benjamin F. And Bertha M. Horack, House, 219 N. Clinton St., Iowa City, 96000895.

[FR Doc. 04–4523 Filed 3–1–04; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1063–1068 (Preliminary)]

Certain Frozen or Canned Warmwater Shrimp and Prawns From Brazil, China, Ecuador, India, Thailand, and Vietnam

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Brazil, China, Ecuador, India, Thailand, and Vietnam of certain frozen or canned warmwater shrimp and prawns, provided for in subheadings 0306.13.00 and 1605.20.10 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

[1] The record is defined in sec. 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

Background

On December 31, 2003, a petition was filed with the Commission and Commerce by the Ad Hoc Trade Action Committee, Washington, DC, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of certain frozen or canned warmwater shrimp and prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam. Accordingly, effective December 31, 2003, the Commission instituted antidumping duty investigations Nos. 731–TA–1063–1068 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of January 8, 2004 (69 FR 1301, January 8, 2004). The conference was held in Washington, DC on January 21, 2004, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on February 17, 2004. The views of the Commission are contained in USITC Publication 3672 (March 2004), entitled *Certain Frozen or Canned Warmwater Shrimp and Prawns from Brazil, China, Ecuador, India, Thailand, and Vietnam: Investigations Nos. 1063–1068 (Preliminary).*

Issued: February 25, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–4527 Filed 3–1–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–492]

Certain Plastic Grocery and Retail Bags; Notice of Decisions Not To Review Two Initial Determinations Each Terminating the Investigation as to Certain Respondents on the Basis of Settlement Agreements and One Initial Determination Terminating the Investigation as to a Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the following initial determinations (IDs) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation: (1) Order No. 28, terminating the investigation as to respondents Advance Polybag, Inc. ("API") and Universal Polybag Co. Ltd. ("Universal") on the basis of a settlement agreement; (2) Order No. 29, terminating the investigation as to respondent Pan Pacific Plastics Mfg., Inc. ("Pan Pacific") on the basis of settlement agreement; and (3) Order No. 30, terminating the investigation as to respondent Prime Source International LLC ("Prime Source") on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3105. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 1, 2003, based on a complaint filed by Superbag Corp. ("Superbag") of Houston, Texas, against four respondents, including Pan Pacific of Union City, California. 68 FR 24755. Superbag's complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain T-styled plastic grocery and retail bags that infringe one or more of claims 1–8 and 15–19 of Superbag's U.S. Patent No. 5,188,235. On August 22, 2003, the ALJ issued an ID (Order No. 7) granting complainant's motion to amend the complaint to add six additional respondents to the investigation, including API of Metarie, Louisiana, Universal of Thailand, and Prime Source of Westerville, Ohio. That ID was not reviewed by the Commission. 68 FR 54740 (Sept. 18., 2003). The Commission subsequently terminated the investigation as to respondent Spectrum Plastics, Inc. on the basis of a consent order.

On January 16, 2004 complainant and respondents API and Universal jointly moved to terminate the investigation as to those respondents on the basis of a settlement agreement. On January 24, 2004, complainant and respondent Pan Pacific moved to terminate the investigation as to Pan Pacific on the basis of a settlement agreement. On January 22, 2004 complainant moved to terminate the investigation with respect to Prime Source on the basis of a proposed consent order. On February 2, 2004, the Commission investigative attorney filed responses supporting each of the three motions for termination.

On February 3, 2004, the ALJ issued three IDs (Orders Nos. 28, 29, and 30) granting the respective motions. No petitions for review of the IDs were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: February 26, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–4632 Filed 3–1–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–474]

Certain Recordable Compact Discs and Rewritable Compact Discs; Notice of Commission Determination To Extend the Target Date for Completion of the Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation by two weeks, or until March 11, 2004.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3012. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on July 26, 2002, based on a complaint filed by U.S. Philips Corporation of Tarrytown, NY ("Philips" or "complainant"). 67 FR 48948 (2002).

The previous target date for completion of this investigation was February 26, 2004. The Commission determined that the target date for completion of the investigation should be extended by two weeks, or until March 11, 2004, due to the number and complexity of the issues under review.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 210.51(a)).

By order of the Commission.

Issued: February 26, 2004.

Marilyn R. Abbott,

Secretary.

[FR Doc. 04–4633 Filed 3–1–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 24, 2004.

The Department of Labor (DOL) has submitted the following 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). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of a currently approved collection.

Title: Definition and Requirements for a Nationally Recognized Testing Laboratory; (29 CFR 1910.147).

OMB Number: 1218–0147.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions; and State, local or tribal government.

Number of Respondents: 62.

Number of Annual Responses: 62.

Estimated Time Per Response: Varies from 160 hours for an organization to prepare initial recognition applications to 10 hours if an organization applies to use voluntary programs.

Total Burden Hours: 1260 hours.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: A number of standards issued by the Occupational Safety and Health Administration (OSHA) contain requirements for equipment, products, or materials. These standards often specify that employers use only equipment, products, or materials tested or approved by a nationally recognized testing laboratory (NRTL); this requirement ensures that employers use safe and efficacious equipment, products, or materials in complying with the standards. Accordingly, OSHA promulgated the regulation titled "Definition and Requirements for a Nationally Recognized Testing Laboratory." The Regulation specifies procedures that organizations must follow to apply for, and to maintain, OSHA's recognition to test and certify equipment, products, or material for this purpose.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–4547 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 24, 2004.

The Department of Labor (DOL) has submitted the following 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). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other form of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Type of Review: Extension of a currently approved collection

Title: Access to Employee Exposure and Medical Records; (29 CFR 1910.1020).

OMB Number: 1218–0065.

Frequency: On occasion.

Affected Public: Business or other for-profit; Federal Government; and State, local or Tribal government.

Number of Respondents: 717,268.

Number of Annual Responses: 4,577,613.

Estimated Time Per Response: Varies from 5 minutes (.08 hour) to 10 minutes (.17 hour).

Total Burden Hours: 561,308 hours.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Under the authority granted by the OSH Act, OSHA published a health regulation governing access to employee exposure-monitoring data and medical records. This regulation does not require employers to collect any information or to establish any new systems of records. Rather, it

requires that employers provide employees, their designated representatives, and OSHA with access to employee exposure-monitoring and medical records, and any analysis resulting from these records, whether or not the records are mandated by specific occupational safety and health standards. In this regard, the regulation specifies requirements for record access, record retention, employee information, trade-secret management, and record transfer. Accordingly, the Agency attributes the burden hours and costs associated with exposure monitoring and measurement, medical surveillance, and the other activities required to generate the data governed by the regulation to the health standards that specify these activities; therefore, OSHA did not include these burden hours and costs in this ICR.

Access to exposure and medical information enables employees and their designated representatives to become directly involved in identifying and controlling occupational health hazards, as well as managing and preventing occupationally-related health impairment and disease.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–4548 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

February 24, 2004.

The Department of Labor (DOL) has submitted the following 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). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this is not a toll-free number) or e-Mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

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 agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: Bureau of Labor Statistics

Type of Review: Extension of a currently approved collection.

Title: CPS Volunteer Supplement.

OMB Number: 1220–0176.

Affected Public: Individuals or households.

Type of Response: Reporting.

Frequency: Annually.

Number of Respondents: 112,000.

Annual Responses: 112,000.

Total Burden: 7,467.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: The Volunteer Supplement will provide information on the total number of individuals in the U.S. involved in unpaid volunteer activities, factors that motivate volunteerism, measures of the frequency or intensity with which individuals volunteer, types of organizations that facilitate volunteerism, and activities in which volunteers participate.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–4549 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Hearing on U.S. Submission #2003–01

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of hearing.

SUMMARY: The purpose of this notice is to announce a hearing, open to the public, on U.S. Submission #2003–01.

U.S. Submission #2003–01 was filed with the U.S. National Administrative Office (NAO) on September 30, 2003, by the U.S.-based United Students Against Sweatshops (USAS), the Mexico-based Centro de Apoyo al Trabajador (CAT) and the Canada-based Maquiladora Solidarity Network. The submitters filed an amendment to the submission on November 10, 2003. The submission was accepted for review by the NAO on February 5, 2004, and a notice of acceptance for review was published in the **Federal Register**, 69 FR 6691 (February 11, 2004).

Article 16(3) of the North American Agreement on Labor Cooperation (NAALC) provides for the review of labor law matters in Canada and Mexico by the NAO in accordance with domestic procedures, and Section H of the NAO procedural guidelines, 59 FR 16660 (April 7, 1994), requires a hearing on the submission unless the Secretary determines that a hearing would not be a suitable method for carrying out the NAO's responsibilities.

DATES: The hearing will be held on April 1, 2004, commencing at 9 a.m. Persons desiring to present oral testimony at the hearing must submit a request in writing, along with a written statement or brief describing the information to be presented or the position to be taken.

ADDRESSES: The hearing will be held in Room N4437A–D, fourth (4th) floor, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Written statements or briefs and requests to present oral testimony may be mailed, e-mailed (*usnao@dol.gov*), or hand delivered to the U.S. National Administrative Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5205, Washington, DC 20210. Due to processing delays for regular mail resulting from increased security procedures, it is strongly recommended that all correspondence be submitted electronically (*usnao@dol.gov*) or be hand delivered. Requests to present oral testimony and written statements or briefs must be received by the NAO no later than close of business March 22, 2004.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, Acting Secretary, U.S. National Administrative Office, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–5205, Washington, DC 20210. Telephone: (202) 693–4900 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Nature and Conduct of Hearing

As set out in the notice published in the **Federal Register** on February 11, 2004, the objective of the review of the submission will be to gather information to assist the NAO to better understand and publicly report on issues raised in the submission, including freedom of association and protection of the right to organize, the right to bargain collectively, minimum employment standards, occupational safety and health, and access to fair, equitable and transparent labor tribunal proceedings, as they relate to the Government of Mexico's compliance with the obligations set forth in the NAALC.

The hearing will be conducted by the Secretary of the NAO or the Secretary's designee. It will be open to the public. All proceedings will be conducted in English, with simultaneous interpretation in English and Spanish provided as appropriate and necessary. The public files for the submission, including written statements, briefs and requests to present oral testimony, will be made a part of the appropriate hearing record. The public files will also be available for inspection at the NAO prior to the hearing.

The hearing will be transcribed. A transcript of the proceeding will be made available for inspection, as provided for in Section E of the NAO procedural guidelines, or may be purchased from the reporting company.

Disabled persons should contact the Secretary of the NAO no later than March 22, 2004 if special accommodations are needed.

II. Written Statements or Briefs and Requests To Present Oral Testimony

Written statements or briefs shall provide a description of the information to be presented or position taken and shall be legibly typed or printed. Requests to present oral testimony shall include the name, address, and telephone number of the witness, the organization represented, if any, and any other information pertinent to the request. If not filed electronically, five copies of a statement or brief and a single copy of a request to present oral testimony shall be submitted to the NAO at the time of filing.

No request to present oral testimony will be considered unless accompanied by a written statement or brief. A request to present oral testimony may be denied if the written statement or brief suggests that the information sought to be provided is unrelated to the review of the submission or for other appropriate reasons. The NAO will notify each requester of the disposition of the request to present oral testimony.

In presenting testimony, the witness should summarize the written statement or brief, may supplement the written statement or brief with relevant information, and should be prepared to answer questions from the Secretary of the NAO or the Secretary's designee. Oral testimony will ordinarily be limited to a ten-minute presentation, not including the time for questions. Persons desiring more than ten minutes for their presentation should so state in the request, setting out reasons why additional time is necessary.

The requirements relating to the submission of written statements or briefs and requests to present oral testimony may be waived by the Secretary of the NAO for reasons of equity and public interest.

Signed at Washington, DC on February 25, 2004.

Lewis Karesh,

Acting Secretary, U.S. National Administrative Office.

[FR Doc. 04–4550 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–28–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11203]

Proposed Class Exemption for the Establishment, Investment and Maintenance of Certain Individual Retirement Plans Pursuant to an Automatic Rollover of a Mandatory Distribution

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). If granted, the proposed exemption would permit a fiduciary of a plan who is also the employer maintaining the plan to establish, on behalf of its separated employees, an individual retirement plan at a financial institution which is the employer or an affiliate, in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code. Relief is also being proposed to permit a plan fiduciary to select a proprietary product as the initial investment for such individual retirement plan. Finally, relief is proposed for the receipt of certain fees by the individual retirement plan provider in connection with the establishment or maintenance of the individual retirement plan and the initial investment of the mandatory distribution. If granted, the proposed exemption would affect plan sponsors, plan fiduciaries, individual retirement plan providers and individual retirement plan account holders.

DATES: Written comments and requests for a public hearing must be received by the Department on or before April 1, 2004.

ADDRESSES: All written comments and request for a public hearing should be sent to: Office of Exemption Determinations, (Attention: D–11203), Employee Benefits Security Administration, Room N–5649, U.S. Department of Labor, 200 Constitution Ave, NW., Washington, DC 20210. Comments and requests for a hearing also may be submitted to EBSA via fax at (202) 219–0204, or by e-mail to *moffitt.betty@dol.gov* by the end of the comment period. The application and comments received will be available for public inspection in EBSA's Public Documents Room, U.S. Department of Labor, Room N–1513, 200 Constitution Ave, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne or Karen Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, at (202) 693–8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed class exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code.

The Department is proposing this class 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 2570, subpart B (55 FR 32836, August 10, 1990).[1]

[1] Section 102 of Reorganization Plan No. 4 of 1978 generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

I. Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Accordingly, this action has been reviewed by OMB.

The proposed prohibited transaction class exemption is being published concurrently with a proposed regulation on Fiduciary Responsibility under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor. The proposed exemption will permit plan fiduciaries that are also employers maintaining a pension plan to establish, for separated employees, individual retirement plans at financial institutions that are the employer or an affiliate, in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code. The proposed exemption also permits plan fiduciaries to select a proprietary product as the initial investment for an individual retirement plan. Finally, the proposed exemption provides relief from what would otherwise be a prohibited transaction for the receipt of certain fees by Individual Retirement Plan Providers in connection with the establishment or maintenance of the individual retirement plan and the initial investment of the mandatory distribution.

In general, the costs and benefits that may accrue to fiduciaries have been described and quantified in connection with the economic impact of the proposed regulation describing the safe harbor for automatic rollovers of mandatory distributions also published in today's issue of the Federal Register. Fiduciaries of pension plans who are also employers maintaining the plan who would establish these individual retirement plans at a financial institution which is the employer or affiliate are included within the estimates of affected plans and separated participants presented in the proposed regulations.

Certain additional costs may accrue to plan fiduciaries that select the proprietary products of an employer or an affiliate for investment of individual retirement plans. Specifically, in connection with the acquisition of an Eligible Investment Product, section I(h) of the proposed exemption provides that plan fiduciaries are not permitted to charge a sales commission to the individual retirement plans of their separated employees. In contrast to individual retirement plans not described in section 401(a)(31)(B) of the Code, individual retirement plans that do not generate sales commissions may result in a cost to some Individual Retirement Plan Providers. Because the Department has no basis for determining the extent to which plan fiduciaries will use one or more proprietary products, the number of accounts that could be rolled over into such products, or the lost income, if any, that may result from unpaid sales commissions, the Department has not estimated a cost for this provision of the proposed exemption. However, many of the proprietary products permitted under the exemption generally do not charge a sales commission in connection with an initial purchase. In any case, it is likely that a plan fiduciary will use a proprietary product for these individual retirement plans only if it is financially beneficial to do so, for example, as a way to retain deposits and increase earnings. The Department requests comments on benefits and costs that pertain specifically to the conditions of this proposed exemption.

II. Paperwork Reduction Act

The proposed exemption permits a fiduciary of a pension plan that is also the employer maintaining the plan to establish, on behalf of its separated employees, an individual retirement plan at a financial institution that is the employer or an affiliate, in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code. Relief is also being provided that would permit a plan fiduciary to select a proprietary product as the initial investment for such an individual retirement plan. Finally, relief is proposed for the receipt of certain fees by the Individual Retirement Plan Provider and the initial investment of the mandatory distribution.

The proposed exemption includes certain notice and recordkeeping requirements that are meant to inform separated employees and allow for verification by interested persons that the terms of the exemption have been met with respect to the automatic rollover of mandatory distributions and investments. Specifically, prior to an automatic rollover of a mandatory distribution, a plan fiduciary is required to notify a participant that the distribution may be rolled over into a proprietary investment selected by the plan fiduciary. Notification that a proprietary investment may be selected is to be provided in connection with a written explanation required under section 402(f) of the Code or in the plan's summary plan description or summary of materials modifications thereto.

In the Department's view, neither alternative will result in a measurable burden. The additional information required to be included to meet this condition, though important, would require only a minor alteration to an existing disclosure. The fiduciary would also retain flexibility under the proposed exemption as to the most efficient method of conveying the required information. As such, no burden for plan fiduciaries is expected to arise from the notice requirement in the proposed exemption.

The Individual Retirement Plan Provider is also required to maintain or to cause to be maintained, for a period of six years, records relating to the automatic rollover that are necessary to enable certain described persons to determine whether the conditions of the proposed exemption had been met. Because these records would customarily be maintained as a part of usual business practices, this condition is not expected to impose a burden on Individual Retirement Plan Providers.

Because no burden is expected to arise in connection with the notice and recordkeeping requirements in the proposed exemption, the Department has not made a submission for OMB approval of an information collection request in in connection with the proposed exemption. The Department requests comments on any potential impact of the notice and recordkeeping requirements of the proposed exemption.

III. Background

Under the Code, tax-qualified retirement plans are permitted to incorporate provisions requiring an immediate distribution to a separating participant without the participant's consent if the present value of the participant's vested accrued benefit does not exceed $5,000.[2] A distribution by a plan in compliance with such a provision is termed a mandatory distribution, commonly referred to as a "cash-out." Separating participants may choose to roll the cash-out, which is an eligible rollover distribution,[3] into an eligible retirement plan,[4] or they may retain the cash-out as taxable distribution. Within a reasonable period of time prior to making a mandatory distribution, plan administrators are required by section 402(f) of the Code to provide a separating participant with a written notice explaining, among other things, the following: the Code provisions under which the participant may elect to have the cash-out transferred directly to an eligible retirement plan and that if an election is not made, such cash-out is subject to the automatic rollover provisions of Code section 401(a)(31)(B); the provision requiring income tax withholding if the cash-out is not directly transferred to an eligible retirement plan; and the provisions under which the distribution will not be taxed if the participant transfers the account balance to an eligible retirement plan within 60 days of receipt.[5]

As part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA),[6] section 401(a)(31) of the Code was amended to require that, absent an affirmative election by the participant, certain mandatory distributions from a tax-qualified retirement plan be directly transferred to an individual retirement plan[7] of a designated trustee or issuer. Specifically, section 657(a) of EGTRRA added a new section 401(a)(31)(B)(i) to the Code to provide that, in the case of a trust that is part of an eligible plan,[8] the trust will not constitute a qualified trust unless the plan of which the trust is a part provides that if a mandatory distribution of more than $1,000 is to be made and the participant does not elect to have such distribution paid directly to an eligible retirement plan or to receive the distribution directly, the plan administrator must transfer such distribution to an individual retirement plan. Section 657(a) of EGTRRA also added a notice requirement in section 401(a)(31)(B)(i) of the Code requiring the plan administrator to notify the participant in writing, either separately or as part of the notice required under section 402(f) of the Code, that the participant may transfer the distribution to another individual retirement plan.[9]

Section 657(c)(2)(A) of EGTRRA directed the Department to issue regulations providing safe harbors under which (1) a plan administrator's designation of an institution to receive the automatic rollover and (2) the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary responsibility provisions of section 404(a) of ERISA. Section 657(c)(2)(B) of EGTRRA states that the Secretaries of Labor and Treasury may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of Code section 401(a)(31)(B) automatic rollovers and for other uses that promote the preservation of assets for retirement income.

Where the plan administrator (or other fiduciary)[10] of a plan is a financial institution or an affiliate, and is an individual retirement plan provider,[11] the plan administrator may determine to designate itself or its affiliate as the individual retirement plan provider. In addition, the plan administrator may determine to invest the mandatory distribution in an investment product in which it or its affiliate has an interest. In this regard, section 406(a)(1) prohibits in part, a fiduciary of a plan from causing the plan to engage in a transaction that constitutes a direct or an indirect sale, exchange or leasing of any property between the plan and a party in interest; lending of money or other extension of credit between the plan and a party in interest; furnishing of goods, services, or facilities between the plan and a party in interest; and a transfer to, or use by or for the benefit of, a party in interest of any assets of the plan. Section 406(b)(1) and (b)(2) prohibits a fiduciary with respect to a plan from dealing with the assets of the plan in his own interest or for his own account; and from acting in his individual or in any other capacity in any transaction involving the plan on behalf of a party (or representing a party) whose interests are adverse to the interests of the plan or the interests of its participants or beneficiaries. Accordingly, a violation of section 406(a) and/or (b) may occur if the plan administrator or other fiduciary designates itself or an affiliate as the provider of the individual retirement plan. Also, additional violations may occur if the plan fiduciary determines to invest the mandatory distribution in an investment which it or its affiliate has an interest. Section 408(b)(2) of ERISA provides a conditional statutory exemption for the provision of services by a party in interest to a plan and the payment of reasonable compensation to the party in interest. However, section 408(b)(2) of ERISA does not provide relief from the prohibitions described in section 406(b) of ERISA.[12] If a plan fiduciary uses the authority, control or responsibility which makes such person a fiduciary to cause the plan to pay an additional fee to such fiduciary or to a person in which he has an interest which may affect the exercise of such fiduciary's best judgment as a fiduciary, then a violation of section 406(b) of ERISA would occur.

The Department notes that this proposed class exemption provides relief for a plan fiduciary's designation of itself or an affiliate as individual retirement plan provider to receive automatic rollovers of mandatory distributions from plans for which it or an affiliate serves as the plan sponsor.[13] In addition, relief is provided for the selection of the plan fiduciary's (or an

[2] Code sections 411(a)(11) and 417(e). *See* Code section 411(a)(11)(D) for circumstances where the amount of a cash-out may be greater than $5,000, based on a participant's prior rollover contribution to the plan.

[3] *See* Code section 402(f)(2)(A).

[4] *See* Code section 402(f)(2)(B).

[5] Code section 402(f)(1).

[6] Pub. L. 107–16, June 7, 2001, 115 Stat. 38.

[7] Section 401(a)(31)(B)(i) of the Code requires the transfer to be made to an "individual retirement plan," which section 7701(a)(37) of the Code defines to mean an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).

[8] Section 657(a)(1)(B)(ii) of EGTRRA defines an "eligible plan" as a plan which provides for an immediate distribution to a participant of any "nonforfeitable accrued benefit for which the present value (as determined under section 411(a) of the Code) does not exceed $5,000." The Treasury and the IRS have advised the Department that the requirements of Code section 401(a)(31)(B) apply to a broad range of retirement plans including plans established under Code sections 401(a), 401(k), 403(a), 403(b) and 457.

[9] Conforming amendments to Code sections 401(a)(31) and 402(f)(1) were also made by section 657 of EGTRRA.

[10] Although the provisions of section 401(a)(31)(B) of the Code state that the "plan administrator" will make the transfer to an individual retirement plan, the Department has determined to provide relief for any plan fiduciary affiliated with the plan sponsor who makes the decisions described herein with respect to the automatic rollover.

[11] The Department uses the term individual retirement plan provider, defined in section IV(d), to refer to the entity that is providing the rollover individual retirement plan. For purposes of this exemption, the individual retirement plan provider will either be the plan fiduciary that is the sponsor of the plan from which the rollover was made, or an affiliate.

[12] *See* 29 CFR 2550.408b–2(e).

[13] *See* ERISA section 3(16)(B).

affiliate's) proprietary investment products as the initial investment designation for the mandatory distributions of its plan participants. The proposed exemption does not cover any subsequent investment decisions made by the individual retirement plan provider on behalf of the individual retirement plan account holder.[14] Additionally, the Department anticipates that, where a plan fiduciary which is unrelated to the plan sponsor recommends itself as individual retirement plan provider, and recommends its own proprietary investments as the initial investment of the mandatory distribution, such determinations will ultimately be subject to the independent approval of the plan sponsor and, therefore, may not result in prohibited transactions.[15]

Discussion of the Proposed Exemption

Section I of the proposal describes the transactions that are covered by the exemption. The plan fiduciary who provides the notice in section II(a) and meets the additional requirements described below would be able to be the individual retirement plan provider for its separated employees and to make an initial decision to invest the mandatory distribution in an investment product in which such plan fiduciary or its affiliate has an interest. Additionally, relief is provided for the receipt of fees by the individual retirement plan provider for the receipt of fees by the individual retirement plan provider in connection with the establishment or maintenance of the individual retirement plan, and as a result of the investment of the mandatory distribution in an investment product in which the plan fiduciary or its affiliate has an interest.

Under the proposal, a plan fiduciary must, in connection with the written explanation provided pursuant to section 402(f) of the Code or in the plan's summary plan description or summary of material modifications thereto, notify the participant prior to the mandatory rollover distribution that, absent his or her election, the mandatory distribution will be rolled over to an individual retirement plan provided by the plan fiduciary or an affiliate, and that the plan fiduciary may select its own proprietary investment as the initial investment of the mandatory distribution. In any case, the plan's summary plan description or summary of material modifications thereto will describe the plan's rollover provisions effectuating the requirements of section 401(a)(31)(B) of the Code.

The plan fiduciary must comply with the requirements of the Automatic Rollover Regulation. The term "Automatic Rollover Regulation" refers to the regulation promulgated by the Department at 29 CFR 2550.401a–2, which is proposed elsewhere in this issue of the **Federal Register**.

The plan fiduciary must be the employer, any of whose employees are covered by the plan from which the automatic rollover of the mandatory distribution is made, or an affiliate.

Under the proposal, the individual retirement plan must be established and maintained for the exclusive benefit of the account holder of the individual retirement plan, his or her spouse or their beneficiaries. Under section IV(a) of the proposed exemption, the term individual retirement plan is defined in section 7701(a)(37) of the Code. Section 7701(a)(37) defines individual retirement plan as an individual retirement account described in section 408(a) of the Code and an individual retirement annuity described in section 408(b) of the Code. For purposes of this exemption, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.[18]

The proposal requires that the terms of the individual retirement plan, including the fees and expenses for establishing and maintaining the individual retirement plan, be no less favorable than those available to comparable individual retirement plans for distributions not described in section 401(a)(31)(B) of the Code.

Under the proposed exemption, the individual retirement plan must be invested in an "Eligible Investment Product." Section IV(e) defines the term "Eligible Investment Product" to mean an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution and must seek to maintain a stable dollar value equal to the amount invested in the product by the individual retirement plan. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or a similar financial institution.[19] In addition, the term includes "stable value products" issued by a financial institution that are fully benefit-responsive to the individual retirement plan account holder, *i.e.*, that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder's access to the assets of the individual retirement plan. The Department requests comments as to whether an annuity provider described in section 408(b) of the Code currently offers Eligible Investment Products as defined herein.

The exemption would not apply to the initial investment transaction entered into by an individual retirement plan unless the Eligible Investment Product is provided by a Regulated Financial Institution. A Regulated Financial Institution is defined under the exemption as an entity that: (i) Is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit union Act; an insurance company, the products of which are protected by state guarantee associations; or an investment company registered under the Investment Company Act of 1940.

The Department expects that a Regulated Financial Institution whose investment product is selected by the plan fiduciary on behalf of the individual retirement plan will be a solvent institution capable of honoring its ultimate financial obligation to the account holder.

In addition, the proposal requires that the rate of return or the investment performance of the individual retirement plan investment(s) be no less

[14] The Department notes that where a distribution constitutes the entire benefit rights of a participant, the participant will cease to be a participant covered under the plan within the meaning of 29 CFR 2510.3–3(d)(2)(ii)(B), and the distributed assets will cease to be plan assets within the meaning of 29 CFR 2510.3–101 for purposes of Title I of ERISA. Nevertheless, if the assets are rolled over into an individual retirement plan, the prohibitions of section 4975 of the Code will continue to apply. *See* 29 CFR 2510.3–101(a)(1).

[15] To the extent that an independent plan fiduciary provides investment advice to a plan within the meaning of regulation 29 CFR 2510.3–21(c)(1)(ii)(B), and recommends an investment in its own proprietary investment product, the presence of an unrelated second fiduciary (*e.g.*, plan sponsor) acting on the investment advisor's recommendations on behalf of the plan is not sufficient to insulate the advisor from fiduciary liability under section 406(b) of ERISA. *See* Advisory Opinions 84–03A and 84–04A issued by the Department on January 4, 1984.

[18] *See* 29 CFR 2510.3–2(d).

[19] The investment of plan assets in bank deposits may be covered by ERISA section 408(b)(4) and Code section 4975(d)(4).

favorable than the rate of return or investment performance of an identical investment that could have been made at the same time by a comparable individual retirement plan for distributions not described in section 401(a)(31)(B) of the Code.

The proposal does not permit the individual retirement plan to pay a sales commission in connection with the acquisition of an Eligible Investment Product.

Under the proposed exemption, the individual retirement plan account holder must be able to, within a reasonable time after request and without penalty to the principal amount of the investment, transfer his individual retirement plan balance to a different investment offered by the individual retirement plan provider, or transfer his or her individual retirement plan balance to another individual retirement plan sponsored at a different financial institution. The Department wants to ensure that, once the account holder discovers that an individual retirement plan has been established on his or her behalf, he or she is able to make appropriate investment decisions with respect to the assets of the individual retirement plan or to change individual retirement plan providers without penalty.

