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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 215, 235 and 252

[DHS–2004–0002]

RIN 1650–AA00

United States Visitor and Immigrant Status Indicator Technology Program ("US–VISIT"); Authority To Collect Biometric Data From Additional Travelers and Expansion to the 50 Most Highly Trafficked Land Border Ports of Entry; Correction

AGENCY: Border and Transportation Security Directorate, DHS.

ACTION: Interim rule; correction.

SUMMARY: On August 31, 2004, the Department of Homeland Security (DHS) published an interim rule in the **Federal Register** at 69 FR 53318 expanding the United States Visitor and Immigrant Status Technology Program (US–VISIT) to the 50 most highly trafficked land border ports of entry in the United States. The interim rule also further defined the population of aliens who are required to provide biometric identifiers and other identifying information under the US–VISIT program. The interim rule contained a typographical error and identified an incorrect docket number. The correct docket number is DHS–2004–0002.

DATES: *Effective date:* The interim rule is effective September 30, 2004.

Comment date: Written comments must be submitted on or before November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hardin, Senior Policy Advisor, US–VISIT, Border and Transportation Security, Department of Homeland Security, 1616 Fort Myer Drive, 18th Floor, Arlington, Virginia 22209, (202) 298–5200.

Dated: August 31, 2004.

Elizabeth L. Branch,

Associate General Counsel for Rules and Legislation, Office of the General Counsel, Department of Homeland Security.

[FR Doc. 04–20126 Filed 8–31–04; 1:10 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18958; Directorate Identifier 2004–NE–32–AD; Amendment 39–13778; AD 2004–18–01]

RIN 2120–AA64

Airworthiness Directives; Hoffmann Propeller GmbH & Co KG Models HO–V343 and HO–V343K Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Hoffmann Propeller GmbH & Co KG (Hoffmann Propeller) models HO–V343 and HO–V343K propellers. This AD requires initial and repetitive visual inspections of propeller blades for blade shake and blade nut preload. This AD also requires initial and repetitive eddy current inspections of blade hubs for damage and cracks. This AD results from a report of a blade separating from either a model HO–V343 or HO–V343K propeller. We are issuing this AD to prevent propeller hub failure and blade separation due to an unknown root cause, leading to damage and possible loss of control of the airplane.

DATES: Effective September 17, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 17, 2004.

We must receive any comments on this AD by November 1, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- 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.

You can get the service information identified in this AD from Hoffmann Propeller GmbH & Co KG, Küpferlingstraße 9, D–83022 Rosenheim, Germany, telephone ++49–(0)8031–1878–0; fax ++49–(0)8031–1878–78.

You may examine the comments on this AD in the AD docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Luftfahrt-Bundesamt (LBA), which is the aviation authority for Germany, recently notified us that an unsafe condition may exist on Hoffmann propeller models HO–V343 and HO–V343K propellers. The LBA has notified us of an occurrence of a propeller blade separating from the hub. Initial investigation after that blade separation revealed that the propeller hub was cracked. The root cause of the failure is not known and is still under investigation. A propeller blade having blade shake may be evidence of either incorrect blade nut preload or a cracked hub or both. Incorrect blade nut preload may be evidence of a cracked hub. The actions specified in this AD are of precautionary nature. We certificated these propellers for use in the U.S. in 1997. We estimate that 12 of these propellers of the same type design are installed on airplanes of U.S. registry.

Relevant Service Information

We have reviewed and approved the technical contents of Hoffmann Propeller GmbH & Co KG Service Instruction No. 61–10–05 SI E 4B, dated July 13, 2004, that describes procedures for initial and repetitive visual inspections of propeller blades for blade

shake and blade nut preload. This service instruction also describes procedures for initial and repetitive eddy current inspections of blade hubs for damage or cracks. The LBA classified this service instruction as mandatory and issued AD D–2004–352R2, dated July 23, 2004, in order to ensure the airworthiness of these propellers in Germany.

Bilateral Airworthiness Agreement

These Hoffmann Propeller GmbH & Co KG models HO–V343 and HO–V343K propellers are manufactured in Germany and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the LBA kept the FAA informed of the situation described above. We have examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other Hoffmann Propeller GmbH & Co KG model HO–V343 and HO–V343K propellers of the same type design. We are issuing this AD to prevent propeller hub failure and blade separation due to an unknown root cause, leading to damage and possible loss of control of the airplane. This AD requires initial and repetitive visual inspections of propeller blades for blade shake and blade nut preload. This AD also requires initial and repetitive eddy current inspections of blade hubs for damage and cracks. You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Interim Action

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

Docket Management System (DMS)

We have implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, we post new AD actions on the DMS and assign a DMS docket number. We track each action and assign a corresponding Directorate identifier. The DMS docket No. is in the form "Docket No. FAA–200X–XXXXX." Each DMS docket also lists the Directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. FAA–2004–18958; Directorate Identifier 2004–NE–32–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the DMS Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

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

Examining the AD Docket

You may examine the docket that contains the AD, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation Nassif Building at the street address stated in **ADDRESSES.** Comments will be available in the AD docket shortly after the DMS receives them.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by adding the following new airworthiness directive (AD):

2004–18–01 Hoffmann Propeller GmbH & Co KG: Amendment 39–13778. Docket No. FAA–2004–18958; Directorate Identifier 2004–NE–32–AD.

Effective Date

(a) This AD becomes effective September 17, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Hoffmann Propeller GmbH & Co KG (Hoffmann Propeller) models HO–V343 and HO–V343K propellers. These propellers are installed on, but not limited to, general aviation airplanes possibly having an FAA-approved Supplemental Type Certificate.

Unsafe Condition

(d) This AD results from a report of a blade separating from either a model HO–V343 or HO–V343K propeller. We are issuing this AD to prevent propeller hub failure and blade separation due to an unknown root cause, leading to damage and possible loss of control of the airplane.

Compliance

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

Propellers With Hubs Having 1,200 or More Flight Hours-Since-New (FHSN)

(f) For propellers having hubs with 1,200 or more FHSN, do the following:

(1) Before each flight after the effective date of this AD, perform a preflight check for blade shake. Use paragraph 2.2 of Accomplishment Instructions of Hoffmann Propeller Service Instruction (SI) No. 61–10–05 SI E 4B, dated July 13, 2004, to do this check. If you find any blade shake, do the following before further flight:

(i) Record the blade shake, blade nut preload, and final blade nut torque of all three blades. Use paragraph 2.2 of Accomplishment Instructions of Hoffmann Propeller Service Instruction (SI) No. 61–10–05 SI E 4B, dated July 13, 2004, to do these recordings and checks.

(ii) Remove propeller blades from the hub. Information on blade removal can be found in Hoffmann Propeller Overhaul Manual No. (E)661.

(iii) Perform an eddy current inspection (ECI) of the propeller hub for damage and cracks. Use paragraphs 2.3 through 2.4 of Accomplishment Instructions of Hoffmann Propeller SI No. 61–10–05 SI E 4B, dated July 13, 2004, to do the ECI.

(iv) If the propeller hub has damage or cracks, remove the propeller hub from service before further flight.

(2) Perform repetitive checks and inspections as specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this AD within intervals of 100 flight hours-since-last-inspection.

Propellers With Hubs Having Fewer Than 1,200 FHSN

(g) For propellers with hubs having fewer than 1,200 FHSN, do the following:

(1) Before each flight after the effective date of this AD, perform a preflight check for blade shake, as specified in paragraph (f)(1) of this AD. If blade shake is found, perform the follow-up actions specified in paragraphs (f)(1)(i) through (f)(1)(iv) of this AD.

(2) Perform an ECI of the propeller hub for damage and cracks before exceeding 1,200 FHSN. Use paragraphs 2.3 through 2.4 of Accomplishment Instructions of Hoffmann Propeller SI No. 61–10–05 SI E 4B, dated July 13, 2004, to do the ECI.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) You must use Hoffmann Propeller Service Instruction No. 61–10–05 SI E 4B, dated July 13, 2004, to perform the checks and inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Hoffmann Propeller GmbH & Co KG, Küpferlingstraße 9, D–83022 Rosenheim, Germany, telephone ++49–(0)8031–1878–0; fax ++49–(0)8031–1878–78; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Related Information

(j) LBA airworthiness directive D–2004–352R2, dated July 23, 2004, which holds EASA Approval No. 2004–7836, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on August 23, 2004.

Robert E. Guyotte,

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

[FR Doc. 04–19829 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–327–AD; Amendment 39–13779; AD 2004–18–02]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, that requires measuring the electrical resistance of the support bracket for the fire extinguisher bottle located in the left main landing gear wheel well to ensure that it does not exceed the maximum allowed resistance; and corrective actions, if necessary. This action is necessary to prevent high electrical resistance in the squib firing circuit, which could result in insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of October 7, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer; Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes was published in the **Federal Register** on December 4, 2003 (68 FR 67812). That action proposed to require measuring the electrical resistance of the support bracket for the fire extinguisher bottle located in the left main landing gear wheel well to ensure that it does not exceed the maximum allowed resistance; and corrective actions, if necessary.

Comments

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

Support for the Proposal

Two commenters, who do not have airplanes affected by the proposed AD, either do not object to or agree with the proposed AD.

Request To Give Credit for Boeing Telex

One commenter, an airplane operator, noted that the actions proposed in the notice of proposed rulemaking (NPRM) are based on Boeing Telex M–7200–02–01401, dated September 9, 2002. The operator states that immediate action based on the telex was necessary due to safety concerns, and it did not wait for Boeing to issue the related service bulletin before taking the necessary actions. The commenter proposes that the telex should be included in the final rule as an acceptable means for compliance with the proposed actions.

We agree with the commenter. We have included Boeing Telex M–7200–02–01401, dated September 9, 2002, in a new paragraph (c) of the final rule to allow credit for accomplishment of the required actions per that telex.

Request To Include New Revision of Service Bulletin

Another commenter, the airplane manufacturer, requests that Boeing Alert Service Bulletin 737–26A1118, Revision 1, dated April 8, 2004, be included as the appropriate source of service information for the final rule. The commenter states that a typographical error in the original release of the service bulletin (dated October 17, 2002) makes it impossible for any correctly configured airplane to pass the continuity test in the work instructions. In addition, as noted in the NPRM, the original release of the service bulletin did not have explicit instructions for reworking the terminal installation if the resistance requirement is not met. The commenter states that, if Revision 1 of the service bulletin is included in the final rule, paragraph (b) ("Additional Rework") should be deleted, and paragraph (a) should be revised to exclude a reference to paragraph (b).

We partially agree with the commenter's request. In a further engineering review, we determined that there is no typographical error in the original release of the service bulletin that makes it impossible for airplanes to pass the continuity test. However, we have revised the applicability section and paragraphs (a) and (b) of the final rule to include Revision 1 of the service bulletin, which is the most current source of service information for the actions in this AD. We have not deleted paragraph (b), but instead have revised it to allow operators to rework the terminal installation in accordance with either Revision 1 of the service bulletin, or in accordance with a method approved by the FAA, as proposed in the NPRM. The new paragraph (c) of this final rule also allows credit for actions done in accordance with the original issue of the service bulletin.

Request To Revise Wording Regarding Anodize Coating

The same commenter requests that the following sentence in the "Discussion" section of the NPRM be revised: "During manufacture, the anodize coating was not removed properly from the holes in the support bracket into which the ground studs are inserted, thereby increasing the electrical resistance between the studs and the bracket." The commenter notes that the anodize coating surrounding the hole was also improperly prepared for an electrical bond.

We partially agree with the commenter's request, which provides a more accurate description of the unsafe condition. However, the "Discussion" paragraph is included in an NPRM as a description of the unsafe condition to provide adequate information to the public during the comment period. The "Discussion" paragraph is not included in the final rule. Therefore, we have not changed the information in the final rule, but have provided the commenter's information above for the sake of accuracy.

Conclusion

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

Cost Impact

There are approximately 133 airplanes of the affected design in the worldwide fleet. The FAA estimates that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,640, or $130 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–18–02 Boeing: Amendment 39–13779. Docket 2002–NM–327–AD.

Applicability: Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, as listed in Boeing Alert Service Bulletin 737–26A1118, Revision 1, dated April 8, 2004; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent high electrical resistance in the squib firing circuit, which could result in

insufficient electrical current to fire the fire extinguisher bottle squib and discharge the fire extinguishing agent, which could lead to an uncontrolled engine fire, accomplish the following:

Inspection, Rework, Replacement, Relocation, and Installation

(a) Except as provided by paragraph (b) of this AD: Within 90 days after the effective date of this AD, measure the electrical resistance of the dual ground studs of the support brackets for the fire extinguisher bottle located in the left main landing gear wheel well (including the applicable corrective actions) by accomplishing all actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–26A1118, Revision 1, dated April 8, 2004. Do the actions per the service bulletin. Any applicable corrective action must be accomplished prior to further flight.

Additional Rework

(b) If, when accomplishing the bond resistance measurement described in Figure 4 of Boeing Alert Service Bulletin 737–26A1118, Revision 1, dated April 8, 2004, the resistance is found to be greater than 1.0 milliohms (0.001 ohms): Before further flight, do the actions in paragraph (b)(1) or (b)(2) of this AD.

(1) Rework the terminal installation per Figure 4 of the service bulletin.

(2) Rework the terminal installation per a method approved by the Manager, Seattle Aircraft Certification Office, FAA.

Actions Accomplished per Boeing Telex and Previous Issue of Service Bulletin

(c) Actions accomplished before the effective date of this AD per Boeing Telex M–7200–02–01401, dated September 9, 2002; or Boeing Alert Service Bulletin 737–26A1118, dated October 17, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–26A1118, Revision 1, dated April 8, 2004. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(f) This amendment becomes effective on October 7, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–19855 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–350–AD; Amendment 39–13777; AD 2004–17–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 777 series airplanes. This action requires an inspection to determine the part number of the filter/regulator on the fire extinguishing system installed in the lower cargo compartment of the airplane, and re-identification of the filter/regulator, or replacement of the filter/regulator with a new filter/regulator, if necessary. This action is necessary to prevent leakage of fire extinguishing agent through the filter/regulator of the cargo fire extinguishing system, which could result in the inability of the fire extinguishing system to suppress a fire in the cargo compartment of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

FOR FURTHER INFORMATION CONTACT: Marcia G. Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6484; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 777 series airplanes was published in the **Federal Register** on December 22, 2003 (68 FR 71049). That action proposed to require an inspection to determine the part number of the filter/regulator on the fire extinguishing system installed in the lower cargo compartment of the airplane, and replacement of the filter/regulator with a new filter/regulator, if necessary.

Comments

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

Support for Notice of Proposed Rulemaking (NPRM)

One commenter supports the NPRM.

Request To Clarify Discussion Section

One commenter requests that we clarify the "Discussion" section of the NPRM. The commenter requests that we change the last sentence in the first paragraph of the "Discussion" section to say, "This out-of-tolerance condition could cause the filter/regulator to leak," rather than, "This out-of-tolerance condition could cause the filter/regulator to leak and to fall out of calibration during operation." The commenter states that the calibration and leakage conditions are different issues. The commenter also requests that we clarify the explanation of the problem in the "Discussion" section. The commenter indicates that the leakage due to a problem with an O-ring seat is different from the calibration issue, which was caused by a loose locknut.

We agree with the commenter's statements, but cannot make changes to the "Discussion" section itself because that section is not restated in the final rule. However, for clarity's sake and for operators' reference, have rewritten portions of the paragraph to respond to

the comment. The changed paragraph is as follows:

"The FAA has received a report indicating that, during a certification flight test on a Boeing Model 777–300 series airplane, the Halon 1301 fire extinguishing agent flowed through the metered portion of the cargo fire extinguishing system in less than the predicted time. When the cargo fire extinguishing system was checked for leakage, it was determined that the filter/regulator was the source of the leakage. The manufacturer discovered that several housing assemblies had a warped O-ring groove at the point where the filter element retainer was screwed into the housing. The warping was caused by heat treatment of the housing with a finished O-ring groove. Furthermore, during qualification testing of a different filter/regulator assembly, the unit failed the flow test after the vibration testing. It was discovered that the locknut in the variable pressure regulator had loosened during vibration testing, allowing the regulator adjustment screw assembly to move. This caused a slight change in the unit's flow rate."

Request To Exempt/Re-Identify Certain Part Numbers

Two commenters observed that filter/regulators with parts that have a serial number with suffix "A" are not subject to the 60-month replacement requirement of the proposed rule. One commenter, the parts manufacturer, states that parts with a suffix "A" in the serial number are identical in form, fit, and function to parts with part numbers (P/N) that end with a "-3" and that parts with P/Ns that end with a "-3" are not subject to the requirements of the proposed rule. The other commenter notes that Walter Kidde Service Bulletin 473494–26–405 allows parts with a suffix "A" in the serial number to remain in service until schedule maintenance is required.

We partially agree with the commenters' requests. We have changed the final rule to exclude the requirement to replace filter/regulators having a suffix "A" in the serial number. However, although one of the commenters states that the applicable Walter Kidde service bulletin allows parts having a suffix "A" to remain in service, the same bulletin still requires re-identification of the part. Therefore, we have changed the final rule to allow the option of replacing or reidentifying filter/regulators having a suffix "A" in the serial number, in accordance with the procedures in the applicable Walter Kidde service bulletin. We have revised paragraph (a) and paragraph (b) of the final rule accordingly.

Request for Editorial Change

The same commenter requests that we change two references to Walter Kidde service bulletins, which we inadvertently spelled "Water" Kidde. One of the references is in Note 1 of the NPRM, and the other is in the section titled "Explanation of Relevant Service Information."

We agree with the commenter's request. However, we have made a change only to Note 1 in the final rule because the section titled "Explanation of Relevant Service Information" is not restated in the final rule.

Conclusion

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

Explanation of Editorial Change to Proposed AD

We have changed all references to filter/regulator that have P/Ns "with a suffix A," to P/Ns that have a serial number with suffix A. We have determined that this change shows that the suffix number is part of the serial number rather than part of the P/N.

Cost Impact

There are approximately 289 airplanes of the affected design in the worldwide fleet. The FAA estimates that 83 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $5,395, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–17–05 Boeing: Amendment 39–13777. Docket 2002–NM–350–AD.

Applicability: Model 777–200 and 777–300 series airplanes, line numbers 002 through 290 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of fire extinguishing agent through the filter/regulator of the cargo fire extinguishing system, which could result in the inability of the fire extinguishing system to suppress a fire in the cargo compartment of the airplane, accomplish the following:

Note 1: The Accomplishment Instructions of Boeing Service Bulletin 777–26–0028, dated November 2, 2000, also refer to the following Walter Kidde Service Bulletins as additional sources of service information for accomplishment of the replacement: 473494–26–405, Revision 1, dated November 1, 2000; 473494–26–422, dated April 13, 2000; 473857–26–406, Revision 1, dated November 1, 2000; 473857–1–26–423, dated April 13, 2000; 473995–1–26–424, dated April 13, 2000; and 473995–26–408, Revision 2, dated November 1, 2000.

Inspection and Replacement, if Necessary

(a) Within 60 months after the effective date of this AD: Inspect the lower cargo fire extinguishing filter/regulator to determine the part number (P/N). Instead of inspecting the part, a review of airplane maintenance records is acceptable if the P/N of the part can be positively determined from that review.

(1) If no filter regulator P/N 473494–1, P/N 473857–1, or P/N 473995–1 is found, no further action is required by this paragraph.

(2) If any filter/regulator having P/N 473494–1, P/N 473857–1, or P/N 473995–1 is found and the serial number does not contain suffix "A," within 60 months after the effective date of this AD, replace the filter/regulator with a new filter/regulator, per the Accomplishment Instructions of Boeing Service Bulletin 777–26–0028, dated November 2, 2000.

(3) If any filter/regulator having P/N 473494–1, P/N 473857–1, or P/N 473995–1 containing a serial number with suffix "A" is found, within 60 months after the effective date of this AD, do paragraph (a)(3)(i) or (a)(3)(ii).

(i) Re-identify the filter/regulator by following the Accomplishment Instructions of the applicable Walter Kidde Service Bulletin that follows: for P/N 473494–1, use Service Bulletin 473494–26–422, dated April 13, 2000; for P/N 473857–1, use Service Bulletin 473857–1–26–423, dated April 13, 2000; for P/N 473995–1, use Service Bulletin 473995–1–26–424, dated April 13, 2000.

(ii) Replace the filter/regulator with a new filter regulator per the Accomplishment Instructions of Boeing Service Bulletin 777–26–0028, dated November 2, 2000.

Note 2: Filter/regulators having P/N 473494–1, P/N 473857–1, and P/N 473995–1 that have a serial number with suffix "A" are good parts and are identical in form, fit, and function to P/N 473494–3, P/N 473857–3, and P/N 473995–3 respectively. Re-identification of the part numbers ensures unique part numbering.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane a filter/regulator with any of the following Walter Kidde Aerospace P/Ns: P/N 473494–1 (with or without a serial number with suffix "A"), P/N 473857–1 (with or without a serial number with suffix "A"), or P/N 473995–1 (with or without a serial number with suffix "A"), unless a P/N with a serial number with suffix "A" has been re-identified per paragraph (a)(3)(i) of this AD.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with the service bulletins listed in Table 1 of this AD.

TABLE 1.—MATERIAL INCORPORATED BY REFERENCE

Service bulletin	Date
Boeing Service Bulletin 777–26–0028	November 2, 2000.
Walter Kidde Aerospace Service Bulletin 473494–26–422	April 13, 2000.
Walter Kidde Aerospace Service Bulletin 473857–1–26–423	April 13, 2000.
Walter Kidde Aerospace Service Bulletin 473995–1–26–424	April 13, 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; and Kidde Technologies, Inc., 4200 Airport Drive Northwest, Wilson, North Carolina 27896. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Effective Date

(e) This amendment becomes effective on October 7, 2004.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–19856 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18993; Directorate Identifier 2004–NM–125–AD; Amendment 39–13781; AD 2004–18–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) series airplanes. That AD currently requires revising the airplane flight manual to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight. That AD also requires repetitive tests to detect a fuel leak between the wing fuel tanks and the center fuel tank; and further related investigative and corrective actions, if necessary. For certain airplanes, that AD also requires installation of flexible hoses and brackets in the fuel feed system. This AD reduces the compliance times for the repetitive checks, requires replacement of primary fuel feed ejectors with new ejectors, and provides an optional center fuel tank empty procedure. This AD is prompted by reports of cracking in the primary fuel ejector. We are issuing this AD to detect and correct cracking in any primary fuel ejector, which could cause fuel leakage into the center fuel tank, and could result in engine shutdown during flight.

DATES: Effective September 17, 2004.

The incorporation by reference of certain publications listed in the AD was approved previously by the Director of the Federal Register as of April 15, 2004 (69 FR 16780, March 31, 2004).

We must receive any comments on this AD by November 1, 2004.

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

• DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.

• Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.

• Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.

• Fax: (202) 493–2251.

• 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.

You can get the service information identified in this AD from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You may examine this information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form "Docket No. FAA–2004–99999." The Transport Airplane Directorate identifier is in the form "Directorate Identifier 2004–NM–999–AD." Each DMS AD docket also lists the directorate identifier ("Old Docket Number") as a cross-reference for searching purposes.

Examining the Dockets

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7321; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION: On March 19, 2004, we issued AD 2004–07–01, amendment 39–13545 (69 FR 16780, March 31, 2004). That AD applies to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) series airplanes. That AD requires revising the airplane flight manual (AFM) to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight. That AD also requires repetitive tests to detect a fuel leak between the wing fuel tanks and the center fuel tank; and further related investigative and corrective actions, if necessary. For certain airplanes, that AD also requires installation of flexible hoses and brackets in the fuel feed system. That AD was prompted by reports of longitudinal cracks found in a primary fuel ejector on affected airplanes. The actions specified in that AD are intended to detect and correct cracking of the primary fuel ejectors, which could cause fuel leakage into the center fuel tank, and could result in engine shutdown during flight.

Actions Since AD Was Issued

Since we issued that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has issued Canadian airworthiness directive CF–2004–04R2, issued April 16, 2004. The revised Canadian airworthiness directive mandates a revision to the AFM, replacement of certain primary fuel feed ejectors, and operational leak checks of the center tank; and provides for an optional center fuel tank empty procedure.

Relevant Service Information

Bombardier has issued the following temporary revisions (TRs) to the AFM:

• CRJ Regional Jet (Bombardier) TR RJ 700/52–2, dated December 19, 2003, to the Bombardier Model CL–600–2C10 AFM, Document CSP B–012; and

• CRJ Regional Jet (Bombardier) TR RJ 900/10–1, dated December 19, 2003, to the Bombardier Model CL–600–2D24 AFM, Document CSP C–012.

These TRs describe revisions to the Abnormal Procedures section of the AFM to advise the flightcrew to monitor the fuel quantity in the center fuel tank throughout the flight.

Bombardier has also issued CRJ 700/900 Regional Jet Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003. This service bulletin describes procedures for performing repetitive checks to detect fuel leaking between the wing tanks and the center tank. The leak check involves filling the wing fuel tanks with a specified quantity of fuel, and monitoring the amount of fuel increase in the center tank over time. The service bulletin also describes procedures for sending the results of the leak check to the Bombardier Technical Help Desk.

If the amount of fuel increase in the center fuel tank is more than 150 pounds (68 Kilograms (kgs)), the service bulletin describes procedures for further related investigative and corrective actions. The related investigative action involves doing a general visual inspection of the center tank (including the ejectors and fuel system components) to determine the source of the leak. When the source of the leak is found, the corrective action involves replacing any cracked or damaged part with a new part. The service bulletin also includes directions for faxing inspection results and for sending all replaced parts to Bombardier.

For airplanes having serial numbers 10005 through 10065 inclusive, the service bulletin specifies that, before the leak check, flexible hoses and brackets must be installed in the fuel feed system in accordance with CRJ 700 Regional Jet (Bombardier) Service Bulletin 670BA–28–008, Revision C, dated January 23, 2003. These installations are intended to address conditions that can result in fuel line and coupling damage, and leakage due to the combined effects of installation misalignment and vibration.

Accomplishing the actions specified in the service information will adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2004–04R2, issued April 16, 2004, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of This AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept the FAA informed of the situation

described above. We have examined the TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States. Therefore, we are issuing this AD to detect and correct cracking of the primary fuel ejectors, which could cause fuel leakage into the center fuel tank, and could result in engine shutdown during flight.

This AD requires you to use the service information described previously to perform these actions, except as discussed under the following paragraph.

Differences Among the Canadian Airworthiness Directive, Service Bulletin, and This AD

The Canadian airworthiness directive allows for leak checks to be performed in accordance with CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, original issue, dated December 12, 2003; or CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003. However, this AD requires those actions to be done in accordance with Revision A. Revision A contains significant changes to certain procedures.

Additionally, the Canadian airworthiness directive requires the leak checks to be accomplished "between each flight." However, we consider that performing the leak check once a day, in addition to requiring use of procedures for operation with the center fuel tank empty for those primary ejectors that exceed 3,500 flight hours, provides an adequate level of safety.

Although the Canadian airworthiness directive specifies that the pilots receive a briefing on the procedure in use for the leak check, this AD does not require that briefing, since the pre-flight procedures associated with performing the leak check should be accomplished by appropriate maintenance personnel.

Although Service Bulletin 670BA–28–025, Revision A, recommends and the Canadian airworthiness directive mandates sending reports of certain findings to the manufacturer, this AD does not include those requirements.

Although Service Bulletin 670BA–28–025, Revision A, includes instructions for sending all damaged parts to the manufacturer, this AD does not include that requirement.

The differences cited above have been coordinated with the TCCA.

Clarification of the Use of Certain Terms

In AD 2004–07–01, we used the term "leak test" for certain requirements. For the purposes of this AD, we have revised the term "leak test" to specify "leak check." We made this change in order to more closely follow the intent and terminology of the referenced service information and the airworthiness directive issued by the TCCA. We consider that using the term "leak check" will clarify certain requirements.

Change to Existing AD

This AD would retain certain requirements of AD 2004–07–01. Since AD 2004–07–01 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–07–01	Corresponding requirement in this AD
paragraph (a)	paragraph (f).
paragraph (b)	paragraph (g).
paragraph (c)	paragraph (h).
paragraph (d)	paragraph (i).

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any relevant written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–18993; Directorate Identifier 2004–NM–125–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends part 39 of the Federal

Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–13545 (69 FR 16780, March 31, 2004) and adding the following new AD:

2004–18–03 Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2004–18993; Directorate Identifier 2004–NM–125–AD; Amendment 39–13781.

Effective Date

(a) This AD becomes effective September 17, 2004.

Affected ADs

(b) This AD supersedes AD 2004–07–01, amendment 39–13545 (69 FR 16780, March 31, 2004).

Applicability

(c) This AD applies to Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701), and CL–600–2D24 (Regional Jet Series 900) series airplanes; as listed in CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of cracking in the primary fuel ejector. We are issuing this AD to detect and correct cracking in the primary fuel ejector, which could cause fuel leakage into the center fuel tank and could result in engine shutdown during flight.

Compliance

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

Requirements of AD 2004–07–01

Airplane Flight Manual (AFM) Revisions

(f) Within 14 days after April 15, 2004 (the effective date of AD 2004–07–01, amendment 39–13545): Revise the Abnormal Procedures section of the Bombardier Model CL–600–2C10 and Model CL–600–2D24 AFM, Documents CSP B–012 and CSP C–012, to include the applicable temporary revisions (TR) specified in paragraphs (f)(1) and (f)(2) of this AD. Thereafter, operate the airplane per the limitations specified in these AFM revisions.

(1) CRJ Regional Jet (Bombardier) TR RJ 700/52–2, dated December 19, 2003, to the Bombardier Model CL–600–2C10 AFM, Document CSP B–012.

(2) CRJ Regional Jet (Bombardier) TR RJ 900/10–1, dated December 19, 2003, to the Bombardier Model CL–600–2D24 AFM, Document CSP C–012.

Note 1: When information identical to that in the applicable TR specified in paragraphs (f)(1) and (f)(2) of this AD has been included in the general revisions of the applicable AFM, the general revisions may be inserted into the AFM, and the TR may be removed from the AFM.

Prior Requirement

(g) For airplanes having serial numbers (S/N) 10005 through 10065, inclusive; prior to accomplishing the leak test required by paragraph (h) of this AD, install flexible hoses and brackets in the fuel feed system in accordance with the Accomplishment Instructions of Bombardier CRJ 700 Regional Jet Service Bulletin 670BA–28–008, Revision C, dated January 23, 2003.

Leak Tests

(h) At the applicable compliance time, for the applicable S/N in Table 1 of this AD, do a leak test between the wing tanks and the center fuel tank in accordance with the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003. Thereafter, repeat the leak test at intervals not to exceed 450 flight hours.

TABLE 1.—LEAK TEST THRESHOLDS

Airplane S/N	Accumulated flight hours (as of April 14, 2004)	Inspection threshold
10005 through 10065, inclusive	More than 2,500 flight hours since accomplishment of the service bulletin in paragraph (g) of this AD.	Within 100 flight hours after April 15, 2004.
10005 through 10065, inclusive	2,500 flight hours or less since accomplishment of the service bulletin in paragraph (g) of this AD.	Within 250 flight hours after April 15, 2004.
10003 and 10004; 10066 through 10999, inclusive; and 15001 through 15990, inclusive.	2,500 flight hours or more since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.	Within 100 flight hours after April 15, 2004.
10003 and 10004; 10066 through 10999, inclusive; and 15001 through 15990, inclusive.	2,499 flight hours or less since the date of issuance of the original Airworthiness Certificate or the date of issuance of the Export Certificate of Airworthiness, whichever occurs first.	Within 450 flight hours after April 15, 2004.

Detailed Inspection and Repair

(i) If, during the leak test required by paragraph (h) of this AD, the amount of fuel increase in the center fuel tank is 150 pounds (68 kilograms (Kgs)) or more: Before further flight, do the further investigative and corrective actions, in accordance with the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, Revision A, dated December 15, 2003.

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

New Requirements of This AD

Determination of Flight Hours and Replacement of Primary Fuel Feed Ejectors

(j) Within three days after the effective date of this AD, determine the number of total flight hours on each of the two primary fuel feed ejectors having part number (P/N) T99A38–603.

(1) For any fuel feed ejector with 4,500 or more total flight hours, before further flight, replace it with a new ejector in accordance with Part B of the Accomplishment

Instructions of CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin (ASB) 670BA–28–025, Revision A, dated December 15, 2003.

(2) For any primary fuel feed ejector with less than 4,500 total flight hours, replace the primary fuel feed ejector, P/N T99A38–603, with a new ejector, in accordance with Part B of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003, at the later of the times specified in paragraph (j)(2)(i) or (j)(2)(ii) of this AD.

(i) Before the accumulation of 3,500 total flight hours on a primary fuel feed ejector.

(ii) Before the accumulation of 4,500 total flight hours on a primary fuel feed ejector, or within 750 flight hours after the effective date of this AD, whichever occurs first.

(3) Following replacement with a new ejector in accordance with paragraph (j)(2)(i) or (j)(2)(ii) of this AD, primary fuel feed ejectors must be replaced before accumulating 3,500 total flight hours.

Daily Leak Checks or Fuel Tank Empty Procedures

(k) Except as stated in paragraph (l) of this AD, before accumulating 2,000 total flight hours or within 14 days after the effective date of this AD, whichever occurs later, begin doing the actions specified in paragraph (m) or (p) of this AD. Accomplishing the actions specified in paragraph (m) or (p) of this AD ends the leak test (check) requirements of paragraph (h) of this AD.