The proposal limits the fees that may be paid by the individual retirement plan, as follows: (i) The fees and expenses attendant to the individual retirement plan, including the investment of the assets of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the individual retirement plan provider for comparable individual retirement plans established for eligible rollover distributions that are not subject to the automatic rollover provisions of section 401(a)(31)(B) of the Code; (ii) the fees and expenses, other than establishment charges, attendant to the individual retirement plan, may be charged only against the income earned by the individual retirement plan; and (iii) the fees and expenses shall not exceed reasonable compensation with in the meaning of section 4975(d)(2) of the Code. Accordingly, establishment fees for the individual retirement plan may be paid out of the principal of the mandatory distribution, provided that such fees do not exceed the fees charged to comparable individual retirement plans containing rollover distributions not described in section 401(a)(31)(B) of Code.

The proposed exemption applies only to the automatic rollover of a mandatory distribution described in section 401(a)(31) (B) of the Code. At present, such distributions are limited to nonforfeitable accrued benefits, the present value of which is in excess of $1,000, but is less than or equal to $5,000. For purposes of determining the present value of such benefits, section 401(a)(31)(B) references Code section 411(a)(11). Section 411(a)(11)(A) of the Code provides that, in general, if the present value of any nonforfeitable accrued benefit exceeds $5,000, such benefit may not be immediately distributed without the consent of the participant. Section 411(a)(11)(D) of the Code also provides a special rule that permits plans to disregard that portion of a nonforfeitable accrued benefit that is attributable to amounts rolled over from other plans (and earnings thereon) in determining the $5,000 limit. Inasmuch as section 401(a)(31)(B) of the Code requires the automatic rollover of mandatory distributions, as determined under section 411(a)(11), which would include prior rollover contributions, the proposed exemption, if granted, would provide relief in the case of automatic rollovers of mandatory distributions containing such prior rollover contributions.

Lastly, the proposal contains a recordkeeping requirement. The individual retirement plan provider must maintain records to enable certain persons to determine whether the applicable conditions of the exemption have been met. The records must be available for examination by the IRS, the Department, and account holders and their beneficiaries for at least six years from the date of each automatic rollover.

General Information

The attention of interested persons is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 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 such plan.

(2) The proposed exemption, 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;

(3) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code; and

(4) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption.

Written Comments

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments and requests for a hearing 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 address set forth above.

Proposed Exemption

The Department has under consideration the granting of the following class exemption, under the authority of section 408(a) of ERISA 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, August 10, 1990).

I. Transactions

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (i) the fiduciary of an Employee Pension Benefit Plan (plan) using its authority to designate itself or an affiliate as Individual Retirement Plan Provider to receive the automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code, (ii) the initial investment of the mandatory distribution by the plan fiduciary in an investment product in which the plan fiduciary or its affiliate has an interest, (iii) the receipt of fees by the Individual Retirement Plan Provider in connection with the establishment or maintenance of the individual retirement plan, and (iv) the receipt of investment fees by the Individual Retirement Plan Provider or an affiliate as a result of the investment of the mandatory distribution in an investment product in which the plan fiduciary or an affiliate has an interest, provided that the conditions set forth in sections II and III are satisfied.

II. Conditions

(a) In connection with the written explanation provided to the separating

participant pursuant to section 402(f) of the Code, or in the plan's summary plan description or summary of material modifications thereto, the plan fiduciary notifies the participant that, absent his or her election, the mandatory distribution will be rolled over to an individual retirement plan offered by the plan fiduciary or an affiliate, and that the plan fiduciary may select its own proprietary investment for the initial investment of the mandatory distribution.

(b) The requirements of the Automatic Rollover Regulation are met.

(c) The plan fiduciary is the employer any of whose employees are covered by the plan from which the automatic rollover of the mandatory distribution is made, or an affiliate.

(d) The individual retirement plan is established and maintained for the exclusive benefit of the individual retirement plan account holder, his or her spouse or their beneficiaries.

(e) The terms of the individual retirement plan, including the fees and expenses for establishing and maintaining the individual retirement plan, are no less favorable than those available to comparable individual retirement plans for distributions not described in section 401(a)(31)(B) of the code.

(f) The mandatory distribution is invested in an Eligible Investment Product(s), as defined in section IV(e).

(g) The rate of return or the investment performance of the individual retirement plan investment(s) is no less favorable than the rate of return or investment performance of an identical investment(s) that could have been made at the same time by comparable individual retirement plans for distributions not described in section 401(a)(31)(B) of the code.

(h) The individual retirement plan does not pay a sales commission in connection with the acquisition of an eligible Investment Product.

(i) The individual retirement plan account holder may, within a reasonable period of time after his or her request and without penalty to the principal amount of the investment, transfer his individual retirement plan balance to a different investment offered by the Individual Retirement Plan Provider, or transfer his individual retirement plan balance to an individual retirement plan sponsored at a different financial institution.

(j) (1) Fees and expenses attendant to the individual retirement plan, including the investment of the assets of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the Individual Retirement Plan Provider for comparable individual retirement plans established for eligible rollover distributions that are not subject to the automatic rollover provisions of section 401(a)(31)(B) of the Code;

(2) Fees and expenses attendant to the individual retirement plan, with the exception of establishment charges, may be charged only against the income earned by the individual retirement plan; and

(3) Fees and expenses are not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code.

(k) The present value of the nonforfeitable accrued benefit, as determined under section 411(a)(11) of the Code, does not exceed the maximum amount under section 401(a)(31)(B) of the Code.

III. Recordkeeping

(a) The Individual Retirement Plan Provider maintains or causes to be maintained for a period of six (6) years from the date of each automatic rollover the records necessary to enable the persons described in paragraph (b) of this section to determine whether the applicable conditions of this exemption have been met. Such records must be readily available to assure accessibility by the persons identified in paragraph (b) of this section.

(b) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this section are unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; and

(2) Any account holder of an individual retirement plan established pursuant to this exemption, or any duly authorized representative of such account holder.

(c) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Individual Retirement Plan Provider, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Individual Retirement Plan Provider shall be subject to the civil penalty that may be assessed under section 502(i) of ERISA or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b).

IV. Definitions

(a) The term "individual retirement plan" means an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of this exemption, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.

(b) The term "Employee Pension Benefit Plan" refers to an employee pension benefit plan defined in ERISA section 3(2)(A).

(c) The term "Automatic Rollover Regulation" refers to the regulation promulgated by the Department at 29 CFR 2550.404a–2.

(d) The term "Individual Retirement Plan Provider" means an entity that is eligible to serve as an individual retirement account trustee under section 408(a)(2) of the Code, or for purposes of an individual retirement annuity described in section 408(b) of the Code, an insurance company which is qualified to do business under the law of the jurisdiction in which the annuity contract, or endowment contract (described in 26 CFR 1.408–3 (e)), is sold.

(e) The term "Eligible Investment Product" means an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution and must seek to maintain a stable dollar value equal to the amount invested in the product by the individual retirement plan. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, the term includes "stable value products" issued by a financial institution that are fully benefit-responsive to the individual retirement plan account holder, *i.e.*, that provide a liquality guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder's access to the individual retirement plan's assets.

(f) The term "Regulated Financial Institution" means an entity that: (i) Is

subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guarantee associations; or an investment company registered under the Investment Company Act of 1940.

(g) An "affiliate" of a person includes: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; or (2) Any officer, director, partner or employee of the person;

(h) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Signed at Washington, DC, this 5th day of February.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 04–4552 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0231(2004)]

Material Hoists, Personnel Hoists, and Elevators; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA submits comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Material Hoists, Personnel Hoists, and Elevators Standard CFR 1926.552). The Standard is designed to protect employees who operate and work around personnel hoists.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 3, 2004.

Facsimile and electronic: Your comments must be submitted (postmarked or received) by May 3, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand-delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR–1218–0231(2004), Room N–2625, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. ICR 1218–0231(2004), in your comments.

Electronic: You may submit comments, but not attachments, through the internet at: *http://ecomments.osha.gov/.*

II. Obtaining Copies of Supporting Statement for the Information Collection

The Supporting Statement for the Information Collection is available for downloading from OSHA's Web site at *http://www.osha.gov.* The supporting statement is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the supporting statement can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Noah Connell, Directorate of Construction, OSHA, U.S. Department of Labor, Room N–3467, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2345.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your comments. Because of security-related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of material by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95)(44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

Posting Requirements

Paragraph (a)(2) requires that the rated load capacities, recommended operating speeds, and special hazard warnings or instructions be posted on cars and platforms.

Paragraph (b)(1)(i) requires that operating rules for material hoists be established and posted at the operators station of the hoist. These rules shall include signal system and allowable line speed for various loads.

Paragraph (c)(10) requires that cars be provided with a capacity and data plate secured in a conspicuous place on the car or crosshead.

These posting requirements are used by the operator and crew of the material and personnel hoists to determine how to use the specific machine and how much it will be able to lift as assembled in one or a number of particular configurations. If not properly used, the machine would be subject to failures, endangering the employees in the immediate vicinity.

Test and Inspection and Certification Records

Paragraph (c)(15) requires that a test and inspection of all functions and safety devices be made following assembly and erection of hoists. The test and inspection are to be conducted under the supervision of a competent person. A similar inspection and test is required following major alteration of an existing installation. All hoists shall be inspected and tested at three month intervals. A certification record (the most recent) of the test and inspection is required to be kept on file, including the date the test and inspection was completed, the identification of the equipment and the signature of the person who performed the test and inspection. This certification ensures

that the equipment has been tested and is in safe operating condition.

Disclosure of Test and Inspection Certification Records

The most recent certification record will be disclosed to a CSHO during an OSHA inspection.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirements in the Material Hoists, Personnel Hoists, and Elevators Standard (29 CFR 1926.552).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the Material Hoists, Personnel Hoists, and Elevators Standard (29 CFR 1926.552).

Type of Review: Extension of a currently-approved information collection requirement.

Title: Material Hoists, Personnel Hoists, and Elevators.

OMB Number: 1218–0231.

Affected Public: Business or other for-profit organizations; not-for-profit institutions; Federal government; State, local or tribal governments.

Number of Respondents: 26,547.

Frequency of Response: On occasion; quarterly.

Total Responses: 143,727.

Average Time per Response: Varies from 2 minutes (.03 hour) for a supervisor to disclose test and inspection certification records to 30 minutes (.50 hour) for a construction worker to obtain and post information for hoists.

Estimated Total Burden Hours: 30,282.

IV. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on February 26, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–4596 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0224(2004)]

Overhead and Gantry Cranes Standard (29 CFR 1910.179); Extension of the Office of Management and Budget's (OMB) Approval of Information-Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comment.

SUMMARY: OSHA solicits comments concerning its proposal to extend OMB approval of the Information Collection requirements contained in the Overhead and Gantry Cranes standard. (29 CFR 1910.179). The paperwork provisions of this standard specify requirements for: Marking the rated load of cranes; preparing, maintaining, and disclosing certification records of hook, hoist chain, and rope inspections and load test reports. The purpose of the requirements is to provide information to employees concerning tests and inspection of critical components of the crane and to provide information about the lifting limits of the crane. This information will be useful in preventing death and serious injuries by ensuring that employees operate overhead and gantry cranes within the rated loads marked on the equipment.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by May 3, 2004.

Facsimile and electronic transmission: Your comments must be received by May 3, 2004.

ADDRESSES:

I. Submission of Comments

Regular mail, express delivery, hand delivery, and messenger service: Submit your comments and attachments to the OSHA Docket Office, Docket No. ICR 1218–0224(2004), Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number, ICR 1218–0224(2004), in your comments.

Electronic: You may submit comments, but not attachments, through the Internet at *http://ecomments.osha.gov/*.

II. Obtaining Copies of the Supporting Statement for the Information Collection Request

The Supporting Statement for the Information Collection Request (ICR) is available for downloading from OSHA's Web site at *http://www.osha.gov*. The complete ICR, containing the OMB Form 83–I, Supporting Statement, and attachments, is available for inspection and copying in the OSHA Docket Office, at the address listed above. A printed copy of the ICR can be obtained by contacting Theda Kenney at (202) 693–2222.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA webpage. Please note you cannot attach materials such as studies or journal articles to electronic comments. If you have additional materials, you must submit three copies of them to the OSHA Docket Office at the address above. The additional materials must clearly identify your electronic comments by name, date, subject and docket number so we can attach them to your receipt comments. Because of security related problems there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 693–2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.*, employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorized information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The Standard specifies several paperwork requirements. The following sections describe who uses the information collected under each requirement, as well as how they use it. The purpose of these requirements is to prevent death and serious injuries among employees by ensuring that all critical components of the crane are inspected and tested on a periodic basis and that the crane is not used to lift loads beyond its rated capacity.

• *Marking the Rated Load (paragraphs (b)(3) and (b)(5)).* Paragraph (b)(5) requires that the rated load be plainly marked on the side of each crane. If the crane has more than one hoist, the rated load must be marked on each hoist or the load block. The manufacturer will mark the rated loads. If the crane is modified, paragraph (b)(3) requires the new rating to be determined and marked on the crane. Reports of the rated load test are also required. This function would most likely fall to the employer. Marking the rated-load capacity of a crane ensures that employers and employees will not exceed the limits of the crane, which can result in crane failure.

• *Certification Records for Hook and Hoist Chain Inspections (paragraphs (j)(2)(iii), (j)(2)(iv)).* Paragraphs (j)(2)(iii) and (j)(2)(iv) require daily and monthly inspections of hooks and hoist chains, respectively. After each monthly inspection, employers are to prepare a certification record that includes the date of the inspection, the signature of the person who performed the inspection, and the serial number, or other identifier, of the inspected hook or hoist chain. Certification records provide employers, employees, and OSHA compliance officers with assurance that the hooks and hoist chains used on cranes regulated by the Standard have been inspected as required by the Standard. These inspections help assure that the equipment is in good operating condition, thereby preventing failure of the hooks or hoist chains during material handling. These records also provide the most efficient means for the compliance officers to determine that an employer is complying with the Standard.

• *Reports or Rated Load Tests (paragraph (k)(2)).* Under this provision, employers must make readily available test reports of load-rating tests conducted under paragraph (b)(3) for modified cranes, and for hooks repaired as stated in paragraph (l)(3)(iii)(*a*) of the Standard.

These reports inform the employer, employees, and OSHA compliance officers that a rated load test was performed, providing information about the capacity of the crane and the adequacy of the repaired hook. This information is used by crane operators so that they will not exceed the rated load of the crane or hook.

• *Certification Records of Rope Inspections (paragraph (m)).* Paragraph (m)(1) requires employers to inspect thoroughly all running rope in use, and do so at least once a month. In addition, rope which has been idle for at least a month must be inspected before use, as prescribed by paragraph (m)(2), and a record prepared to certify that the inspection was done. The certification records must include the inspection date, the signature of the person conducting the inspection, and the identifier of the rope inspected. Employers must keep the certification records on file and available for inspection. The certification records provide employers, employees, and OSHA compliance officers with assurance that the ropes are in good condition.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

• Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of OSHA's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and -transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collections requirements in the Overhead and Gantry Cranes Standard (29 CFR 1910.179). The Agency will summarize the comments submitted in response to this notice, and will include this summary in its request to OMB to extend the approval of these information collection requirements.

Type of Review: Extension of currently approved information collection requirements.

Title: Overhead and Gantry Cranes Standard (29 CFR 1910.179).

OMB Number: 1218–0224.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local or Tribal governments.

Number of Respondents: 35,000.

Frequency of Recordkeeping: On occasion; monthly.

Average Time per Response: Varies from 5 minutes (.08 hour) to disclose certification records to 2 hours to obtain and post rated load information on cranes.

Total Annual Hours Requested: 360,179.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on February 26, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–4597 Filed 3–1–04; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request use

of NA Form 14127, Microfilm Rental Order Form, used by customers/researchers for renting roll(s) of a microfilm publication. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before May 3, 2004, to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–837–3213; or electronically mailed to *tamee.fechhelm@nara.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694, or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways, including the use of information technology, to minimize the burden of the collection of information on respondents. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Microfilm Rental Order Form.

OMB number: 3095–NEW.

Agency form number: NA Form 14127.

Type of review: Regular.

Affected public: Individuals or households.

Estimated number of respondents: 5,200.

Estimated time per response: 10 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 867 hours.

Abstract: The NARA microfilm publications provides ready access to records for research in a variety of fields including history, economics, political science, law, and genealogy. NARA emphasizes microfilming groups of records relating to the same general subject or to a specific geographic area. For example, the decennial population censuses from 1790 to 1930 and their related indexes are available on microfilm. Census records constitute the vast majority of microfilmed records available currently through the rental program.

Dated: February 17, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–4520 Filed 3–1–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Electronic Records Policy Working Group Public Meeting

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of public meeting.

SUMMARY: The Electronic Records Policy Working Group is holding a public meeting to obtain views from the public and Federal agencies on implementing section 207(e)(1)(A) of the E-Government Act of 2002. That section calls for "the adoption by agencies of policies and procedures to ensure that chapters 21, 25, 27, 29, and 31 of title 44, United States Code, are applied effectively and comprehensively to Government information on the Internet and to other electronic records." Additional information on the Electronic Records Policy Working Group and the meeting agenda is provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The meeting will be held on March 30, 2004, from 1 p.m. to 4 p.m.

Because seating is limited to 200 people and we must provide a list of attendees to the building security staff in advance, you must register no later than March 26, 2004. Registrations will be taken on a first-come, first-served basis.

ADDRESSES: The location of the meeting is: National Capital Planning Commission, 401 9th Street, NW., Suite 500 North, Washington DC 20576.

FOR FURTHER INFORMATION CONTACT: Pamela Mason at 301–837–0975 or *pamela.mason@nara.gov.*

SUPPLEMENTARY INFORMATION: The Electronic Records Working Group was established by the Interagency Committee on Government Information (ICGI), to fulfill the requirements of subsection 207(e) of the Act, "Public Access to Electronic Information." The Working Group's members are drawn from a number of Federal agencies, with NARA as the chair. The Working Group has held several focus groups with interested stakeholders from Federal agencies, public interest groups, and professional organizations to address the following three issues:

- The definition to be used for "Government information on the Internet and other electronic records".

The operating definitions currently used by the Working Group are as follows:

Government information on the Internet—

- Information posted on Government Web sites,
- Information exchanged between Federal agencies,
- Information exchanged between Federal agencies and the public,
- Information exchanged between Federal agencies and other governments,
- Government-enabled Web services,
- Standard government forms,
- E-government business transactions.

Other electronic records—Electronic information meeting the definition of a Federal record per 44 U.S.C. 3301. *Records* include:

- All books, papers, maps, photographs, machine readable materials, or other documentary materials,
- Regardless of physical form or characteristics,
- Made or received by an agency of the United States government:
- Under Federal law, or
- In connection with the transaction of public business;
- And preserved or appropriate for preservation by that agency or its legitimate successor:
- As evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the government, or
- Because of the informational value of the data in them (44 U.S.C. 3301).
- Perceived barriers to effective management of "Government information on the Internet and other electronic records".

The operating definition of *effective management* currently used by the Working Group includes:

- Managing through the life cycle,
- Providing for accessibility and retrieval,

- Providing sufficient security,
- Ensuring consistency (ability to reproduce record),
- Providing for the integrity of records over time,
- Ensuring no loss of records,
- Ensuring compatibility with standard formats,
- Managing format changes over time,
- Providing for long-term record storage and migration of formats,
- Managing the location of records over time,
- Cost effective,
- Appropriate long-term custodianship.
- What guidance tools would assist in overcoming the identified barriers.

At this public meeting, the Working Group will highlight findings from the focus groups and seek additional comments from the attendees on the three issues.

Dated: February 25, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–4612 Filed 3–1–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management Notice of Reestablishment

The Deputy Director of the National Science Foundation has determined that the reestablishment of the Oversight Council for the International Arctic Research Center is necessary and in the pubic interest in connection with the performance of the duties imposed upon the National Science Foundation (NSF) by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Oversight Council for the International Arctic Research Center (9535).

Nature/Purpose: The Oversight Council will advise NSF and the University of Alaska, Fairbanks on scientific, policy, and management issues relating to the operation of the IARC. The Oversight Council will review annual program plans of the IARC before submission to NSF.

Responsible NSF Official: Thomas Pyle, Head, Arctic Science Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Suite 755, Arlington, VA 22230. *Telephone:* 703/292–8030.

Dated: February 26, 2004.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 04–4593 Filed 3–1–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND PLACE: 9:30 a.m., Tuesday, March 9, 2004.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The two items are open to the public.

MATTERS TO BE CONSIDERED:

7461A Railroad Accident Report—Derailment of a Canadian Pacific Railway Train near Minot, North Dakota, on January 18, 2002.

7539A Marine Accident Report—Sinking of the U.S. Small Passenger Vessel Panther near Everglades City, Florida, on December 30, 2002.

NEWS MEDIA CONTACT: Telephone (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, March 5, 2004.

The public may view the meeting via a live or archived webcast by accessing a link under "News & Events" on the NTSB home page at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: February 27, 2004.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 04–4747 Filed 2–27–04; 2:11 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–395]

South Carolina Electric and Gas Company, Virgil C. Summer Nuclear Station; Notice of Availability of the Final Supplement 15 to the Generic Environmental Impact Statement Regarding License Renewal for the Virgil C. Summer Nuclear Station

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a final plant-specific supplement to the "Generic Environmental Impact Statement (GEIS)", NUREG–1437, regarding the renewal of operating license NPF–12 for Virgil C. Summer Nuclear Station (V.C. Summer), for an additional 20 years of operation. V.C. Summer is owned by South Carolina Electric and Gas Company (SCE&G), and is located in Fairfield County, South Carolina, approximately 26 miles northwest of Columbia, South Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative methods of power generation.

It is stated in Section 9.3 of the report:

Based on (1) The analysis and findings in the GEIS (NRC 1996; 1999); (2) the Environmental Report submitted by SCE&G (SCE&G 2002b); (3) consultation with Federal, State, and local agencies; (4) the staff's own independent review; and (5) the staff's consideration of public comments, the staff recommends that the Commission determine that the adverse environmental impacts of license renewal for V.C. Summer are not so great that preserving the option of license renewal for energy planning decisionmakers would be unreasonable.

The final Supplement 15 to the GEIS is available for public inspection in the NRC Public Document Room (PDR) located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20852, or from the Publicly Available Records (PARS) component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* The final supplement to the GEIS is also available for public inspection at the Thomas Cooper Library, 1322 Greene Street, Columbia, South Carolina 29208, and at the Fairfield County Library, 300 Washington Street, Winnsboro, South Carolina 29180.

FOR FURTHER INFORMATION CONTACT: Mr. William Dam, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Mail Stop O–11 F1, Washington, DC 20555. Mr. Dam may be contacted at (301) 415–4014 or *WLD@nrc.gov.*

Dated at Rockville, Maryland, this 23rd day of February, 2004.

For the Nuclear Regulatory Commission.

Pao Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–4574 Filed 3–1–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 1, 8, 15, 22, 29, April 5, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 1, 2004

Tuesday, March 2, 2004

9:30 a.m. Meeting with Advisory Committee on the Medical Uses of Isotopes, (ACMUI) and NRC Staff (Public Meeting) (Contact: Angela Williamson, 301–415–5030).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Wednesday, March 3, 2004

9:30 a.m. 25th Anniversary Three Mile Island (TMI) Unit 2 Accident Presentation (Public Meeting) (Location: TWFN Auditorium, 11545 Rockville Pike) (Contact: Sam Walker, 301–415–1965).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2:45 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, March 4, 2004

1:30 p.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Waste Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of March 8, 2004—Tentative

Tuesday, March 9, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Material Safety and Safeguards (NMSS) Programs, Performance, and Plans—Material Safety (Public Meeting) (Contact: Claudia Seelig, 301–415–7243).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of March 15, 2004—Tentative

There are no meetings scheduled for the Week of March 15, 2004.

Week of March 22, 2004—Tentative

Tuesday, March 23, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Regulatory Research (RES), Programs, Performance, and Plans (Public Meeting) (Contact: Alan Levin, 301–415–6656).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

1:30 p.m. Briefing on Status of Office of Nuclear Security and Incident Response (NSIR) Programs, Performance, and Plans (Public Meeting) (Contact: Jack Davis, 301–415–7256).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

2:30 p.m Discussion of Security Issues (Closed—Ex. 1).

Wednesday, March 24, 2004

9:30 a.m. Briefing on Status of Office of Nuclear Reactor Regulation (NRR), Programs, Performance, and Plans (Public Meeting) (Contact: Mike Case, 301–415–1275).

This meeting will be webcast live at the Web address—*www.nrc.gov.*

Week of March 29, 2004—Tentative

There are no meetings scheduled for the Week of March 29, 2004.

Week of April 5, 2004—Tentative

There are no meetings scheduled for the Week of April 5, 2004.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at *www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: February 26, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–4670 Filed 2–27–04; 9:40 am]

BILLING CODE 7590–01–M

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, February 5, 2004, through February 19, 2004. The last biweekly notice was published on February 17, 2004 (69 FR 7517).

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 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 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 file such a supplement which satisfies 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. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois, Docket No. 50–219, Oyster Creek Generating Station, Ocean County, New Jersey, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of amendment request: January 30, 2004.

Description of amendment request: The licensee proposes to revise the operating licenses to reflect the current 100% ownership of AmerGen by Exelon Generation Company. In particular, the proposed amendments will remove PECO and British Energy from the licenses, and will remove certain license conditions in their entirety which were imposed to acknowledge the indirect foreign ownership in AmerGen by British Energy plc. 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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes are administrative in nature and would merely conform the facility operating licenses to reflect the current ownership structure of AmerGen. No actual plant equipment or accident analyses will be affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes are administrative in nature and would merely conform the facility operating licenses to reflect the current ownership structure of AmerGen. No actual plant equipment or accident analyses will be affected by the proposed changes and no failure modes not bounded by previously evaluated accidents will be created.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change is administrative in nature and would merely conform the facility operating licenses to reflect the current ownership structure of AmerGen. No actual plant equipment or accident analyses will be affected by the proposed changes. Additionally, the proposed changes will not relax any criteria used to establish safety limits, will not relax any safety system settings, or will not relax the bases for any limiting conditions for operation. Therefore, the proposed changes do not involve a significant reduction in any 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: Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2 (IP2), Westchester County, New York

Date of amendment request: January 29, 2004.

Description of amendment request: The proposed amendment would increase the maximum authorized reactor core power level from 3114.4 megawatt thermal (MWt) to 3216 MWt. This represents a nominal increase of 3.26% rated thermal power. 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 evaluations and analyses associated with this proposed change to core power level have demonstrated that all applicable acceptance criteria for plant systems, components, and analyses (including the Final Safety Analysis Report Chapter 14 safety analyses) will continue to be met for the proposed increase in licensed core thermal power for IP2. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or the operational performance of any potentially affected system, component or analysis. Therefore, the probability of an accident previously evaluated is not affected by this change. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its intended safety function. Further, the radiological dose evaluations in support of this power uprate effort show all acceptance criteria are met.

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 evaluations of this proposed amendment show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR [final safety analysis report] Chapter 14 safety analyses) will continue to be met for the proposed power increase in IP2 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or analyses. The subject increase in core thermal power will not adversely affect the ability of any safety-related system to meet its safety function. Furthermore, the conditions and changes associated with the subject increase in core thermal power will neither cause initiation of any accident, nor create any new credible limiting single failure. The power uprate does not result in changing the status of events previously deemed to be non-credible being made credible. Additionally, no new operating modes are proposed for the plant as a result of this requested change.

Therefore, the subject increase in core thermal power level will not create the

possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The evaluations associated with this proposed change show that all applicable acceptance criteria for plant systems, components, and analyses (including FSAR Chapter 14 safety analyses) will continue to be met for this proposed increase in IP2 licensed core thermal power. The subject increase in core thermal power will not result in conditions that could adversely affect the integrity (material, design, and construction standards) or operational performance of any potentially affected system, component, or analysis. The subject power uprate will not adversely affect the ability of any safety-related system to meet its intended safety function.

Therefore, the subject increase in core thermal power will 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: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: February 9, 2004.

Description of amendment request: The proposed amendment would remove the pressurizer heatup and cooldown limits, and the associated action and surveillance requirements, from the Technical Specifications and place them in a licensee controlled document.

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 probability of an accident is unchanged as a result of the proposed change to delete the ANO–2 [Arkansas Nuclear One, Unit 2] pressurizer heatup and cooldown rates and associated action, surveillance requirement, and bases from the TS [Technical Specification]. The cooldown and heatup rates are not initiators to any accidents or pressurizer transients discussed in the ANO–2 SAR [Safety Analysis Report]. Therefore, the probability of an accident is not changed.

The purpose of the pressurizer heatup and cooldown limits is to ensure that given transient events will not negatively affect the pressurizer structural integrity beyond Code [American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code] allowables. These limits will be maintained within ASME Code allowables in a licensee controlled document in accordance with 10 CFR 50.59. Therefore, the consequences of an accident are not increased.

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 limitations imposed on the pressurizer heatup and cooldown rates are provided to assure that the pressurizer is operated within the design criteria assumed for the flaw evaluation and fatigue analysis performed in accordance with the ASME Code Section XI, subsection IWB–3600 requirements. The ANO–2 SAR has analyzed the conditions that would result from a thermal or pressurization transient on the ANO–2 pressurizer. The proposed deletion of the pressurizer heatup and cooldown rates and relocation of the limits to a licensee controlled document does not change the way that the pressurizer is designed or operated.

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.

The margin of safety is established by the rules contained in the ASME Section III Code. Any future changes to the cooldown or heatup rates will be evaluated using 10 CFR 50.59, "Changes, Tests and Experiments," and are required to meet the ASME Code margins.