(l) For any primary fuel feed ejector with 3,500 or more total flight hours as of the effective date of this AD, within 14 days after the effective date of this AD, begin doing the actions specified in paragraph (p) of this AD, and repeat those actions until the ejector is replaced in accordance with paragraph (j) of this AD.

Daily Operational Leak Checks

(m) Once a day, before the first flight of the day: With both engines operating at ground idle or taxi thrust, open both L&R XFER SOV circuit breakers, 1N9 and 2P8, and monitor the fuel quantity of the center fuel tank for five minutes, in accordance with Part A of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003. For the daily check, the fuel quantity in the center fuel tank must be 4,000 pounds or less.

Note 3: If the center fuel tank contains fuel when doing this check, the following engine indicating and crew alerting system (EICAS) caution message may be displayed: "L XFER SOV and/or R XFER SOV."

Leak Check Results

(n) Do the actions specified in paragraph (n)(1) or (n)(2) of this AD as applicable.

(1) If the leak check reveals that there is no fuel quantity increase in the center fuel tank or the fuel quantity increase is less than 150 pounds (68 kilograms (kg)): Before further flight, close the circuit breakers in accordance with Part B of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003.

(2) If the leak check reveals a fuel quantity increase of 150 pounds or more in the center fuel tank: Before further flight, do the investigative and corrective actions in accordance with the procedures specified in Part B of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003.

Flight Operations Using the Center Fuel Tank Empty Procedure

(o) Before flight operations with the center fuel tank empty procedure, revise the Limitations and Abnormal sections of the AFM to include the following instructions. This may be done by inserting a copy of this AD into the Limitations and Abnormal Procedures sections of the AFM.

(1) Revise the Limitations Section to specify:

"For every flight of each day, check the quantity of fuel in the center fuel tank during pre-flight and post-flight operations.

If the fuel quantity increase from the wing tanks to the center fuel tank is more than 150 pounds (68kg): Before takeoff, turn the airplane over to maintenance to perform corrective actions."

(2) Revise the Abnormal Procedure section to specify:

"If an abnormal increase of the center fuel tank quantity is detected or the center fuel tank quantity exceeds 600 pounds (272.2 kg) during flight: Immediately perform the actions specified in the Abnormal Procedures Section of CRJ Regional Jet (Bombardier) TR RJ 700/52–2, dated December 19, 2003, to the Bombardier Model CL–600–2C10 AFM, Document CSP B–012; or CRJ Regional Jet (Bombardier) TR RJ 900/10–1, dated December 19, 2003, to the Bombardier Model CL–600–2D24 AFM, Document CSP C–012; as applicable."

Before Dispatch for Flights Using the Center Fuel Tank Empty Procedure

(p) Before dispatch of airplanes operating with the center fuel tank empty, do the following actions:

(1) If the pre-flight fuel quantity check reveals that the airplane has less than 300 pounds (136.1 kg) of fuel in the center fuel tank and no leak is suspected: Open and collar both L&R XFER SOV circuit breakers, 1N9 and 2P8. The fuel in the center fuel is considered to be unusable.

Note 4: If the center fuel tank contains fuel when dispatching in this condition, the following EICAS caution message may be displayed: "L XFER SOV and/or R XFER SOV." That message may be removed by scrolling it away.

(2) If the pre-flight fuel quantity check reveals that the center fuel tank quantity is greater than 300 pounds (136.1 kg) and no leak is suspected: Do either (p)(2)(i) or (p)(2)(ii) of this AD at the time specified:

(i) Before dispatch of the airplane: Uncollar and close the SOV circuit breakers 1N9 and 2P8, to transfer the fuel from the center fuel tank to the wing tanks and open and re-collar circuit breakers 1N9 and 2P8.

(ii) Before dispatch of the airplane: Drain (defuel) the center fuel tank, in accordance with Part B of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003.

Corrective Actions for Center Fuel Tank Empty Procedures

(q) Before takeoff: If the fuel quantity increase from the wing tanks to the center fuel tank is more than 150 pounds (68 kg), as determined in paragraph (n) of this AD, do the investigative and corrective actions in accordance with Part B of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003.

Abnormal Increase of the Center Fuel Tank Quantity

(r) If an abnormal increase of the center fuel tank quantity is detected or the center fuel tank quantity exceeds 600 pounds (272.2 kg) during flight, after landing and before further flight, do the investigative and corrective actions in accordance with Part B of the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003.

Actions Accomplished Per Previous Releases of Service Bulletins

(s) Actions accomplished before the effective date of this AD in accordance with the following service bulletins are considered acceptable for compliance with the corresponding action in this AD:

(1) Bombardier CRJ 700 Regional Jet Service Bulletin 670BA–28–008, Revision A, dated September 16, 2002; or Revision B, dated October 2, 2002;

(2) CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, dated December 12, 2003, are considered acceptable for compliance with the corresponding action in this AD.

Reporting and Parts Return Requirement

(t) Although the Accomplishment Instructions of CRJ 700/900 Regional Jet (Bombardier) ASB 670BA–28–025, Revision A, dated December 15, 2003, specify to submit certain information to the manufacturer, and to return damaged parts to the manufacturer; this AD does not include those requirements.

Alternative Methods of Compliance (AMOCs)

(u) The Manager, New York Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(v) Canadian airworthiness directive CF–2004–04R2, issued April 16, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(w) You must use the following documents to perform the actions required by this AD, as applicable, unless the AD specifies otherwise:

TABLE 2.—MATERIAL INCORPORATED BY REFERENCE

Service document	Revision level	Date
Bombardier CRJ 700 Regional Jet Service Bulletin 670BA–28–008	Revision C	January 23, 2003.
CRJ 700/900 Regional Jet (Bombardier) Alert Service Bulletin 670BA–28–025, excluding Appendix A.	Revision A	December 15, 2003.
CRJ Regional Jet (Bombardier) Temporary Revision RJ 700/52–2 to Bombardier CL–600–2C10 Airplane Flight Manual, Document CSP B–012.	Original	December 19, 2003.
CRJ Regional Jet (Bombardier) Temporary Revision RJ 900/10–1 to Bombardier CL–600–2D24 Airplane Flight Manual, Document CSP C–012.	Original	December 19, 2003.

The Director of the Federal Register has previously approved the incorporation by reference of these documents as of April 15, 2004 (69 FR 16780, March 31, 2004). You can get copies of the documents from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20014 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18465; Airspace Docket No. 04–ASO–8]

Amendment of Class E Airspace; Somerset, KY

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E5 airspace at Somerset, KY. As a result of an evaluation, it has been determined a modification should be made to the Somerset, KY, Class E5 airspace area to contain the Nondirectional Radio Beacon (NDB) Runway 5, Standard Instrument Approach Procedure (SIAP) to Somerset—Pulaski County—J.T. Wilson Field Airport, Somerset, KY. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On July 8, 2004, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class E5 airspace at Somerset, KY, (69 FR 41215). This action provides adequate Class E5 airspace for IFR operations at Somerset—Pulaski County—J.T. Wilson Field Airport, Somerset, KY. Designations for Class E are published in FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR part 71.1. The Class E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class E5 airspace at Somerset, KY.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§71.1 [Amended]

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

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth

* * * * *

ASO KY E5 Somerset, KY [Revised]

Somerset—Pulaski County—J.T. Wilson Field Airport, KY
(Lat. 37°03'12" N, long. 84°36'57" W)
Cumberland River NDB
(Lat. 36°59'46" N, long. 84°40'53" W)

That airspace extending upward from 700 feet above the surface within an 8.6-mile radius of the Somerset—Pulaski County—J.T. Wilson Field Airport and within 4 miles northwest and 8 miles southeast of the 223° bearing from the Cumberland River NDB extending from the 8.6-mile radius to 16 miles southwest of the NDB.

* * * * *

Issued in College Park, Georgia, August 20, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–20062 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 2004N–0214]

Public Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to implement more comprehensively the exemptions contained in the Freedom of Information Act (FOIA). This action incorporates exemptions one, two, and three of FOIA into FDA's public information regulations. Exemption one applies to information that is classified in the interest of national defense or foreign policy. Exemption two applies to records that are related solely to an agency's internal personnel rules and practices. Exemption three incorporates the various nondisclosure provisions that are contained in other Federal statutes. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under the agency's usual procedure for notice-and-comment rulemaking, to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comments and withdraws this direct final rule.

DATES: The rule is effective January 17, 2005. Submit written or electronic comments by November 16, 2004. If FDA receives no significant adverse comments by the specified comment period, the agency will publish a document in the **Federal Register** confirming the effective date of this direct final rule. If the agency receives any significant adverse comments during the specified comment period, FDA intends to withdraw this direct final rule before its effective date by publication of a document in the **Federal Register**.

ADDRESSES: You may submit comments, identified by [Docket No. 2004N–0214], by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.

E-mail: *fdadockets@oc.fda.gov*. Include [Docket No. 2004N–0214] in the subject line of your e-mail message.

FAX: 301–827–6870.

Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket No. 2004N–0214 for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Betty B. Dorsey, Division of Freedom of Information (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6567.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is amending its public information regulations to incorporate exemptions one, two, and three of the FOIA (5 U.S.C. 552). FOIA provides that all Federal agency records shall be made available to the public upon request, except to the extent those records are protected from public disclosure by one of nine exemptions (5 U.S.C. 552(b)) or one of three special law enforcement record exclusions (5 U.S.C. 552(c)). FDA originally issued its public information regulations implementing FOIA in 1974. As noted at the time, FDA's 1974 regulations explicitly addressed four of the nine FOIA exemptions that were then perceived to be of particular importance to the agency, those relating to trade secrets, internal memoranda, personal privacy, and investigatory files (39 FR 44602, December 24, 1974). FDA now finds it necessary to address exemption one (5 U.S.C. 552(b)(1)), given the President's designation of the Secretary of Health and Human Services to classify information under Executive Order 12958 (66 FR 64347, December 12, 2001). Because exemption two (5 U.S.C. 552(b)(2)) applies to, among other types of records, internal matters whose disclosure would risk circumvention of a legal requirement, this exemption is of fundamental importance to homeland security in light of recent terrorism events and heightened security awareness. In addition, FDA now finds that exemption three (5 U.S.C. 552(b)(3)), which incorporates the various nondisclosure provisions that are contained in other Federal statutes, is becoming increasingly important to the agency. As such, FDA is amending, by direct final rule, subpart D of its public information regulations in 21 CFR part 20 to incorporate these three exemptions.

II. Direct Final Rulemaking

FDA has determined that the subject of this rulemaking is suitable for a direct final rule. This direct final rule amends the agency's public information regulations by incorporation of exemptions one, two, and three of FOIA, which have become increasingly relevant to FDA and its records. Because these exemptions are already contained in FOIA, this action should be noncontroversial, and the agency does not anticipate receiving any significant adverse comments on this rule.

If FDA does not receive significant adverse comments during the specified comment period, the agency will publish a document in the **Federal Register** confirming the effective date of this direct final rule (see **DATES**). A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. A comment recommending a rule change in addition to this rule will not be considered a significant adverse comment unless the comment states why this rule would be ineffective without the additional change. If timely significant adverse comments are received, the agency will publish a document of significant adverse comment in the **Federal Register** withdrawing this direct final rule.

Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, identical to the direct final rule, that provides a procedural framework within which the proposed rule may be finalized in the event the direct final rule is withdrawn because of significant adverse comment. The comment period for the direct final

rule runs concurrently with that of the companion proposed rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule and the agency will consider such comments in developing a final rule. FDA will not provide additional opportunity for comment on the companion proposed rule.

If a significant adverse comment applies to an amendment, paragraph, or section of this direct final rule and that provision may be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment. A full description of FDA's policy on the direct final rule procedures may be found in a guidance document published in the **Federal Register** of November 21, 1997 (62 FR 62466).

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (i) 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.

IV. Federalism

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

V. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this direct final rule simply incorporates three existing FOIA exemptions, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted annually for inflation. As noted previously, we find that this final rule would not have an effect of this magnitude on the economy.

VI. Paperwork Reduction Act of 1995

The direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

■ 2. Section 20.65 is added to read as follows:

§ 20.65 National defense and foreign policy.

(a) Records or information may be withheld from public disclosure if they are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(2) In fact properly classified under such Executive order.

(b) [Reserved]

■ 3. Section 20.66 is added to read as follows:

§ 20.66 Internal personnel rules and practices.

Records or information may be withheld from public disclosure if they are related solely to the internal personnel rules and practices of the Food and Drug Administration (FDA). Under this exemption, FDA may withhold records or information about routine internal agency practices and procedures. Under this exemption, the agency may also withhold internal records whose release would help some persons circumvent the law.

■ 4. Section 20.67 is added to read as follows:

§ 20.67 Records exempted by other statutes.

Records or information may be withheld from public disclosure if a statute specifically allows the Food and Drug Administration (FDA) to withhold them. FDA may use another statute to justify withholding records and information only if it absolutely prohibits disclosure, sets forth criteria to guide our decision on releasing material, or identifies particular types of matters to be withheld.

Dated: August 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19996 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation and Injectable Dosage Form New Animal Drugs; Ivermectin Injection

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 Merial Ltd. The supplemental NADA provides for an increased period of protection from reinfection with three species of internal parasites of cattle following administration of ivermectin solution by subcutaneous injection.

DATES: This rule is effective September 2, 2004.

FOR FURTHER INFORMATION CONTACT: Janis Messenheimer, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7578, e-mail: *janis.messenheimer@fda.gov.*

SUPPLEMENTARY INFORMATION: Merial Ltd., 3239 Satellite Blvd., Bldg. 500, Duluth, GA 30096–4640, filed a supplement to NADA 128–409 for IVOMEC (ivermectin) Injection for Cattle and Swine. The supplemental application provides for an increased period of protection from reinfection with three species of internal parasites of cattle following administration of ivermectin solution by subcutaneous injection. Specifically, the period of persistent effectiveness is increased from 14 days to 28 days for *Oesophagostomum radiatum*, and from 14 days to 21 days for *Trichostrongylus axei* and *Cooperia punctata*. A veal calf warning statement is being added because residue depletion data for this class of cattle has not been submitted to the application. The supplemental NADA is approved as of August 16, 2004, and 21 CFR 522.1192 is amended to reflect the approval. 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.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval qualifies for 3 years of marketing exclusivity beginning August 16, 2004. Exclusivity applies only to the extension of the persistent effectiveness claims for *O. radiatum* from 14 days after treatment to 28 days after treatment, and for *T. axei* and *C. punctata* from 14 days after treatment to 21 days after treatment, for which new data were required.

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 522

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 522 is amended as follows:

PART 522—IMPLANTATION AND INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Section 522.1192 is amended in paragraphs (a)(1), (a)(2), and (a)(3) by removing "sterile aqueous"; and by revising paragraphs (b) and (d)(2)(i) through (d)(2)(iii) to read as follows:

§ 522.1192 Ivermectin injection.

* * * * *

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

(1) No. 050604 for use as in paragraph (d) of this section.

(2) No. 059130 for use as in paragraphs (d)(2), (d)(3), (d)(4), and (d)(6) of this section of this section.

* * * * *

(d) * * *

(2) * * *

(i) *Amount.* 200 micrograms per kilogram of body weight by subcutaneous injection.

(ii) *Indications for use*—For the treatment and control of gastrointestinal nematodes (adults and fourth-stage larvae) (*Haemonchus placei, Ostertagia ostertagi* (including inhibited larvae), *O. lyrata, Trichostrongylus axei, T. colubriformis, Cooperia oncophora, C. punctata, C. pectinata, Oesophagostomum radiatum, Nematodirus helvetianus* (adults only), *N. spathiger* (adults only), *Bunostomum phlebotomum*); lungworms (adults and fourth-stage larvae) (*Dictyocaulus viviparus*); grubs (parasitic stages) (*Hypoderma bovis, H. lineatum*); sucking lice (*Linognathus vituli, Haematopinus eurysternus, Solenopotes capillatus*); mites (scabies) (*Psoroptes ovis* (syn. *P. communis* var. *bovis*), *Sarcoptes scabiei* var. *bovis*). For No. 059130 in § 510.600(c) of this chapter: It is also used to control infections of *D. viviparus* for 28 days after treatment; *O. ostertagi* for 21 days after treatment; and *H. placei, T. axei, C. punctata, C. oncophora*, and *O. radiatum* for 14 days after treatment. For No. 050604 in § 510.600(c) of this chapter: To control infections and to protect from reinfection with *D. viviparus* and *O. radiatum* for 28 days after treatment; *O. ostertagi, T. axei*, and *C. punctata* for 21 days after treatment; *H. placei* and *C. oncophora* for 14 days after treatment.

(iii) *Limitations.* Do not treat cattle within 35 days of slaughter. Because a withdrawal time in milk has not been established, do not use in female dairy cattle of breeding age. A withdrawal period has not been established for this product in pre-ruminating calves. Do not use in calves to be processed for veal. Not for intravenous or intramuscular use. Do not use in other animal species because severe adverse reactions, including fatalities in dogs, may result. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

* * * * *

Dated: August 25, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–19984 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Flunixin

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 abbreviated new animal drug application (ANADA) filed by Agri Laboratories, Ltd. The supplemental ANADA provides for use of flunixin meglumine solution by intravenous injection for control of fever and inflammation in beef cattle and nonlactating dairy cattle.

DATES: This rule is effective September 2, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lonnie.luther@fda.gov.*

SUPPLEMENTARY INFORMATION: Agri Laboratories, Ltd., P.O. Box 3103, St. Joseph, MO 64503, filed a supplement to ANADA 200–061 that provides for veterinary prescription use of Flunixin Meglumine Injection by intravenous administration for control of fever and inflammation in beef cattle and nonlactating dairy cattle. The supplemental application is approved as of July 29, 2004, and the regulations are amended in 21 CFR 522.970 to reflect the approval. 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 522

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 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

§ 522.970 [Amended]

■ 2. Section 522.970 is amended in paragraph (b)(1) by removing "Nos. 000061 and 059130" and by adding in its place "Nos. 000061, 057561, and 000856"; and in paragraph (b)(2) by removing "Nos. 000856 and 057561" and by adding in its place "No. 000856".

Dated: August 18, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–19987 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice 4809]

RIN 1400–AB95

Schedule of Fees for Consular Services; Exemption From the Nonimmigrant Visa Application Processing Fee for Family Members of Individuals Killed or Critically Injured While Serving the United States

AGENCY: State Department.

ACTION: Interim rule.

SUMMARY: This rule amends the Schedule of Fees for Consular Services ("Schedule of Fees" or "Schedule") to include an exemption from the nonimmigrant visa application processing fee for family members traveling to the United States for the funeral or burial of a U.S. Government employee killed in the line of duty or to visit a U.S. Government employee critically injured in the line of duty.

DATES: *Implementation Date:* This interim rule is effective September 2, 2004. Interested parties are invited to submit written comments by September 24, 2004.

ADDRESSES: Comments may be submitted in writing to the Office of the Executive Director, Bureau of Consular Affairs, Department of State, Suite H1004, 2401 E Street NW., Washington, DC 20520. Comments may also be forwarded via e-mail to *fees@state.gov.* In addition, this document may be viewed and comments submitted by going to the "Regulations.gov" Web site at *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Phillip Min, Office of the Executive Director, Bureau of Consular Affairs, telefax: 202–663–2499; e-mail: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

This rule amends the Schedule of Fees for Consular Services, 22 CFR 22.1, effective immediately. In addition, the amendment made by this rule will be incorporated into the proposed Schedule of Fees published as a proposed rule for comment in the **Federal Register** (Public Notice 4765) on July 19, 2004. See 69 FR 42913–42919.

Consular officers are required by law to charge fees as established in the Schedule of Fees for Consular Services, and they may not grant exemptions from fees set forth in the Schedule except as specifically authorized in the Schedule. The Schedule includes nonimmigrant visa reciprocity fees established pursuant to Section 281 of the Immigration and Nationality Act (8 U.S.C. 1351), and a nonimmigrant visa application processing fee, commonly known as the "machine readable visa" or "MRV" fee, which generally recovers from the visa applicant the full cost of processing the visa application on the assumption that in most cases nonimmigrant visa services are provided primarily for the benefit of the individual applicant. Current exemptions from the MRV fee exist only for applicants for A, G, C–3, NATO, and diplomatic visas; applicants for J visas participating in U.S. Government-sponsored exchanges; persons who need replacement visas when the original visa was not properly affixed or needs to be reissued through no fault of the applicant; applicants traveling to provide charitable services as determined by the Department of State; and U.S. Government employees traveling on official business.

The new exemption from the nonimmigrant visa application processing (MRV) fee will provide a waiver of the fee for an applicant who is an immediate family member of a U.S. Government employee killed in the line of duty and who is traveling to attend the employee's funeral and/or burial. The new exemption will also be applicable to a family member visiting a U.S. Government employee who has been critically injured in the line of duty during the period of emergency treatment and convalescence. The exemption will extend to a surviving parent, sibling, spouse, son, or daughter of the deceased or injured U.S. Government employee. This exemption appropriately shifts the cost of visa processing in such cases to the general public because it is in the national interest to assist close non-U.S. citizen relatives of U.S. Government employees killed or critically injured in the line of duty traveling to the United States for funeral and/or burial events or for visitation during emergency treatment and convalescence.

Regulatory Findings

Administrative Procedure Act

The Department is publishing this rule as an interim rule effective upon publication under the good cause authorities of 5 U.S.C. 553(b)(B) and (d)(3) and the exemption provision of 5 U.S.C. 553 (d)(1).

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6). Adding the exemption will have no economic impact on such entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 801–808, which constitute the Congressional Review portion (Subtitle E) of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988: Civil Justice Reform

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 22

Consular services, Fees, Schedule of fees for Consular Services, Passports, Visas.

■ For the reasons set forth in the preamble, part 22 of title 22 of the Code of Federal Regulations is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

■ 1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351, 1351 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Pub. L. 105–277, 112 Stat. 2681 *et seq.*; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

■ 2. Section 22.1 is amended in item 22 of the table by adding paragraph (g) to read as follows:

§ 22.1 Schedule of fees.

* * * * *

Schedule of Fees for Consular Services

Item No.	*Fee*
* * * * *	
■ 22. * * *	
(g) A parent, sibling, spouse, or child of a U.S. Government employee killed in the line of duty who is traveling to attend the employee's funeral and/or burial; or a parent, sibling, spouse, son, or daughter of a U.S. Government employee critically injured in the line of duty for visitation during emergency treatment and convalescence. [24–MRV EXEMPT] * * *	NO FEE
* * * * *	

August 23, 2004.

Grant Green, Jr.,

Under Secretary of State for Management, Department of State.

[FR Doc. 04–20043 Filed 9–1–04; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1–93]

Sale and Issue of Marketable Treasury Bills, Notes, and Bonds: Six-Decimal Pricing, Negative-Yield Bidding, Zero-Filling, and Noncompetitive Bidding and Award Limit Increase

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

ACTION: Final rule.

SUMMARY: The Department of the Treasury ("Treasury," "We," or "Us") is issuing in final form an amendment to its regulations (Uniform Offering Circular for the Sale and Issue of

Marketable Book-Entry Treasury Bills, Notes, and Bonds). This amendment implements four policy changes and makes conforming changes to the formulas. First, this amendment changes the pricing convention for all marketable Treasury securities auctions from three decimal places to six decimal places. Second, this amendment allows for negative-yield bidding in Treasury inflation-protected securities (TIPS) auctions to accommodate circumstances in which the desired real yield is a negative number. Third, this amendment provides for "zero-filling" of competitive auction bids that are not expressed out to the required three decimals by modifying the bids to a three-decimal rate or yield that is mathematically equivalent to the rate or yield submitted. Finally, this amendment raises the noncompetitive bidding and award limit for all Treasury bill auctions from $1 million to $5 million, which is the current noncompetitive limit for all Treasury note and bond auctions.

EFFECTIVE DATE: September 20, 2004.

ADDRESSES: You may download this final rule from the Bureau of the Public Debt's Web site at *http://www.publicdebt.treas.gov* or from the Electronic Code of Federal Regulations (e-CFR) Web site at *http://www.gpoaccess.gov/ecfr*. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622–0990 for an appointment.

FOR FURTHER INFORMATION CONTACT: Lori Santamorena (Executive Director), Chuck Andreatta or Lee Grandy (Associate Directors), Bureau of the Public Debt, Government Securities Regulations Staff, (202) 504–3632, or e-mail us at *govsecreg@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: The Uniform Offering Circular, in conjunction with the offering announcement for each auction, provides the terms and conditions for the sale and issuance in an auction to the public of marketable Treasury bills, notes and bonds.[1] In this notice, we describe the current rules and why we are changing them. Then we describe the final amendment to the Uniform Offering Circular.

[1] The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The circular, as amended, is codified at 31 CFR part 356.

Background and Analysis

A. Six-Decimal Pricing

It is a longstanding convention in marketable Treasury securities auctions that the prices at which we award securities to successful bidders are expressed in terms of price per 100 of par value to three decimal places, for example, 99.170. One result is that auctions of Treasury bills of less than 72 days currently do not result in price uniqueness for each discount rate bid.[2] In other words, for these short-term Treasury bills, there may be multiple discount rates bid that result in the same three-decimal price. Furthermore, for extremely short-term Treasury bills, rounding the price to three decimals can result in the investment rate (the equivalent coupon-issue yield) being inaccurate. Treasury provides both the discount rate and the investment rate on its Treasury bill auction results announcements. Because the discount rate is based on a par value of $100, and the investment rate is based on the actual price paid per $100 of par, the discount rate should always be less than the investment rate. (The formula for calculating a purchase price from a discount rate is $P = 100(1 - dr/360)$, where d = the discount rate, in decimals, r = the number of days to maturity, and P = price per hundred (dollars). The formula for calculating an investment rate from a purchase price is

$$i = \left[\frac{100 - P}{P} \times \frac{y}{r}\right]$$

where i = the investment rate, in decimals; P = price per hundred (dollars); r = number of days to maturity; and y = number of days in the year following the issue date (normally 365). See Section V of Appendix B.) However, this relationship does not always hold under our current three-decimal conventions.

An example of the anomalies that can occur in very short-term Treasury bills occurred in Treasury's auction of four-day cash management bills on September 10, 2003. This bill was awarded at a discount rate of 0.940 percent and a three-decimal price of 99.990. Under the current bidding convention, 18 different discount rates could have been bid in the auction (from 0.860 percent to 0.945 percent), all having a corresponding rounded price of 99.990. In addition, the investment rate for the auction was 0.915 percent, which is less than the awarded discount rate of 0.940 percent.

In the February 2004 Quarterly Refunding Statement, Treasury announced its intention to compute the price of awards in auctions to six decimal places per hundred.[3–4] In an effort to make the transition as smooth as possible, the six-decimal pricing calculation formulas were made available at the Bureau of the Public Debt Website on March 4, 2004.[5] In the May 2004 Quarterly Refunding Statement, Treasury reiterated its intention to change to the six-decimal pricing convention in the second half of the year.[6]

Accordingly, to ensure price uniqueness for all discount rates or yields bid in all marketable Treasury securities auctions, we are amending the Uniform Offering Circular to calculate prices for awarded securities to six decimals per $100 of par value. Specifically, § 356.20(c) is being changed to state that price calculations for awarded securities will be rounded to six decimal places per hundred (rather than the current three decimals), for example, 99.954321. Calculating prices to six decimals will also make Treasury's pricing practice consistent with secondary market practices. As of the effective date of this amendment, this change will apply to all Treasury bill, note, and bond auctions.

B. Negative-Yield Bidding

Treasury's current auction regulations do not expressly permit bidders in TIPS auctions to submit negative-yield bids. Since it is possible that under certain market conditions the yield desired by a competitive bidder in a TIPS auction would be a negative number, this amendment modifies the regulations to allow Treasury to accept negative-yield bids in TIPS auctions.

The introduction of 5-year TIPS[7] has increased the possibility that a Treasury TIPS auction could result in a negative-yield TIPS. However, a negative TIPS interest (coupon) rate is neither practical nor desirable. Therefore, if a TIPS auction produces a negative or zero yield, this amendment clarifies that

[2] Price uniqueness occurs when each separate discount rate produces a different (unique) price, *i.e.*, no two discount rates result in the same price. Price uniqueness is a function of the minimum bid increment allowed in auctions, price rounding conventions, and the number of days to maturity.

[3–4] Treasury February Quarterly Refunding Statement, February 4, 2004. Treasury stated its intention to implement six-decimal pricing later in the year.

[5] See Public Debt News Release on March 4, 2004. The formulas are available at *http://www.publicdebt.treas.gov/of/ofcalc6decimal.htm*.

[6] Treasury May Quarterly Refunding Statement, May 5, 2004.

[7] Treasury May 2004 Quarterly Refunding Statement, May 5, 2004. Treasury stated it would begin offering 5-year TIPS, with the first such offering to be conducted in October 2004.

we will set the interest rate at zero and calculate the award price accordingly. Investors will receive the inflation-adjusted par amount at maturity. Therefore, § 356.12(c)(1)(iii) is being modified to state that the real-yield bid submitted for a TIPS auction may be a positive number, a negative number, or zero. Also, § 356.20(b) is being modified to state that if a TIPS auction produces a negative or zero yield, the interest rate will be set at zero, with successful bidders' award prices calculated accordingly.

C. Zero-Filling

When evaluating bids submitted in Treasury auctions, we currently reject any bid that does not adhere to the established three-decimal bidding format. Rejecting such bids reduces the number of competitive bids in Treasury auctions, which is counter to our objective of ensuring broad participation in Treasury auctions. Therefore, we have decided to accept competitive bids that are not expressed out to three decimals at a three-decimal rate or yield that is mathematically equivalent to the rate or yield that was submitted. For example, a bid of 5.32 will be treated as a bid of 5.320, a bid of 4.1 will be treated as a bid of 4.100, and a bid of 3 will be treated as a bid of 3.000. Accordingly, §§ 356.12(c)(1)(i),(ii), and (iii) are being modified to state that any missing decimals in a competitive bid will be treated as zero.

D. Noncompetitive Bidding and Award Limit Increase for Treasury Bill Auctions

In an October 25, 1991 Treasury News press release, Treasury announced it was increasing the maximum noncompetitive award in note and bond auctions from $1 million to $5 million, effective November 5, 1991.[8] The change was made to broaden participation in Treasury auctions, particularly to encourage bidding by smaller investors. The noncompetitive bid and award limit for Treasury bills remained at $1 million. In an effort to make the maximum noncompetitive bid and award limit consistent for all marketable Treasury securities auctions, and to increase participation in Treasury auctions, Treasury is raising the noncompetitive bidding and award limit for Treasury bill auctions from $1 million to $5 million.

Accordingly, § 356.12(b)(1) is being modified to provide generally that the maximum amount that can be bid noncompetitively in any Treasury securities auction is $5 million.[9] Also, § 356.22(a) is being modified to state that the maximum noncompetitive award to any bidder will be $5 million, which will apply to all Treasury auctions.

E. Formulas and Effective Date

Technical changes are being made to the formulas in Appendix B, Sections II, III, and V to conform with the changes we are making in the pricing conventions. To provide market participants and Treasury sufficient time to modify their settlement systems and to make any other operational changes that may be needed, we are providing a delayed effective date of September 20, 2004.

Procedural Requirements

It has been determined that this final rule is not a significant regulatory action for purposes of Executive Order 12866. The notice and public procedures requirements of the Administrative Procedure Act do not apply.

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

The Office of Management and Budget has approved the collections of information in this final rule amendment in accordance with the Paperwork Reduction Act of 1995. This final rule is technical in nature and imposes no additional burdens on auction bidders.

List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government Securities, Securities.

■ For the reasons stated in the preamble, 31 CFR part 356 is amended as follows:

PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

■ 1. The authority citation for part 356 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

■ 2. Section 356.12 is amended by revising paragraphs (b)(1) and (c)(1)(i),(ii), and (iii) to read as follows:

§ 356.12 What are the different types of bids and do they have specific requirements or restrictions?

* * * * *

(b) *Noncompetitive bids.* (1) *Maximum bid.* You may not bid noncompetitively for more than $5 million. The maximum bid limitation does not apply if you are bidding solely through a TreasuryDirect reinvestment request. A request for reinvestment of securities maturing in TreasuryDirect is a noncompetitive bid.

* * * * *

(c) *Competitive bids.*—(1) *Bid format* (i) *Treasury bills.* A competitive bid must show the discount rate bid, expressed with three decimals in .005 increments. The third decimal must be either a zero or a five, for example, 5.320 or 5.325. We will treat any missing decimals as zero, for example, a bid of 5.32 will be treated as 5.320.

(ii) *Treasury fixed-principal securities.* A competitive bid must show the yield bid, expressed with three decimals, for example, 4.170. We will treat any missing decimals as zero, for example, a bid of 4.1 will be treated as 4.100.

(iii) *Treasury inflation-protected securities.* A competitive bid must show the real yield bid, expressed with three decimals, for example, 3.070. We will treat any missing decimals as zero, for example, a bid of 3 will be treated as 3.000. The real yield may be a positive number, a negative number, or zero.

* * * * *

■ 3. Section 356.20 is amended by revising paragraphs (b) and (c) to read as follows:

§ 356.20 How does the Treasury determine auction awards?

* * * * *

(b) *Determining the interest rate for new note and bond issues.* We set the interest rate at a ⅛ of one percent increment. If a Treasury inflation-protected securities auction results in a negative or zero yield, the interest rate will be set at zero, and successful bidders' award prices will be calculated accordingly (See Appendix B to this part for formulas).

(1) *Single-price auctions.* The interest rate we establish produces the price closest to, but not above, par when evaluated at the yield of awards to successful competitive bidders.

(2) *Multiple-price auctions.* The interest rate we establish produces the price closest to, but not above, par when evaluated at the weighted-average yield of awards to successful competitive bidders.