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.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket No. 50–277, Peach Bottom Atomic Power Station, Unit 2, York and Lancaster Counties, Pennsylvania

Date of application for amendment: February 12, 2004.

Description of amendment request: The proposed amendment would revise technical specification (TS) Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation," to increase the TS Allowable Value (AV) related to the setpoint for the Main Steam Tunnel Temperature—High system isolation function for those instruments located within the Reactor Building. A new Function, 1.f, would be added to represent the Reactor Building Main Steam Tunnel Temperature—High. Existing Function 1.e would be renamed to clarify that it represents only the Turbine Building Main Steam Tunnel Temperature—High.

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 leak detection instrumentation associated with the proposed amendment is designed to detect Main Steam Line leakage in the range of one to ten percent of rated steam flow. This design basis remains unchanged. This ensures that the criteria for acceptance as established in the original licensing bases remains valid. The previous analysis for establishing the allowable value for Main Steam Line Tunnel High temperature in the Reactor Building can be improved using industry standard, state of the art computer modeling techniques. The new analysis using the GOTHIC computer code is appropriate because it accurately accounts for the building heat structures, HVAC effects, and outside air temperatures. The proposed change increases the operating margin, which reduces the potential for unnecessary plant transients. Raising the setpoint causes a greater time to detect the leak, but remains bounded by existing analysis for the design basis break of the main steam line documented in Table 14.9.8 of the Peach Bottom [Updated Final Safety Analysis Report] UFSAR. There are no impacts on equipment qualification. Changes to the instrumentation used to detect a steam line leak do not affect the probability of occurrence of the leak. Hence, it is concluded that raising the allowable value for Reactor Building Main Steam Tunnel high temperature does not significantly increase 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 proposed amendment does not impact the physical design or location of the associated leak detection instrumentation. The leak detection instrumentation associated with the proposed amendment will continue to detect main steam line leakage in the range of one to ten percent of rated steam flow. The instruments will still initiate the automatic isolation of the appropriate containment isolation valves to mitigate steam leakage as credited in the original licensing bases. This proposed amendment is associated only with the results of a main steam line leak in the Reactor Building portion of the Main Steam Tunnel and has no impact on the initiation of this leak. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Steam leaks in the affected area of the Reactor Building will be detected on a timely basis so that the Group 1 Primary Containment Isolation Valves are promptly closed. The analysis performed for the proposed amendment demonstrates that the appropriate instruments will promptly initiate automatic system isolation upon sensing a temperature in excess of the new setpoint. Therefore, the proposed amendment ensures that the criteria for acceptance as established in the original licensing bases remain valid. Further, the proposed amendment eliminates a potential cause for unnecessary plant shutdowns created by conditions other than a main steam line leak. Equipment qualification and structural integrity of systems, structures, and components located within the Reactor Building are not affected by the proposed amendment. Therefore, the proposed amendment does not involve a significant reduction in the 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: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 2301 Market Street, S23–1, Philadelphia, PA 19101.

NRC Acting Section Chief: Darrell J. Roberts.

FPL Energy Seabrook, LLC, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 4, 2004.

Description of amendment request: This amendment request proposes to update the Technical Specifications (TSs) to correct a non-conservatism in a TS Table, correct a reference error, update titles, incorporate formatting changes to increase ease of use, and remove a permit issuance date to ease administrative burden.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR) Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient or accident conditions nor do they change any of the procedures related to operation of the plant. The proposed changes do not alter or prevent the ability of structures, systems and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes are editorial in nature and only correct, update and modify the Technical Specifications and Environmental Protection Plan.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, and do not significantly increase individual or cumulative occupational/public radiation exposures.

Based on the above, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes.

The proposed changes are editorial in nature and only update Seabrook Station Technical Specifications and Environmental Protection Plan to provide consistency and facilitate ease of use. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient or accident conditions. The changes do not introduce a new mode of plant operation. The changes do not affect plant safety. The plant's design and design basis are not revised and the current safety analyses remain in effect.

Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The propose changes do not involve a significant reduction in the margin of safety.

The proposed changes are editorial changes to the Seabrook Station Technical Specifications and Environmental Protection Plan. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes.

Thus, it is concluded that the proposed changes 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: M.S. Ross, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.

Acting NRC Section Chief: Darrell J. Roberts.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: December 9, 2003.

Description of amendment request: The proposed amendment request would: (1) Incorporate into the Updated Safety Analysis Report the overall Main Steam Isolation Valve (MSIV) Leakage Pathway configuration (including the post-accident manual actions necessary to establish that configuration) upon Nuclear Regulatory Commission (NRC) approval, (2) incorporate into the Cooper Nuclear Station (CNS) licensing basis the loss-of-coolant accident (LOCA) dose calculation methodology (currently approved on an interim basis) upon permanent approval by the NRC, and (3) delete License Condition 2.C.(6), eliminating the commitment to provide potassium iodide to the control room occupants during LOCA conditions with core damage.

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 ALT [alternate leakage treatment] pathway was determined using the NRC-endorsed method described in Reference 7.3 [NEDC–31858P–A Class III, August 1999, "BWROG [Boiling Water Reactor Owners Group] Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems"]. The proposed manual actions to establish that configuration are designed to assure that MSIV leakage resulting after a LOCA with core damage will reach the Main Turbine Condenser via a pathway that has been evaluated as being seismically robust. The LOCA dose calculation methodology assumes this leakage reaches the turbine condenser complex. The manual actions are simple to perform and there are no concerns for personnel safety in carrying out these actions within the timeframes established. Accordingly, there is no significant increase in probability or consequences of a previously evaluated accident.

The LOCA dose calculation methodology is already approved on an interim basis, as documented in Reference 7.1 [letter to C. Warren (NPPD) [Nuclear Public Power District] from U.S. Nuclear Regulatory Commission dated February 21, 2003, "Cooper Nuclear Station—Issuance of Amendment Regarding Design Basis Accidents" Radiological Dose Assessment Methodologies, and Revision to License Condition 2.C.(6) (TAC No. MB4654)"]. As there are no technical issues to resolve, the effects of permanent approval on the probability or consequences of an accident are bounded by the previous safety conclusions of License Amendment 196.

The deletion of License Condition 2.C.(6), following implementation of the seismic evaluation and permanent approval of the LOCA dose calculation methodology, is an administrative change to the CNS Operating License. Therefore, there are no associated effects on the probability or consequences of previously evaluated accidents.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No

The proposed changes only involve the treatment of the Loss-of-Coolant Accident. No other new or different kinds of accidents can be created by the proposed changes.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No

The LOCA dose calculation methodology credits MSIV leakage plateout in the Main Turbine Condenser prior to release to the Turbine Building. The ALT pathway to the Main Turbine Condenser was determined using the NRC-endorsed method described in Reference 7.3. Therefore, the effects on safety margins due to crediting this configuration are bounded by the NRC Safety Evaluation conclusions on this methodology. Using the MSIV leakage assumed in the LOCA analysis and conservative assumptions, there is sufficient time for the CNS personnel to take the simple actions necessary to configure the pathway, and thereby assure that the radiological consequences are bounded by the LOCA dose calculation methodology results. Accordingly, there is no significant reduction in safety margin.

The LOCA dose calculation methodology is already approved on an interim basis, as documented in Reference 7.1. As there are no technical issues to resolve, the effects of permanent approval on the [] [margin of safety] are bounded by the previous safety conclusions of License Amendment 196.

The deletion of License Condition 2.C.(6), following implementation of the seismic evaluation and permanent approval of the LOCA dose calculation methodology, is an administrative change to the CNS Operating License. Therefore, there are no associated effects on safety margins.

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: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa; Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin; Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota; Docket No. 50–255, Palisades Plant, Van Buren County, Michigan; Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin; Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: January 30, 2004.

Description of amendment request: The proposed amendment deletes requirements in the Technical Specifications (TS) to maintain hydrogen recombiners and hydrogen and oxygen 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 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 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 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 January 30, 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 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 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 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 elimination of the hydrogen recombiner requirements and 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 recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and 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 elimination of the hydrogen recombiner requirements and 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.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Morgan Lewis, 1111 Pennsylvania Avenue NW., Washington, DC 20004.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 1, 2003.

Description of amendment request: The proposed changes to the Fort Calhoun Technical Specifications (TSs) consist primarily of typographical changes and relocation of material not required to be in the TSs. The licensee has proposed changes to the following TSs: (1) Item 14 of Table 3–3 regarding testing of nuclear detector well cooling annulus exit air temperature detectors, (2) the title of Item of 10a.2 of Table 3–5, (3) TS Section 3.17(5)(ii), (4) TS Section 5.5, "Review and Audit," (5) TS Section 5.6, "Reportable Event Action," (6) TS Sections 5.7.1.b, 5.7.1.c, and 5.7.1.d, (7) TS Section 5.9.1.a, "Startup Report," and (8) TS Section 5.9.4.c, "Fire Protection Program Deficiency Report."

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 change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change relocates requirements for Nuclear Detector Cooling that do not meet the criteria for inclusion in the TS set forth in 10 CFR 50.36(c)(2)(ii). The requirements for Nuclear Detector Cooling are being relocated from TS to the USAR [Updated Safety Analysis Report], which will be maintained pursuant to 10 CFR 50.59, thereby reducing the level of regulatory control. The level of regulatory control has no impact on the probability or consequences of an accident previously evaluated. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The correction of typographical errors and relocation of specifications is not an initiator of any previously evaluated accident. The proposed changes will not prevent safety systems from performing their accident mitigation function as assumed in the safety analysis.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change relocates requirements for Nuclear Detector Cooling that do not meet the criteria for inclusion in TS set forth in 10 CFR 50.36(c)(2)(ii). The proposed change only affects the technical specifications and does not involve a physical change to the plant. Modifications will not be made to existing components nor will any new or different types of equipment be installed. The proposed change corrects typographical errors and relocates information that is unnecessary in the TS. This change will not alter assumptions made in safety analysis and licensing bases.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change relocates requirements for Nuclear Detector Cooling that do not meet the criteria for inclusion in TS set forth in 10 CFR 50.36(c)(2)(ii). The change will not reduce a margin of safety since the location of a requirement has no impact on any safety analysis assumptions. In addition, the relocated requirements for Nuclear Detector Cooling remain the same as the existing TS. Since any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59, there will be no reduction in a margin of safety.

The additional proposed changes correct typographical errors and relocate redundant information not required to be in the TS.

Therefore, this technical specification change does not involve a significant reduction in the 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: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: December 30, 2003.

Description of amendment requests: The proposed amendment deletes the requirements from the technical specifications (TS) 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 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 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 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 December 30, 2003.

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.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: December 30, 2003.

Brief description of amendments: The amendment revised the Administrative Controls Section 5.1.5 to state any Senior Reactor Operator may be designated to be responsible for the control room command function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.92(c), 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?

The proposed change to Technical Specifications Administrative Controls Section 5.1.5, involves the use of a more generic designation of SRO [Senior Reactor Operator] for the unit staff position responsible for the control room command function. Since the proposed change is administrative in nature, it does not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. The proposed change also does not affect the operation, maintenance, or testing of the plant. Therefore, the response of the plant to previously analyzed accidents will not be affected. Consequently, 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 previously evaluated?

As a result of the proposed change to the Technical Specifications, the qualification requirements for the unit staff position responsible for the control room command function will remain unchanged and the plant staff will continue to meet applicable regulatory requirements. Also, since no change is being made to design, operation, maintenance, or testing of the plant, no new methods of operation or failure modes are introduced by the proposed change. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

3. Does the proposed change involve a significant decrease in the margin of safety?

The proposed change to the Technical Specifications will have no adverse impact on the onsite organizational features necessary to assure safe operation of the plant since the qualification requirements for the unit staff position for the control room command function remain unchanged. The adoption of the more generic designation of SRO for the individual responsible for control room command function will also reduce the regulatory burden of having to devote limited resources to process a license amendment whenever a title change for this position is implemented, thus improving plant efficiency. Therefore, the proposed change does not invoice a significant decrease in the 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: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: John A. Nakoski.

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: February 3, 2004.

Description of amendment request: The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions are revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 4.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated February 3, 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 proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS Limiting Conditions for Operation (LCO). The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant.

The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: A. H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: January 21, 2004.

Brief description of amendments: The amendment would revise Technical Specifications (TSs) 3.3.1, "Reactor Trip System (RTS) Instrumentation," 3.3.2, "Engineered Safety Feature Actuation System (ESFAS) Instrumentation," and 3.3.6, "Containment Ventilation Isolation Instrumentation." The purpose of the amendment is to adopt the completion time, test bypass time, and surveillance frequency time changes approved by the NRC in Topical Reports WCAP–14333–P–A, "Probabilistic Risk Analysis of the RPS [reactor protection system] and ESFAS Test Times and Completion Times," and WCAP–15376–P–A, "Risk-Informed Assessment of the RTS and ESFAS Surveillance Test Intervals and Reactor Trip Breaker Test and Completion Times." The proposed changes would revise the required actions for certain action conditions; increase the completion times for several required actions (including some notes); delete notes in certain required actions; and increase frequency time intervals (including certain notes) in several surveillance requirements (SRs).

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The same reactor trip system (RTS) and engineered safety feature actuation system (ESFAS) instrumentation will continue to be used. The protection systems will continue to function in a manner consistent with the plant design basis. These changes to the Technical Specifications [in the amendment] do not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered.

The proposed changes will not modify any system interface. The proposed changes will not affect the probability of any event initiators [because the proposed changes are not event initiators]. There will be no degradation in the performance of or an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the FSAR [Comanche Peak Final Safety Analysis Report].

The determination that the results of the proposed changes are acceptable [to be considered for plant-specific Technical Specifications] was established in the NRC Safety Evaluations prepared for WCAP–14333–P–A (issued by letter dated July 15, 1998) and for WCAP–15376–P–A (issued by letter dated December 20, 2002). Implementation of the proposed changes will result in an insignificant risk impact. Applicability of these conclusions has been verified through plant-specific reviews and implementation of the generic analysis results in accordance with the respective NRC Safety Evaluation conditions [for the two WCAPs].

The proposed changes to the Completion Times, test bypass times, and Surveillance Frequencies reduce the potential for inadvertent reactor trips and spurious ESF [engineered safety feature] actuations, and therefore do not increase the probability of any accident previously evaluated. The proposed changes do not change the response of the plant to any accidents and have an insignificant impact on the reliability of the RTS and ESFAS signals. The RTS and ESFAS will remain highly reliable and the proposed changes will not result in a significant increase in the risk of plant operation. This is demonstrated by showing that the impact on plant safety as measured by the increase in core damage frequency (CDF) is less than 1.0E–06 per year and the increase in large early release frequency (LERF) is less than 1.0E–07 per year. In addition, for the Completion Time changes, the incremental conditional core damage probabilities (ICCDP) and incremental conditional large early release probabilities (ICLERP) are less than 5.0E–07 and 5.0E–08, respectively. These changes meet the acceptance criteria in Regulatory Guides 1.174 and 1.177. Therefore, since the RTS and ESFAS will continue to perform their [safety] functions with high reliability as originally assumed, and the increase in risk as measured by "CDF, "LERF, ICCDP, ICLERP risk metrics is within the acceptance criteria of existing [NRC] regulatory guidance, there will not be a significant increase in the consequences of any accidents.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) from performing their intended [safety] function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, [the] change[s do] not increase the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The proposed changes will not affect the normal method of plant operation. No performance requirements will be affected or eliminated. The proposed changes will not result in physical alteration to any plant system nor will there be any change in the method by which any safety-related plant system performs its safety function.

There will be no setpoint changes or changes to accident analysis assumptions.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, DNBR [departure from nucleate boiling ratio] limits, F_Q [heat flux hot channel factor], $F\Delta_H$ [nuclear enthalpy rise hot channel factor], LOCA PCT [loss-of-

coolant accident peak cladding temperature], peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the [NRC] Standard Review Plan will continue to be met. Redundant RTS and ESFAS trains are maintained, and diversity with regard to the signals that provide reactor trip and engineered safety features actuation is also maintained. All signals credited as primary or secondary, and all operator actions credited in the accident analyses will remain the same. The proposed changes will not result in plant operation in a configuration outside the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in Regulatory Guides 1.174 and 1.177. Although there was no attempt to quantify any positive human factors benefit due to increased Completion Times and bypass test times, it is expected that there would be a net benefit due to a reduced potential for spurious reactor trips and actuations associated with testing.

Implementation of the proposed changes is expected to result in an overall improvement in safety, as follows:

(a) Reduced testing will result in fewer inadvertent reactor trips, less frequent actuation of ESFAS components, less frequent distraction of operations personnel without significantly affecting RTS and ESFAS reliability.

(b) Improvements in the effectiveness of the operating staff in monitoring and controlling plant operation will be realized. This is due to less frequent distraction of the operators and shift supervisor to attend to instrumentation Required Actions with short Completion Times.

(c) Longer repair times associated with increased Completion Times will lead to higher quality repairs and improved reliability.

(d) The Completion Time extensions for the reactor trip breakers will provide the utilities additional time to complete test and maintenance activities while at power, potentially reducing the number of forced outages related to compliance with reactor trip breaker Completion Times, and provide consistency with the Completion Times for the logic trains.

Therefore, the proposed changes do not involve a significant reduction in the 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: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

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.

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3

Date of amendment request: November 13, 2003.

Brief description of amendment request: The proposed amendment would allow an increase in the licensed power from 3441 megawatts thermal (MWt) to 3716 MWt. This represents an increase of approximately 8 percent above the current rated licensed thermal power. The proposed amendment would also change the operating license and the technical specifications appended to the operating license to provide for implementing uprated power operation.

Date of publication of individual notice in ***Federal Register:*** February 5, 2004.

Expiration date of individual notice: March 8, 2004.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: January 30, 2004.

Brief description of amendment request: The proposed amendment would revise the Cooper Nuclear Station (CNS) Technical Specifications (TS), by adding a temporary note to allow a one-time extension of a limited number of TS Surveillance Requirements (SRs). The temporary note states that the next required performance of the SR may be delayed until the current cycle refueling outage, but no later than February 2, 2005, and it expires upon startup from the refueling outage. With the exception of one SR, the period of additional time requested occurs during the next planned refueling outage.

Date of publication of individual notice in ***Federal Register:*** February 12, 2004 (69 FR 7023).

Expiration date of individual notice: March 15, 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 2, 2003.

Brief description of amendment: The amendment revised Surveillance Requirement (SR) 4.0.2 of the Technical Specifications (TSs) to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified frequency, whichever is greater." The revised SR 4.0.2 specifies that a risk evaluation shall be performed for any surveillance delayed greater than 24 hours and the risk impact shall be managed. In addition, a new Section 6.21 is added to provide for a TS Bases Control Program.

Date of Issuance: February 5, 2004.

Effective date: February 5, 2004 and shall be implemented within 60 days of issuance.

Amendment No.: 240.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 6, 2004 (69 FR 692).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated February 5, 2004.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: June 11, 2003, as supplemented August 20 and October 13, 2003.

Brief description of amendment: The amendment allows the licensee to extend its Appendix J, Type A, Containment Integrated Leak Rate Test, Option B, for H. B. Robinson Steam Electric Plant, Unit No. 2, from the scheduled May 2004 timeframe to no later than April 9, 2007.

Date of issuance: February 11, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No. 199.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 23, 2003 (68 FR 74264).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 11, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket No. 50–270, Oconee Nuclear Station, Unit 2, Oconee County, South Carolina

Date of application of amendment: October 28, 2003.

Brief description of amendment: The amendment revised the licensing basis in the Updated Final Safety Analysis Report (UFSAR) to support installation of a passive low-pressure injection (LPI) cross connect inside containment. The changes to the UFSAR revise the licensing basis for selected portions of the core flood and LPI/Decay Heat Removal piping to allow exclusion of the dynamic effects associated with postulated rupture of that piping by application of leak-before-break technology.

Date of Issuance: February 5, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 338.

Renewed Facility Operating License No. DPR–47: Amendment revised the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** December 9, 2003 (68 FR 68661) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 5, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 12, 2003, as revised by letters dated December 5 and 18, 2003.

Brief description of amendment: By letter dated December 5, 2003, Entergy submitted a revised application for amendment to Grand Gulf Nuclear Station, Unit 1 Technical Specification (TS) 3.3.6.1, "Primary Containment and Drywell Isolation Instrumentation," to add a provision to the APPLICABILITY function that will eliminate the requirement that the Residual Heat Removal System Isolation, Reactor Vessel Water Level-Low, Level 3, be OPERABLE under certain conditions during refueling outages. Specifically, the proposed change requested in the original application dated May 12, 2003, would remove the requirement for this isolation function, specified in Table 3.3.6.1–1, when the upper containment reactor cavity is at the High Water Level condition specified in TS 3.5.2, "Emergency Core Cooling Systems (ECCS) Shutdown." The revised application adds a new surveillance requirement (SR) (SR 3.3.6.1.9) to verify every four hours that the water level in the upper containment pool is greater than or equal to 22 feet 8 inches above the reactor pressure vessel flange, and adds a footnote to Table 3.3.6.1–1, Item 5.b, for MODE 5 that states that the function is not required when the upper containment reactor cavity and transfer canal gates are removed and SR 3.3.6.1.9 is met. The proposed SR and footnote are only applicable in MODE 5. The May 12, 2003, application was previously noticed in the **Federal Register** on June 10, 2003 (68 FR 34665).

Date of issuance: January 23, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment No: 163.

Facility Operating License No. NPF–29: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 2003 (68 FR 69726). The December 18, 2003, supplemental letter provided clarifying information that did not change the scope of the December 15, 2003, **Federal Register** notice or the no significant hazards consideration determination therein.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated January 23, 2004.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: August 15, 2003, as supplemented by letter on September 15, 2003.

Brief description of amendment: The amendment revised the reactor coolant system pressure-temperature limit curves in Section 3.4.11, "RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits," of the Technical Specifications. The revised curves are effective up to 22 effective full-power years.

Date of issuance: January 27, 2004.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 110.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 2, 2003 (68 FR 52235).

The staff's related evaluation of the amendment is contained in a Safety Evaluation dated January 27, 2004.

No significant hazards consideration comments received: No

The September 15, 2003, letter provided clarifying information within the scope of the original application and did not change the staff's initial proposed no significant hazards consideration determination.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: August 28, 2003.

Brief description of amendment: The amendment revised Section 3.1.7, "Standby Liquid Control (SLC) System," of the Technical Specifications to support a transition from GE11 to GE14 fuel in the reactor core. The revised Section 3.1.7 raises the required calculated average boron concentration in the reactor from a concentration equivalent to 660 parts per million (ppm) natural boron to 780 ppm natural boron. The increased concentration is achieved by requiring use of sodium pentaborate solution enriched with the boron-10 isotope.

Date of issuance: February 13, 2004.

Effective date: As of the date of issuance to be implemented prior to startup from Refueling Outage 9.

Amendment No.: 111.

Facility Operating License No. NPF–69: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 30, 2003 (68 FR 56345). The staff's related evaluation of the amendment is contained in a Safety Evaluation dated February 13, 2004.

No significant hazards consideration comments received: No.

PSEG Nuclear, LLC, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: February 14, 2003, as supplemented on October 2, 2003.

Brief description of amendments: The amendments modify the Salem Nuclear Generating Station, Unit Nos. 1 and 2, Technical Specifications (TSs) by: (1) Adding new TS 3/4.7.11, "Fuel Storage Pool Boron Concentration," to define spent fuel pool boron concentration limits; (2) relocating fuel assembly storage requirements currently located in TS 5.6.1.2d to a new TS 3/4.7.12, "Fuel Assembly Storage in the Spent Fuel Pool;" and (3) relocating refueling boron concentration requirements from TS 3/4.9.1, "Boron Concentration," to the Core Operating Limits Report.

Date of issuance: February 6, 2004.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 262 and 244.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the TSs.

Date of initial notice in ***Federal Register:*** April 29, 2003 (68 FR 22753).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 6, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: March 13, 2002, as supplemented on April 1 and November 21, 2003.

Brief description of amendment: The amendment approves revisions to the Updated Final Safety Analysis Report (UFSAR) to update the quality assurance criteria and the basis for the seismic qualification of the ducting installed as part of the suspended ceiling air delivery system in the main control room.

Date of issuance: February 12, 2004.

Effective date: As of the date of issuance and shall be implemented in accordance with 10 CFR 50.71(e).

Amendment No.: 50.

Facility Operating License No. NPF–90: Amendment revised the UFSAR.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18286). The supplemental letters provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 12, 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. 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 file such a supplement which satisfies 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. 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 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).

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: February 6, 2004.

Description of amendment request: The amendment changes the implementation date from 30 days to 120 days for Amendment No. 224 issued on January 16, 2004, that approved a measurement uncertainty uprate to increase the licensed rated power by 1.6 percent from 1500 megawatts thermal (MWt) to 1524 MWt.

Date of issuance: February 13, 2004.

Effective date: February 13, 2004, and the fully implemented date for Amendment No. 224 (issued January 16, 2004) is changed to 120 days.

Amendment No.: 225.

Renewed Facility Operating License No. DPR–40: Amendment revises the implementation date for Amendment No. 224.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Omaha-World Herald. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

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 February 13, 2004.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: February 5, 2004.

Brief description of amendment: The amendment revises Technical Specification 3.7.5, "Auxiliary Feedwater (AFW) System" to incorporate a one-time provision that extends the allowed outage time for an inoperable turbine-driven auxiliary feedwater pump.

Date of issuance: February 6, 2004.

Effective date: February 6, 2004.

Amendment No.: 158.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated February 6, 2004.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Dated at Rockville, Maryland, this 20th day of February 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–4343 Filed 3–1–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26368; File No. 812–12908]

Metropolitan Life Insurance Company, et al.

February 25, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of exemption pursuant to Section 26(c) of the Investment Company Act of 1940 (the "1940 Act") approving a substitution of securities.

Applicants: Metropolitan Life Insurance Company ("MetLife") and New England Life Retirement Investment Account (the "Separate Account") (together, the "Applicants").

Filing Dates: The application was filed on December 10, 2002, and amended and restated on February 23, 2004.

Summary of Application: The Applicants request an order pursuant to Section 26(c) of the 1940 Act to permit the substitution of certain classes of shares of certain portfolios of the Metropolitan Series Fund, Inc. (the "Replacement Portfolios") for Class A shares of certain portfolios of the CDC Nvest Cash Management Trust, CDC Nvest Funds Trust I, and CDC Nvest Funds Trust II (the "Substituted Portfolios").

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 26, 2004, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0604. Applicants, c/o Marie C. Swift, Esq. and Michele H. Abate, Esq., Metropolitan Life Insurance Company, 501 Boylston Street, Boston, MA 02116. Copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. MetLife is a life insurance company that is domiciled in New York and is a wholly owned subsidiary of MetLife, Inc., a publicly traded company. With approximately $331.7 billion of assets under management as of June 30, 2003, MetLife provides individual insurance and investment products to approximately 12 million individuals in the United States. MetLife also provides group insurance and investment products to 37 million employees and family members through their plan sponsors. MetLife operates as a life insurance company in all 50 states, the District of Columbia, and Puerto Rico. Outside the U.S., the MetLife companies have insurance operations in 12 countries serving approximately 8 million customers.

2. The Separate Account is a separate investment account of MetLife and is registered under the 1940 Act as a unit

investment trust. The Separate Account serves as a funding vehicle for variable annuity contracts known as Preference (the "Contracts"), which are no longer available for purchase. The Contracts were initially issued by New England Mutual Life Insurance Company, and subsequent to its merger with and into MetLife, MetLife assumed all of the liabilities and obligations under the Contracts. The Separate Account is a "separate account" as defined in Section 2(a)(37) of the 1940 Act.

The terms of the Contracts funded by the Separate Account permit Contract owners to transfer contract value under the Contracts among subaccounts during the accumulation period and to exchange annuity units during the annuity period. MetLife does not currently impose a charge in connection with a transfer, but has reserved the right to do so (not to exceed $5). MetLife does not limit the number of transfers permitted each contract year, but does require a minimum transfer amount of $25.

3. New England Securities Corporation ("NES") serves as principal underwriter and distributor for the Contracts. NES is an indirect wholly owned subsidiary of New England Life Insurance Company ("NELICO"), which in turn is a subsidiary of MetLife. NES is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the NASD.

4. The Metropolitan Series Fund, Inc. (the "Metropolitan Fund") is registered as an open-end management investment company under the 1940 Act and currently offers thirty-six separate investment portfolios, five of which would be involved in the proposed substitution. The Metropolitan Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the Securities Act of 1933 ("1933 Act") on Form N–1A. Shares of the Metropolitan Fund are offered only to separate accounts established by MetLife, NELICO, MetLife Investors USA Insurance Company, General American Life Insurance Company, or other insurance companies affiliated with any of these insurance companies and to certain eligible qualified retirement plans. The general public may not purchase Metropolitan Fund shares directly.

5. MetLife Advisers LLC serves as the investment adviser to each Replacement Portfolio. MetLife Advisers is an indirect wholly owned subsidiary of NELICO. MetLife Advisers receives an investment advisory fee from each Replacement Portfolio it manages. MetLife Advisers has contracted with subadvisers to make the day-to-day investment decisions for all Replacement Portfolios it manages. Subadvisers are compensated by MetLife Advisers, and not by the Metropolitan Fund. MetLife Advisers derives the amounts that it pays the subadvisers from its own investment advisory fees. The following are the subadvisers for the Replacement Portfolios:

Replacement Portfolios	Subadviser
Metropolitan Fund Alger Equity Growth Portfolio.	Fred Alger Management, Inc.
Metropolitan Fund Harris Oakmark Large Cap Value Fund.	Harris Associates L.P.
Metropolitan Fund Davis Venture Value Portfolio.	Davis Selected Advisers, L.P.
Metropolitan Fund State Street Research Bond Income Portfolio.	State Street Research & Management Company.
Metropolitan Fund State Street Research Money Market Portfolio.	State Street Research & Management Company.