(c) *Determining purchase prices for awarded securities.* We round price calculations to six decimal places on the basis of price per hundred, for example, 99.954321 (See Appendix B to this part).

[8] Treasury News press release dated October 21, 1991.

[9] Paragraph 356.12(b)(1) also states that the maximum bid limitation does not apply if a bidder is bidding solely through a TreasuryDirect reinvestment request.

(1) *Single-price auctions.* We award securities to both noncompetitive and competitive bidders at the price equivalent to the highest accepted discount rate or yield at which bids were accepted. For inflation-protected securities, the price for awarded securities is the price equivalent to the highest accepted real yield.

(2) *Multiple-price auctions*—(i) *Competitive bids.* We award securities to competitive bidders at the price equivalent to each yield or discount rate at which their bids were accepted.

(ii) *Noncompetitive bids.* We award securities to noncompetitive bidders at the price equivalent to the weighted average yield or discount rate of accepted competitive bids.

■ 4. Section 356.22 is amended by revising paragraph (a) to read as follows:

§ 356.22 Does the Treasury have any limitations on auction awards?

(a) *Awards to noncompetitive bidders.* The maximum award to any bidder is $5 million. This limit does not apply to bidders bidding solely through TreasuryDirect reinvestment requests.

* * * * *

■ 5. Appendix B to part 356, sections II and III are revised to read as follows:

Appendix B to Part 356—Formulas and Tables

* * * * *

II. Formulas for Conversion of Fixed-Principal Security Yields to Equivalent Prices

Definitions

P = price per 100 (dollars), rounded to six places, using normal rounding procedures.

C = the regular annual interest per $100, payable semiannually, *e.g.*, 6.125 (the decimal equivalent of a 6⅛ interest rate).

i = nominal annual rate of return or yield to maturity, based on semiannual interest payments and expressed in decimals, *e.g.*, .0719.

n = number of full semiannual periods from the issue date to maturity, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining to maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond issue. For example, a security maturing on November 15, 2015, would have coupon frequency dates of May 15 and November 15.

r = (1) number of days from the issue date to the first interest payment (regular or short first payment period), or (2) number of days in fractional portion (or "initial short period") of long first payment period.

s = (1) number of days in the full semiannual period ending on the first interest payment date (regular or short first payment period), or (2) number of days in the full semiannual period in which the fractional portion of a long first payment period falls, ending at the onset of the regular portion of the first interest payment.

$v^n = 1 / [1 + (i/2)]^n$ = present value of 1 due at the end of n periods.

$a_{n\rceil} = (1 - v^n) / (i/2) = v + v^2 + v^3 + \ldots v^n$ = present value of 1 per period for n periods.

Special Case: If i = 0, then $a_{n\rceil} = n$. Furthermore, when i = 0, $a_{n\rceil}$ cannot be calculated using the formula: $(1 - v_n)/(i/2)$. In the special case where i = 0, $a_{n\rceil}$ must be calculated as the summation of the individual present values (*i.e.*, $v + v^2 + v^3 + \ldots + v^n$). Using the summation method will always confirm that $a_{n\rceil} = n$ when i = 0.

A = accrued interest.

A. *For fixed-principal securities with a regular first interest payment period:*

Formula:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_{n\rceil} + 100v^n$.

Example:

For an 8¾% 30-year bond issued May 15, 1990, due May 15, 2020, with interest payments on November 15 and May 15, solve for the price per 100 (P) at a yield of 8.84%.

Definitions:

C = 8.75.
i = .0884.
r = 184 (May 15 to November 15, 1990).
s = 184 (May 15 to November 15, 1990).
n = 59 (There are 60 full semiannual periods, but n is reduced by 1 because the issue date is a coupon frequency date.)
$v^n = 1 / [(1 + .0884 / 2)]^{59}$, or .0779403508.
$a_{n\rceil}$ = (1 − .0779403508) / .0442, or 20.8610780353.

Resolution:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_{n\rceil} + 100v^n$ or
$P[1 + (184/184)(.0884/2)] = (8.75/2)(184/184) + (8.75/2)(20.8610780353) + 100(.0779403508)$.
(1) $P[1 + .0442] = 4.375 + 91.2672164044 + 7.7940350840$.
(2) $P[1.0442] = 103.4362514884$.
(3) $P = 103.4362514884 / 1.0442$.
(4) P = 99.057893.

B. *For fixed-principal securities with a short first interest payment period:*

Formula:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_{n\rceil} + 100v^n$.

Example:

For an 8½% 2-year note issued April 2, 1990, due March 31, 1992, with interest payments on September 30 and March 31, solve for the price per 100 (P) at a yield of 8.59%.

Definitions:

C = 8.50.
i = .0859.
n = 3.
r = 181 (April 2 to September 30, 1990).
s = 183 (March 31 to September 30, 1990).
$v^n = 1 / [(1 + .0859 / 2)]^3$, or .8814740565.
$a_{n\rceil}$ = (1 − .8814740565) / .04295, or 2.7596261590.

Resolution:

$P[1 + (r/s)(i/2)] = (C/2)(r/s) + (C/2)a_{n\rceil} + 100v^n$ or
$P[1 + (181/183)(.0859/2)] = (8.50/2)(181/183) + (8.50/2)(2.7596261590) + 100(.8814740565)$.
(1) $P[1 + .042480601] = 4.2035519126 + 11.7284111757 + 88.14740565$.
(2) $P[1.042480601] = 104.0793687354$.
(3) $P = 104.0793687354 / 1.042480601$.
(4) P = 99.838183.

C. *For fixed-principal securities with a long first interest payment period:*

Formula:

$P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2)a_{n\rceil} + 100v^n$.

Example:

For an 8½% 5-year 2-month note issued March 1, 1990, due May 15, 1995, with interest payments on November 15 and May 15 (first payment on November 15, 1990), solve for the price per 100 (P) at a yield of 8.53%.

Definitions:

C = 8.50.
i = .0853.
n = 10.
r = 75 (March 1 to May 15, 1990, which is the fractional portion of the first interest payment).
s = 181 (November 15, 1989, to May 15, 1990).
v = 1 / (1 + .0853/2), or .9590946147.
$v^n = 1 / (1 + .0853/2)^{10}$, or .6585890783.
$a_{n\rceil}$ = (1 − .658589)/.04265, or 8.0049454082.

Resolution:

$P[1 + (r/s)(i/2)] = [(C/2)(r/s)]v + (C/2)a_{n\rceil} + 100v^n$ or
$P[1 + (75/181)(.0853/2)] = [(8.50/2)(75/181)].9590946147 + (8.50/2)(8.0049454082) + 100(.6585890783)$.
(1) $P[1 + .017672652] = 1.6890133062 + 34.0210179850 + 65.8589078339$.
(2) $P[1.017672652] = 101.5689391251$.
(3) $P = 101.5689391251 / 1.017672652$.
(4) P = 99.805118.

D. (1) *For fixed-principal securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new fixed-principal securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Formula:

$(P + A)[1 + (r/s)(i/2)] = C/2 + (C/2)a_{n\rceil} + 100v^n$.

Where:

A = [(s − r)/s](C/2).

Example:

For a 9½% 10-year note with interest accruing from November 15, 1985, issued November 29, 1985, due November 15, 1995, and interest payments on May 15 and November 15, solve for the price per 100 (P) at a yield of 9.54%. Accrued interest is from November 15 to November 29 (14 days).

Definitions:

C = 9.50.
i = .0954.
n = 19.

r = 167 (November 29, 1985, to May 15, 1986).
s = 181 (November 15, 1985, to May 15, 1986).
$v^n = 1 / [(1 + .0954/2)]^{19}$, or .4125703996.
$a_{n\rceil} = (1 - .4125703996) / .0477$, or 12.3150859630.
A = [(181 − 167) / 181](9.50/2), or .367403.

Resolution:

$(P+A)[1 + (r/s)(i/2)] = C/2 + (C/2)a_{n\rceil} + 100v^n$ or

(P + .367403)[1 + (167/181)(.0954/2)] = (9.50/2) + (9.50/2)(12.3150859630) + 100(.4125703996).

(1) (P + .367403)[1 + .044010497] = 4.75 + 58.4966583243 + 41.25703996.
(2) (P + .367403)[1.044010497] = 104.5036982843.
(3) (P + .367403) = 104.5036982843 / 1.044010497.
(4) (P + .367403) = 100.098321.
(5) P = 100.098321 − .367403.
(6) P = 99.730918.

E. *For fixed-principal securities reopened during the regular portion of a long first payment period:*

Formula:

$(P + A)[1 + (r/s)(i/2)] = (r's'')(C/2) + C/2 + (C/2)a_{n\rceil} + 100v^n$.

Where:

A = AI′ + AI,
AI′ = (r′/s″)(C/2),
AI = [(s − r) / s](C/2), and
r = number of days from the reopening date to the first interest payment date,
s = number of days in the semiannual period for the regular portion of the first interest payment period,
r′ = number of days in the fractional portion (or "initial short period") of the first interest payment period,
s″ = number of days in the semiannual period ending with the commencement date of the regular portion of the first interest payment period.

Example:

A 10¾% 19-year 9-month bond due August 15, 2005, is issued on July 2, 1985, and reopened on November 4, 1985, with interest payments on February 15 and August 15 (first payment on February 15, 1986), solve for the price per 100 (P) at a yield of 10.47%. Accrued interest is calculated from July 2 to November 4.

Definitions:

C = 10.75.
i = .1047.
n = 39.
r = 103 (November 4, 1985, to February 15, 1986).
s = 184 (August 15, 1985, to February 15, 1986).
r′ = 44 (July 2 to August 15, 1985).
s″ = 181 (February 15 to August 15, 1985).
$v^n = 1 / [(1 + .1047 / 2)]^{39}$, or .1366947986.
$a_{n\rceil} = (1 - .1366947986) / .05235$, or 16.4910258142.
AI′ = (44 / 181)(10.75 / 2), or 1.306630.
AI = [(184 − 103) / 184](10.75 / 2), or 2.366168.
A = AI′ + AI, or 3.672798.

Resolution:

$(P + A)[1 + (r/s)(i/2)] = (r's'')(C/2) + C/2 + (C/2)a_{n\rceil} + 100v^n$ or

(P + 3.672798)[1 + (103/184)(.1047/2)] = (44/181)(10.75/2) +10.75/2 + (10.75/2)(16.4910258142) + 100(.1366947986).

(1) (P + 3.672798)[1 + .02930462] = 1.3066298343 + 5.375 + 88.6392637512 + 13.6694798628.
(2) (P + 3.672798)[1.02930462] = 108.9903734482.
(3) (P + 3.672798) = 108.9903734482 / 1.02930462.
(4) (P + 3.672798) = 105.887384.
(5) P = 105.887384 − 3.672798.
(6) P = 102.214586.

F. *For fixed-principal securities reopened during a short first payment period:*

Formula:

$(P + A)[1 + (r/s)(i/2)] = (r'/s)(C/2) + (C/2)a_{n\rceil} + 100v^n$.

Where:

A = [(r′ − r)/s](C/2) and
r′ = number of days from the original issue date to the first interest payment date.

Example:

For a 10½% 8-year note due May 15, 1991, originally issued on May 16, 1983, and reopened on August 15, 1983, with interest payments on November 15 and May 15 (first payment on November 15, 1983), solve for the price per 100 (P) at a yield of 10.53%. Accrued interest is calculated from May 16 to August 15.

Definitions:

C = 10.50.
i = .1053.
n = 15.
r = 92 (August 15, 1983, to November 15, 1983).
s = 184 (May 15, 1983, to November 15, 1983).
r′ = 183 (May 16, 1983, to November 15, 1983).
$v^n = 1/[(1 + .1053/2)]^{15}$, or .4631696332.
$a_{n\rceil} = (1 - .4631696332) / .05265$, or 10.1962082956.
A = [(183 − 92) / 184](10.50 / 2), or 2.596467.

Resolution:

$(P + A)[1 + (r/s)(i/2)] = (r'/s)(C/2) + (C/2)a_{n\rceil} + 100v^n$ or

(P + 2.596467)[1+(92/184)(.1053/2)] = (183/184)(10.50/2) + (10.50/2)(10.1962082956) + 100(.4631696332).

(1) (P + 2.596467)[1 + .026325] = 5.2214673913 + 53.5300935520 + 46.31696332.
(2) (P + 2.596467)[1.026325] = 105.0685242633.
(3) (P + 2.596467) = 105.0685242633 / 1.026325.
(4) (P + 2.596467) = 102.373541.
(5) P = 102.373541 − 2.596467.
(6) P = 99.777074.

G. *For fixed-principal securities reopened during the fractional portion (initial short period) of a long first payment period:*

Formula:

$(P + A)[1 + (r/s)(i/2)] = [(r'/s)(C/2)]v + (C/2)a_{n\rceil} + 100v^n$.

Where:

A = [(r′ − r)/s](C/2), and
r = number of days from the reopening date to the end of the short period.
r′ = number of days in the short period.
s = number of days in the semiannual period ending with the end of the short period.

Example:

For a 9¾% 6-year 2-month note due December 15, 1994, originally issued on October 15, 1988, and reopened on November 15, 1988, with interest payments on June 15 and December 15 (first payment on June 15, 1989), solve for the price per 100 (P) at a yield of 9.79%. Accrued interest is calculated from October 15 to November 15.

Definitions:

C = 9.75.
i = .0979.
n = 12.
r = 30 (November 15, 1988, to December 15, 1988).
s = 183 (June 15, 1988, to December 15, 1988).
r′ = 61 (October 15, 1988, to December 15, 1988).
v = 1 / (1 + .0979/2), or .9533342867.
$v^n = [1 / (1 + .0979/2)]^{12}$, or .5635631040.
$a_{n\rceil} = (1 - .5635631040)/.04895$, or 8.9159733613.
A = [(61 − 30)/183](9.75/2), or .825820.

Resolution:

$(P + A)[1 + (r/s)(i/2)] = [(r'/s)(C/2)]v + (C/2)a_{n\rceil} + 100v^n$ or

(P + .825820)[1 + (30/183)(.0979/2)] = [(61/183)(9.75/2)](.9533342867) + (9.75/2)(8.9159733613) + 100(.5635631040).

(1) (P + .825820)[1+ .00802459] = 1.549168216 + 43.4653701362 + 56.35631040.
(2) (P + .825820)[1.00802459] = 101.3708487520.
(3) (P + .825820) = 101.3708487520 / 1.00802459.
(4) (P + .825820) = 100.563865.
(5) P = 100.563865 −. 825820.
(6) P = 99.738045.

III. Formulas for Conversion of Inflation-Indexed Security Yields to Equivalent Prices

Definitions

P = unadjusted or real price per 100 (dollars).
P_{adj} = inflation adjusted price; P × Index $Ratio_{Date}$.
A = unadjusted accrued interest per $100 original principal.
A_{adj} = inflation adjusted accrued interest; A× Index $Ratio_{Date}$.
SA = settlement amount including accrued interest in current dollars per $100 original principal; $P_{adj} + A_{adj}$.
r = days from settlement date to next coupon date.
s = days in current semiannual period.
i = real yield, expressed in decimals (*e.g.*, 0.0325).
C = real annual coupon, payable semiannually, in terms of real dollars paid on $100 initial, or real, principal of the security.
n = number of full semiannual periods from issue date to maturity date, except that, if the issue date is a coupon frequency date, n will be one less than the number of full semiannual periods remaining until maturity. Coupon frequency dates are the two semiannual dates based on the maturity date of each note or bond

issue. For example, a security maturing on July 15, 2026 would have coupon frequency dates of January 15 and July 15.

$v^n = 1/(1 + i/2)^n$ = present value of 1 due at the end of n periods.

$a_{n\rceil} = (1 - v^n)/(i/2) = v + v^2 + v^3 + \cdots + v^n$ = present value of 1 per period for n periods.

Special Case: If i = 0, then $a_{n\rceil} = n$. Furthermore, when i = 0, $a_{n\rceil}$ cannot be calculated using the formula: $(1 - v^n)/(i/2)$. In the special case where i = 0, $a_{n\rceil}$ must be calculated as the summation of the individual present values (*i.e.*, $v + v^2 + v^3 + \cdots + v^n$). Using the summation method will always confirm that $a_{n\rceil} = n$ when i = 0.

Date = valuation date.

D = the number of days in the month in which Date falls.

t = calendar day corresponding to Date.

CPI = Consumer Price Index number.

CPI_M = CPI reported for the calendar month M by the Bureau of Labor Statistics.

Ref CPI_M = reference CPI for the first day of the calendar month in which Date falls (also equal to the CPI for the third preceding calendar month), *e.g.*, Ref $CPI_{April\ 1}$ is the $CPI_{January}$.

Ref CPI_{M+1} = reference CPI for the first day of the calendar month immediately following Date.

Ref CPI_{Date} = Ref $CPI_M - [(t - 1)/D][\text{Ref } CPI_{M+1} - \text{Ref } CPI_M]$.

Index $Ratio_{Date}$ = Ref CPI_{Date} / Ref $CPI_{IssueDate}$.

Note: When the Issue Date is different from the Dated Date, the denominator is the Ref $CPI_{DatedDate}$.

A. *For inflation-indexed securities with a regular first interest payment period:*

Formulas:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$P_{adj} = P \times \text{Index Ratio}_{Date}$.

$A = [(s - r)/s] \times (C/2)$.

$A_{adj} = A \times \text{Index Ratio}_{Date}$.

$SA = P_{adj} + A_{adj}$.

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{IssueDate}$.

Example:

We issued a 10-year inflation-indexed note on January 15, 1999. The note was issued at a discount to yield of 3.898% (real). The note bears a 3⅞% real coupon, payable on July 15 and January 15 of each year. The base CPI index applicable to this note is 164. (We normally derive this number using the interpolative process described in Appendix B, section I, paragraph B.)

Definitions:

C = 3.875.

i = 0.03898.

n = 19 (There are 20 full semiannual periods but n is reduced by 1 because the issue date is a coupon frequency date.).

r = 181 (January 15, 1999 to July 15, 1999).

s = 181 (January 15, 1999 to July 15, 1999).

Ref CPI_{Date} = 164.

Ref $CPI_{IssueDate}$ = 164.

Resolution:

Index $Ratio_{Date}$ = Ref CPI_{Date} / Ref $CPI_{IssueDate}$ = 164/164 = 1.

$A = [(181 - 181)/181] \times 3.875/2 = 0$.

$A_{adj} = 0 \times 1 = 0$.

$v^n = 1/(1 + i/2)^n = 1/(1 + .03898/2)^{19} = 0.692984572$.

$a_{n\rceil} = (1 - v^n)/(i/2) = (1 - 0.692984572)/(.03898/2) = 15.752459107$.

Formula:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3.875/2) + (3.875/2)(15.752459107) + 100(0.692984572)}{1 + (181/181)(0.03898/2)} - [(181 - 181)/181](3.875/2)$$

$$P = \frac{1.9375 + 30.52038952 + 69.29845720}{1.01949000} - 0$$

$$P = \frac{101.75634672}{1.01949000}$$

P = 99.811030.

$P_{adj} = P \times \text{Index Ratio}_{Date}$.

$P_{adj} = 99.811030 \times 1 = 99.811030$.

$SA = P_{adj} \times A_{adj}$.

SA = 99.811030 + 0 = 99.811030.

NOTE: For the real price (P), we have rounded to six places. These amounts are based on 100 par value.

B. (1) *For inflation-indexed securities reopened during a regular interest period where the purchase price includes predetermined accrued interest.*

(2) *For new inflation-indexed securities accruing interest from the coupon frequency date immediately preceding the issue date, with the interest rate established in the auction being used to determine the accrued interest payable on the issue date.*

Bidding: The dollar amount of each bid is in terms of the par amount. For example, if the Ref CPI applicable to the issue date of the note is 120, and the reference CPI applicable to the reopening issue date is 132, a bid of $10,000 will in effect be a bid of $10,000 × (132/120), or $11,000.

Formulas:

$$P = \frac{(C/2) + (C/2)a_{n\rceil} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$P_{adj} = P \times \text{Index Ratio}_{Date}$.

$A = [(s - r)/s] \times (C/2)$.

$A_{adj} = A \times \text{Index Ratio}_{Date}$.

$SA = P_{adj} + A_{adj}$.

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{IssueDate}$.

Example:

We issued a 3⅝% 10-year inflation-indexed note on January 15, 1998, with interest payments on July 15 and January 15. For a reopening on October 15, 1998, with inflation compensation accruing from January 15, 1998 to October 15, 1998, and accrued interest accruing from July 15, 1998 to October 15, 1998 (92 days), solve for the price per 100 (P) at a real yield, as determined in the reopening auction, of 3.65%. The base index applicable to the issue date of this note is 161.55484 and the reference CPI applicable to October 15, 1998, is 163.29032.

Definitions:

C = 3.625.

i = 0.0365.

n = 18.

r = 92 (October 15, 1998 to January 15, 1999).

s = 184 (July 15, 1998 to January 15, 1999).

Ref CPI_{Date} = 163.29032.

Ref $CPI_{IssueDate}$ = 161.55484.

Resolution:

Index $Ratio_{Date}$ = Ref CPI_{Date}/Ref $CPI_{IssueDate}$ = 163.29032/161.55484 = 1.01074.

$v^n = 1/(1 + i/2)^n = 1/(1 + .0365/2)^{18} = 0.722138438$.

$a_n = \rceil 1 - v^n)/(i/2) = (1 - 0.722138438)/(.0365/2) = 15.225291068$.

Formula:

$$P = \frac{(C/2) + (C/2)a_{\overline{n}|} + 100v^n}{1 + (r/s)(i/2)} - [(s - r)/s](C/2)$$

$$P = \frac{(3.625/2) + (3.625/2)(15.225291068) + 100(0.722138438)}{1 + (92/184)(0.0365/2)} - [(184 - 92)/184](3.625/2)$$

$$P = \frac{1.8125 + 27.59584006 + 72.21384380}{1.009125} - (92/184)(1.8125)$$

$$P = \frac{101.62218386}{1.009125} - 0.906250$$

P = 100.703267 − 0.906250.
P = 99.797017.
$P_{adj} = P \times \text{Index Ratio}_{Date}$.
$P_{adj} = 99.797017 \times 1.01074 = 100.86883696$.
$P_{adj} = 100.868837$.
$A = [(184 - 92)/184] \times 3.625/2 = 0.906250$.
$A_{adj} = A \times \text{Index Ratio}_{Date}$.
$A_{adj} = 0.906250 \times 1.01074 = 0.91598313$.
$A_{adj} = 0.915983$.
$SA = P_{adj} + A_{adj} = 100.868837 + 0.915983$.
SA = 101.784820.

Note: For the real price (P), and the inflation-adjusted price (P_{adj}), we have rounded to six places. For accrued interest (A) and the adjusted accrued interest (A_{adj}), we have rounded to six places. These amounts are based on 100 par value.

* * * * *

■ 6. Appendix B to Part 356, Section V, is revised to read as follows:

V. Computation of Purchase Price, Discount Rate, and Investment Rate (Coupon-Equivalent Yield) for Treasury Bills

A. *Conversion of the discount rate to a purchase price for Treasury bills of all maturities:*

Formula:

$P = 100 (1 - dr / 360)$.

Where:

d = discount rate, in decimals.
r = number of days remaining to maturity.
P = price per 100 (dollars).

Example:

For a bill issued November 24, 1989, due February 22, 1990, at a discount rate of 7.610%, solve for price per 100 (P).

Definitions:

d = .07610.
r = 90 (November 24, 1989 to February 22, 1990).

Resolution:

$P = 100 (1 - dr / 360)$.
(1) $P = 100 [1 - (.07610)(90) / 360]$.
(2) $P = 100 (1 - .019025)$.
(3) $P = 100 (.980975)$.
(4) P = 98.097500.

Note: Purchase prices per $100 are rounded to six decimal places, using normal rounding procedures.

B. *Computation of purchase prices and discount amounts based on price per $100, for Treasury bills of all maturities:*

1. To determine the purchase price of any bill, divide the par amount by 100 and multiply the resulting quotient by the price per $100.

Example:

To compute the purchase price of a $10,000 13-week bill sold at a price of $98.098000 per $100, divide the par amount ($10,000) by 100 to obtain the multiple (100). That multiple times 98.098000 results in a purchase price of $9,809.80.

2. To determine the discount amount for any bill, subtract the purchase price from the par amount of the bill.

Example:

For a $10,000 bill with a purchase price of $9,809.80, the discount amount would be $190.20, or $10,000 − $9,809.80.

C. *Conversion of prices to discount rates for Treasury bills of all maturities:*

Formula:

$$d = \left[\frac{100 - P}{100} \times \frac{360}{r}\right]$$

Where:

P = price per 100 (dollars).
d = discount rate.
r = number of days remaining to maturity.

Example:

For a 26-week bill issued December 30, 1982, due June 30, 1983, with a price of $95.934567, solve for the discount rate (d).

Definitions:

P = 95.934567.
r = 182 (December 30, 1982, to June 30, 1983).

Resolution:

$$d = \left[\frac{100 - P}{100} \times \frac{360}{r}\right]$$

$$d = \left[\frac{100 - 95.934567}{100} \times \frac{360}{182}\right]$$

(2) $d = [.04065433 \times 1.978021978]$.
(3) $d = .080415158$.
(4) d = 8.042%.

Note: Prior to April 18, 1983, we sold all bills in price-basis auctions, in which discount rates calculated from prices were rounded to three places, using normal rounding procedures. Since that time, we have sold bills only on a discount rate basis.

D. *Calculation of investment rate (coupon-equivalent yield) for Treasury bills:*

1. *For bills of not more than one half-year to maturity:*

Formula:

$$i = \left[\frac{100 - P}{P} \times \frac{y}{r}\right]$$

Where:

i = investment rate, in decimals.
P = price per 100 (dollars).
r = number of days remaining to maturity.
y = number of days in year following the issue date; normally 365 but, if the year following the issue date includes February 29, then y is 366.

Example:

For a cash management bill issued June 1, 1990, due June 21, 1990, with a price of $99.559444 (computed from a discount rate of 7.930%), solve for the investment rate (i).

Definitions:

P = 99.559444.
r = 20 (June 1, 1990, to June 21, 1990).
y = 365.

Resolution:

$$i = \left[\frac{100 - P}{P} \times \frac{y}{r}\right]$$

$$(1)\ i = \left[\frac{100 - 99.559444}{99.559444} \times \frac{365}{20}\right]$$

(2) $i = [.004425 \times 18.25]$.
(3) i = .080756.
(4) i = 8.076%.

2. For bills of more than one half-year to maturity:

Formula:

$P [1 + (r - y/2)(i/y)] (1 + i/2) = 100$.

This formula must be solved by using the quadratic equation, which is:

$ax^2 + bx + c = 0$.

Therefore, rewriting the bill formula in the quadratic equation form gives:

$$\left[\frac{r}{2y} - .25\right] i^2 + \left(\frac{r}{y}\right) i + \left(\frac{P - 100}{P}\right) = 0$$

and solving for "i" produces:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

Where:

i = investment rate in decimals.
b = r/y.
a = (r/2y) − .25.
c = (P − 100)/P.
P = price per 100 (dollars).
r = number of days remaining to maturity.
y = number of days in year following the issue date; normally 365, but if the year following the issue date includes February 29, then y is 366.

Example:

For a 52-week bill issued June 7, 1990, due June 6, 1991, with a price of $92.265000 (computed from a discount rate of 7.65%), solve for the investment rate (i).

Definitions:

r = 364 (June 7, 1990, to June 6, 1991).
y = 365.
P = 92.265000.

b = 364 / 365, or .997260274.
a = (364 / 730) − .25, or .248630137.
c = (92.265 − 100) / 92.265, or −.083834607.

Resolution:

$$i = \frac{-b + \sqrt{b^2 - 4ac}}{2a}$$

$$(1)\ i = \frac{-.997260274 + \sqrt{(.997260274)^2 - 4[(.248630137)(-.083834607)]}}{2(.248630137)}$$

$$(2)\ i = \frac{-.997260274 + \sqrt{.994528054 + .083375239}}{.497260274}$$

(3) i = (−.997260274 + 1.038221216) / .497260274.
(4) i = .040960942 / .497260274.
(5) i = .082373244 or
(6) i = 8.237%.

* * * * *

Donald V. Hammond,

Fiscal Assistant Secretary.

[FR Doc. 04–19999 Filed 9–1–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD15

Rocky Mountain National Park Snowmobile Routes

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is amending regulations specific to Rocky Mountain National Park that designate snowmobile routes inside the park. The routes currently designated are inconsistent with the protection of the resources and values of this park, management objectives, the requirements of two Executive orders, and NPS general regulations that govern snowmobile use in the National Park System. This amendment would eliminate three of the four routes currently designated for snowmobile use and for the remaining route ensure compliance with the general regulations.

DATES: This rule becomes effective October 4, 2004.

FOR FURTHER INFORMATION CONTACT:

Technical information: Larry Gamble, Chief, Branch of Planning and Compliance, Rocky Mountain National Park, 1000 Highway 36, Estes Park, CO 80517. Telephone: (970) 586–1320. E-mail: *Larry_Gamble@nps.gov.*

Other information: Bernard C. Fagan, Acting Regulations Program Manager, National Park Service, 1849 C Street, NW., Mail Stop 7252, Washington, DC 20240. Telephone: (202) 208–7456. E-mail: *Chick_Fagan@nps.gov.*

SUPPLEMENTARY INFORMATION The NPS published a Proposed Rule in the **Federal Register** on January 5, 2001 (66 FR 1069). Background information on the Proposed Rule can be found in that **Federal Register** notice. The Proposed Rule was available for public review through March 6, 2001.

In addition to the **Federal Register** notice, the NPS released an Environmental Assessment (EA) for the Management of Snowmobiles in Rocky Mountain National Park for public review and comment. The EA was released December 15, 2000, and was available for public review and comment for a period of eighty-four days, which ended March 6, 2001. Four alternatives were included in the EA:

(1) *Preferred Alternative*—Trail Ridge Road, the Summerland Park Snowmobile Trail, and Bowen Gulch Access Trail would be permanently closed to snowmobiles. The North Supply Access Trail would remain open.

(2) *No Action Alternative*—The North Supply Access Trail and Trail Ridge Road would remain open to snowmobile use.

(3) *Less Restrictive Alternative*—The North Supply Access Trail and Trail Ridge Road would remain open to snowmobiles. The Summerland Park Snowmobile Trail and Bowen Gulch Access Trail would be reopened to snowmobile use.

(4) *Most Restrictive Alternative*—The park would be closed to all snowmobiles.

The NPS received 3,363 responses to the EA in the form of letters, a petition, facsimiles and e-mail. After a careful review of public comments and resource, economic and visitor impacts, the Preferred Alternative (Alternative 1) was selected for implementation and a Finding of No Significant Impact (FONSI) was signed February 20, 2003, by the Director of the Intermountain Region of the National Park Service.

Final Rule

The Proposed Rule called for the repeal of the designation of all snowmobile routes in Rocky Mountain National Park except the North Supply Access Trail. The Preferred Alternative in the EA is identical to the Proposed Rule and is therefore consistent with the signed FONSI. After a careful review of public comments and resource, economic and visitor impacts, the Final Rule remains unchanged from the Proposed Rule. The park will close three routes to snowmobile use:

- Trail Ridge Road
- Summerland Park Snowmobile Trail
- Bowen Gulch Access Trail

The North Supply Access Trail will remain open for snowmobile use.

Analysis of Public Comments

A period of sixty days was provided for public comments on the rule change, from January 5, 2000, through March 6, 2001. We received 3,453 responses in the form of letters, a petition, facsimiles, and via e-mail. Many of the responses to the Proposed Rule identified the same issues that were raised during the public comment period for the EA. A few responses raised new issues. Following is a summary of the comments we received and our responses to them.

1. We support the NPS phase-out of snowmobiles in Rocky Mountain National Park. The park should work with adjacent landowners and Forest Service officials to provide alternative access to lands west of the park that does not include a route within the boundaries of the park.

NPS Response:

We are aware that there has been an effort to find an alternative route, but to date nothing has been resolved. The NPS will continue to support and provide input for any future discussions. If we were to close the park now to snowmobiles, there is no guarantee that an alternative trail would be quickly established. In the interim, there would be significant economic impacts to Grand Lake. The Arapaho

National Forest, particularly in the Idleglen parking area, would experience a significant increase in snowmobile use and potentially significant adverse impacts to natural resources and visitor safety if the park were closed to snowmobiles. We chose to leave the North Supply Access Trail open because it has the least impact to the "human environment," which includes the town of Grand Lake, local businesses, nearby private landowners and the Arapaho National Forest. NPS policy requires that impacts be evaluated irrespective of land ownership. In other words, the analysis of potential impacts did not stop at the park boundary, but included the surrounding area.

2. Rocky Mountain National Park has negated the purpose of the environmental assessment, which is to evaluate and accept comments before a rule change is selected.

NPS Response:

The "Snowmobile Management Plan and Environmental Assessment" was approved on February 20, 2003, by the signing of the FONSI. The FONSI was signed before the rule change was finalized.

3. The NPS has no reason to now (January 5, 2001) consider the rulemaking, as it cannot go into effect until the winter of 2002–2003, and should withdraw these proposed rules and propose them, if at all, at a later time closer to the winter of 2002–2003.

NPS Response:

There are many time-consuming steps involved in rulemaking, and the process must begin long before a rule is scheduled to take effect. Given the dates contained in the comment, it is clear that the NPS has not rushed the rulemaking process. We anticipate that the Final Rule will be in place prior to the 2004–2005 snowmobile season.