6. CDC Nvest Cash Management Trust, CDC Nvest Funds Trust I, and CDC Nvest Funds Trust II are registered as open-end management investment companies under the 1940 Act. CDC Nvest Cash Management Trust currently offers one separate investment series, which would be involved in the proposed substitution. CDC Nvest Funds Trust I currently offers nine separate investment series, three of which would be involved in the proposed substitution. CDC Nvest Funds Trust II currently offers two separate investment series, one of which would be involved in the proposed substitution. CDC Nvest Cash Management Trust issues a separate series of shares of beneficial interest in connection with its portfolio, the CDC Nvest Cash Management Trust—Money Market Series, and has registered such shares under the 1933 Act on Form N–1A. CDC Nvest Funds Trust I issues a separate series of shares of beneficial interest in connection with each of its portfolios, and has registered such shares under the 1933 Act on Form N–1A. CDC Nvest Funds Trust II issues a separate series of shares of beneficial interest in connection with each of its portfolios, and has registered such shares under the 1933 Act on Form N–1A. Shares of the portfolios of the CDC Nvest Cash Management Trust, the CDC Nvest Funds Trust I, and the CDC Nvest Funds Trust II are offered to the general public, as well as through the Contracts.

7. CDC IXIS Asset Management Advisers, L.P. ("CDC IXIS Advisers") serves as the investment manager to each Substituted Portfolio in the CDC Nvest Funds Trust I and CDC Nvest Funds Trust II, except for the CGM Advisor Targeted Equity Fund, for which Capital Growth Management Limited Partnership ("CGM"), an affiliate of CDC IXIS Advisers, serves as the investment adviser and Loomis Sayles Core Plus Bond Fund, for which Loomis, Sayles & Company, L.P. ("Loomis Sayles"), an affiliate of CDC IXIS Advisers, serves as investment adviser. CDC IXIS Advisers also serves as the investment manager to the Money Market Series of the CDC Nvest Cash Management Trust. As the investment managers to their respective portfolios, CDC IXIS Advisers, Loomis Sayles and CGM receive investment advisory fees from the portfolios. CDC IXIS Advisers, Loomis Sayles and CGM are also responsible for the day-to-day investment management responsibility of certain portfolios they manage, including the Substituted Portfolios. CDC IXIS Advisers has contracted with subadvisers to make the day-to-day investment decisions for the Substituted Portfolios it manages. The amount of investment management fee payable to CDC IXIS Advisers is offset by the amount of investment advisory fee payable to the subadvisers. The following are the subadvisers for the Substituted Portfolios:

Substituted Portfolios	Subadviser(s)
CGM Advisor Targeted Equity Fund.	Not Applicable.
Harris Associates Growth and Income Fund.	Harris Associates L.P.
CDC Nvest Star Value Fund.	Harris Associates L.P., Loomis, Sayles & Company, L.P., Vaughan Nelson Investment Management, L.P., Westpeak Global Advisors, L.P.
Loomis Sayles Core Plus Bond Fund.	Not Applicable.
CDC Nvest Cash Management Trust—Money Market Series.	Reich & Tang Asset Management, LLC.

8. Met Life proposes the following substitution of certain classes of shares of the Replacement Portfolios for Class A shares of the Substituted Portfolios (the "Substitutions"):

Substituted Portfolios	Replacement Portfolios
Class A shares of the GM Advisor Targeted Equity Fund of the CDC Nvest Funds Trust I.	Class B shares of the Alger Equity Growth Portfolio of the Metropolitan Series Fund, Inc.
Class A shares of the Harris Associates Growth and Income Fund of the CDC Nvest Funds Trust II.	Class B shares of the Harris Oakmark Large Cap Value Fund of the Metropolitan Series Fund, Inc.
Class A shares of the CDC Nvest Star Value Fund of the CDC Nvest Funds Trust I.	Class B shares of the Davis Venture Value Portfolio of the Metropolitan Series Fund, Inc.
Class A shares of the Loomis Sayles Core Plus Bond Fund of the CDC Nvest Funds Trust I.	Class B shares of the State Street Research Bond Income Portfolio of the Metropolitan Series Fund, Inc.
Class A shares of the Money Market Series of the CDC Nvest Cash Management Trust.	Class B shares of the State Street Research Money Market Portfolio of the Metropolitan Series Fund, Inc.

9. The following chart sets out the investment objectives and certain policies of the Substituted Portfolios and the Replacement Portfolios, as stated in their respective prospectuses and statements of additional information.

Substituted Portfolios	Replacement Portfolios
CGM Advisor Targeted Equity Fund	Metropolitan Fund Alger Equity Growth Portfolio
Investment Objective: The Fund seeks long-term growth of capital through investment in equity securities of companies whose earnings are expected to grow at a faster rate than that of the overall United States economy..	Investment Objective: The investment objective of the Metropolitan Fund Alger Equity Growth Portfolio is long-term capital appreciation.
Investment Strategies: Under normal market conditions, the Fund will invest at least 80% of its net assets in equity investments. The Fund will generally invest in a focused portfolio of common stocks of large capitalization companies that CGM expects will grow at a faster rate than that of the overall United States economy. When CGM believes that market conditions warrant, however, CGM may select stocks based upon overall economic factors such as the general economic outlook, the level and direction of interest rates and potential impact of inflation. The Fund will not invest in small capitalization companies..	Investment Strategies: Fred Alger Management, Inc. ("Alger"), subadviser to the Portfolio, invests, under normal circumstances, the Portfolio's assets primarily in growth stocks. Alger will ordinarily invest at least 80% of the Portfolio's assets in equity securities. The Portfolio will invest in equity securities of issuers with a market capitalization of $1 billion or greater.
The Fund may also invest a significant portion of its assets in a single industry sector, invest in foreign securities, invest in other investment companies and invest in real estate investment trusts..	Alger seeks out and invests primarily in companies that are traded on domestic stock exchanges or in the domestic over-the counter market. The companies Alger chooses for the Portfolio may still be in the development stage, may be older companies that appear to be entering a new stage of growth progress due to factors like management changes or development of new technologies, products or markets, or may be companies providing products or services with a high unit volume growth rate. Alger focuses on fundamental characteristics of individual companies and does not allocate assets based on specific industry sectors.
Harris Associates Growth and Income Fund	Metropolitan Fund Harris Oakmark Large Cap Value Fund
Investment Objective: The Fund seeks opportunities for long-term capital growth and income..	Investment Objective: The investment of the Metropolitan Fund Harris Oakmark Large cap Value Fund is long-term capital appreciation.
Investment Strategies: Under normal market conditions, the Fund will invest substantially all of its assets in common stocks of large and mid-capitalization companies in any industry..	Investment Strategies: Harris Associates L.P. ("Harris"), subadviser to the Portfolio, will invest under normal market conditions at least 80% the Portfolio's assets in equity securities of large capitalization U.S. companies. This minimum may be changed on 60 days' notice. Harris defines large capitalization companies as those, at the time of purchase, with a market capitalization larger than the market capitalization of the smallest company included in the Russell 1000 Index. As of June 30, 2002, this included companies with capitalizations of approximately $1.3 billion and above.
The Fund's subadviser, Harris Associates L.P. ("Harris"), uses a value investment philosophy in selecting equity securities for the Fund, based on the belief that, over time, a company's stock price converges with that company's true business value. Harris defines "true business value" to mean its estimate of the price a knowledgeable buyer would pay to acquire the entire business..	Harris may invest up to 20% of the Portfolio's total assets in fixed-income securities, including investment grade securities and high yield debt.
The Fund may invest in foreign securities traded in U.S. markets (through American Depositary Receipts or stocks sold in U.S. dollars..	
CDC Nvest Star Value Fund	Metropolitan Fund Davis Venture Value Portfolio
Investment Objective: The Fund seeks a reasonable, long-term investment return from a combination of market appreciation and dividend income from equity securities..	Investment Objective: The investment objective of the Metropolitan Fund Davis Venture Value Portfolio is growth of capital.

Substituted Portfolios	Replacement Portfolios
Investment Strategies: Under normal market conditions, the Fund invests substantially all of its assets in equity securities. The Fund primarily will invest in the common stocks of mid- and large-capitalization companies of various industries. The companies in which the Fund invests are value-oriented according to one or more of the following measures: price-to-earnings ratio, return on equity, dividend yield, price-to-book value ratio or price-to-sales ratio.. Subject to the allocation policies adopted by the Fund's Board of Trustees, CDC IXIS Advisers generally allocates capital invested in the Fund equally among four segments which are managed by the subadvisers set forth in this column below. Each subadviser manages its segment of the fund's assets in accordance with its distinctive investment style and strategy.. The segment of the Fund managed by Harris Associates L.P. ("Harris") primarily invests in common stocks of mid- and large-capitalization companies that Harris believes are trading at a substantial discount to the company's "true business value.". A segment of the Fund is managed by Loomis, Sayles & Company, L.P. by using a fundamental research in a value-oriented selection process to seek companies with the following characteristics; low price-to-earnings ratios based on earnings estimates; competitive return on equity; competitive current and estimated dividend yield; and favorable earnings prospects.. A segment of the Fund is managed by Vaughan Nelson Investment Management, L.P. by using rigorous fundamental research and active management to analyze a broad selection of company or industry sectors and to seek companies with market capitalizations of at least $2 billion with the following characteristics: strong balance sheets; growing cash flows; reasonable valuations based upon discounted cash flow models; stable and proven management teams; and high relative dividend yield.. A segment of the Fund is managed by Westpeak Global Advisors, L.P. by constructing a portfolio of recognizable, reasonably priced stocks by combining its experience and judgment with a dynamic weighting process known as "portfolio profiling." Using proprietary research based on economic, market and company specific information, Westpeak analyzes each stock and ranks them based on factors such as: earnings-to-price ratios, earnings growth rates, positive earnings surprises, book-to-price ratios and dividend yields. Westpeak invests in stocks of companies in the Russell 3000 Index..	Investment Strategies: Davis Selected Advisers, L.P. ("Davis Selected"), subadviser to the Portfolio, invests, under normal circumstances, the majority of the Portfolio's assets primarily in equity securities of companies with market capitalizations of at least $10 billion. Davis Selected searches for companies that it believes are of high quality and whose stocks are selling at attractive prices with the intention of holding them for the long term. Davis Selected believes that managing risk is the key to delivering superior long-term investment results; therefore, it considers how much could potentially be lost on an investment before considering how much might be gained. Davis Selected has developed a list of ten characteristics that it believes allow companies to sustain long-term growth and minimize risks to enhance their potential for superior long-term returns. Davis Selected does not have particular allocation strategies, and emphasizes individual stock selection rather than industry sectors. Davis Selected relies heavily on its evaluation of the management of potential investments, and will ordinarily visit the managers at their place of business to gain insight into the relative value of different companies.
Loomis Sayles Core Plus Bond Fund Investment Objective: The Fund seeks a high level of current income consistent with what the Fund considers reasonable risk. It invests primarily in corporate and U.S. government bonds.. Investment Strategies: Under normal market conditions, the Fund will invest primarily in U.S. corporate and U.S. government bonds. It will adjust to changes in the relative strengths of the U.S. corporate or U.S. government bond markets by shifting the relative balance between the two. The Fund will invest at least 80% of its net assets in bond investments. In addition, the Fund will invest at least 80% of its assets in investment-grade bonds (those rated BBB or higher by Standard & Poor's Ratings Group ("S&P") or Baa or higher by Moody's Investors Service, Inc. ("Moody's") or, if unrated, of comparable quality as determined by Loomis Sayles and will generally maintain an average effective maturity of ten years or less. The Fund may also purchase lower-quality bonds (those rated below BBB by S&P and below Baa by Moody's, also known as junk bonds").. The Fund may also invest in foreign securities, including those of emerging markets, and related currency hedging transactions. The Fund may also invest in Rule 144A securities, Foreign securities, including emerging markets, and related currency hedging transactions and mortgage-related securities..	Metropolitan Fund State Street Research Bond Income Portfolio Investment Objective: The investment objective of the Metropolitan Fund State Street Research Bond Income Portfolio is a competitive total return primarily from investing in fixed-income securities. Investment Strategies: State Street Research & Management Company ("State Street Research"), subadviser to the Portfolio, invests, under normal circumstances, at least 80% of the Portfolio's assets in fixed-income securities. The Portfolio may invest in investment grade fixed-income securities, obligations of the U.S. Treasury or any U.S. government agency, mortgage-backed and asset-backed securities, corporate debt securities of U.S. and foreign issuers, and cash equivalents. The Portfolio may also invest in securities through Rule 144A and other private placement transactions. In addition, the Portfolio may invest up to 20% of its total assets in high yield securities. It may also invest up to 20% of its total assets in foreign securities and up to 10% of its total assets in securities of issuers located in developing or emerging market countries. The 10% limit on emerging market securities will not be counted toward the limits on foreign or high yield securities. No combination of investments in high yield securities, foreign securities or emerging market securities will exceed 30% of the Portfolio's total assets.
CDC Nvest Cash Management Trust—Money Market Series Investment Objective: The Fund seeks maximum current income consistent with preservation of capital and liquidity..	Metropolitan Fund State Street Research Money Market Portfolio Investment Objective: The investment objective of the Metropolitan Fund State Street Research Money Market Portfolio is a high level of current income consistent with preservation of capital.

Substituted Portfolios	Replacement Portfolios
Investment Strategies: The Fund will invest up to 100% of its assets in high-quality, short-term, U.S. dollar-denominated money market investments issued by U.S. and foreign issuers. To preserve investors' capital, the Fund seeks to maintain a stable $1.00 share price. Some of the Fund's portfolio positions include certificates of deposit, bankers' acceptances or bank notes, securities issued or guaranteed by the U.S. government, commercial paper, repurchase agreements, other corporate debt obligations cash..	Investment Strategies: State Street Research, subadviser to the Portfolio, invests the Portfolio, invests the Portfolio's assets in a managed portfolio of money market instruments. The Portfolio may invest in the highest quality, short-term money market instruments or in U.S. government securities. The Portfolio may invest in commercial paper and asset-backed securities, including those issued in Rule 144A and other private placement transactions. The Portfolio also may invest in U.S. dollar-denominated securities issued by foreign companies or banks or their U.s. affiliates. The Portfolio may invest all of its assets in any one type of security.

10. The following chart compares the fees paid for advisory services for the fiscal year ended December 31, 2002 (fiscal year ended June 30, 2003 for the CDC Nvest Cash Management Trust—Money Market Series and fiscal year ended September 30, 2003 for the Loomis Sayles Core Plus Bond Fund), expressed as an annual percentage of average daily net assets, by each Substituted Portfolio and each Replacement Portfolio. The advisory fee rate for the Harris Associates Growth and Income Fund is the pro forma fee rate that the Fund would have incurred for the fiscal year ended December 31, 2002 assuming that the combination of the Growth and Income Fund and the CDC Nvest Balanced Fund, which occurred in June 2003, had occurred on January 1, 2002.

Substituted portfolios		Replacement portfolios	
CGM Advisor Targeted Equity Fund	0.69%	Metropolitan Fund Alger Equity Growth Portfolio	0.75%
Harris Associates Growth and Income Fund	0.67%	Metropolitan Fund Harris Oakmark Large Cap Value Fund.	0.75%
CDC Nvest Star Value Fund	0.75%	Metropolitan Fund Davis Venture Value Portfolio	0.75%
Loomis Sayles Core Plus Bond Fund	0.41%	Metropolitan Fund State Street Research Bond Income Portfolio.	0.40%
CDC Nvest Cash Management Trust—Money Market Series.	0.40%	Metropolitan Fund State Street Research Money Market Portfolio.	0.35%

11. The following charts compare the total operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2002 (fiscal year ended June 30, 2003 for the CDC Nvest Cash Management Trust—Money Market Series and fiscal year ended September 30, 2003 for the Loomis Sayles Core Plus Bond Fund), expressed as an annual percentage of average daily net assets, of the Substituted Portfolios and the Replacement Portfolios. The total operating expenses for the Harris Associates Growth and Income Fund are the pro forma expenses that the Fund would have incurred for the fiscal year ended December 31, 2002 assuming that the Growth and Income Fund and the CDC Nvest Balanced Fund combined as of January 1, 2002. The Substituted Portfolios, other than the Money Market Series of the CDC Nvest Cash Management Trust, and the Replacement Portfolios have adopted plans pursuant to Rule 12b–1 under the 1940 Act.

[In percent]

	Substituted Portfolio CGM Advisor Targeted Equity Fund (Class A)	Replacement Portfolio Metropolitan Fund Alger Equity Growth Portfolio (Class B)
Management Fees	0.69	0.75
Distribution and/or Service (12b–1) Fees	0.25	0.25
Other Expenses	0.53	0.04
Total Operating Expenses	1.47	1.04
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	1.47	1.04

[In percent]

	Substituted Portfolio Harris Associates Growth and Income Fund (Class A)	Replacement Portfolio Metropolitan Fund Harris Oakmark Large Cap Value Fund (Class B)
Management Fees	0.67	0.75
Distribution and/or Service (12b–1) Fees	0.25	0.25
Other Expenses	0.61	0.08
Total Operating Expenses	1.53	1.08
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	1.53	1.08

[In percent]

	Substituted Portfolio CDC Nvest Star Value Fund (Class A)	Replacement Portfolio Metropolitan Fund Davis Venture Value Portfolio (Class B)
Management Fees	0.75	0.75
Distribution and/or Service (12b–1) Fees	0.25	0.25
Other Expenses	0.68	0.05
Total Operating Expenses	1.68	1.05
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	1.68	1.05

[In percent]

	Substituted Portfolio Loomis Sayles Core Plus Bond Fund (Class A)	Replacement Portfolio Metropolitan Fund State Street Research Bond Income Portfolio (Class B)
Management Fees	0.41	0.40
Distribution and/or Service (12b–1) Fees	0.25	0.25
Other Expenses	0.62	0.11
Total Operating Expenses	1.28	0.76
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	1.28	0.76

[In percent]

	Substituted Portfolio CDC Nvest Cash Management Trust—Money Market Series (Class A)	Replacement Portfolio Metropolitan Fund State Street Research Money Market Portfolio (Class B)
Management Fees	0.40	0.35
Distribution and/or Service (12b–1) Fees	N/A	0.25
Other Expenses	0.48	0.08
Total Operating Expenses	0.88	0.68

[In percent]

	Substituted Portfolio CDC Nvest Cash Management Trust—Money Market Series (Class A)	Replacement Portfolio Metropolitan Fund State Street Research Money Market Portfolio (Class B)
Less Expense Waivers and Reimbursements	N/A	N/A
Net Operating Expenses	0.88	0.68

12. The following chart illustrates the average annual total returns for the Substituted Portfolios:

SUBSTITUTED PORTFOLIOS

[In percent]

Average Annual Total Returns For the Periods Ended 9/30/03 (Before Taxes)	CGM Advisor Targeted Equity Fund (Class A)	Harris Associates Growth and Income Fund (Class A)	CDC Nvest Star Value Fund (Class A)	Loomis Sayles Core Plus Bond Fund (Class A)	CDC Nvest Cash Management Trust-Money Market Series (Class A)
One Year	7.99	22.60	25.57	10.48	0.55
Five Years	0.49	(1.00)	1.04	4.88	3.25
Ten Years	7.67	7.91	7.32	6.23	3.90

The following chart illustrates the average annual total returns for the Replacement Portfolios (performance information shown for the periods prior to the inception of Class B of each series is the performance of Class A of each series adjusted to reflect the expenses of Class B):

REPLACEMENT PORTFOLIOS

[In percent]

Average Annual Total Returns For the Periods Ended 9/30/03 (Before Taxes)	Metropolitan Fund Alger Equity Growth Portfolio (Class B)	Metropolitan Fund Harris Oakmark Large Cap Value Fund (Class B)	Metropolitan Fund Davis Venture Value Portfolio (Class B)	Metropolitan Fund State Street Research Bond Income Portfolio (Class B)	Metropolitan Fund State Street Research Money Market Portfolio (Class B)
One Year	23.84	21.67	21.89	6.97	0.69
Five Years	0.44	N/A	5.56	5.95	3.42
Ten Years	N/A	N/A	N/A	6.83	4.06
Since Inception	10.36	2.93	12.11	N/A	N/A

13. Pursuant to its authority under the Contracts and the prospectus describing the same, and subject to the approval of the Commission under Section 26(c) of the 1940 Act, MetLife proposes the Substitutions described above. Applicants propose to redeem shares of each of the Substituted Portfolios for cash. The proceeds of these redemptions will then be used to purchase shares of the Replacement Portfolios. Redemption requests and purchase orders will be placed simultaneously so that the contract values will remain fully invested at all times.

14. The proposed Substitutions are part of an overall business plan involving the management of MetLife. MetLife is seeking to make its products, including the Contracts, more competitive and more efficient to administer and oversee. MetLife has also been reviewing the efficiencies and structures of the funds it offers as investment options under the Contracts. MetLife believes that more concentrated and streamlined operations for investment options could result in increased operational and administrative efficiencies and economies of scale for its Contract owners. In connection with these efforts, MetLife has determined that the funds currently offered under the Contracts warrant replacement.

15. After considering the Substituted Portfolios' performance and generally declining asset growth to date, the Applicants determined that it would be both difficult to find replacement funds which mirror the investment objectives

and strategies of the Substituted Portfolios, and inadvisable to do so. Rather, the Applicants determined that it was in the best interests of Contract owners to eliminate the Substituted Portfolios as investment options and to substitute Contract owners into portfolios that have comparable investment objectives with greater expectations for growth and performance. To accomplish this goal, the Applicants evaluated investment objectives and strategies, expense ratios, performance history, and asset sizes of other investment options offered in other variable contracts issued by MetLife in order to identify the most appropriate choices as Replacement Portfolios.

16. Although not identical, the investment objectives and strategies of the Replacement Portfolios are comparable to those of their corresponding Substituted Portfolios. Both the Metropolitan Fund Alger Equity Growth Portfolio and the CGM Advisor Targeted Equity Fund invest principally in growth stocks of large cap companies. Both the Metropolitan Fund Harris Oakmark Large Cap Value Fund and the Harris Associates Growth and Income Fund invest principally in stocks of large cap companies that are considered undervalued. While the name of the Substituted Portfolio suggests a greater emphasis on dividend income, the dividend yield of the two funds, as of December 31, 2003, was virtually identical. Similarly, while the CDC Nvest Star Value Fund may seek dividend income from its equity holdings, the fund's dividend yield as of December 31, 2003 was virtually the same as that of its Replacement Portfolio. Finally, both the Metropolitan Fund State Street Research Bond Income Portfolio and the Loomis Sayles Core Plus Bond Fund invest principally in investment grade fixed-income securities.

17. In each case, the types of investment advisory and administrative services provided to the Replacement Portfolios by MetLife Advisers are comparable to the types of investment advisory and administrative services provided to the Substituted Portfolios by CDC IXIS Advisers, Loomis Sayles and CGM. Thus, the level and quality of services will remain high. Additionally, utilization of the Replacement Portfolios will permit Contract owners to continue to pursue comparable objectives after the Substitutions.

18. MetLife believes that the elimination of the Substituted Portfolios as investment options will make its Contracts more efficient to administer and oversee and, thus, more cost-efficient and attractive to customers. As the Replacement Portfolios are already offered in other variable contracts issued by MetLife, moving the assets from the Substituted Portfolios to the Replacement Portfolios will permit MetLife to administer the Contracts through a newer administration system which will decrease costs and increase efficiency. Also, as the Replacement Portfolios are offered through other MetLife variable contracts, the costs of sending reports, data transfer, and other communications with the Portfolios will decrease due to efficiencies of dealing with the same fund complex across multiple product lines. Overall, Applicants can achieve better economies of scale by offering the Replacement Portfolios as investment options, which will benefit Contract owners. Applicants believe that replacing the Substituted Portfolios with the Replacement Portfolios is appropriate and in the best interests of Contract owners, who will benefit from investments in underlying funds with increasing or consistent asset bases, better performance, and lower overall expenses than currently is the case with the Substituted Portfolios.

19. MetLife will effect the Substitutions as soon as practicable following the issuance of the requested order as follows. As of the effective date of the Substitutions ("Effective Date"), shares of each Substituted Portfolio will be redeemed in cash by MetLife. The proceeds of such redemptions will then be used to purchase shares of each Replacement Portfolio, with each subaccount of the Separate Account investing the proceeds of its redemption from a Substituted Portfolio in the corresponding Replacement Portfolio. All redemptions of shares of the Substituted Portfolios and purchases of shares of the Replacement Portfolios will be effected in accordance with Rule 22c–1 of the Act.

20. The Substitutions will take place at relative net asset value with no change in the amount of any Contract owner's contract value or death benefit or in the dollar value of his or her investments in any of the subaccounts. Contract owners will not incur any additional fees or charges as a result of the Substitutions, nor will their rights or MetLife's obligations under the Contracts be altered in any way. All expenses incurred in connection with the Substitutions, including legal, accounting, transactional, and other fees and expenses, including brokerage commissions, will be paid by MetLife. In addition, the Substitutions will not impose any tax liability on Contract owners. The Substitutions will not cause the Contract fees and charges currently paid by existing Contract owners to be greater after the Substitutions than before the Substitutions. MetLife will not exercise any right it may have under the Contracts to impose restrictions on transfers under the Contracts for a period of at least thirty days following the Substitutions.

21. For a period of two years from the date of the Substitution, MetLife will not increase Contract charges or total Separate Account charges (net of any waiver or reimbursements) of the subaccounts that invest in the Metropolitan Fund Davis Venture Value Portfolio or the Metropolitan Fund State Street Research Bond Income Portfolio. If the total operating expenses for the Davis Venture Value Portfolio or the State Street Research Bond Income Portfolio (taking into account any expense waiver or reimbursement) for any fiscal quarter for the two-year period following the date of Substitution exceed on an annualized basis the net expense ratio for its corresponding Substituted Portfolio for the fiscal year ended December 31, 2002 (for the CDC Nvest Star Value Fund), or fiscal year ended September 30, 2003 (for the Loomis Sayles Core Plus Bond Fund), MetLife will reduce (through waiver or reimbursement) the Separate Account expenses paid during that quarter of the subaccount that invests in such Replacement Portfolio to the extent necessary to offset the amount by which the Replacement Portfolio's expense ratio for such period exceeds, on an annualized basis, the relevant expense ratio level of the Substituted Portfolio. MetLife will reduce (through waiver or reimbursement) the Separate Account expenses if the corresponding Replacement Portfolio's expense ratio exceeds the following levels:

Replacement Portfolios	Two-Year Expense Cap
Metropolitan Fund Davis Venture Value Portfolio (Class B)	1.68%
Metropolitan Fund State Street Research Bond Income Portfolio (Class B)	1.28%

22. At no time after the date of the Substitution will MetLife increase Contract charges or total Separate Account charges (net of any waiver or reimbursements) of the subaccounts that invest in the following Replacement Portfolios: the Metropolitan Fund Harris Oakmark Large Cap Value Fund, the Metropolitan Fund State Street Research Money Market Portfolio, or the Metropolitan Fund Alger Equity Growth

Portfolio. If the total operating expenses for the Harris Oakmark Large Cap Value Fund, the State Street Research Money Market Portfolio, or the Alger Equity Growth Portfolio (taking into account any expense waiver or reimbursement) for any fiscal quarter following the date of Substitution exceed on an annualized basis the net expense ratio for its corresponding Substituted Portfolio for the fiscal year ended December 31, 2002 (for the Harris Associates Growth and Income Fund and the CGM Advisor Targeted Equity Fund) or fiscal year ended June 30, 2003 (for the CDC Nvest Cash Management Trust—Money Market Series), MetLife will reduce (through waiver or reimbursement) the Separate Account expenses paid during that quarter of the subaccount that invests in such Replacement Portfolio to the extent necessary to offset the amount by which the Replacement Portfolio's expense ratio for such period exceeds, on an annualized basis, the following levels:

Replacement portfolios	Permanent expense cap
Metropolitan Fund Harris Oakmark Large Cap Value Fund (Class B)	1.53%
Metropolitan Fund State Street Research Money Market Portfolio (Class B)	0.88%
Metropolitan Fund Alger Equity Growth Portfolio (Class B)	1.47%

23. Contract owners were notified of the initial Application by means of a supplement to the prospectus that disclosed that the Applicants filed the Application to seek approval for the Substitutions. Further, before the Effective Date, a notice ("Pre-Substitution Notice"), in the form of an additional supplement to the prospectuses for the Contracts, will be mailed to Contract owners setting forth the scheduled Effective Date and advising Contract owners that contract values attributable to investments in the Substituted Portfolios will be transferred to the Replacement Portfolios, without charge, on the Effective Date. In addition, all Contract owners will have received a copy of the most recent Replacement Portfolio prospectuses prior to the Substitutions. The Effective Date will be no earlier than twenty days after the mailing of the Pre-Substitution Notice. The Pre-Substitution Notice will state that, from the date the Application was filed with the Commission through the date thirty days after the Substitution, Contract owners may transfer contract value from any subaccount to any other subaccount without charge. In addition, within five days after the Substitutions, all Contract owners will be sent a written notice informing them that the Substitutions were carried out and advising them of their transfer rights ("Post-Substitution Notice").