4. We oppose any regulation that would prohibit supervised snowmobile or ORV use by unlicensed minors.

NPS Response:

Visitors operating snowmobiles in Rocky Mountain National Park must abide by the following Colorado Statutes:

- Colorado Revised Statute 33–14–109 (1) states minors under 10 years of age can operate a snowmobile if they are supervised by an adult, with the adult either being on the snowmobile with the minor, in sight of the minor, or on family land.
- Colorado Statute 33–14–109 (2) states minors under the age of 16 and older than 10, must be supervised by an adult or have in their possession a snowmobile safety certificate. Note: This does not apply to family land.
- Adults do not need to be licensed to operate a snowmobile.

ORVs (all terrain vehicles) are not allowed on roads or trails in Rocky Mountain National Park.

5. It is my understanding that the reason for the rule change is because snowmobiles do not conform to the NPS's rules and regulations. Where, exactly, do the rules and regulations say that?

NPS Response:

Section 2.18 of Title 36 of the Code of Federal Regulations (CFR), promulgated in 1983, states that snowmobiles are prohibited except when their use is consistent with a park's natural, cultural, scenic and aesthetic values, safety considerations, and park management objectives and will not disturb wildlife or damage park resources. That regulation was adopted in response to similar wording in Executive Order 11644, which was promulgated in 1972 and amended in 1977 by Executive Order 11989. On April 26, 2000, the NPS was directed to take a fresh look at snowmobile use and determine whether that use is consistent with the Service-wide regulation. In response, Rocky Mountain National Park prepared an Environmental Assessment (EA) for the Management of Snowmobiles and proposed a rule change to close three designated snowmobile routes while leaving the North Supply Access Trail open to snowmobiles. Based on the analysis that was conducted for the EA, it was determined that three of the currently designated snowmobile routes are inconsistent with (1) the protection of park resources and values; (2) park management objectives; (3) the requirements of Executive Order 11644, as amended by Executive Order 11989; and (4) the NPS general regulation that governs snowmobile use in the National Park System.

The decision to implement the rule change is based on the selection of the alternative that minimizes impacts to natural resources within Rocky Mountain National Park and the Arapaho National Forest, while minimizing the economic impacts to Grand Lake. The preferred alternative has short and long-term beneficial effects on park natural resources and on park visitors who do not snowmobile, and is consistent with the enabling legislation for the park and with the park's Final Master Plan.

This decision is also consistent with the February 17, 2004, memorandum on snowmobile use in the National Park System by the Assistant Secretary for Fish and Wildlife and Parks. That memorandum, which superseded the April 2000 memorandum, states that each park presents a unique set of environmental conditions and uses and should undertake its own individual analysis and rulemaking as to snowmobile management.

6. The NPS explained only in the most cursory manner its rationale for proposing to close three trails in Rocky Mountain National Park, relying on an inadequate and skewed analysis in the EA. The proposed rule lacks a sound scientific or informational basis.

NPS Response:

The EA evaluated four alternatives and examined the potential impacts of each alternative on soils, vegetation, natural sounds, aquatic environments, threatened and endangered species, and several other natural resource topics. The EA also examined potential impacts of the four alternatives on socioeconomic resources and visitors. We used the best available information and the knowledge of NPS natural resource managers and subject matter experts to develop the EA. We believe the EA provides adequate information on which to make well-reasoned management decisions.

7. Should not the NPS protect the parks, yet allow equal rights and access to the beauty of the Parks?

NPS Response:

Rocky Mountain National Park was established by an act of Congress in 1915. The enabling legislation states:

> [S]aid area is dedicated and set apart as a public park for the benefit and enjoyment of the people of the United States * * * with regulations being primarily aimed at the freest use of the said park for recreational purposes by the public and for the preservation of the natural conditions and scenic beauties thereof. (38 Stat. 798)

Park managers must balance access to and use of national parks with the requirement to protect park resources and values. With the closure of Trail Ridge Road to snowmobile use, visitors are not denied access to Rocky Mountain National Park. Automobiles are permitted to drive on Trail Ridge Road in the winter to the Timber Lake trailhead (10 miles inside the park), and the North Supply Access Trail will remain open to snowmobile use.

8. Existing regulations should be repealed and replaced with regulations that prohibit any and all use of snowmobiles in national park units. The only exceptions should be for subsistence use by indigenous people in Alaska, administrative and law enforcement activities of park personnel, access to private in-holdings, and essential services (*i.e.* search and rescues) at park facilities.

NPS Response:

In the Assistant Secretary's memo of February 17, 2004, he found that a nationwide rulemaking to ban snowmobile use in national park units was not warranted at this time. Because of the unique circumstances at each park unit, park units are better served through individual analysis and rulemaking as to snowmobile management. Prohibiting snowmobile use in Rocky Mountain National Park would result in significant economic impacts to the Town of Grand Lake, and would result in potentially significant environmental impacts within the Arapaho National Forest. In arriving at the decision to retain snowmobile use on the two-mile North Supply Access Trail, the NPS gave careful consideration to off-site environmental and economic impacts. The NPS also determined that snowmobile use on the North Supply Access Trail would not result in significant environmental impacts within the park.

The Grand County Commissioners, the Town of Grand Lake Trustees, and the Arapaho National Forest are not opposed to the park's rulemaking changes. This demonstrates a spirit of cooperation between Rocky Mountain National Park, the gateway community of Grand Lake, and the Arapaho National Forest.

9. The NPS should consider identifying motorized and non-motorized days and charging appropriate fees under the Fee Demonstration Program to fund monitoring and enforcement costs.

NPS Response:

Limiting certain uses to specific days of the week would likely create hardships for visitors who have traveled from a considerable distance and have only a limited time to enjoy snowmobiling on the trails of Arapaho National Forest. Allowing snowmobile use on the North Supply Access Trail throughout the winter will provide access to over 100 miles of snowmobile trails on the Arapaho National Forest. We believe this approach better fulfills our mandate to provide for "the freest use of the park for recreational purposes by the public and for the preservation of the natural conditions and scenic beauties thereof" (38 Stat. 798), while also protecting the experience of other park visitors who may choose to access the park using another form of transportation.

10. The NPS should conduct a better cost analysis that takes into account all of the park's constituents, not just the non-motorized users.

NPS Response:

Research Triangle Institute (RTI) conducted an economic impact study during the fall of 2000, prior to the release of the EA. The results of the analysis were included in the EA and in the FONSI. The economic analysis focused on snowmobile rental companies and businesses in Grand Lake that cater to snowmobile users. The economic analysis was updated in February 2004, prior to publishing the Final Rule. We believe the analysis fully considered the economic impact of closing Trail Ridge Road to snowmobile use and was not biased in favor of non-motorized users. The economic impact analysis provided important information that contributed to the decision to leave the North Supply Access Trail open for snowmobile use.

11. The NPS should experiment with ways of reducing conflicts between users instead of simply claiming one set of users is superior to another set.

NPS Response:

The management decision to limit snowmobile use to the North Supply Access Trail was not based on the superiority of one user group over another. The decision was based on knowledge of park natural resources and important park values (such as tranquility) that can be negatively impacted by snowmobile use in the interior of the park. Conflict between users is evidenced by the fact that there have been several accidents involving snowmobiles and automobiles on Trail Ridge Road over the years. The potential for snowmobile/automobile conflicts on the North Supply Access Trail is minimal because no automobiles are allowed on the south half of the trail, and the north half of the trail parallels County Road 491 instead of using the travel lanes.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

In accordance with the criteria in Executive Order 12866, this rule has been reviewed by OMB and found to be a significant regulatory action. OMB has made this determination under Executive Order 12866 because the rule may raise novel legal or policy issues.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. Nonetheless, the NPS has prepared a draft study on the economic effects of this proposal on, among others, small businesses ("Economic Analysis of Management Alternatives for Snowmobile Use in Rocky Mountain National Park," RTI International, Research Triangle Park, NC, February 2004).

This report indicates that the proposed regulation is expected to lead to a reduction in the number of visitor days spent by snowmobilers in Rocky Mountain National Park in the winter, as they would no longer be able to use Trail Ridge Road. There may or may not be a reduction in visitation to the gateway community of Grand Lake, Colorado, depending on (1) how many people who used to snowmobile on Trail Ridge Road will continue to come to the area to snowmobile on other routes, and (2) whether there is an increase in other winter visitors to the park who will have a more enjoyable winter experience there without snowmobile use on Trail Ridge Road.

Examining a likely range of possible reductions in winter visitation to Grand Lake, the report indicates that the total impact on regional output in the first year after implementation of the Final Rule could range from an annual decrease of $165,600 to $496,900.

Interested persons may obtain a copy economic analysis by one of several ways:

—Internet: *http://www.nps.gov/romo/planning/planningdocs.html.*
—By mail: Bruce Peacock, National Park Service, 1201 Oakridge Drive, Suite 200 Fort Collins, CO 80525
—By e-mail: *Bruce_Peacock@nps.gov.*

Public comments regarding the economic report may be submitted to Bruce Peacock at one of the addresses above.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule deals specifically with Rocky Mountain National Park, which is administered solely by the NPS, and any rules regarding snowmobile use there would affect only the NPS and not other agencies.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no budgetary constraints or funding issues associated with this rulemaking. This rule pertains only to the recreational uses of areas within the park.

(4) This rule may raise novel legal or policy issues. The general matter of snowmobile restrictions in any area of the National Park System raises concerns among some segments of the public, and those concerns are important to NPS managers. This rule affects only a small portion of the total

snowmobile use within the National Park System. Generally, the effect of this rulemaking will be a small percentage of change in use patterns within the park. Historically, the North Supply Access Trail has received eighty-five percent (85%) of all snowmobile use within the park; the NPS is proposing to keep this trail open. Historically, Trail Ridge Road has received fifteen percent (15%) of all snowmobile use within the park; the NPS is proposing to close this route to snowmobiles.

Regulatory Flexibility Act

The Department of the Interior certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nonetheless, the NPS has prepared a report of the economic effects of this regulation on, among others, small entities ("Economic Analysis of Management Alternatives for Snowmobile Use in Rocky Mountain National Park," RTI International, Research Triangle Park, NC, February 2004). Small entities potentially affected will be all five snowmobile rental shops in the Grand Lake area, and all governmental jurisdictions in the area.

For snowmobile rental shops, the Final Rule could lead to a loss of revenue ranging from $121,100 to $363,400 in the first year after implementation. However, there appears to be excess demand for snowmobile rentals in Grand Lake, with the rental businesses typically renting all available machines on weekends, weather permitting, and during holiday weeks. This means that the effects on the rental shops could be less than the ranges estimated.

The town of Grand Lake does not collect a sales and use tax on snowmobile rentals. The range in reductions in winter visitation examined in the study would lead to a decline in the state and local tax receipts ranging between $5,960 and $17,870.

The analysis of small entities cited above identifies only five rental shops that would potentially incur impacts in the range of 3 to 9 percent of total revenue. The NPS does not consider this number of businesses to constitute a substantial number of small entities. Further, due to the excess demand for snowmobile rentals cited above, the actual impacts on these businesses could be lower than indicated. Therefore, the NPS does not believe that this regulation will impose a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule has been estimated to have a potential impact on small businesses (five rental shops) from approximately $121,100 to $363,400 during the first year after implementation.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. There are not likely to be cost increases associated with this rulemaking. The potential economic effect would be a minimal loss of revenue to small businesses and tax revenue to local governments.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S-based enterprises to compete with foreign-based enterprises. This rule pertains only to recreational uses within a park unit, has no effect on methods of manufacturing or production, and specifically affects only the Northern Colorado region, not national or U.S.-based enterprises.

Unfunded Mandates Reform Act

In accordance with the unfounded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required.

b. This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year (nor does it impose any other mandates).

This rule imposes regulatory requirements only on those visitors that choose to operate a snowmobile within Rocky Mountain National Park, and it does not require any additional expenditures of money by them. The potential impact to state and local government could be loss of tax revenue estimated between $5,960 and $17,870 during the first year after implementation of the rule.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Private property within or adjacent to Rocky Mountain National Park will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

This rule does not constitute a major federal action significantly affecting the quality of the human environment. An EA for the management of snowmobiles in Rocky Mountain National Park was completed in 2000. The EA evaluated several alternatives for the management of snowmobiles and was distributed for public review and comment. The park received over 3,000 comments. In February 2003, the Director of the Intermountain Region of the NPS signed a Finding of No Significant Impact (FONSI) selecting the Preferred Alternative as described in the Management Plan. The Final Rule is necessary to implement the Preferred Alternative, which is to close all snowmobile routes in Rocky Mountain National Park except the North Supply Access Trail.

Copies of the EA and FONSI may be obtained through one of several methods.≤

—By Internet: *http://www.nps.gov/romo/planning/planningdocs.html.*
—By e-mail: *romo_superintendent@nps.gov.*
—By mail: Superintendent, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, Colorado 80517.

Government to Government Relationship With Tribes

In accordance with Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249), the President's memorandum of April 29, 1994, "Government to Government relations with Native

American Tribal Governments" (59 FR 22951), and Part 512 Section 2 of the Department of the Interior Manual, the NPS has evaluated potential effects on federally recognized Indian tribes and has determined that there are no potential effects.

Drafting Information

The principal contributors to this rule have been Craig Manson, Assistant Secretary of the Interior for Fish and Wildlife and Parks; Kym A. Hall, NPS Regulations Program Manager; A. Durand Jones, Deputy Director of the NPS; Larry Gamble, Chief of the Branch of Planning and Compliance, Rocky Mountain National Park; and Jeff Connor, Natural Resources Specialist, Rocky Mountain National Park.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

The Final Rule

■ For the reasons stated in the preamble, we amend the Special Regulations, Areas of the National Park System (36 CFR Part 7) as set forth below:

PART 7—SPECIAL REGULATIONS; AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Section 7.7 is amended by revising paragraphs (e)(1) and (2) and removing paragraphs (e)(3) through (6).

§ 7.7 Rocky Mountain National Park

* * * * *

(e)(1) *On what route may I operate a snowmobile?* Snowmobiles may be operated on the North Supply Access Trail solely for the purpose of gaining access between national forest lands on the west side of the park and the town of Grand Lake. Use of this trail for other purposes is not permitted. This trail will be marked by signs, snow poles or other appropriate means.

(e)(2) *When may I operate a snowmobile on the North Supply Access Trail?* The Superintendent will determine the opening and closing dates for use of the North Supply Access Trail each year, taking into consideration the location of wintering wildlife, appropriate snow cover, and other factors that may relate to public safety. The Superintendent will notify the public of such dates through one or more of the methods listed in § 1.7(a) of this chapter. Temporary closure of this route will be initiated through the posting of appropriate signs and/or barriers.

Dated: June 17, 2004.

Paul Hoffman,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–20024 Filed 9–1–04; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AC98

Chickasaw National Recreation Area, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This rule designates areas where personal watercraft (PWC) may be used in Chickasaw National Recreation Area, Oklahoma. This rule implements the provisions of the National Park Service (NPS) general regulations authorizing park areas to allow the use of PWC by promulgating a special regulation. The NPS Management Policies 2001 require individual parks to determine whether PWC use is appropriate for a specific park area based on an evaluation of that area's enabling legislation, resources and values, other visitor uses, and overall management objectives.

EFFECTIVE DATE: This rule is effective September 2, 2004.

ADDRESSES: Mail inquiries to Connie Rudd, Superintendent, Chickasaw National Recreation Area, 1008 W. Second Street, Sulphur, OK 73086, e-mail: *chic@den.nps.gov.*

FOR FURTHER INFORMATION CONTACT: Kym Hall, Special Assistant, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Background

Personal Watercraft Regulation

On March 21, 2000, the National Park Service published a regulation (36 CFR 3.24) on the management of PWC use within all units of the National Park System (65 FR 15077). This regulation prohibits PWC use in all National Park System units unless the NPS determines that this type of water-based recreational activity is appropriate for the specific park unit based on the legislation establishing that park, the park's resources and values, other visitor uses of the area, and overall management objectives. The regulation banned PWC use in all park units effective April 20, 2000, except 21 parks, lakeshores, seashores, and recreation areas. The regulation established a 2-year grace period following the final rule publication to provide these 21 park units time to consider whether PWC use should be allowed.

Description of Chickasaw National Recreation Area

Chickasaw National Recreation Area is a part of America's national system of parks, monuments, battlefields, recreation areas, and other natural and cultural resources. Chickasaw National Recreation Area is located in Murray County, near U.S. Highway 177, just south of the town of Sulphur, Oklahoma, approximately 90 miles south of Oklahoma City. Chickasaw National Recreation Area encompasses 9,888.83 acres of land and water. The recreation area includes many lakes and creeks, with the largest water areas being the Lake of the Arbuckles, created by the Arbuckle Dam, and Veterans Lake. Chickasaw National Recreation Area is the first national park in the State of Oklahoma. It is also one of the most heavily visited parks for its size in the National Park System, with over 3 million total visits including 1.5 million visits a year to use the park's recreational facilities. Chickasaw remains relatively undeveloped. Summer visitors engage in camping, picnicking, hiking, mountain biking, horseback riding, hunting, sightseeing, auto touring, nature viewing, photography, boating, waterskiing, fishing, and swimming.