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act (formerly, Section 26(b)) prohibits any depositor or trustee of a unit investment trust that invests exclusively in the securities of a single issuer from substituting the securities of another issuer without the approval of the Commission. Section 26(c) provides that such approval shall be granted by order of the Commission, if the evidence establishes that the substitution is consistent with the protection of investors and the purposes of the 1940 Act.

2. Section 26(c) was intended to provide for Commission scrutiny of proposed substitutions which could, in effect, force shareholders dissatisfied with the substitute security to redeem their shares, thereby possibly incurring a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the proceeds of redemption, or both. The section was designed to forestall the ability of a depositor to present holders of interest in a unit investment trust with situations in which a holder's only choice would be to continue an investment in an unsuitable underlying security, or to elect a costly and, in effect, forced redemption. The Applicants submit that the Substitutions meet the standards set forth in Section 26(c) and that, if implemented, the Substitutions would not raise any of the aforementioned concerns that Congress intended to address when the 1940 Act was amended to include this provision.

3. The replacement of the Substituted Portfolios with the Replacement Portfolios is consistent with the protection of Contract owners and the purposes fairly intended by the policy and provisions of the 1940 Act and, thus, meets the standards necessary to support an order pursuant to Section 26(c) of the 1940 Act. The investment objectives and strategies of the Replacement Portfolios are comparable to the investment objectives and strategies of their respective Substituted Portfolios. In each case, the substitution of a Replacement Portfolio for the corresponding Substituted Portfolio should assure that the essential investment objectives of Contract owners will continue to be met.

4. The level and quality of services provided by MetLife after the Substitutions will be comparable to the level and quality of services provided by CDC IXIS Advisers, Loomis Sayles and CGM prior to the Substitutions. The actual investment management fee for each Replacement Portfolio is expected to be less than, or the same as, the actual investment management fee for each corresponding Substituted Portfolio, except for the Metropolitan Fund Alger Equity Growth Portfolio (the Replacement Portfolio for the CGM Advisor Targeted Equity Fund) and the Metropolitan Fund Harris Oakmark Large Cap Value Fund (the Replacement Portfolio for the Harris Associates Growth and Income Fund). Although the actual investment management fee for the Metropolitan Fund Alger Equity Growth Portfolio for the fiscal year ended December 31, 2002 (0.75%) was greater than the actual investment management fee for the CGM Advisor Targeted Equity Fund for the fiscal year ended December 31, 2002 (0.69%), the estimated overall expense ratio for the Class B shares of Metropolitan Fund Alger Equity Growth Portfolio for the fiscal year ended December 31, 2002 (1.04%) was significantly less than the overall expense ratio for the Class A shares of CGM Advisor Targeted Equity Fund for the fiscal year ended December 31, 2002 (1.47%). Similarly, although the actual investment management fee for the Metropolitan Fund Harris Oakmark Large Cap Value Fund for the fiscal year ended December 31, 2002 (0.75%) was greater than the actual investment management fee for the Harris Associates Growth and Income Fund for the fiscal year ended December 31, 2002 (0.67%), the estimated overall expense ratio for the Class B shares of Metropolitan Fund Harris Oakmark Large Cap Value Fund for the fiscal year ended December 31, 2002 (1.08%) was significantly less than the overall expense ratio for the Class A shares of the Harris Associates Growth and Income Fund for the fiscal year ended December 31, 2002 (1.53%). To ensure such lower expenses, MetLife has agreed to impose a permanent expense cap on the Metropolitan Fund Alger Equity Growth Portfolio and the Metropolitan Fund Harris Oakmark Large Cap Value Fund as described *infra*.

5. Each Replacement Portfolio's total expense ratio for the fiscal year ended December 31, 2002 was significantly lower than the expense ratio of the corresponding Substituted Portfolio for the fiscal year ended December 31, 2002 (fiscal year ended June 30, 2003 for the CDC Nvest Cash Management Trust —Money Market Series and fiscal year

ended September 30, 2003 for the Loomis Sayles Core Plus Bond Fund). The Metropolitan Fund State Street Research Money Market Portfolio's total expense ratio for the fiscal year ended December 31, 2002 was lower that the CDC Nvest Cash Management Trust—Money Market Series for the fiscal year ended June 30, 2003, even though the Metropolitan Fund State Street Research Money Market Portfolio imposes a 12b–1 fee while the CDC Nvest Cash Management Trust—Money Market Series does not. To ensure such lower expenses, MetLife has agreed to impose a permanent expense cap on the Metropolitan Fund State Street Research Money Market Portfolio, as described *infra*. Further, the Replacement Portfolios generally have outperformed the Substituted Portfolios over time and the generally increasing asset levels of the Replacement Portfolios should lead to continued lower expense ratios over time.

6. The rights of the Contract owners and the obligations of MetLife under the Contracts would not be altered by the Substitutions except, of course, that Contract owners will not be able to continue to allocate contract value to subaccounts that currently invest in the Substituted Portfolios. Contract owners will not incur any additional tax liability as a result of the Substitutions. MetLife will bear the costs of any legal or accounting fees and transactional expenses of the Substitutions, including brokerage commissions.

7. The Applicants assert that the procedures to be implemented are sufficient to assure that each Contract owner's contract value immediately after the Substitutions shall be equal to the contract value immediately before the Substitutions, and that the Substitutions will not affect the value of the interests of those owners of other MetLife variable contracts (other than the Contracts) who currently have contract value allocated to any of the portfolios of the Metropolitan Fund, the CDC Nvest Cash Management Trust, the CDC Nvest Funds Trust II, or the CDC Nvest Funds Trust I.

8. The Applicants will permit Contract owners to transfer contract value from any subaccount to any other subaccount without charge, but subject to minimum transfer requirements. The Applicants also note that, in accordance with the terms of the Contracts, no sales charges or surrender charges or other charges will apply to transfers in connection with the Substitutions, and MetLife represents that no such charge shall be imposed.

9. The Applicants request an order of the Commission pursuant to Section 26(c) of the 1940 Act approving the Substitutions by the Applicants. The Applicants submit that, for all the reasons stated above, the Substitutions are consistent with the protection of investors and the purposes fairly intended by the provisions of the 1940 Act.

Applicants' Conditions for Relief

For purposes of the approval sought pursuant to Section 26(c) of the 1940 Act, the Substitutions described in this amended and restated Application will not be completed unless all of the following conditions are met.

1. The Commission shall have issued an order approving the Substitutions under Section 26(c) of the 1940 Act as necessary to carry out the transactions described in this amended and restated Application.

2. Each Contract owner will have been sent (a) prior to the Effective Date, a copy of the effective prospectuses for the Replacement Portfolios, (b) prior to the Effective Date, a Pre-Substitution Notice describing the terms of the Substitutions and the rights of the Contract owners in connection with the Substitutions, and (c) a Post-Substitution Notice within five days after the Substitutions informing them that the Substitutions were carried out and advising them of their transfer rights.

3. MetLife shall have satisfied itself that (a) the Contracts allow the substitution of portfolios in the manner contemplated by the Substitutions and related transactions described herein, (b) the transactions can be consummated as described in this amended and restated Application under applicable insurance laws, and (c) that any applicable regulatory requirements in each jurisdiction where the Contracts are qualified for sale have been complied with to the extent necessary to complete the transaction.

Conclusion

Applicants request an order of the Commission pursuant to Section 26(c) of the Act approving the Substitution. Section 26(c), in pertinent part, provides that the Commission shall issue an order approving a substitution of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons and upon the facts set forth above, the requested order meets the standards set forth in Section 26(c) and should, therefore, be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4568 Filed 3–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26369; 812–12927]

Real Estate Income Fund Inc., et al.; Notice of Application

February 25, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

Summary of the Application: Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any preferred stock.

Applicants: Real Estate Income Fund Inc. ("REIF"), Salomon Brothers Capital Income Fund Inc. ("SBCIF"), Citi Fund Management Inc. ("CFMI"), Salomon Brothers Asset Management Inc. ("SBAM," together with CFMI, the "Advisers") and each registered closed-end management investment company currently or in the future advised by an Adviser (including any successor in interest)[1] or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Advisers (included in the term Advisers) that decides in the future to rely on the requested relief (together with REIF and SBCIF, the "Funds").[2]

Filing Dates: The application was filed on February 6, 2003 and amended on February 23, 2004.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a

[1] A successor in interest is limited to any entity that results from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All existing Funds currently intending to rely on the requested order are named as applicants, and any Fund that may rely on the order in the future will comply with the terms and conditions of the application.

hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving the Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on March 22, 2004, and should be accompanied by proof of service on the Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, c/o Burton M. Leibert, Esq., Willkie Farr & Gallagher, 787 Seventh Avenue, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Todd Kuehl, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. REIF is organized as a Maryland corporation and is registered under the Act as a non-diversified closed-end management investment company. REIF's primary investment objective is to seek high current income by investing at least 90% of its assets in income-producing equity securities and debt securities issued by real estate companies. REIF's common stock is listed and traded on the New York Stock Exchange ("NYSE"). SBCIF is organized as a Maryland corporation and is registered under the Act as a non-diversified closed-end management investment company. SBCIF's investment objective is total return with an emphasis on income by investing at least 80% of its assets in equity and fixed income securities of U.S. and foreign issuers. SBCIF's common stock has been approved for listing on the NYSE, subject to notice of issuance. CFMI and SBAM are registered as investment advisers under the Investment Advisers Act of 1940 and serves as investment adviser to REIF and SBCIF, respectively. CFMI and SBAM are indirect wholly owned subsidiaries of Citigroup Inc.

2. The periodic pay-out policy with respect to a Fund's common shares will be initially established and will be reviewed at least annually by the board of directors/trustees ("Board") of the Fund, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Members"). On June 19, 2002, and November 13, 2003, REIF's Board, including a majority of the Independent Members, concluded that the proposed distribution policies of REIF, with respect to common shares only, would be in the best interests of REIF's shareholders. On January 20, 2004, SBCIF's Board, including a majority of the Independent Members, concluded that the proposed distribution policies of SBCIF, with respect to common shares only, would be in the best interests of SBCIF's shareholders.

3. The order would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock and as often as distributions are specified in the terms of its preferred stock,[3] so long as it maintains in effect a distribution policy (a) with regard to their common stock of at least a minimum fixed percentage per year of the net asset value ("NAV") or market price per share of its common stock or at least a minimum fixed dollar amount per year, and (b) with regard to each series of their preferred stock of a specified percentage of liquidation preference, whether such specified percentage is determined at the time the preferred stock is initially issued, or pursuant to periodic remarketing or auctions ("Distribution Policies"). The Boards also considered that the Distribution Policies may help each Fund attract new investors which could have a positive effect on the market price of each Fund's common shares. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, the Funds are at a competitive disadvantage and, consequently, are likely to be required to pay a higher dividend rate on their preferred stock than issuers who pay at the desired frequency. Applicants state that the frequency of the specified periodic payments with respect to preferred stock of the Funds and the periodic pay-out with respect to common stock of the Funds will not be related to one another in any way other than that the Funds' ability to comply with Revenue Ruling 89–81 will be enhanced.

4. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gain distribution, as defined in section 852(b)(3)(C) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b–1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make in any one year, would prevent implementation of the Funds' proposed Distribution Policies. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89–81 and the accounting interpretation relating to rule 19b–1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89–81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the

[3] SBCIF has not issued and currently does not intend to issue preferred stock.

rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that, in accordance with rule 19a–1 under the Act, a statement showing the source or sources of the distribution will accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the year has been or will be included on each Fund's IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also has been, or will be, included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend"), where the dividend results in an immediate corresponding reduction in net asset value and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly actually help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specific periodic dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with theses guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable rules of the National Association of Securities Dealers, Inc. regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

Applicants' Condition

Applicants agree that any order granting the requested relief with respect to a Fund's common stock shall terminate with respect to the Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within a 15-day period immediately following the record date of a monthly dividend, or within the six-week period immediately following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) an offering in connection with a merger, consolidation, acquisition, spin-off or reorganization, unless such Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4569 Filed 3–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49315; File No. SR–Amex–2004–08]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to Trust Certificates Linked to a Basket of Investment Grade Fixed Income Securities

February 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to approve for listing and trading under Section 107A of the Amex Company Guide ("Company Guide"), trust certificates linked to a basket of investment grade fixed income debt instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

Under Section 107A of the Company Guide, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants.[3] The Amex proposes to list for trading under Section 107A of the Company Guide, the asset-backed securities (the "ABS Securities") representing ownership interests in the Select Notes Trust 2004–02 ("Trust"), a special purpose trust to be formed by Structured Obligations Corporation ("SOC"),[4] and the trustee of the Trust pursuant to a trust agreement, which will be entered into on the date that the ABS Securities are issued. The assets of the Trust will consist primarily of a basket or portfolio of up to approximately twenty-five (25) investment-grade fixed-income securities ("Underlying Corporate Bonds") and United States Department of Treasury STRIPS or securities issued by the United States Department of the Treasury ("Treasury Securities") or government sponsored entity securities ("GSE securities"). In the aggregate, the component securities of the basket or portfolio will be referred to as the "Underlying Securities."

The ABS Securities will conform to the initial listing guidelines under Section 107A [5] and continued listing guidelines under Sections 1001–1003[6] of the Company Guide. At the time of issuance, the ABS Securities will receive an investment grade rating from a nationally recognized securities rating organization ("NRSRO"). The issuance of the ABS Securities will be a repackaging of the Underlying Corporate Bonds together with the addition of either Treasury Securities or GSE Securities,[7] with the obligation of the Trust to make distributions to holders of the ABS Securities depending on the amount of distributions received by the Trust on the Underlying Securities.

However, due to the pass-through and passive nature of the ABS Securities, the Exchange intends to rely on the assets and stockholder equity of the issuers of the Underlying Corporate Bonds as well as GSE Securities, rather than the Trust to meet the requirement in Section 107A of the Company Guide. The corporate issuers of the Underlying Corporate Bonds and GSE Securities will meet or exceed the requirements of Section 107A of the Company Guide. The distribution and principal amount/aggregate market value requirements found in Section 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. In addition, the Exchange for purposes of including Treasury Securities will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A.

The basket of Underlying Securities will not be managed and will generally remain static over the term of the ABS Securities. Each of the Underlying Securities provide for the payment of interest on a semi-annual basis, but the ABS Securities will provide for monthly or quarterly distributions of interest. Neither the Treasury Securities or GSE Securities will make periodic payments of interest.[8] The Exchange represents that, to alleviate this cash flow timing issue, the Trust will enter into an interest distribution agreement ("Interest Distribution Agreement") as described in the prospectus supplement related to the ABS Securities ("Prospectus Supplement").[9] Principal distributions on the ABS Securities are expected to be made on dates that correspond to the maturity dates of the Underlying Securities (*i.e.*, the Underlying Corporate Bonds and Treasury Securities or GSE Securities). However, some of the Underlying Securities may have redemption provisions and in the event of an early redemption or other liquidation (*e.g.*, upon an event of default) of the Underlying Securities, the proceeds from such redemption (including any make-whole premium associated with such redemption) or liquidation will be distributed pro rata to the holders of the ABS Securities. Each Underlying Corporate Bond will be issued by a corporate issuer and purchased in the secondary market.

In the case of Treasury Securities, the Trust will either purchase the securities directly from primary dealers or in the secondary market that consists of primary dealers, non-primary dealers, customers, financial institutions, non-financial institutions and individuals. Similarly, in the case of GSE Securities, the Trust will either purchase the securities directly from the issuer or in the secondary market.

Holders of the ABS Securities generally will receive interest on the face value in an amount to be determined at the time of issuance of the ABS Securities and disclosed to investors. The rate of interest payments will be based upon prevailing interest rates at the time of issuance and made to the extent that coupon payments are received from the Underlying Securities. Distributions of interest will be made monthly or quarterly. Investors will also be entitled to be repaid the principal of their ABS Securities from the proceeds of the principal payments on the

[3] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990) (order approving File No. SR–Amex–89–29).

[4] SOC is a wholly-owned special purpose entity of J.P. Morgan Securities Holdings Inc. and the registrant under the Form S–3 Registration Statement (No. 333–67188) under which the securities will be issued.

[5] The initial listing standards for the ABS Securities require: (1) A minimum public distribution of one million units; (2) a minimum of 400 shareholders; (3) a market value of at least $4 million; and (4) a term of at least one year. However, if traded in thousand dollar denominations, then there is no minimum holder requirement. In addition, the listing guidelines provide that the issuer have assets in excess of $100 million, stockholder's equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years. In the case of an issuer which is unable to satisfy the earning criteria stated in Section 101 of the Company Guide, the Exchange pursuant to Section 107A of the Company Guide will require the issuer to have the following: (1) Assets in excess of $200 million and stockholders' equity of at least $10 million; or (2) assets in excess of $100 million and stockholders' equity of at least $20 million.

[6] The Exchange's continued listing guidelines are set forth in Sections 1001 through 1003 of Part 10 to the Exchange's Company Guide. Section 1002(b) of the Company Guide states that the Exchange will consider removing from listing any security where, in the opinion of the Exchange, it appears that the extent of public distribution or aggregate market value has become so reduced to make further dealings on the Exchange inadvisable. With respect to continued listing guidelines for distribution of the ABS Securities, the Exchange will rely on the guidelines for bonds in Section 1003(b)(iv). Section 1003(b)(iv)(A) provides that the Exchange will normally consider suspending dealings in, or removing from the list, a security if the aggregate market value or the principal amount of bonds publicly held is less than $400,000.

[7] A GSE Security is a security that is issued by a government-sponsored entity such as Federal National Mortgage Association ("Fannie Mae"), Federal Home Loan Mortgage Corporation ("Freddie Mac"), Student Loan Marketing Association ("Sallie Mae"), the Federal Home Loan Banks and the Federal Farm Credit Banks. All GSE debt is sponsored but not guaranteed by the federal government, whereas government agencies such as Government National Mortgage Association ("Ginnie Mae") are divisions of the United States government whose securities are backed by the full faith and credit of the United States.

[8] A stripped fixed income security, such as a Treasury Security or GSE Security, is a security that is separated into its periodic interest payments and principal repayment. The separate strips are then sold individually as zero coupon securities providing investors with a wide choice of alternative maturities.

[9] Pursuant to the Interest Distribution Agreement, shortfalls in the amounts available to pay monthly or quarterly interest to holders of the ABS Securities due to the Underlying Securities paying interest semi-annually will be made to the Trust by JP Morgan Chase Bank or one of its affiliates and will be repaid out of future cash flow received by the Trust from the Underlying Securities.

Underlying Securities.[10] The payout or return to investors on the ABS Securities will not be leveraged.

The ABS Securities will mature on the latest maturity date of the Underlying Securities. Holders of the ABS Securities will have no direct ability to exercise any of the rights of a holder of an Underlying Corporate Bond; however, holders of the ABS Securities as a group will have the right to direct the Trust in its exercise of its rights as holder of the Underlying Securities.

The proposed ABS Securities are virtually identical to a product currently listed and traded on the Exchange.[11] The only difference being the actual Underlying Securities in the basket of investment grade fixed-income securities. Accordingly, the Exchange also proposes to provide for the listing and trading of the ABS Securities where the Underlying Securities meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Company Guide. The Exchange represents that all of the Underlying Securities in the proposed basket will meet or exceed these listing standards.

The Exchange's Bond and Debenture Listing Standards in Section 104 of the Company Guide provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and any of: (1) The issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange ("NYSE") or on the Nasdaq National Market ("Nasdaq")); (2) an issuer of equity securities listed on the Exchange (NYSE or on the Nasdaq) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; (3) an issuer of equity securities listed on the Exchange (or on the NYSE or on the Nasdaq) has guaranteed the debt security; (4) an NRSRO has assigned a current rating to the debt security that is no lower than an S&P Corporation ("S&P") "B" rating or equivalent rating by another NRSRO; or (5) or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned (i) an investment grade rating to an immediately senior issue or (ii) a rating that is no lower than a S&P "B" rating or an equivalent rating by another NRSRO to a pari passu or junior issue.

In addition to the Exchange's Bond and Debenture Listing Standards, an Underlying Security must also be of investment grade quality as rated by an NRSRO and at least 75% of the underlying basket is required to contain Underlying Securities from issuances of $100 million or more. The maturity of each Underlying Security is expected to match the payment of principal of the ABS Securities with the maturity date of the ABS Securities being the latest maturity date of the Underlying Securities. Amortization of the ABS Securities will be based on (1) the respective maturities of the Underlying Securities, including Treasury Securities or GSE Securities, (2) principal payout amounts reflecting the pro-rata principal amount of maturing Underlying Securities and (3) any early redemption or liquidation of the Underlying Securities, including Treasury Securities or GSE Securities.

Investors will be able to obtain the prices for the Underlying Securities through Bloomberg L.P. or other market vendors, including the broker-dealer through whom the investor purchased the ABS Securities.[12] In addition, The Bond Market Association ("TBMA") provides links to price and other bond information sources on its investor Web site at *http://www.investinginbonds.com*. Transaction prices and volume data for the most actively traded bonds on the exchanges are also published daily in newspapers and on a variety of financial Web sites. The National Association of Securities Dealers, Inc. ("NASD") Trade Reporting and Compliance Engine ("TRACE") also will help investors obtain transaction information for the most active corporate debt securities, such as investment grade corporate bonds.[13] For a fee, investors can have access to intra-day bellwether quotes.[14]

Price and transaction information for Treasury Securities and GSE Securities may also be obtained at *http://www.publicdebt.treas.gov* and *http://www.govpx.com, respectively*. Price quotes are also available to investors via proprietary systems such as Bloomberg L.P., Reuters and Dow Jones Telerate. Valuation prices[15] and analytical data may be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

The ABS Securities will be listed in $1,000 denominations with the Exchange's existing debt floor trading rules applying to trading.[16] First, pursuant to Amex Rule 411, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the ABS Securities.[17] Second, the ABS Securities will be subject to the debt margin rules of the Exchange.[18] Third, the Exchange will, prior to trading the ABS Securities, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the ABS Securities and highlighting the special risks and characteristics of the ABS Securities. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the ABS Securities: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the ABS Securities. Specifically, the Amex will rely on its existing surveillance procedures governing debt, which have

[10] The Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. *See* Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

[11] *See* Securities Exchange Act Release Nos. 48791 (November 17, 2003), 68 FR 65750 (November 21, 2003) (File No. SR–Amex–2003–92); 48312 (August 8, 2003), 68 FR 48970 (August 15, 2003) (File No. SR–Amex–2003–69); 47884 (May 16, 2003), 68 FR 28305 (May 23, 2003) (File No. SR–Amex–2003–37); 47730 (April 24, 2003), 68 FR 23340 (May 1, 2003) (File No. SR–Amex–2003–25); 46923 (November 27, 2002), 67 FR 72247 (December 4, 2002) (File No. SR–Amex–2002–92); and 46835 (November 14, 2002), 67 FR 70271 (November 21, 2002) (File No. SR–Amex–2002–70).

[12] The prices of Underlying Securities generally will be determined by one or more market makers in accordance with applicable law and self-regulatory organization rules.

[13] *See* Securities Exchange Act Release No. 43873 (January 23, 2001), 66 FR 8131 (January 29, 2001). Investors are able to access TRACE information at *http://www.nasdbondinfo.com/*.

[14] Corporate prices are available at 20-minute intervals from Capital Management Services at *http://www.bondvu.com/*.

[15] "Valuation Prices" refer to an estimated price that has been determined based on an analytical evaluation of a bond in relation to similar bonds that have traded. Valuation prices are based on bond characteristics, market performance, changes in the level of interest rates, market expectations and other factors that influence a bond's value.

[16] The ABS Securities will trade on Amex's debt trading floor. Telephone conversation between Jeffrey P. Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on February 24, 2004.

[17] Amex Rule 411 requires that every member, member firm or member corporation use due diligence to learn the essential facts, relative to every customer and to every order or account accepted.

[18] *See* Amex Rule 462.

been deemed adequate under the Act. In addition, the Exchange also has a general policy, which prohibits the distribution of material, non-public information by its employees.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [19] in general and furthers the objectives of Section 6(b)(5) [20] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, 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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2004–08. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–2004–08 and should be submitted by March 23, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of 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 applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[21] The Commission finds that this proposal is similar to several approved equity-linked instruments currently listed and traded on the Amex.[22] Accordingly, the Commission finds that the listing and trading of the ABS Securities is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[23]

As described more fully above, the ABS securities are asset-backed securities and represent a repackaging of the Underlying Corporate Bonds together with the addition of either Treasury Securities or GSE Securities, subject to certain distribution of interest obligations of the Trust. The ABS Securities are not leveraged instruments. The ABS Securities are debt instruments whose price will still be derived and based upon the value of the Underlying Securities. The Exchange represents that the value of the Underlying Securities will be determined by one or more market makers, in accordance with Exchange rules. Investors are guaranteed at least the principal amount that they paid for the Underlying Securities. In addition, each of the Underlying Corporate Bonds will pay interest on a semi-annual basis while the ABS securities themselves will pay interest on a monthly or quarterly basis, pursuant to the Interest Distribution Agreement. Neither the Treasury Securities or GSE Securities will make periodic payments of interest.[24] In addition, the ABS securities will mature on the latest maturity date of the Underlying Securities.[25] However, due to the pass-through nature of the ABS Securities, the level of risk involved in the purchase or sale of the ABS Securities is similar to the risk involved in the purchase or sale of traditional common stock.

The Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to the ABS Securities. In particular, by imposing the hybrid listing standards, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the ABS Securities. Moreover, the Commission notes that the Exchange will distribute a circular to its membership calling attention to the specific risks associated with the ABS Securities.

The Commission notes that the ABS Securities are dependent upon the individual credit of the issuers of the Underlying Securities. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide that only issuers satisfying asset and equity requirements may issue securities such as the ABS Securities. In addition, the Exchange's "Other Securities" listing standards further provide that there is no minimum holder requirement if the securities are traded in thousand dollar denominations.[26] The Commission notes that the Exchange has represented that the ABS Securities will be listed in $1000 denominations with its existing debt floor trading rules applying to the trading. In any event, financial information regarding the issuers of the Underlying Securities will be publicly available.[27] Due to the pass-through and passive nature of the ABS Securities, the Commission does not object to the Exchange's reliance on the assets and

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(5).

[21] *Id.*

[22] See *supra* note 11.

[23] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[24] See *supra* note 8.

[25] The Commission notes, however, that the Exchange has represented that the Underlying Securities may drop out of the basket upon maturity or upon payment default or acceleration of the maturity date for any default other than payment default. See Prospectus for a schedule of the distribution of interest and of the principal upon maturity of each Underlying Security and for a description of payment default and acceleration of the maturity date.

[26] See Company Guide Section 107A.

[27] The ABS Securities will be registered under section 12 of the Act.

stockholder equity of the Underlying Securities rather than the Trust to meet the requirement in Section 107A of the Company Guide. The Commission notes that the distribution and principal amount/aggregate market value requirements found in Sections 107A(b) and (c), respectively, will otherwise be met by the Trust as issuer of the ABS Securities. Thus, the ABS Securities will conform to the initial listing guidelines under Section 107A and continued listing guidelines under Sections 1001–1003 of the Company Guide, except for the assets and stockholder equity characteristics of the Trust. At the time of issuance, the Commission also notes that the ABS Securities will receive an investment grade rating from an NRSRO.

The Commission also believes that the listing and trading of the ABS Securities should not unduly impact the market for the Underlying Securities or raise manipulative concerns. As discussed more fully above, the Exchange represents that, in addition to requiring the issuers of the Underlying Securities meet the Exchange's Section 107A listing requirements (in the case of Treasury securities, the Exchange will rely on the fact that the issuer is the U.S. Government rather than the asset and stockholder tests found in Section 107A), the Underlying Securities will also be required to meet or exceed the Exchange's Bond and Debenture Listing Standards pursuant to Section 104 of the Amex's Company Guide, which among other things, requires that underlying debt instrument receive at least an investment grade rating of "B" or equivalent from an NRSRO. Furthermore, at least 75% of the basket is required to contain Underlying Securities from issuances of $100 million or more. The Amex also represents that the basket of Underlying Securities will not be managed and will remain static over the term of the ABS securities. In addition, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

The Commission notes that the investors may obtain price information on the Underlying Securities through market venders such Bloomberg, L.P., or though Web sites such as *http://www.investinginbonds.com* (for Underlying Corporate Bonds) and *http://www.publicdebt.treas.gov* and *http://www.govpx.com* (for Treasury Securities and GSE Securities, respectively).

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amex has requested accelerated approval because this product is similar to several other asset-backed instruments currently listed and traded on the Amex.[28] The Commission believes that the ABS Securities will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the ABS Securities promptly. Additionally, the ABS Securities will be listed pursuant to Amex's existing hybrid security listing standards as described above. Based on the above, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act [29] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[30] that the proposed rule change (SR–Amex–2004–08) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4573 Filed 3–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49317; File No. SR–FICC–2003–12]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Modifications to FICC's Rules Regarding Member Compliance With Applicable Laws, Modern Forms of Signatures, and Non-Eligibility of Certain Securities

February 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 17, 2003, Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by FICC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow FICC to amend rules for its Government Securities Division ("GSD") and Mortgage-Backed Securities Division ("MBSD") regarding member compliance with applicable laws in the use of FICC's services, use of modern forms of signatures, and the non-eligibility of certain securities.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC 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. FICC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Compliance With Laws

The proposed rule change will allow FICC to add language to GSD and MBSD rules to clarify and to remind members of the requirement to comply with all applicable laws in connection with their use of FICC's services.[4] In particular, members should be cognizant of all applicable securities, taxation, and money laundering laws because these laws are likely to be invoked each time a member submits a transaction for processing through FICC. For example, a member must comply with the applicable requirements pertaining to it

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[28] *See supra* note 11.

[29] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 U.S.C. 78o–3(b)(6) and 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] On January 1, 2003, the MBS Clearing Corporation ("MBSCC") was merged into the Government Securities Clearing Corporation ("GSCC"), and GSCC was renamed FICC. FICC operates through two divisions, the Government Securities Division (the "GSD," formerly GSCC) and the Mortgage-Backed Securities Division ("MBSD," formerly MBSCC) handling Government securities and mortgage-backed securities transactions, respectively. Each Division has retained its own set of rules. This rule filing will implement changes to the rules of both the GSD and MBSD. Changes to the MBSD rules will affect both clearing and electronic pool notification ("EPN") services.

[3] The Commission has modified the text of the summaries prepared by FICC.

[4] FICC will add language to GSD Rule 3, Section 8 and amend language in MBSD Article III, Rule 1, Section 7 of the clearing rulebook and in MBSD Article VIII, Rule 1, Section 5 of the EPN rulebook.

that are contained in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act) Act[5] prior to submitting a transaction for processing through FICC's systems. Members cannot use FICC's system in furtherance of violation of any laws.

2. Electronic Signatures

The proposed rule change will also allow FICC to update its rules with respect to acceptable forms of signatures. Currently, GSD Rule 32 permits GSD to accept documents from members that have been executed using mechanically reproduced facsimile signatures. The proposed rule change modernizes Rule 32 to permit GSD at its option to accept other forms of signatures, such as electronic signatures, in lieu of original signatures.

The MBSD does not currently have a provision regarding acceptable forms of signatures in its rules. This filing adds Article V, Rule 16 to MBSD's clearing rulebook and Article X, Rule 15 to the EPN rulebook. The new language will mirror the language in GSD Rule 32.

3. Non-Eligibility of Certain Securities

The proposed rule change will also allow FICC to amend its definition of "eligible security" to make clear that any security of an issuer that either is listed on the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issuer list or is incorporated in a country that is on the OFAC list of pariah countries cannot be an eligible security for purposes of FICC's rules.[6]

The proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] and the rules and regulations thereunder because it will allow FICC to enhance compliance with applicable laws, thereby reducing risk, and to modernize its rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. FICC will notify the Commission of any written comments received by FICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change took effect upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4)[9] thereunder because the proposal effected a change in an existing service of FICC that (i) does not adversely affect the safeguarding of securities or funds in FICC's custody or control or for which it was responsible and (ii) does not significantly affect the respective rights or obligations of FICC or persons using the service. At any time within sixty days of the filing of such rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–FICC–2003–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in either hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of such filing also will be available for inspection and copying at the principal office of FICC. Copies of the proposed rule change and all subsequent amendments are also available at *www.ficc.com*. All submissions should refer to File No. SR–FICC–2003–12 and should be submitted by March 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4571 Filed 3–1–04; 8:45 am]

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[5] 15 U.S.C. 7001–7006, 7021, and 7031 (2000).

[6] The affected rules are GSD Rule 1; MBSD, clearing rulebook, Rule 1; and MBSD, EPN rulebook, Article VI, Rule 2.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b-4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49316; File No. SR–FICC–2003–11]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Notification Obligations

February 24, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 30, 2003, the Fixed Income Clearing Corporation ("FICC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by FICC. On October 30, 2003, FICC also filed an amendment to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify the rules of FICC's Government Securities Division ("GSD") and the Mortgage-Backed Securities Division ("MBSD") so that notices disseminated to members in an electronic format will satisfy each Division's notification obligations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FICC included statements concerning the purpose of and basis for the proposed rule change and discussed any

[1] 15 U.S.C. 78s(b)(1).

comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, GSD's rules require Important Notices to be delivered to members in hard copy format via U.S. mail, facsimile, or by hand delivery only when specifically requested in writing by a member. MBSD's rules do not currently provide for a specific method of delivering Important Notices to members.

FICC believes that delivering Important Notices by e-mail is an effective and timely method of communicating important information to members. FICC now proposes to change the GSD's and MBSD's rules in an identical manner so that GSD and MBSD have explicit authority to do so.

In addition to the above, FICC proposes to amend GSD's rules to (i) eliminate the provision that allows members to request hand delivery of Important Notices and (ii) permit delivery of notices to members by posting the notices on FICC's Web site and have these postings satisfy FICC's notification obligations. FICC believes that given the other methods of providing notices, hand delivery is no less optimal because it is a burdensome process for both FICC and members. No FICC member has requested hand-delivery of Important Notices. Members will be able to readily access all FICC important notices by accessing FICC's Web site at *http://www.ficc.com*.

FICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder because it will facilitate the timely dissemination of information necessary for participation in FICC's services.

B. Self-Regulatory Organization's Statement on Burden on Competition

FICC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not solicited or received written comments relating to the proposed rule change. FICC will notify the Commission of any written comments it receives.

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[3] and Rule 19b–4(f)(3)[4] thereunder because it is concerned solely with the administration of FICC. At any time within 60 days of the filing of such proposed rule change, the Commission could have summarily abrogated such rule change if it appeared to the Commission that such action was necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549–0069. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–FICC–2003–11. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the rule filing that are filed with the Commission, and all written communications relating to the rule filing between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at FICC's principal office and on FICC's Web site at *http://www.ficc.com/gov/gov.docs.jsp?NS-query=*. All submissions should refer to File No. SR–FICC–2003–11 and should be submitted by March 23, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4572 Filed 3–1–04; 8:45 am]

BILLING CODE 8010–01–P

[2] The Commission has modified the text of the summaries prepared by FICC.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 200.19b–4(f)(3)(iii).

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49314; File Nos. SR–NYSE–2004–03; SR–NASD–2004–020]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. Relating to Certain Prerequisites to and Exemptions From Taking the Research Analyst Qualification Examination ("Series 86/87")

February 24, 2004.

Pursuant to section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act" or "Exchange Act"), and Rule 19b–4 thereunder,[2] notice is hereby given that on January 30, 2004, the New York Stock Exchange, Inc. ("NYSE" or the "Exchange"), and on February 3, 2004, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared by the respective self-regulatory organizations ("SROs"). The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statements of the Terms of Substance of the Proposed Rule Changes

The NYSE is proposing an interpretation to NYSE Rule 344 to establish certain prerequisites to, and exemptions from, taking the Research Analyst Qualification Examination ("Series 86/87").

NASD is proposing to amend NASD Rule 1050 to set forth certain prerequisites and exemptions for the requirement that all associated persons who function as research analysts be registered with NASD and pass a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

qualification examination. Specifically, the proposed rule change would (1) establish, as a prerequisite to be registered as a research analyst, the requirement that an applicant also be registered pursuant to NASD Rule 1032 as a General Securities Representative and (2) provide for an exemption from the analytical portion of the Research Analyst Qualification Examination (Series 86) for certain applicants who have passed both Levels I and II of the Chartered Financial Analyst ("CFA") Examination.

Below is the text of the proposed rule changes. Proposed new language is in *italics;* proposed deletions are in [brackets].

A. NYSE's Proposed Interpretation Text

NYSE Rule 344 *RESEARCH ANALYSTS AND SUPERVISORY ANALYSTS*

/01 Qualifications

Research Analyst candidates shall qualify by taking the Research Analyst Qualification Examination (Series 86/87). For purposes of this interpretation, the term "research analyst" is defined in Rule 344.10. The Series 86 covers fundamental security analysis and valuation of equity securities. The Series 87 covers pertinent rules and regulations of the self-regulatory organizations, and the SEC.

Supervisory Analyst candidates shall qualify by taking and passing the Supervisory Analyst (Series 16) Examination.

Pre-requisite

The General Securities Registered Representative Examination (Series 7) qualification is a prerequisite for any Research Analyst candidate prior to taking either Part I (Series 86) or Part II (Series 87) of the Research Analyst Qualification Examination.

Alternatively, the United Kingdom Limited Registered Representative (Series 17) Examination and the Canadian Limited Registered Representative (Series 37/38) Examination will also serve as prerequisites to taking either Part I or Part II of the Research Analyst Qualification Examination.

In satisfying the Series 7, Series 17 or Series 37/38 examination prerequisite, Research Analyst candidates will not be required to complete the four month post-examination training period required of Registered Representative candidates pursuant to Rule 345.15/02 (see page 3459). Candidates that have failed either Part I or II of the examination must wait 30 days before retaking either part of the examination.

Experience

Appropriate experience for a candidate for Supervisory Analyst means having at least three years prior experience within the immediately preceding six years involving securities or financial analysis. Examples of appropriate experience may include the following:

(a) Equity or Fixed Income Research Analyst;

(b) Credit Analyst for a securities rating agency;

(c) Supervising preparation of materials prepared by financial/securities analysts;

(d) Financial analytical experience gained at banks, insurance companies or other financial institutions;

(e) Academic experience relating to the financial/securities markets/industry.

/02 Director of Research

A person having the title of "Director of Research" need not be a supervisory analyst as defined by the Rule so long as he does not approve research reports. If, however, such a person is in charge of registered representatives, he must qualify as a supervisory person under Rule 342.13.

/03 Chartered Financial Analyst (CFA)

Successful completion of the CFA Level I Examination given by the Institute of Chartered Financial Analysts (in lieu of completion of Levels I, II and III for a full CFA designation) will suffice to allow a Supervisory Analyst candidate to qualify by taking Part I of the Series 16 Qualification Examination.

Successful completion of Levels I and II of the CFA Examination allows a Research Analyst candidate to request an exemption from Part I (Series 86) of the Research Analyst Qualification Examination. If an exemption is granted for Part I (Series 86), a candidate will be qualified as a Research Analyst after passing Part II (Series 87) only.

To qualify for a CFA exemption a Research Analyst candidate must have: (i) Completed the CFA Part II within two years of application for registration or (ii) functioned as a research analyst continuously since having passed the CFA Part II. Applicants that have completed the CFA Part II that do not meet criteria (i) or (ii) where good cause is shown based upon previous related employment experience may make a written request to the Exchange for an exemption.

B. NASD's Proposed Rule Text

1050. Registration of Research Analysts

(a) All persons associated with a member who are to function as research analysts shall be registered with NASD. Before [their] registration[s] *as a Research Analyst* can become effective, [they]*an applicant* shall:

(1) be registered pursuant to Rule 1032 as a General Securities Representative; and

(2) pass a Qualification Examination for Research Analysts as specified by the Board of Governors.

(b) For the purposes of this Rule 1050, "research analyst" shall mean an associated person who is primarily responsible for the preparation of the substance of a research report or whose name appears on a research report.

(c) Upon written request pursuant to the Rule 9600 Series, NASD will grant a waiver from the analytical portion of the Research Analyst Qualification Examination (Series 86) upon verification that the applicant has passed Levels I and II of the Charter Financial Analyst Examination and has either (1) functioned as a research analyst continuously since having passed the Level II examination or (2) applied for registration as a research analyst within two years of having passed the Level II examination. An applicant who has been granted such an exemption still must become registered as a General Securities Representative and then complete the regulatory portion of the Research Analyst Qualification Examination (Series 87) before that applicant can be registered as a Research Analyst.

* * * * *

9600. PROCEDURES FOR EXEMPTIONS

9610. Application

(a) Where to File

A member seeking exemptive relief as permitted under Rules 1021, *1050,* 1070, 2210, 2315, 2320, 2340, 2520, 2710, 2720, 2810, 2850, 2851, 2860, Interpretive Material 2860–1, 3010(b)(2), 3020, 3150, 3210, 3230, 3350, 8211, 8212, 8213, 11870, or 11900, Interpretive Material 2110–1, or Municipal Securities Rulemaking Board Rule G–37 shall file a written application with the appropriate department or staff of the Association and provide a copy of the application to the Office of General Counsel of NASD Regulation.

(b) through (c) No change.

* * * * *

II. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the NYSE and NASD included

statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. NYSE and NASD have prepared summaries, set forth in Sections A, B, and C below.

A. Self-Regulatory Organizations' Statements of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

1. NYSE's Purpose

Recent amendments to NYSE Rule 344 ("Research Analysts and Supervisory Analysts") require Research Analysts to be registered with, qualified by, and approved by the Exchange. The Exchange is proposing to adopt a new interpretation to NYSE Rule 344 to establish certain prerequisites to and exemptions from the requirement that Research Analysts pass a new qualification examination.

Background

On July 29, 2003, the SEC approved amendments to Exchange Rules 472 ("Communications with the Public"), 351 ("Reporting Requirements"), 344 ("Research Analysts and Supervisory Analysts" (formerly titled "Supervisory Analysts')), and 345A ("Continuing Education for Registered Persons") (collectively referred to as the "Research Analysts" Conflicts Rules").[3]

The Research Analysts' Conflicts Rules include, a new registration category and qualification examination for research analysts, address potential conflicts of interest, and require disclosure in research reports and during public appearances by research analysts of other potential conflicts of interest. The NYSE believes that the Research Analyst Qualification Examination represents a continuation of the SRO regulatory effort to safeguard the investing public from potential conflicts of interest relating to research analysts. NYSE believes that the new qualification examination, in conjunction with the new rules, assist in protecting the investing public by requiring research analysts to demonstrate that they are competent to perform their jobs and are knowledgeable about the new regulatory requirements affecting them.

The Research Analyst Qualification Examination (Series 86/87) is a five-and-a-half hour examination, consisting of 150 questions. The exam is divided into two parts. Part I, the Series 86, consists of 100 questions, which address security analysis and valuation of equity securities. Candidates will be allotted 240-minutes to complete Part I. Part II, the Series 87, consists of 50 questions, which primarily address pertinent SRO and SEC rules and regulations, including the recent Research Analysts' Conflict Rules. Candidates will be allotted 90 minutes to complete Part II.

The requirement to take and pass the proposed Series 86/87 examination applies to all prospective and current research analysts, as the term is defined in Exchange Rule 344.10, which provides that the term "research analyst" includes a member, allied member, or employee who is primarily responsible for the preparation of the substance of a research report and/or whose name appears on such report. Individuals who are currently functioning as Research Analysts will be required to pass the Series 86/87 examination within one year of its implementation date.

The proposed interpretation to NYSE Rule 344 would require taking the General Securities Registered Representative Examination (Series 7) as a prerequisite to taking either Part I or Part II of the Research Analyst Qualification Examination. Although certain subject areas of the Series 7 examination are not directly related to a research analyst's job, the knowledge required to pass the Series 7 examination will provide an analyst with good general background information on the industry and address regulatory concerns in instances when an analyst might participate in sales and solicitation activities. Moreover, the Series 7 examination which tests, among other topics, "communications with the public" and "know your customer" rules, would serve an important regulatory purpose to have research analysts Series 7 qualified.

. Alternatively, the United Kingdom ("UK") Limited Registered Representative (Series 17) Examination and the Canadian Limited Registered Representative (Series 37/38) Examination will also serve as prerequisites to taking either Part I or Part II of the Research Analyst Qualification Examination. Persons qualified to conduct a general public securities business in the UK and Canada respectively can also be qualified for the same in the U.S. by taking the Series 17 or Series 37/38 in lieu of the Series 7. These examinations are intended to cover subject matter unique to the U.S. securities markets otherwise not covered by the UK/Canada examinations.

The proposed interpretation also allows a research analyst candidate that has passed both Level I and Level II of the Chartered Financial Analyst ("CFA") Examination, to request an exemption from Part I (Series 86) of the Research Analyst Qualification Examination. A Research Analyst candidate that has passed Levels I and II of the CFA Examination will have evidenced proficiency in "Investment Tools" and "Asset Valuation" (2 major topic areas of the exam). Exchange staff has reviewed the CFA Level I and II examinations and has determined that the content coverage is comparable to the Series 86. Many research analysts have completed CFA Levels I and II, and it is not necessary to re-qualify them with respect to such analytical skills. As such, granting an exemption from the securities analysis and equity valuation' part (Series 86) of the examination can be done without compromising any regulatory concerns. Analysts granted waivers of the Series 86 will still be required to pass the Series 87 dealing with industry rules and regulations.

To qualify for the CFA exemption to the examination requirement a Research Analyst candidate must have: (i) Completed the CFA Part II within 2 years of application for registration or (ii) functioned as a research analyst continuously since having passed the CFA Part II. Applicants that have completed the CFA Part II that do not meet either of the above criteria, may, upon a showing of good cause based upon previous related employment experience, make a written request to the Exchange for an exemption.

2. NYSE's Statutory Basis

The statutory basis for this proposed rule change is section 6(c)(3)(B) of the Exchange Act.[4] Under that Section, it is the Exchange's responsibility to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

In addition, under section 6(c)(3)(B) of the Exchange Act,[5] the Exchange may bar a natural person from becoming a member or person associated with a member, if such natural person does not meet such standards of training, experience and competence as prescribed by the rules of the Exchange. Pursuant to this statutory obligation, the Exchange has: (i) Developed an examination that will be administered to establish that Research Analysts have attained specified levels of competence and knowledge, and (ii) proposed an interpretation to establish certain requirements and pre-requisites for

[3] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003).

[4] 15 U.S.C. 78f(c)(3)(B).

[5] *Id.*

analysts before taking such an examination.

1. NASD's Purpose

The proposed rule change would implement certain aspects of NASD Rule 1050, which requires that associated persons who function as research analysts register with NASD and pass a qualification examination. NASD Rule 1050 is intended to ensure that research analysts possess a certain competency level to perform their jobs effectively and in accordance with applicable rules and regulations. The proposed rule change would require such persons not only to pass the Research Analyst Qualification Examination (Series 86/87), but also to be registered pursuant to NASD Rule 1032 as a General Securities Representative (Series 7, 17, 37 or 38). The proposed rule change further would provide for an exemption from the Series 86 analytical portion of the qualification examination for certain associated persons who have passed both Levels I and II of the CFA Examination administered by the Association for Investment Management and Research ("AIMR").

As to the General Representative qualification requirement, NASD believes it is important for those functioning as research analysts to be familiar with general industry rules and practices, particularly those of registered representatives, who are a primary source for distributing research. The requirement further would develop in research analysts a sensitivity to the interests of public customers who are the end users of their work product. According to NASD, the proposed Series 86/87 examination program was developed jointly by NASD and NYSE staff in consultation with a committee of research analysts, and the committee unanimously recommended that research analysts be required to pass the Series 7 in addition to a more job-specific research analyst qualification examination.[6]

NASD intends to require applicants to pass the Series 7 examination prior to taking the Series 86 or 87 examinations. NASD believes this is the most logical testing sequence and will provide a better foundation for applicants to understand and address the more specific topics and rules covered by the Series 86 and 87 examinations.

NASD has reviewed the content of the CFA examination and found the major areas tested in Levels I and II of that examination to be comparable to topics covered by the Series 86 examination. Moreover, NASD believes that the minimum passing scores for Levels I and II of the CFA examination are sufficient to ensure that those who succeed in passing those Levels have obtained a level of analytic competency commensurate with a passing score on the Series 86 examination. Accordingly, the proposed rule change would provide for an exemption[7] from the Series 86 examination where an applicant has passed Levels I and II of the CFA examination and either (i) functioned as a research analyst continuously since having passed Level II or (ii) applied for registration as a research analyst within two years of having passed Level II. NASD believes these limitations will ensure that applicants have current knowledge of the concepts covered by the CFA Level I and II examinations, as well as familiarity with the current regulatory environment. Applicants who do not meet these criteria may, based upon previous related employment/experience, make written request to NASD for a waiver.[8]

An applicant who has been granted such an exemption still must become registered as a General Securities Representative and then complete the regulatory portion of the Research Analyst Qualification Examination (Series 87) before the applicant can be registered and function as a Research Analyst.

4. NASD's Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[9] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed rule change is consistent with the provisions of the Act noted above in that it will ensure that those functioning as research analysts possess a minimum competency level and knowledge of applicable laws, rules and regulations, thereby enhancing investor protection.

B. Self-Regulatory Organizations' Statements on Burden on Competition

NYSE and NASD do not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act, as amended.

C. Self-Regulatory Organizations' Statements on Comments on the Proposed Rule Changes Received From Members, Participants or Others

The NYSE and NASD have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission:

(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 changes are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule=comments@sec.gov*. All comment letters should refer to File Nos. SR–NYSE–2004–03, SR–NASD–2004–020. These file numbers should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in

[6] The Series 17, 37, and 38 are modified versions of the Series 7 for associated persons who are registered in good standing with the Financial Services Authority of the United Kingdom or one of the Canadian securities regulatory organizations.

[7] Initially, the Series 86 exemption must be requested and granted manually; however, NASD anticipates that at some point the exemption will be granted automatically through the CRD system.

[8] Pursuant to NASD Rule 1070 and the NASD Rule 9600 Series, NASD may, in exceptional cases and where good cause is shown, waive the applicable qualification examination and accept other standards as evidence of an applicant's qualifications for registration. While NASD will consider waivers of the Series 86/87 in extraordinary circumstances, in light of the purpose of the new research analyst qualification requirements, NASD does not intend to grant waivers except to those who have either passed the Series 86/87 or the CFA Levels I and II. To request either the CFA exemption or a waiver, a member must submit a written request to NASD's Testing and Qualification Department on behalf of the applicant that sets forth the basis for the request. If granted, NASD will then enter the exemption or waiver in the CRD system, which will register the applicant as a research analyst when the other examination requirements have been satisfied.

[9] 15 U.S.C. 78*o*–3(b)(6).

hard copy or by e-mail but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 filings will also be available for inspection and copying at the principal offices of the NYSE and NASD. All submissions should refer to the file numbers SR–NYSE–2004–03, SR–NASD–2004–020 and should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4570 Filed 3–1–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[MidMark Capital II, L.P License No. 02/72–0602]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that MidMark Capital II, L.P., 177 Madison Avenue, Morristown, New Jersey 07960, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (2003)). MidMark Capital II, L.P. proposes to provide equity financing to Kane Magnetics Acquisition, LLC. The financing is contemplated for an acquisition.

The financing is brought within the purview of Section 107.730(a)(1) of the Regulations because MidMark Equity Partners II, L.P., an Associate of MidMark Capital II, L.P., currently owns greater than ten percent of Kane Magnetics Acquisition, LLC and therefore Kane Magnetics Acquisition, LLC is considered an Associate of MidMark Capital II, L.P. as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Dated: February 25, 2004.

Jeffrey D. Pierson,

Associate Administrator for Investment.

[FR Doc. 04–4575 Filed 3–1–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster # 3566]

Commonwealth of Pennsylvania

Greene County and the contiguous counties of Fayette and Washington in the Commonwealth of Pennsylvania; and Marshall, Monongalia, and Wetzel Counties in the State of West Virginia constitute a disaster area as a result of severe storms and flooding that occurred on November 19 and 20, 2003. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on April 26, 2004 and for economic injury until the close of business on November 24, 2004 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.250
Homeowners without credit available elsewhere	3.125
Businesses with credit available elsewhere	6.123
Businesses and non-profit organizations without credit available elsewhere	3.061
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.061

The numbers assigned to this disaster for physical damage are 356611 for Pennsylvania and 356711 for West Virginia. For economic injury, the numbers are 9Z4600 for Pennsylvania and 9Z4700 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: February 24, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–4576 Filed 3–1–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4610]

Shipping Coordinating Committee; Notice for Change of Meeting

This provides notice of a change in the date, time and location of the Shipping Coordinating Committee (SHC) announced on February 17, 2004, through meeting notice 4603. The SHC will now conduct an open meeting at 10 a.m. on Friday, March 5, 2004, in Room 1303 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593–0001. The primary purpose of the meeting remains to prepare for the 12th session of the International Maritime Organization (IMO) Sub-Committee on Flag State Implementation to be held at IMO Headquarters in London, England from March 15th to 19th.

The primary matters to be considered include:

- Measures to enhance maritime security;
- Responsibilities of governments and measures to encourage flag State compliance;
- PSC on seafarer's working hours;
- Comprehensive analysis of difficulties encountered in the implementation of IMO instruments;
- Regional cooperation on port State control;
- Reporting procedures on port State control detentions and analysis and evaluation of reports;
- Mandatory reports under MARPOL 73/78;
- Casualty statistics and investigations;
- PSC officer training for bulk carriers;
- Development of provisions on transfer of class;
- Review of the Survey Guidelines under the HSSC (resolution A.746(18));
- Marking the ship's plans, manuals and other documents with the IMO ship identification number;
- Illegal, unregulated and unreported (IUU) fishing and implementation of resolution A.925(22);
- Consideration of IACS unified interpretations;
- Unique IDs for companies and registered owners;
- Review of reporting requirements for reception facilities.

[10] 17 CFR 200.30–3(a)(12).

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Commander Linda Fagan, Commandant (G–MOC), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1116, Washington, DC 20593–0001 or by calling (202) 267–2978.

Dated: February 24, 2004.

Steven Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–4605 Filed 3–1–04; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 4611]

Shipping Coordinating Committee Notice of Change in Meeting

This provides notice of a change in location for the meeting of the U.S. Shipping Coordinating Committee (SHC) announced on February 17, 2004, through Notice 4604. The SHC will now conduct an open meeting at 10 a.m. on Tuesday, April 13, 2004, in Room 4342 at the Department of Transportation, 400 7th & D Streets, SW., Washington, DC 20590–0001. The purpose of this meeting remains to prepare for the Eighty-Eighth Session of the International Maritime Organization's (IMO) Legal Committee (LEG 88) scheduled from April 19, to April 23, 2004.

The provisional LEG 88 agenda calls for the Legal Committee to review the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, and its Protocol of 1988 relating to Fixed Platforms Located on the Continental Shelf (SUA Convention and Protocol). Also the Committee will examine the draft Wreck Removal Convention. To be addressed as well is the Provision of Financial Security which includes a progress report on the work of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding claims for Death, Personal Injury and Abandonment of Seafarers, and includes follow-up resolutions adopted by the International Conference on the Revision of the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 1974. The Legal Committee will examine places of refuge, measures to protect crews and passengers against crimes committed on vessels, as well as monitoring of the implementation of the HNS Convention, access of news media to the proceedings of institutionalized committees, and matters arising from the twenty-second extraordinary session of the Council and the twenty-third regular session of the Assembly. Finally the committee will review technical cooperation: Subprogramme for maritime legislation in addition to allotting time to address any other issues that may arise on the Legal Committee's work program.

Members of the public are invited to attend the SHC meeting up to the seating capacity of the room. To facilitate the building security process, those who plan to attend should call or send an e-mail two days before the meeting. Upon request, participating by phone may be an option. For further information please contact Captain Joseph F. Ahern or Lieutenant Martha Rodriguez, at U.S. Coast Guard, Office of Maritime and International Law (G-LMI), 2100 Second Street, SW., Washington, DC 20593–0001; e-mail *mrodriguez@comdt.uscg.mil*, telephone (202) 267–1527; fax (202) 267–4496.

Dated: February 24, 2004.

Steve Poulin,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 04–4606 Filed 3–1–04; 8:45 am]

BILLING CODE 4710–07–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–6832. (SC: 000YZN1)

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than April 1, 2004.

SUPPLEMENTARY INFORMATION: *Type of Request:* Regular submission, proposal to reinstate with change a previously approved collection for which approval has expired (OMB control number 3316–0062).

Title of Information Collection: TVA Procurement Documents, including Invitation To Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 24,300.

Estimated Total Annual Burden Hours: 49,100.

Estimated Average Burden Hours Per Request: 0.49.

Need For and Use of Information: TVA procures goods and services to fulfill its statutory obligations and sells surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 04–4558 Filed 3–1–04; 8:45 am]

BILLING CODE 8120–08–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB Review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley

Authority, 1101 Market Street (EB–5B), Chattanooga, TN 37402–2801; (423) 751–6832. (SC: 0003D1Z) Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than April 1, 2004.

SUPPLEMENTARY INFORMATION: *Type of Request:* Regular submission; proposal for an extension of a currently approved collection, with revisions, which will expire February 29, 2004 (OMB control number 3316–0009).

Title of Information Collection: Salary Survey for Salary Policy Bargaining Unit Employees.

Frequency of Use: Triennial.

Type of affected Public: State or local governments, Federal agencies, non-profit institutions, businesses, or other for-profit.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 999.

Estimated Number of Triennial Responses: 100.

Estimated Total Triennial Burden Hours: 1,400.

Estimated Average Burden Hours Per Response: 3.5.

Need For and Use of Information: TVA conducts a triennial salary survey for employee compensation and benefits as a basis for labor negotiations in determining prevailing rates of pay and benefits for represented salary policy employees. TVA surveys firms, and Federal, State, and local governments whose employees perform work similar to that of TVA's salary policy employees.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 04–4559 Filed 3–1–04; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending January 17, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2003–14296.

Date Filed: January 16, 2003.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 6, 2003.

Description: Application of Cayman Airways Limited ("CAL"), requesting an amendment of its foreign air carrier permit to authorize CAL to serve an additional U.S. point, Ft. Lauderdale, FL.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–4577 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending February 20, 2004

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2004–17171.

Date Filed: February 20, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 12, 2004.

Description: Application of Skylink Airways, Inc., requesting a certificate of public convenience and necessity to engage in interstate scheduled and charter air transportation of passengers and cargo.

Docket Number: OST–2004–17172.

Date Filed: February 20, 2004.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 12, 2004.

Description: Application of Skylink Airways, Inc., requesting a certificate of public convenience and necessity to engage in foreign scheduled and charter air transportation of passengers and cargo.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 04–4578 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–11A]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. 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 March 8, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] 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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on February 25, 2004.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2004–17184.

Petitioner: Patrick Regan.

Section of 14 CFR Affected: 14 CFR 121.311(a)(2), (b), and (c)(1).

Description of Relief Sought: To allow Patrick Regan, while onboard an aircraft, to utilize the E-Z-ON modified vest restraint system that meets FMVSS213, during all phases of flight.

[FR Doc. 04–4580 Filed 3–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 24, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 1, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1867.

Form Number: IRS Form 8453–S.

Type of Review: Extension.

Title: S Corporation Declaration and Signature for Electronic Filing.

Description: Form 8453–S is used to authenticate and authorize transmittal of an electronic Form 1120S.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,500,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping	4 hr., 46 min.
Learning about the law or the form.	28 min.
Preparing the form	1 hr., 30 min.
Copying, assembling, and sending the form to the IRS	16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 17,550,000 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–4595 Filed 3–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Public Comment on Formulating and Conducting a Study on the Use of Biometrics and Other Similar Technologies to Combat Identity Theft

AGENCY: Department of the Treasury, Departmental Offices.

ACTION: Notice and request for comments.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or Act) requires the Secretary of the Treasury (Secretary) to conduct a study of the use of biometrics and other similar technologies to reduce the incidence and costs to society of identity theft by providing convincing evidence of who actually performed a given financial transaction. The Act also requires the Secretary to consult with a number of entities and the general public "in formulating and conducting the study." In order to fulfill its obligations under the Act, the Department of the Treasury (Treasury) seeks public comment on how Treasury should formulate and conduct the study.

DATES: Comments must be received at the specific address(es) listed below on or before April 1, 2004.

ADDRESSES: Because paper mail in the Washington, DC area and at Treasury is subject to delay, please consider submitting your comments by e-mail. Commenters are encouraged to use the title "FACT Act Biometric Study" to facilitate the organization and distribution of comments. All submissions must be in writing or in electronic form. Please send e-mail comments to *factabiometricstudy@do.treas.gov* or facsimile transmissions to FAX Number (202) 622–2310 re: FACT Act Biometric Study. Comments sent by paper mail should be sent to: Susan Hart, Financial Economist, Office of Critical Infrastructure Protection and Compliance Policy, U.S. Department of the Treasury, Annex Room 3174, 1500 Pennsylvania Avenue, N.., Washington, DC 20220, ATTN: FACT Act Biometric Study. Anyone submitting comments is asked to include his or her name, address, telephone number, and if available, FAX number and e-mail address. Treasury will consider all timely comments, and will make all comments in their entirety, including any personally identifying information such as name and address, available for public inspection and copying. Please do not submit confidential commercial or financial information. Comments may be inspected at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Before visiting the library, visitors must call (202) 622–0990 to arrange an appointment. (Treasury reserves the right to display all comments in their entirety electronically via the Internet, subject to Treasury's assessment at a later date of the practicability of managing and maintaining such a channel of access in this instance.)

FOR FURTHER INFORMATION CONTACT: Susan Hart, Financial Economist, Office of Critical Infrastructure Protection and Compliance Policy, Department of the Treasury, (202) 622–0129.

SUPPLEMENTARY INFORMATION:

I. Background

The President signed the FACT Act into law on December 4, 2003, Public Law 108–159, 117 Stat. 1952. The FACT Act amends the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and will provide consumers, companies, consumer reporting agencies, and regulators with new tools that enhance the accuracy of consumers' financial information and help fight identity theft. These reforms make permanent the uniform national standards that support our credit markets, and institute new consumer protections.

Section 157 of the Act provides that the "Secretary of the Treasury shall conduct a study of the use of biometrics and other similar technologies to reduce the incidence and costs to society of identity theft by providing convincing evidence of who actually performed a given financial transaction." Section 157 further requires the Secretary to submit a report to Congress containing the findings and conclusions of the study, together with recommendations for legislative or administrative actions as may be appropriate, within 180 days from the date of enactment of the Act. Section 157 also requires the Secretary to "consult with Federal banking agencies, the Federal Trade Commission, and representatives of financial institutions, consumer reporting agencies, Federal, State, and local government agencies that issue official forms or means of identification, State prosecutors, law enforcement agencies, the biometric industry, and the general public in formulating and conducting the study."

II. Request for Comments

This request for comment is issued pursuant to the requirement in section 157 that Treasury consult broadly in formulating and conducting the study on the use of biometric and other similar technologies. (Other means of consultation in formulating and conducting the study will also be used.) Treasury seeks comment on the questions set forth below and requests that respondents label comments with the corresponding question number and letter to which the comment relates. Additional relevant comments are welcome.

1. a. What range of biometric solutions could the private sector use to reduce the incidence and costs to society of identity theft by providing convincing evidence of who performed a given financial transaction?

b. How are biometric technologies being applied now to reduce the costs and incidence of identity theft?

c. What other technologies are being applied now to reduce the costs and incidence of identity theft?

d. What biometric technologies could be applied in the future to reduce the cost and incidence of identity theft?

e. Does the private sector have adequate incentives to adopt biometric and other technologies to reduce the costs and incidence of identity theft?

2. a. What is the rate of adoption by the financial services industry of biometric solutions for the purpose of verifying or authenticating who performed a given financial transaction? By other industries?

b. What is the rate of adoption of other similar technology solutions provided by the private sector for the same or similar purpose?

3. What are the public's concerns with the use of biometrics?

4. What are the costs of the use of biometrics? What are the risks of using biometrics?

5. What are the tradeoffs for the consumer in using biometrics?

6. What are the benefits to consumers of the use of biometrics?

7. a. What has been the experience of industries that have used biometrics for the purpose of providing convincing evidence of who performed a given financial transaction? What has been the customer reaction?

b. What has been the experience of industries that have used other similar technologies for the same or similar purpose? What has been customer reaction?

8. What barriers are there to the greater use of biometric and other technologies to reduce the cost and incidence of identity theft?

Dated: February 25, 2004.

Michael A. Dawson,

Deputy Assistant Secretary, Department of the Treasury.

[FR Doc. 04–4604 Filed 3–1–04; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its renewal, without change, of an information collection titled "Lending Limits—12 CFR 32." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by April 1, 2004.

ADDRESSES: You should direct comments to:

OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0221, 250 E Street., SW., Washington, DC 20219. Commenters are encouraged to submit comments by fax or email. Comments may be sent by fax to (202) 874–4448, or by email to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

OMB: Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, 1557–0221, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference, Acting OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Lending Limits—12 CFR part 32.

OMB Number: 1557–0221.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection. The OCC requests only that OMB extend its approval of the information collection.

The information collection is found in 12 CFR 32.7(b). The information collection applies generally to all national banks and specifically to those

national banks that wish to use exceptions to OCC's lending limits for 1–4 family residential real estate loans and loans to small businesses.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 2,140.

Estimated Total Annual Responses: 2,140.

Estimated Total Annual Burden: 55,640 hours.

Frequency of Response: On occasion.

Comments: The OCC has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments regarding any aspect of this collection of information. All comments will become a matter of public record.

Dated: February 25, 2004.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 04–4601 Filed 3–1–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Availability of Report of 2003 Closed Meetings

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to 5 U.S.C. app. I section 10(d), of the Federal Advisory Committee Act, and 5 U.S.C. section 552b, the Government in the Sunshine Act, a report summarizing the closed meeting activities of the Art Advisory Panel during 2003 has been prepared. A copy of this report has been filed with the Assistant Secretary of the Treasury for Management.

DATES: *Effective Date:* This notice is effective March 2, 2004.

ADDRESSES: The report is available for public inspection and requests for copies should be addressed to: Internal Revenue Service, Freedom of Information Reading Room, Room 1621, 1111 Constitution Avenue, NW., Washington, DC. 20224, telephone number (202) 622–5164 (not a toll free number).

FOR FURTHER INFORMATION CONTACT: Karen Carolan, AP:ART, Internal Revenue Service/Appeals, 1099 14th Street, NW., Washington, DC 20005, telephone (202) 694–1861 (not a toll free telephone number).

SUPPLEMENTARY INFORMATION: The Commissioner of Internal Revenue has determined that this document is not a major rule as defined in Executive Order 12291 and that a regulatory impact analysis therefore, is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Mark W. Everson,

Comissioner of Internal Revenue.

[FR Doc. 04–4631 Filed 3–1–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
March 2, 2004

Part II

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor; Proposed Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AA92

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Proposed regulation.

SUMMARY: This document contains a proposed regulation that, upon adoption, would establish a safe harbor pursuant to which a fiduciary of a pension plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), will be deemed to have satisfied his or her fiduciary responsibilities in connection with automatic rollovers of certain mandatory distributions to individual retirement plans. This proposed regulation, if finalized, would affect employee pension benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: Written comments on the proposed regulation should be received by the Department of Labor on or before April 1, 2004.

ADDRESSES: Comments (preferably at least three copies) should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attn: Automatic Rollover Regulation. Comments also may be submitted electronically to *e-ori@dol.gov*. All comments received will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Lisa M. Alexander or Kristen L. Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Under the Internal Revenue Code of 1986, as amended (Code), tax-qualified retirement plans are permitted to incorporate provisions requiring an immediate distribution to a separating participant without the participant's consent if the present value of the participant's vested accrued benefit does not exceed $5,000.[1] A distribution by a plan in compliance with such a provision is termed a mandatory distribution, commonly referred to as a "cash-out". Separating participants may choose to roll the cash-out, which is an eligible rollover distribution,[2] into an eligible retirement plan,[3] or they may retain the cash-out as a taxable distribution. Within a reasonable period of time prior to making a mandatory distribution, plan administrators are required to provide a separating participant with a written notice explaining, among other things, the following: the Code provisions under which the participant may elect to have the cash-out transferred directly to an eligible retirement plan and that if an election is not made, such cash-out is subject to the automatic rollover provisions of Code section 401(a)(31)(B); the provision requiring income tax withholding if the cash-out is not directly transferred to an eligible retirement plan; and the provisions under which the distribution will not be taxed if the participant transfers the account balance to an eligible retirement plan within 60 days of receipt.[4]

As part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA),[5] section 401(a)(31) of the Code was amended to require that, absent an affirmative election by the participant, certain mandatory distributions from a tax-qualified retirement plan be directly transferred to an individual retirement plan[6] of a designated trustee or issuer. Specifically, section 657(a) of EGTRRA added a new section 401(a)(31)(B)(i) to the Code to provide that, in the case of a trust that is part of an eligible plan,[7] the trust will not constitute a qualified trust unless the plan of which the trust is a part provides that if a mandatory distribution of more than $1,000 is to be made and the participant does not elect to have such distribution paid directly to an eligible retirement plan or to receive the distribution directly, the plan administrator must transfer such distribution to an individual retirement plan. Section 657(a) of EGTRRA also added a notice requirement in section 401(a)(31)(B)(i) of the Code requiring the plan administrator to notify the participant in writing, either separately or as part of the notice required under section 402(f) of the Code, that the participant may transfer the distribution to another individual retirement plan.[8]

Section 657(c)(2)(A) of EGTRRA directed the Department of Labor (Department) to issue regulations providing safe harbors under which 1) a plan administrator's designation of an institution to receive the automatic rollover and 2) the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary responsibility provisions of section 404(a) of ERISA. Section 657(c)(2)(B) of EGTRRA states that the Secretaries of Labor and Treasury may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of Code section 401(a)(31)(B) automatic rollovers and for other uses that promote the preservation of assets for retirement income.

Section 657(c)(2)(A) of EGTRRA further provides that the Code provisions requiring automatic rollovers of certain mandatory distributions to individual retirement plans will not become effective until the Department of Labor issues safe harbor regulations.

On January 7, 2003, the Department published a notice in the **Federal Register** requesting information on a variety of issues relating to the development of a safe harbor pursuant to section 657(c)(2)(A) and (B) of EGTRRA.[9] In response to this request for information (RFI), the Department received 17 comment letters. Copies of these comments are posted on the Department's Web site at *http://*

[1] Code sections 411(a)(11) and 417(e). *See* Code section 411(a)(11)(D) for circumstances where the amount of a cash-out may be greater than $5,000, based on a participant's prior rollover contribution into the plan.

[2] *See* Code section 402(f)(2)(A).

[3] *See* Code section 402(f)(2)(B).

[4] Code section 402(f)(1).

[5] Pub. L. 107–16, June 7, 2001, 115 Stat. 38.

[6] Section 401(a)(31)(B)(i) of the Code requires the transfer to be made to an "individual retirement plan", which section 7701(a)(37) of the Code defines to mean an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).

[7] Section 657(a)(1)(B)(ii) of EGTRRA defines an "eligible plan" as a plan which provides for an immediate distribution to a participant of any "nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11) of the Code) does not exceed $5,000." The Treasury and the IRS have advised the Department that the requirements of Code section 401(a)(31)(B) apply to a broad range of retirement plans including plans established under Code sections 401(a), 401(k), 403(a), 403(b) and 457. The Department notes that the safe harbor proposed herein applies only to employee benefit pension plans covered under title I of ERISA. *See infra* fn. 15.

[8] Conforming amendments to Code sections 401(a)(31) and 402(f)(1) were also made by section 657 of EGTRRA.

[9] 68 FR 991. *http://www.dol.gov/ebsa/regs/fedreg/proposed/2003000281.htm.*

www.dol.gov/ebsa/regs/cmt_rolloverRFI.html.

Set forth below is an overview of the proposed safe harbor regulation and a review of the comments received in response to the RFI.

B. Overview of Proposal

1. Scope

Consistent with the directive in section 657(c)(2)(A) of EGTRRA, paragraph (a)(1) of § 2550.404a–2 provides that the proposed safe harbor applies only to the automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code. At present, such distributions are limited to nonforfeitable accrued benefits (generally referred to as vested benefits), the present value of which is in excess of $1,000, but less than or equal to $5,000. For purposes of determining the present value of such benefits, section 401(a)(31)(B) references Code section 411(a)(11). Section 411(a)(11)(A) of the Code provides that, in general, if the present value of any nonforfeitable accrued benefit exceeds $5,000, such benefit may not be immediately distributed without the consent of the participant. Section 411(a)(11)(D) of the Code also provides a special rule that permits plans to disregard that portion of a nonforfeitable accrued benefit that is attributable to amounts rolled over from other plans (and earnings thereon) in determining the $5,000 limit. Inasmuch as section 401(a)(31)(B) of the Code requires the automatic rollover of mandatory distributions, as determined under section 411(a)(11), which would include prior rollover contributions, the proposal provides safe harbor coverage for the automatic rollover of mandatory distributions containing such prior rollover contributions. One commenter on the RFI suggested that the safe harbor should extend to amounts of $1,000 or less. While the Department agrees with the commenter that similar considerations may be relevant to such rollovers, the Department did not adopt this suggestion in light of Congress's direction to provide a safe harbor for automatic rollovers of mandatory distributions described in section 401(a)(31)(B) of the Code.

Paragraph (b) of the proposed regulation provides that, if the conditions of the safe harbor are satisfied, fiduciaries will be deemed to have satisfied their fiduciary duties under section 404(a) of ERISA with respect to both the selection of an individual retirement plan provider and the investment of funds in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code to an individual retirement plan, within the meaning of section 7701(a)(37) of the Code.

The proposal makes clear that the standards set forth in the proposed regulation apply solely for purposes of determining compliance with the safe harbor and that such standards are not intended to represent the exclusive means by which a fiduciary might satisfy his or her duties under ERISA with respect to automatic rollovers of mandatory distributions described in section 401(a)(31)(B) of the Code.

As noted above, section 657(c)(2)(B) of EGTRRA provides that the Secretary of the Treasury and the Secretary of Labor shall consider and may provide special relief with respect to the use of low-cost individual retirement plans. The Department considered the provision of such special relief and believes that the framework of the safe harbor encourages the use of low-cost individual retirement plans for purposes of rollovers under section 401(a)(31)(B) of the Code. The Department specifically invites public comment on whether, given the conditions of the proposal, further relief is necessary in this regard. If so, commenters are encouraged to specifically address what relief is necessary and why, as well as identify approaches to providing such relief.

2. Conditions

Safe harbor relief under the proposed regulation is dependent on a fiduciary satisfying six conditions. In general, the conditions address: (1) The amount of mandatory distributions; (2) qualifications for an individual retirement plan; (3) permissible investment products; (4) permissible fees and expenses; (5) required disclosures to participants and beneficiaries; and 6) prohibited transactions. Each of the conditions is discussed below.

The first condition, described in paragraph (c)(1) of the proposed regulation, provides that, for the automatic rollover of mandatory distributions, the present value of the nonforfeitable accrued benefit, as determined under section 411(a)(11) of the Code, does not exceed the maximum amount permitted under section 401(a)(31)(B) of the Code. This condition was discussed in "Scope", above.

The second condition, described in paragraph (c)(2) of the proposed regulation, provides that the mandatory distribution be directed to an individual retirement plan within the meaning of section 7701(a)(37) of the Code. Section 7701(a)(37) defines the term individual retirement plan to mean an individual retirement account described in section 408(a) of the Code and an individual retirement annuity described in section 408(b) of the Code. Accordingly, a bank, insurance company, financial institution or other provider of an individual retirement plan under the safe harbor is required to satisfy the requirements of the Code and regulations issued thereunder.[10] This approach is consistent with the majority of comments received in response to the RFI. These commenters argued that additional criteria are unnecessary and, if imposed. may only serve to limit the number of providers available or willing to establish and maintain the small rollover accounts covered by the safe harbor. Other commenters suggested that the fiduciaries should be required to consider an individual retirement plan provider's financial stability, taking into account such matters as credit ratings or insurance coverage. The Department is unaware of any problems attributable to weaknesses in the existing Code and regulatory standards for individual retirement plan providers. The Department, therefore, believes that, given the limited scope of the proposed safe harbor, existing Code and regulatory standards are sufficiently protective of separating participants and their beneficiaries who would become individual retirement plan account holders, without imposing unnecessary burdens on either plans or individual retirement plan providers.

The third condition, described in paragraph (c)(3) of the proposed regulation, defines the type of investment products in which a mandatory distribution can be invested under the safe harbor. Specifically, the proposal provides for the investment of mandatory distributions in investment products designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity, and taking into account the extent to which charges can be assessed against an individual retirement plan. For this purpose, the product must be offered by

[10] For example, with respect to individual retirement accounts, 26 CFR 1.408–2(b)(2)(i) provides that the trustee of an individual retirement account must be a bank (as defined in section 408(n) of the Code and regulations thereunder) or another person who demonstrates, in the manner described in paragraph (e) of the regulation, to the satisfaction of the Internal Revenue Service, that the manner in which the trust will be administered will be consistent with section 408 of the Code and regulations thereunder. With respect to individual retirement annuities, 26 CFR 1.408–3 describes, among other things, requirements that must be met in order to maintain the tax-qualified status of such annuity arrangements.

a state or federally regulated financial institution, and must seek to maintain a stable dollar value equal to the amount invested in the product by the individual retirement plan.

For purposes of this condition, a "regulated financial institution" is defined in the proposal as a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guarantee associations; or an investment company registered under the Investment Company Act of 1940.

This condition reflects the Department's view that, given the nature and amount of the automatic rollovers, investments under the safe harbor should be designed to minimize risk, preserve assets for retirement and maintain liquidity. Such safe harbor investment products would typically include money market funds maintained by registered investment companies,[11] and interest-bearing savings accounts and certificates of deposit of a bank or a similar financial institution. In addition, safe harbor investment products would include "stable value products" issued by a regulated financial institution that are fully benefit-responsive to the individual retirement plan account holder. Such products must provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder's access to the assets of the individual retirement plan.

The majority of the commenters on the RFI supported inclusion in the safe harbor of an investment product that favored retention of principal and income over growth. A number of commenters suggested that, in addition to such products, the safe harbor should include investment products identical or similar to those in which the participant had directed his or her investments prior to the mandatory distribution. Some argued that retaining such investments outside the plan might, in fact, result in some cost savings (*e.g.*, lower administrative expenses, avoiding termination charges, etc.). Some commenters also argued for inclusion of participant investments in qualifying employer securities as a safe harbor investment option. The Department does not believe that an investment strategy adopted by a participant while in a defined contribution plan or chosen by a plan fiduciary at a particular point in time would necessarily continue to be appropriate for the participant in the context of an automatic rollover, particularly given the relatively small account balances covered by the safe harbor. For this reason, the Department did not adopt these suggestions.

The fourth condition addresses the extent to which fees and expenses can be assessed against an individual retirement plan, including the investments of such plan. Most of the commenters on the RFI argued that the safe harbor should permit fees and expenses attendant to the establishment and maintenance of an individual retirement plan to be charged against the assets in the individual retirement plan and the safe harbor should not impose limits on such fees and expenses, noting that competition in the marketplace will serve to control costs. These commenters also noted that the costs attendant to maintaining individual retirement plans to handle mandatory distributions will be higher than for other types of accounts, because the amounts contributed are small, future contributions are unlikely, and the account holders generally will be passive or not in contact with the individual retirement plan providers.

There is nothing in the safe harbor that would preclude establishment, maintenance and other fees and expenses from being charged against the individual retirement plan of an account holder. On the other hand, the safe harbor does establish limits on the amount of such fees and expenses that can be charged against an individual retirement plan. While the Department agrees that competition in the marketplace may serve to keep administrative and investment management costs down, the Department nonetheless believes that, given the importance of cost considerations in connection with the selection of service providers by plan fiduciaries generally and the importance of protecting principal in connection with automatic rollover distributions, the safe harbor should contain some limits on the fees and expenses that may be assessed against an individual retirement plan established for mandatory distributions. In this regard, the Department attempted to strike a balance in the proposal between the application of a marketplace principle and the investment goal of preserving principal.

Under paragraph (c)(4) of the proposed regulation, fees and expenses attendant to an individual retirement plan, including investments of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs and surrender charges) may not exceed certain limits. The first limit, provided in paragraph (c)(4)(i), is intended to ensure that fees and expenses charged to individual retirement plans established in connection with a mandatory distribution are not inconsistent with the marketplace. This limit provides that the fees and expenses charged to such plans may not exceed the fees and expenses charged by the provider for comparable individual retirement plans established for rollover distributions that are not subject to the automatic rollover provisions of section 401(a)(31)(B) of the Code.

The second limit, provided in paragraph (c)(4)(ii), is intended to protect the investment principal by providing that fees and expenses attendant to the individual retirement plan may be charged only against the income earned by the plan, with the exception of charges assessed for the establishment of the plan. The Department understands that in some instances providers will charge a one-time, typically small, fee to set up an individual retirement plan. While providers are not required to limit establishment charges to the income earned by individual retirement plans, these charges, nonetheless, may not exceed establishment charges assessed against comparable individual retirement plans established for rollover distributions that are not subject to the automatic rollover provisions of section 401(a)(31)(B) of the Code. If a provider, therefore, imposes no establishment or set-up charge on its comparable individual retirement plan customers, it may not impose a charge on plans established for rollover distributions under section 401(a)(31)(B) of the Code.

The fifth condition is intended to ensure that participants and beneficiaries are informed of the plan's procedures governing automatic rollovers, including an explanation about the nature of the investment product in which the mandatory distribution will be invested, and how

[11] Regarding money market mutual funds, prospectuses for such funds generally state that "an investment in the [money market mutual] Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your [the investor's] investment at $1.00 per share, it is possible to lose money by investing in the Fund."

fees and expenses attendant to the individual retirement plan will be allocated (*i.e.*, the extent to which expenses will be borne by the account holder alone or shared with the distributing plan or plan sponsor). In addition, the disclosure must identify a plan contact for further information concerning the plan's procedures, individual retirement plan providers, and the fees and expenses attendant to the individual retirement plan. In this regard, paragraph (c)(5) of the proposed regulation conditions safe harbor relief on the furnishing of this information to the plan's participants and beneficiaries in a summary plan description (SPD) or a summary of material modifications (SMM) in advance of an automatic rollover. For purposes of this condition, a plan contact can be identified by reference to a person, position or office, along with an address and phone number of the contact. It is anticipated that the contact, in response to requests from separated participants on whose behalf distributions have been made to an individual retirement plan, would be able to identify the individual retirement plan provider to whom a distribution was made for the particular participant.

One commenter on the RFI argued against the establishment of any new disclosure requirements under the safe harbor, given the requirements that already exist under the Code. Another commenter argued that the safe harbor should require individual notices to each separated participant on whose behalf an individual retirement plan is established informing him or her of the provider's name, address and phone number, and any other information needed by the account holder to take action with regard to the distributed funds.

This condition is consistent with the Department's statement in a footnote to Revenue Ruling 2000–36 requiring that plan provisions governing the default direct rollover of distributions, including the participant's ability to affirmatively opt out of the arrangement, must be described in the plan's SPD furnished to participants.[12] We believe this approach to disclosure similarly serves to ensure that participants and beneficiaries are provided, and have access to, sufficient information about automatic rollovers, while avoiding the imposition of unnecessary costs and burdens on pension plans and individual retirement plan providers.

Paragraph (c)(6) of the proposed regulation conditions safe harbor relief on the plan fiduciary not engaging in prohibited transactions in connection with the selection of an individual retirement plan provider or investment product, unless such actions are covered by a statutory or administrative exemption issued under section 408(a) of ERISA. In this regard, the Department is publishing a proposed class exemption in today's **Federal Register** that is intended to deal with prohibited transactions resulting from an individual retirement plan provider's selection of itself as the provider of an individual retirement plan and/or issuer of an investment held by such plan in connection with mandatory distributions from the provider's own pension plan. Specifically, the proposed exemption is intended to permit a bank or other regulated financial institution as defined therein to (1) select itself or an affiliate as the individual retirement plan trustee, custodian or issuer to receive automatic rollovers from its own plan and (2) select its own funds or investment products for automatic rollovers from its own plan. In the absence of this exemption, a bank or other financial institution would be required to direct automatic rollovers from its own plan for its own employees to a competitor as the individual retirement plan provider.

C. Miscellaneous Issues

In response to the Department's RFI, a number of commenters identified possible legal impediments that fiduciaries, banks and other financial institutions might encounter in connection with automatic rollovers. These impediments included perceived conflicts with state laws on signature requirements and escheat, Code requirements, and requirements under the USA PATRIOT Act.[13]

With regard to Code requirements that may possibly conflict with or impede the establishment of individual retirement plans for purposes of automatic rollovers of mandatory distributions under section 401(a)(31)(B) of the Code, the Department has been informed that staff of the Department of the Treasury and the Internal Revenue Service are reviewing the current rules and regulations affecting such distributions and that guidance addressing the application of these rules to the automatic rollover of mandatory distributions is anticipated in advance of or simultaneously with the Department's issuance of a final safe harbor regulation.

With regard to the provisions of the USA PATRIOT Act (Act), a number of commenters pointed out that the customer identification and verification provisions of the Act may preclude banks and other financial institutions from establishing individual retirement plans without the participation of the participant or beneficiary on whose behalf the fiduciary is required to make an automatic rollover. In most of the situations where a fiduciary is required to make an automatic rollover to an individual retirement plan, the participant or beneficiary is unable to be located or is otherwise not communicating with the plan concerning the distribution of plan benefits. Accordingly, if the customer identification and verification provisions of the Act were construed to require participant or beneficiary participation when an individual retirement plan is established on his or her behalf, fiduciaries will be unable to comply with the automatic rollover requirements of the Code and utilize this safe harbor. Commenters also noted that such an interpretation of the Act would limit the ability of fiduciaries to make distributions from terminating defined contribution plans on behalf of missing plan participants and beneficiaries.

In response to these issues, Treasury staff, along with staff of the other Federal functional regulators,[14] have advised the Department that they interpret the customer identification and verification (CIP) requirements of section 326 of the Act and implementing regulations to require that banks and other financial institutions implement their CIP compliance program with respect to an account, including an individual retirement plan, established by an employee benefit plan in the name of a former participant (or beneficiary) of such plan, only at the time the former participant or beneficiary first contacts such institution to assert ownership or exercise control over the account. CIP compliance will not be required at the time an employee benefit plan establishes an account and transfers the funds to a bank or other financial institution for purposes of a distribution of benefits from the plan to a separated employee.[15] In January 2004, Treasury staff, along with staff of the other Federal functional regulators, issued guidance on this matter in the form of

[12] Revenue Ruling 2000–36, 2000–2 C.B. 140.

[13] Pub. L. No. 107–56, October 26, 2001, 115 Stat. 272.

[14] The term "other Federal functional regulators" refers to the other agencies responsible for administration and regulations under the Act.

[15] It is the Department's understanding that this interpretation applies to a broad spectrum of employee benefit plans including those covered by title I of ERISA and those established under Code provisions.

a question and answer, published in a set of "FAQs: Final CIP Rule," on the regulators" Web sites.[16]

Issues raised by commenters concerning the possible application of state laws are beyond the scope of this regulation.

D. Effective Date

As discussed above, section 657(c)(2)(A) of EGTRRA provides that the requirements of section 401(a)(31)(B) of the Code requiring automatic rollovers of mandatory distributions to individual retirement plans do not become effective until the Department issues final safe harbor regulations. Inasmuch as it appears clear that Congress did not intend fiduciaries to be subject to the automatic rollover requirements under the Code in the absence of a safe harbor, the Department believes the effective date of the rollover requirement must be determined by reference to the effective date of the final safe harbor regulation, that is the date on which plan fiduciaries may avail themselves of the relief provided by the safe harbor. In this regard, the Department is proposing to make the final safe harbor regulation effective 6 months after the date of publication in the **Federal Register** in order to afford plan fiduciaries adequate time to amend their plans, distribute required disclosures and identify institutions and products that would afford relief under the final safe harbor regulation.

E. Request for Comments

The Department invites comments from interested persons on all aspects of the proposed safe harbor provided herein, including the proposed effective date. Comments (preferably at least three copies) should be addressed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attn: Automatic Rollover Regulation. Comments also may be submitted electronically to *e-ori@dol.gov*. All comments received will be available for public inspection at the Public Disclosure Room, N–1513, Employee Benefits Security Administration, 200 Constitution Avenue NW., Washington, DC 20210.

The Department has limited the comment period to 30 days in order to issue a final regulation on the earliest possible date, taking into account Congress's expectation that regulations would be issued in June 2004. The Department believes that, in light of the earlier published request for information and the limited number of issues presented for consideration by the proposal, the provided 30-day comment period affords interested persons an adequate amount of time to analyze the proposal and submit comments thereon.

F. Regulatory Impact Analysis

Summary

The purpose of this proposed regulation is to establish conditions under which a fiduciary will be deemed to satisfy the fiduciary obligations under section 404(a) of ERISA in connection with the automatic rollover of a mandatory distribution as described in amended Code section 401(a)(31)(B). The EGTRRA amendment is estimated to have significant costs and benefits in that it annually will provide 241,000 former participants with preserved retirement savings of about $249 million and immediate tax savings of about $71 million. Included in those 241,000 participants are 98,000 who are assumed to be passive or non-responsive. Establishing individual retirement plans for these participants for automatic rollovers of mandatory distributions will reduce ordinary plan administrative expenses attributable to those participants by an estimated $9.5 million in the first year.

The amendment will generate one-time administrative compliance costs of an estimated $139 million, and individual retirement plan establishment and maintenance fees totaling $14.4 million in the first year. Automatic rollovers of mandatory distributions may give rise to other costs as well, such as investment expenses, termination charges, and surrender charges, but the magnitude of some of those expenses will relate to the actual investment products selected. The range of possible costs that relate to investment products is considered too broad to support meaningful estimates.

The savings that will arise from this safe harbor are expected to substantially outweigh its costs and transfers. The guidance provided by this proposed regulation is expected to result in an aggregate savings of administrative compliance costs for plans of about $92 million by lessening the time required to select an individual retirement plan provider, investment product, and fee structure that are consistent with the provisions of Code section 401(a)(31)(B) and ERISA section 404(a) with respect to automatic rollovers of mandatory distributions. Other benefits not quantified here are expected to accrue to fiduciaries through greater certainty and reduced exposure to risk, and to former plan participants through the proposed regulatory standards concerning individual retirement plan providers, investment products, preservation of principal, rates of return, liquidity, and fees and expenses.

One-time costs associated with modifying a summary plan description or summary of material modifications to satisfy the safe harbor conditions are expected to amount to about $13 million.

The proposed safe harbor will preserve the principal amounts of automatic rollovers of mandatory distributions by ensuring that the various fees and expenses that apply to the individual retirement plans established for mandatory distributions are not more costly than those charged by the provider to individual retirement plans for comparable rollover distributions that are not subject to the automatic rollover provisions of Code section 401(a)(31)(B). If adopted as proposed, this guidance may also result in a transfer of individual retirement plan costs to other individual retirement plans or to plan sponsors to the extent that earnings and available profit are less than the fees that the individual retirement plan provider would ordinarily charge for comparable individual retirement plans.

Further discussion of costs and benefits and the data and assumptions underlying these estimates will be found below.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a 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) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect of 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

[16] *See* FAQs: Final CIP Rule at: *http://www.occ.treas.gov/10.pdf http://www.fincen.gov/finalciprule.pdf http://www.ots.treas.gov/docs/25188.pdf http://www.fdic.gov/news/news/financial/2004/FIL0404a.html*

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. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has undertaken an analysis of the costs and benefits of the proposed regulation. OMB has reviewed this regulatory action.

1. Costs and Benefits of the EGTRRA Amendment

The impact of the amendment to Code section 401(a)(31) is distinguishable from the impact of the proposed regulation, and is expected to affect, in the aggregate, fiduciaries, plan participants, and certain regulated financial institutions. Fiduciaries will incur initial administrative expenses to select providers and investment products. Plan participants who may otherwise receive a cash distribution and pay ordinary income tax and penalties on the amount distributed will not pay those taxes because the amounts would have been retained in the pension system to earn additional tax-deferred income for retirement. As a result of the amendment, certain costs and fees will also be incurred by pension plans in connection with automatic rollovers and the investments for individual retirement plans. Finally, certain regulated financial institutions will receive additional deposits and earnings potential, and incur costs and charge fees for account maintenance.

After the effective date of the amendment, plans that currently mandate immediate distributions for amounts of greater than $1,000 but not exceeding $5,000 will, absent an affirmative election of a different alternative, make direct transfers of these distributions to an individual retirement plan. To implement this change, fiduciaries and their professional service providers will need to review the new requirements and select individual retirement plan providers and investment products. The amount of time required for this activity will vary, but based on 680,000 retirement plans and an assumed hourly rate of $68, the aggregate cost of each hour is over $46 million. An effort involving an average of 3 hours would result in an aggregate one-time cost of about $139 million. For this estimate we have conservatively assumed that all plans provide for such mandatory distributions and will need to take action to implement procedures for automatic rollovers to individual retirement plans. The proportion of pension plans that provide for such mandatory distributions is not known, but is believed based on anecdotal evidence to be very high. This total cost may be lessened to the extent that fewer plans will need to address the automatic rollover requirement, or that the assistance of service providers to multiple plans results in greater efficiency.

The Census Bureau's 1996 Survey of Program Participation (SIPP), Wave 7 Pension Benefits Module collected information as to the number, uses, and values of lump sum distributions from private pension plans in 1997. The survey responses show whether a distribution was mandatory or voluntary, and whether the amount involved was "Rolled over into another plan, an IRA, or an individual retirement annuity" ("rolled over"). The number of lump sum distributions between $1,001 and $5,000 that were characterized as mandatory and put to other specific uses enumerated in the survey instrument ("lump sums") has been used for the purpose of this analysis to approximate the number of participants in plans with mandatory distribution provisions that might fail to make an affirmative election. The number of automatic rollovers of mandatory distributions that will occur because of the Code amendment may be smaller than the number of lump sums because some of these participants may have made an affirmative election. It seems reasonable to assume that distributions rolled over would have involved an affirmative election, and that the number of participants making affirmative elections will be largely unchanged. The number of lump sums is assumed to represent an upper bound of the number of participants potentially affected by the automatic rollover provisions of Code section 401(a)(31)(B).

SIPP data show that in 1997 about 143,000 mandatory lump sum distributions of $1,001 to $5,000 were made. Using the midpoint of the reported groupings of distribution amounts (*e.g.*, $1,500 for $1,001 to $1,999) the total amount of retirement savings distributed was about $415 million, or an average of $2,900 per former participant. The account balances and present values of accrued benefits ("accounts") of an additional 98,000 participants were left in plans during the same year for reasons that are not known. Although there is some uncertainty with respect to this assumption, this number has been used here as a proxy for a number of participants that did not receive mandatory distributions because they were passive or non-responsive. Assuming that the accounts of these participants were comparable in size and would also be automatically rolled over after the amendment is effective, the aggregate amount of automatic rollovers of mandatory distributions to individual retirement plans for 241,000 participants would be about $699 million per year ($415 million plus $284 million). Only $415 million of this total represents retirement savings that would not otherwise have been preserved, given that the $284 million was already maintained in retirement plans.

The amount of some mandatory distributions subject to the automatic rollover requirements of section 401(a)(31)(B) of the Code may be more than $5,000. This can occur where the present value of the nonforfeitable accrued benefits immediately distributable includes additional funds attributable to prior rollover contributions (and the earnings thereon).

The Department did not attempt to estimate the number or dollar amount of mandatory distributions eligible for relief under the proposed safe harbor regulation that may exceed $5,000. Adequate data to support such estimates are not currently available.

The Department believes it is probable that the number of mandatory distributions containing prior rollover contributions that will be subject to the automatic rollover requirement of section 401(a)(31)(B) of the Code will be small but the number of plans affected and the dollar amount of some of these mandatory distributions might be large.

A large majority of 401(k) plan participants are in plans that accept rollover contributions, according to the Bureau of Labor Statistics. There is some evidence, however, that rollovers into qualified plans are infrequent, which suggests that the number of participants whose accounts include amounts attributable to prior rollover contributions may be small. The number of such participants that will eventually become the owners of an automatic rollover individual retirement plan will be further limited by a number of factors, on which no data are available. Some plans will not mandate distribution of accounts that include prior rollover contributions and therefore exceed $5,000. Some accounts of participants with prior rollover contributions will accumulate more than $5,000 of additional contributions, thereby becoming ineligible for mandatory distributions. Some participants whose accounts do not accumulate more than $5,000 will

affirmatively direct, upon leaving employment, the disposition of their accounts. Compared with other participants, those with prior rollover contributions, especially those with large rollover contributions, may be more likely to accumulate more than $5,000 from new contributions and more likely to affirmatively direct the disposition of their accounts.

The Department invites comments on the potential economic impact of the safe harbor established by this proposed regulation in connection with the mandatory distributions of accounts valued at more than $5,000.

The Joint Committee on Taxation's May 26, 2001 estimates of budget effects for this provision of EGTRRA indicated revenue losses on the order of about $30 million per year, which suggests a substantially lower estimate of the aggregate preservation of retirement savings, amounting to about $83 million for private plan participants. The reason for this difference is unknown. Interpreting these differing estimates as ends of a range, ordinary income tax and penalty savings are expected to amount to between $30 million and $112 million per year, while aggregate retirement savings are expected to increase by between $83 million and $415 million per year. For purposes of discussion, midpoint values of $71 million and $249 million are used here. These savings for former participants and distributions of amounts previously retained in plans also represent increased deposits to regulated financial institutions.

The establishment and maintenance of individual retirement plans for automatic rollovers of mandatory distributions will generate costs to individual retirement plans that may be defrayed by administrative fees to the extent that the individual retirement plan providers charge them. Certain investments may also generate fees. Some individual retirement plan providers may have termination fees, and some investments may have surrender charges associated with them that would be incurred at a later time when a former participant chose to exercise control over the account. With interpretive guidance, fiduciaries and the regulated financial institutions will have increased certainty regarding the limitations on costs, fees, and charges for individual retirement plans. In the absence of the proposed safe harbor and the fiduciary's desire to make use of the safe harbor, such costs and fees could be paid by plan sponsors or charged to individual retirement plans. However, it has been assumed here that in the absence of guidance, most fees would be charged against individual retirement plans. Aggregate annual establishment fees for rollovers arising from the amendment each year are estimated to range from a negligible amount to $2.4 million at the upper end of a range based on typical establishment fees for comparable individual retirement plan rollovers that range from no charge to $10 per account. Annual maintenance fees, which typically range from $7 to $50, with a mid-point of $29, are estimated to range from $1.7 million to $12 million, implying a mid-point estimate of $6.9 million, for individual retirement plans established in the first year. Assuming that individual retirement plans continue to be established at a constant rate of 241,000 plans per year and that, at an upper bound, no account holders assume control of their plans, maintenance fees would continue to grow at an average rate of $6.9 million annually.

As noted earlier, although establishment and maintenance fees are relatively predictable based on comparable individual retirement plans for rollover distributions available in the marketplace, the types of investment products available and the actual choices that may be made by fiduciaries are considered to be too variable to support a meaningful estimate of investment fees, termination charges, and surrender fees.

Plans will benefit from administrative cost savings under the Code amendment for those 98,000 accounts that previously remained in pension plans but are assumed to be subject to mandatory rollover provisions under EGTRRA. Ordinary administrative costs that typically range from $45 to $150 per participant will be saved when accounts are rolled over, reducing plan expenses by about $4.4 million to $14.7 million, or an average of $9.5 million in the first year. Assuming an annual rollover of 98,000 accounts that would have remained in pensions plans, cost savings to plans would continue to increase at an average of $9.5 million per year. The cost savings realized in each year will continue to accumulate through the future years that the accounts would otherwise have remained in the pension plan.

For the estimated 8 percent of these accounts that were in defined benefit plans, a small savings of approximately $144,000 would be realized from reduced funding risk and corresponding premium payments to the Pension Benefit Guaranty Corporation (PBGC).

2. Benefits and Costs of the Proposed Regulation

The proposed regulation will benefit fiduciaries by affording them greater assurance of compliance and reduced exposure to risk. Specificity as to the types of entities that may receive the rollovers, the investment choices, and the limitations on fees will lessen the time required to comply with the EGTRRA amendment. The substantive conditions of the safe harbor will benefit former participants by directing their retirement savings to individual retirement plans, providers, regulated financial institutions, and investment products that minimize risk and offer preservation of principal and liquidity. The limitation of fees and expenses will also benefit individual retirement plan account holders. Fees and expenses for the individual retirement plans will be limited under the safe harbor to those that would be charged by the provider to comparable individual retirement plans established for rollover distributions that are not subject to automatic rollover provisions of the Code, thereby preserving principal. The limitation of maintenance fees to the extent of income earned will also serve to maintain principal.

The benefits of greater certainty for fiduciaries and protection of participants cannot be specifically quantified. The proposed regulation is, however, expected to reduce one-time startup administrative compliance costs by as much as $92 million by narrowing the range of individual retirement plan providers and investment products fiduciaries might otherwise consider, assuming a savings of 2 of the 3 hours that compliance would otherwise require.

No estimate is made for the impact of the limitation on fees charged to the subject individual retirement plans compared to those charged by individual retirement plan providers for comparable individual account plans established for rollover distributions that are not subject to section 401(a)(31)(B) of the Code because the Department is not aware of a basis for judging whether and in what magnitude providers would charge different fees absent the safe harbor.

The proposal may affect the manner in which fees and expenses would otherwise have been allocated among plan sponsors and individual retirement plans. Under section 2550.404a–2(c)(4)(ii) of the proposed regulation, fees and expenses may be charged only against the income earned by the individual retirement plan. In some instances, particularly in the case of

smaller individual retirement plans and when interest rates are low, the credited interest, together with any profit the individual retirement plan provider might otherwise derive from holding the plan, may not cover the cost incurred by the provider to maintain the plan. The Department believes that in these circumstances individual retirement plan providers will offset or subsidize any such uncovered costs either through increased maintenance fees on larger automatic rollovers, through increased administrative charges to plan sponsors, or possibly both. Because such uncovered costs (if any) derive from a provision of this proposed regulation, any associated offsets or subsidies would be attributable to it as well. The Department would welcome comments on the probable incidence and magnitude of any such uncovered costs and associated offsets or subsidies.

Plans will incur costs in connection with the proposed safe harbor to modify summary plan descriptions or provide a summary of material modifications. This cost is estimated to be about $13 million.

3. Alternatives

In preparation for drafting the proposed regulation, the Department published an RFI (68 FR 991) requesting comment on issues relating to the development of safe harbors for automatic rollovers and assistance in drafting regulations. The Department received 17 comments from the general public, service providers, and professional associations involved with pension planning, investing, and retirement accounts. Commenters opined on potential costs, issues of fiduciary liability and prohibited transaction relief, technical considerations involving state and federal laws, disclosures to participants, and draft language for the proposed regulation. Responses to the RFI informed the drafting process by permitting the Department to consider alternatives for achieving the regulatory objective at the initial stages. A more detailed discussion of the comments and the considerations given the alternatives by the Department is provided earlier in the preamble.

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). It is expected that this proposed rule will result in a modification of retirement plan Summary Plan Descriptions, an information collection request approved separately under OMB control number 1210–0039. However, this modification is not considered to be substantive or material in the context of that information collection request as a whole. In addition, the methodology for calculating burden under the Paperwork Reduction Act for the Summary Plan Description takes into account a steady rate of change in Summary Plan Descriptions that is estimated to accommodate the change that would be made by this proposed rulemaking. As a result, the Department has not made a submission for OMB approval in connection with this rulemaking.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a proposed rule is not likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requests comments on the appropriateness of the size standard used in evaluating the impact of this proposed rule on small entities. The Department does not expect that the financial institutions potentially impacted by this proposal will be small entities.

EBSA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, EBSA has prepared the following initial regulatory flexibility analysis.

Section 657(c)(2)(A) of EGTRRA directed the Department to issue regulations providing safe harbors under which a plan administrator's designation of an institution to receive automatic rollovers of mandatory distributions pursuant to section 401(a)(31)(B) of the Code and the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary responsibility provisions of section 404(a) of ERISA. This EGTRRA provision further provided that the Code provisions requiring automatic rollovers of certain mandatory distributions to individual retirement plans would not become effective until the Department issued safe harbor regulations. Before issuing this proposal, the Department requested comments on the potential design of the safe harbor.

The conditions set forth in this proposed regulation are intended to satisfy the EGTRRA requirement that the Department prescribe regulations providing for safe harbors, while meeting the objectives of offering greater certainty to fiduciaries concerning their compliance with the requirements of ERISA section 404(a), and of preserving assets of former plan participants for retirement income purposes. In describing the financial institutions, investment products, and fee arrangements that fall within the safe harbor, the Department has attempted to strike a balance between the interests of

fiduciaries, individual retirement plan providers, and the investment goal of preserving principal.

The proposed rule would impact small plans that include provisions for the mandatory distribution of accounts with a value exceeding $1,000 and not greater than $5,000. It has been assumed for the purposes of this analysis that all plans include such provisions, although the number may actually be somewhat lower. On this basis, it is expected that the proposal will affect 611,800 small plans. The proportion of the total of 241,000 participants estimated to be affected annually by the amendment to Code section 401(a)(31)(B) that were in small plans is not known. Similarly, there are no available data on the number of participants that will separate from employment with account balances of more than $5,000 (because of prior rollover contributions) that may be, depending on the provisions of the distributing plans, automatically rolled over under EGTRRA. It is assumed that all 611,800 small plans will need to address compliance with the Code amendment and section 404(a) of ERISA.

As described above, the costs and benefits of the Code amendment and safe harbor proposal are distinguishable, and estimated separately. As also noted, the proposed regulation is expected to substantially reduce the cost of compliance with the Code amendment. The initial cost of the Code amendment for small plans is expected to be about $124 million. The one-time savings from the proposed regulation is estimated at about $83 million for small plans compared with $9 million for large plans, due to the significantly larger number of small plans. The condition of the safe harbor requiring disclosure of specific information in a summary plan description or summary of material modification is expected to result in costs of about $11 million. Preparation of this information is in most cases accomplished by professionals that provide services to employee benefit plans. Where fiduciaries prepare these materials themselves, it is assumed that persons at the professional level of budget analysts or financial managers will complete the necessary work.

The benefits of greater certainty afforded fiduciaries by the safe harbor are substantial but cannot be specifically quantified.

Prior to publication of this proposed regulation, the Department published an RFI requesting comments and suggestions from the general public on developing guidelines to assist fiduciaries in selecting institutions and investment products for individual retirement plans. The Department specifically requested in the RFI that commenters, "address the anticipated annual impact of any proposals on small businesses and small plans (plans with fewer than 100 participants)." The Department received three comments that pertained specifically to small plans, the first of which cautioned that plan sponsors would be deterred from sponsoring plans with a mandatory distribution provision by placement of any additional burdens on them. Another comment indicated that, because of technological improvements, the burden on small plans would be manageable. Finally, a third commenter noted that annual costs would not be any higher for small plans.

To the Department's knowledge, there are no federal regulations that might duplicate, overlap, or conflict with the proposed regulation for safe harbors under section 404(a) of ERISA.

Congressional Review Act

The notice of proposed rulemaking being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and, if finalized, will be transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 or more.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, 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 would not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this proposed rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Exemptions, Fiduciaries, Investments, Pensions, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and trustees.

For the reasons set forth in the preamble, the Department proposes to amend Subchapter F, Part 2550 of Title 29 of the Code of Federal Regulations as follows:

SUBCHAPTER F—FIDUCIARY RESPONSIBILITY UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; sec. 657, Pub. L. 107–16, 115 Stat. 38; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713 (Oct. 17, 1978), 3 CFR, 1978 Comp. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), 3 CFR, 1978 Comp. 332. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, 44 FR 1065 (Jan. 3, 1978), and 3 CFR, 1978 Comp. 332. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

2. Add § 2550.404a–2 to read as follows:

§ 2550.404a–2 Safe harbor for automatic rollovers to individual retirement plans.

(a) *In general.* (1) Pursuant to section 657(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16, June 7, 2001, 115 Stat. 38, this section provides a safe harbor under which a fiduciary of an employee pension benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001 *et seq.*, will be deemed to have satisfied his or her fiduciary duties under section 404(a) of

the Act in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Internal Revenue Code of 1986, as amended (the Code).

(2) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this safe harbor. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to automatic rollovers of mandatory distributions described in section 401(a)(31)(B) of the Code.

(b) *Safe harbor.* A fiduciary that meets the conditions of paragraph (c) of this section is deemed to have satisfied his or her duties under section 404(a) of the Act with respect to both the selection of an individual retirement plan provider and the investment of funds in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code to an individual retirement plan, within the meaning of section 7701(a)(37) of the Code.

(c) *Conditions.* With respect to an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code, a fiduciary shall qualify for the safe harbor described in paragraph (b) of this section if:

(1) The present value of the nonforfeitable accrued benefit, as determined under section 411(a)(11) of the Code, does not exceed the maximum amount under section 401(a)(31)(B) of the Code;

(2) The mandatory distribution is to an individual retirement plan within the meaning of section 7701(a)(37) of the Code;

(3)(i) The mandatory distribution is invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity, and taking into account paragraph (c)(4) of this section. For this purpose, the product must be offered by a state or federally regulated financial institution, as defined in paragraph (c)(3)(ii) of this section, and must seek to maintain a stable dollar value equal to the amount invested in the product by the individual retirement plan, and

(ii) For purposes of this section, a regulated financial institution shall be: a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guarantee associations; or an investment company registered under the Investment Company Act of 1940;

(4)(i) Fees and expenses attendant to the individual retirement plan, including investments of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs and surrender charges) shall not exceed the fees and expenses charged by the individual retirement plan provider for comparable individual retirement plans established for rollover distributions that are not subject to the automatic rollover provisions of section 401(a)(31)(B) of the Code, and

(ii) Fees and expenses attendant to the individual retirement plan may be charged only against the income earned by the individual retirement plan, with the exception of charges assessed for the establishment of the individual retirement plan;

(5) Participants have been furnished a summary plan description, or a summary of material modifications, that describes the plan's automatic rollover provisions effectuating the requirements of section 401(a)(31)(B) of the Code, including an explanation that the mandatory distribution will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity, a statement indicating how fees and expenses attendant to the individual retirement plan will be allocated, and the name, address and phone number of a plan contact (to the extent not otherwise provided in the summary plan description or summary of material modifications) for further information concerning the plan's automatic rollover provisions, the individual retirement plan provider and the fees and expenses attendant to the individual retirement plan; and

(6) Both the fiduciary's selection of an individual retirement plan and the investment of funds would not result in a prohibited transaction under section 406 of the Act, unless such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

Signed at Washington, DC, this 24th day of February, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 04–4551 Filed 3–1–04; 8:45 am]

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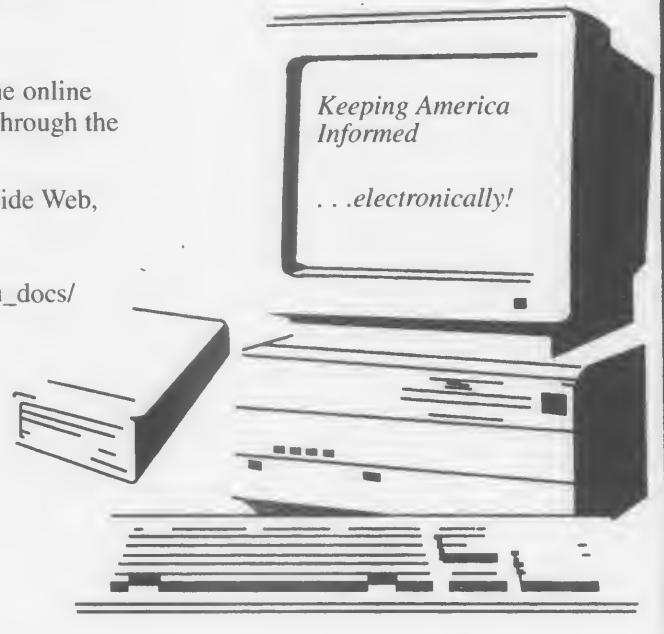

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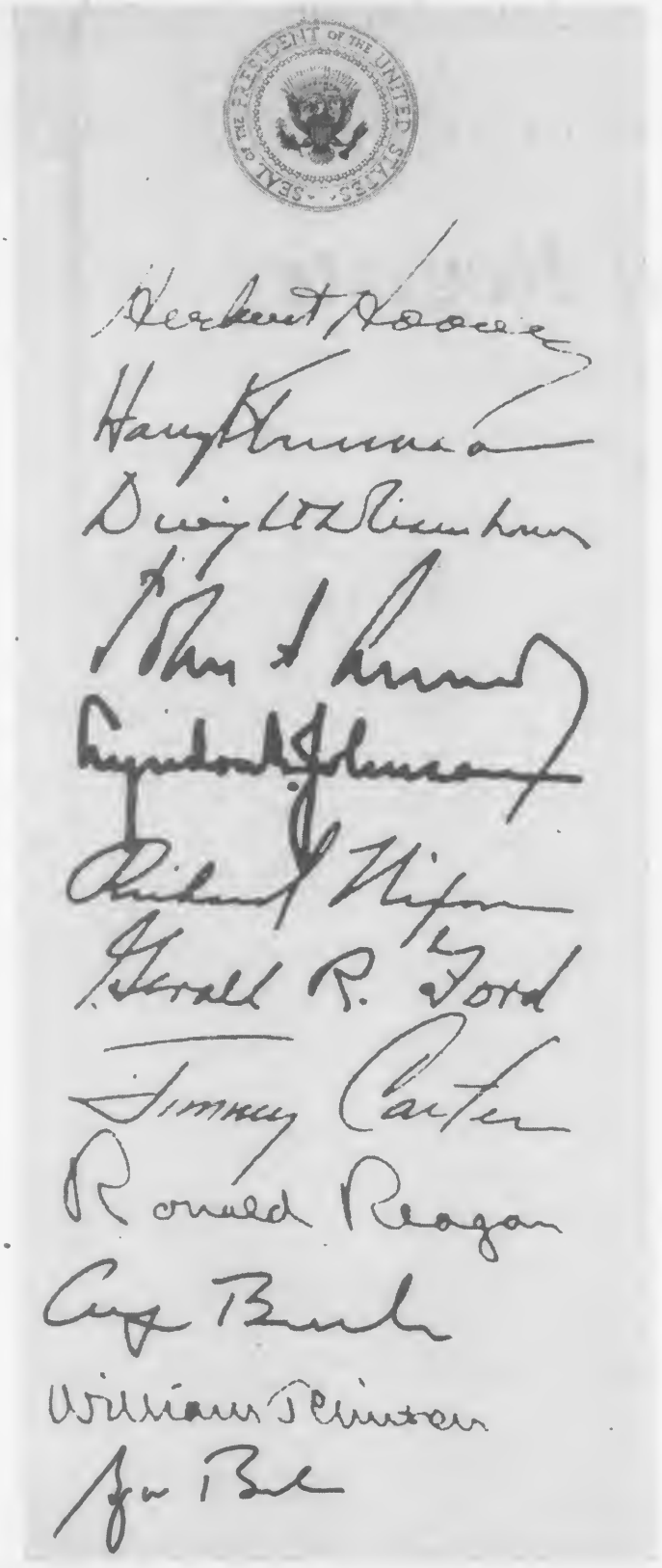

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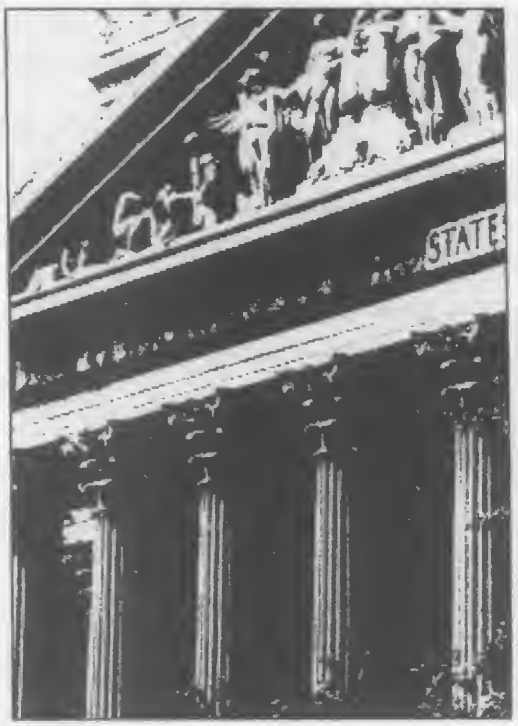

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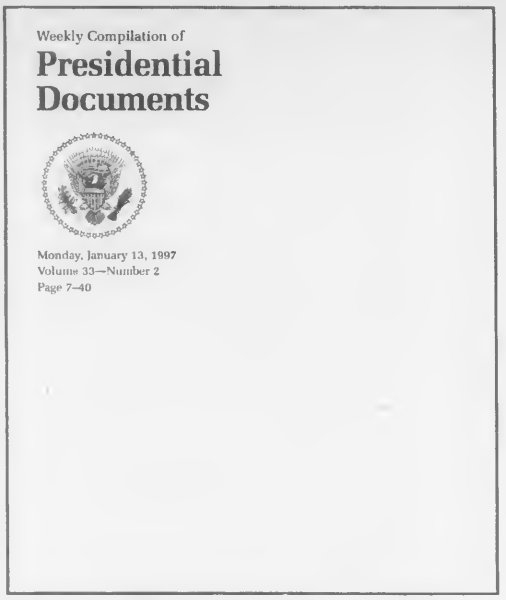

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