The significance of Chickasaw stems from the following resources and values of the park:

- The availability of both mineral and fresh water, which come from one of the most complex geological and hydrological features in the United States.
- The presence of the cultural landscape of Platt Historic District, which reflects the era of 1933–1940 when the Civilian Conservation Corp (CCC) implemented NPS "rustic" designs.
- The availability of recreational opportunities for visitors to experience a wide range of outdoor experiences—swimming, boating, fishing, hiking, observing nature, hunting, camping, biking, horseback riding, family reunions, and picnicking.

• The presence of a transition zone where the eastern deciduous forest and the western prairies meet, which is unique to the central part of the United States.

Purpose of Chickasaw National Recreation Area

Chickasaw National Recreation Area was originally established by act of Congress as Sulphur Springs Reservation in 1902 near Sulphur, Oklahoma. Congress enlarged Sulphur Springs Reservation slightly and established it as Platt National Park in 1906. Later, it was combined with Lake of the Arbuckles to create the present day Chickasaw National Recreation Area.

The purpose of the park is addressed in the following statements that are excerpts from the park's Strategic Plan. The laws establishing Chickasaw provided for the National Park Service to:

• Provide for the proper utilization and control of springs and waters of its creeks.

• Provide for efficient administration of other adjacent areas containing scenic, scientific, natural, and historic values.

• Provide public outdoor recreation use and enjoyment of Arbuckle Reservoir.

• Permit hunting and fishing in some areas.

Therefore, the purpose of Chickasaw is the protection of springs and waters; the preservation of sites of archaeological or ethnological interest; the provision of outdoor recreation; the administration of scenic, scientific, natural, and historic values; the memorialization of the Chickasaw Indian Nation; and the provision for hunting and fishing.

Authority and Jurisdiction

Under the National Park Service's Organic Act of 1916 (Organic Act) (16 U.S.C. 1 *et seq.*) Congress granted the NPS broad authority to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *"

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *"

As with the United States Coast Guard, NPS's regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regard to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). In 1996 the NPS published a final rule (61 FR 35136, July 5, 1996) amending 36 CFR 1.2(a)(3) to clarify its authority to regulate activities within the National Park System boundaries occurring on waters subject to the jurisdiction of the United States.

PWC Use at Chickasaw National Recreation Area

Visitation at Chickasaw has remained relatively stable the last three years, with an average of 3 million visitors annually, including traffic passing through the park on U.S. Highway 177. Approximately 1.5 million visitors annually use the recreation area's facilities, including visitors pursuing recreational activities on the reservoir and those engaging in other recreational opportunities. Based on ranger observations and contacts, most PWC users are from the immediate region; within a radius of about 200 miles are Oklahoma City and the Dallas/Fort Worth area, with a population of about 5.5 million.

The majority of PWC use occurs primarily from April through September, although PWC users may be on the lake year-round. PWC users spend an average of four hours on the lake during a daily visit.

The park began counting PWC in 1996, and through the end of June 2001 approximately 1,820 PWC had been counted in the park (on a cumulative basis), compared to about 7,150 vessels. Based on the number of annual launch ramp permits issued, PWC use declined from 1997 to 2000. In addition to annual permits, day use permits are also issued. These do not specify the type of vessel being used and, based on staff observations, the percent of PWC entering the lake is higher for day use permits during the warm weather season. On busy summer weekends in 2001 and 2002, park staff observed between 34 and 94 PWC per day in the recreation area.

According to park records, approximately 59 PWC per day were observed during the midweek July 4, 2002, holiday period (Wednesday through Friday). Approximately 114 PWC per day were observed on Saturday and Sunday during that holiday weekend.

Lake of the Arbuckles is the only lake in Chickasaw open to PWC use; the "Superintendent's Compendium" (1.5 and 1.7) has closed all lakes of 100 acres or less to PWC use, including Veterans Lake (67 acres). The central part of the main body of Lake of the Arbuckles is a high-use area for PWC. Four areas of Lake of the Arbuckles are closed to all vessels to protect swimmers. Those areas are: the Goddard Youth Camp Cove, a 150 foot wide zone around the picnic area at the end of Hwy 110 (known as "The Point") beginning at the buoy line on the north side of the picnic area and extending south and east into the cove to the east of the picnic area, the cove located directly north of the north branch of the F Loop Road, and the Buckhorn Campground D Loop beach shoreline. These closures are sometimes violated in the Buckhorn and The Point areas when visitors on PWC and vessels access picnic sites.

There are several areas designated as flat wake zones and are described as: the Guy Sandy arm upstream (north) of the east/west buoy line located near Masters pond, the Guy Sandy Cove (boat launch) west of the buoy marking the entrance to the cove, Rock Creek upstream (north) of the east/west buoy line at approximately 034°27′50″ north latitude, the Buckhorn Ramp bay, east of the north/south line drawn from the Buckhorn Ramp Breakwater Dam, a 150 foot wide zone along the north shore of the Buckhorn Creek arm starting at the north end of the Buckhorn Boat Ramp Breakwater Dam and continuing southeast to the Buckhorn Campground D Loop Beach, the cove south and east of the Buckhorn Campground C and D Loops, the cove located east of Buckhorn Campground B Loop and adjacent to Buckhorn Campground A Loop, the second cove east of Buckhorn Campground B Loop, fed by a creek identified as Dry Branch, and Buckhorn Creek upstream (east) of the east/west buoy line located at approximately 096°59′3.50″ longitude, known as the G Road Cliffs area.

PWC may land along the shore of the lake for access to non-water areas but launch and retrieval of PWC continues to be required at designated launch areas.

Conflicts in visitor use can arise in areas that restrict vessels of any kind, such as the end of Highway 110 and along the Buckhorn Pavilion to the F Loop picnic areas along the lake. These areas attract swimmers who may or may

not be associated with a vessel or PWC, and the conflict occurs when these vessels come into the areas to beach, pick up passengers, or change operators.

From 1995 to 2000 there were 20 vessel accidents in the recreation area, eight of which involved PWC. Four of the PWC accidents were collisions with vessels, two were collisions with other PWC, and two involved PWC operators falling or being thrown off their vessels. Six of the eight accidents resulted in personal injury, and two only in property damage. The accidents occurred in the following areas: Buckhorn Arm (4), Guy Sandy Arm (2), Point Arm (1), and the central lake area (1). From 2001 to present, a total of seven accidents have been reported, five vessel-only accidents and two PWC-only accidents.

Notice of Proposed Rulemaking and Environmental Assessment

On March 25, 2004, the National Park Service published a Notice of Proposed Rulemaking (NPRM) for the operation of PWC at Chickasaw National Recreation Area (NRA) (69 FR 15277). The proposed rule for PWC use was based on alternative B in the Environmental Assessment (EA) prepared by NPS for Chickasaw NRA. The EA was available for public review and comment from March 10, 2003, through April 8, 2003, and the NPRM was available for public comment from March 25, 2004, through May 24, 2004.

The purpose of the environmental assessment was to evaluate a range of alternatives and strategies for the management of PWC use at Chickasaw National Recreation Area to ensure the protection of park resources and values while offering recreational opportunities as provided for in the National Recreation Area's enabling legislation, purpose, mission, and goals. The analysis assumed alternatives would be implemented beginning in 2002 and considered a 10-year period, from 2002 to 2012.

The environmental assessment evaluated four alternatives concerning the use of PWC at Chickasaw National Recreation Area. Three of the alternatives considered in the environmental assessment permit PWC use in the park under certain conditions. Alternative A reestablishes the PWC policies that existed prior to November 6, 2002, when PWC use was permitted in Chickasaw National Recreation Area under the current Superintendent's Compendium (1.5 and 1.7) (Revised October 23, 2002, *http://www.nps.gov/ chic/compen02.htm*) Alternative B permits PWC use in roughly the same areas as Alternative A with some additional restrictions, and monitoring and enforcement policies. Alternative C builds on the enforcement and monitoring policies and other restrictions in Alternative B, by adding additional area and operating restrictions to further limit the use of PWC.

In addition to these three alternatives for permitting restricted PWC use, a no action alternative was considered that prohibits all PWC use within the National Recreation Area. All four alternatives were evaluated with respect to PWC impacts on water quality, air quality, soundscapes, wildlife, wildlife habitat, shoreline vegetation, visitor conflicts, visitor safety, and cultural resources.

Based on the analysis, NPS determined that Alternative B is the park's preferred alternative. Alternative B best accomplishes the objectives of managing PWC use and fulfilling the park's mission without restricting lawful use. This document contains regulations to implement Alternative B at Chickasaw National Recreation Area.

Summary of Comments

The proposed rule was published for public comment on March 25, 2004, with the comment period lasting until May 24, 2004. The National Park Service received 78 timely written responses regarding the proposed regulation. Of the responses, 46 were on a petition, and 32 were separate letters. Of the 32 separate letters, 22 were from individuals, 6 from organizations, and 4 from businesses. Within the analysis, the term "commenter" refers to an individual, organization, or public agency that responded. The term "comments" refers to statements made by a commenter.

General Comments

1. Several commenters stated that PWC should not be singled out for analysis and restriction.

NPS Response: The Environmental Assessment (EA) was not designed to determine if personal watercraft caused more environmental damage to park resources than other boats, but rather, to determine if personal watercraft use was consistent with the park's enabling legislation and management goals and objectives.

2. One commenter stated that allowing PWC use violates the park's enabling legislation and NPS mandate to protect resources from harm.

NPS Response: The objective of the Environmental Assessment, as described in the "Purpose and Need" chapter of the EA, was "to ensure the protection of park resources and values". As further stated in that chapter, a special analysis on the management of personal watercraft was also provided under each alternative to meet the terms of the settlement agreement between the Bluewater Network and the National Park Service, to consider impacts to water quality, air quality, soundscape, wildlife and wildlife habitat, shorelines and shoreline vegetation, visitor experience, and visitor conflicts and safety. As a result, the alternatives presented in the Environmental Assessment protect resources and values while providing recreational opportunities at Chickasaw National Recreation Area. As required by NPS policies, the impacts associated with personal watercraft and other recreational uses were evaluated under each alternative to determine the potential for impairment to park resources. Alternative B would not result in impairment of park resources and values for which the Chickasaw National Recreation Area was established. The recreation area's enabling legislation also states that the "Secretary shall administer Chickasaw National Recreation Area for general purposes of public outdoor recreation." The recreation area was established as a unit of the national park system. The goal of the national recreation area is to provide each visitor with an educational, enjoyable, safe and memorable experience.

3. One commenter states that the EA does not use the best available data and violates the court settlement with the Bluewater Network.

NPS Response: A summary of the NPS rulemaking and associated personal watercraft litigation is provided in Chapter 1, Purpose of and Need for Action, Background, of the EA. NPS believes it has complied with the court order and has assessed the impacts of personal watercraft on those resources specified by the settlement agreement, as well as other resources that could be affected. This analysis was done for every applicable impact topic with the best available data, as required by Council on Environmental Quality Regulations (40 CFR 1502.22). Where data was lacking, best professional judgment prevailed using assumptions and extrapolations from scientific literature, other park units where personal watercraft are used, and personal observations of park staff. The NPS believes that the environmental assessment is in full compliance with the court-ordered settlement and that the rationale for limited use within the national recreation area has been adequately analyzed and explained.

4. One commenter is concerned about the use of Federal Aid in Sport Fish Restoration Act (FASFRA) funds to construct boat launches and facilities.

NPS Response: There are no provisions within the preferred alternative for construction of new boat launches and facilities. No FASFRA funds are used within the national recreation area to construct boat launches.

5. Several commenters stated that the decision violates the Organic Act, and other NPS laws, and will result in the impairment of resources.

NPS Response: The "Summary of Laws and Policies" section in the "Environmental Consequences" chapter of the EA summarizes the three overarching laws that guide the National Park Service in making decisions concerning protection of park resources. These laws, as well as others, are also reflected in the NPS Management Policies. An explanation of how the Park Service applied these laws and policies to analyze the effects of personal watercraft on Lake Meredith National Recreation Area resources and values can be found under "Impairment Analysis" in the "Methodology" section of the EA.

An impairment to a particular park resource or park value must rise to the magnitude of a major impact, as defined by its context, duration, and intensity and must also affect the ability of the National Park Service to meet its mandates as established by Congress in the park's enabling legislation. For each resource topic, the Environmental Assessments establish thresholds or indicators of magnitude of impact. An impact approaching a "major" level of intensity is one indication that impairment could result. For each impact topic, when the intensity approached "major," the park would consider mitigation measures to reduce the potential for "major" impacts, thus reducing the potential for impairment.

The PWC Use Environmental Assessment is a proactive measure to protect national recreation area resources from harm. The purpose of the EA is to assess the impacts of PWC use on identified resources within the recreation area boundaries. The National Park Service has determined that under the final rule, which is based on the preferred alternative, Alternative B, there will be no negative impacts on park resources or values.

Comments Regarding the Preferred Alternative

6. One commenter stated that the carrying capacity restriction in the preferred alternative seem difficult to determine and unfair to PWC users without a carrying capacity for other types of boats.

NPS Response: This comment is correct in part. There is no definitive threshold to determine when minor or moderate adverse effects occur. Monitoring protocols for these effects have not been established for Chickasaw National Recreation Area. The reason that the carrying capacity issue is directed toward PWCs is because PWC use is the subject of this particular Environmental Assessment. Carrying capacities for other watercraft may be addressed in future Environmental Assessments.

Comments Regarding Water Quality

7. One commenter stated that the analysis disregarded or overlooked relevant research regarding impacts to water quality from PWC use as well as the impact to downstream resources and long term site-specific water quality data on PWC pollutants.

NPS Response: The EA states that in 2002 impacts to water quality from PWCs on a high-use day would be negligible for all chemicals evaluated based on ecological benchmarks and for benzo(a)pyrene based on human health benchmarks; impacts would be moderate for benzene and human health. In 2012, impacts would be negligible based on all ecological and human health benchmarks. "Impairment" is clearly defined in the EA (page 78) and is the most severe of the five potential impact categories. The other impact categories starting with the least severe are: negligible, minor, moderate, and major. Impacts downstream from the lake are not expected to be more severe when the environmental processes affecting concentrations of organics (*e.g.*, evaporation, dilution, deposition) are considered.

8. One commenter stated that the analysis represents an outdated look at potential emissions from an overstated PWC population of conventional 2-stroke engines, and underestimated the accelerating changeover to 4-stroke and newer 2-stroke engines. The net effect is that the analysis overestimates potential PWC hydrocarbon emissions, including benzene and PAHs, to the water in the Lake of the Arbuckles.

NPS Response: Assumptions regarding PWC use (135 per day in 2002 and 148 per day in 2012) were based on actual count data from the month of July 2002. These data were the only data available for Chickasaw (EA, page 76). Because data from other high-use days or other months or years were not available, trends in PWC use at Chickasaw could not be determined for use in the EA. The July 2002 data can be considered a "worst case" estimate, but it is not "unrealistic" since it is based on actual Chickasaw data. Despite these conservative estimates, impacts to water quality from personal watercraft are judged to be negligible to moderate for all alternatives evaluated. Cumulative impacts from personal watercraft and other outboard motorboats are expected to be negligible to major. If the assumptions used were less than conservative, the conclusions could not be considered protective of the environment, while still being within the range of expected use.

The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in CARB (1998) and Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Personal Watercraft and Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

Reductions in emissions used in the water quality impact assessment are in accordance with the overall hydrocarbon emission reduction projections published by the EPA (1996). EPA (1996) estimates a 52% reduction by personal watercraft by 2010 and a 68% reduction by 2015. The 50% reduction in emissions by 2012 (the future date used in the EA) is a conservative interpolation of the emission reduction percentages and associated years (2010 and 2015) reported by the EPA (1996) but with a one-year delay in production line testing (EPA 1997).

The estimate of 2.8 mg/kg for benzo(a)pyrene in gasoline used in the calculations is considered conservative, yet realistic, since it is within the range of concentrations measured in gasoline according to Gustafson *et al.* (1997).

9. One of the commenters stated that the analysis overstates the potential water quality impacts of resuming PWC use because the newer engine technology is not taken into account.

NPS Response: The assumption of all personal watercraft using 2-stroke engines in 2002 is recognized as conservative. It is protective of the environment yet follows the emission data available in CARB (1998) and

Bluewater Network (2001) at the time of preparation of the EA. The emission rate of 3 gallons per hour at full throttle is a mid-point between 3 gallons in two hours (1.5 gallons per hour; NPS 1999) and 3.8 to 4.5 gallons per hour for an average 2000 model year personal watercraft (Personal Watercraft and Bluewater Network 2001). The assumption also is reasonable in view of the initiation of production line testing in 2000 (EPA 1997) and expected full implementation of testing by 2006 (EPA 1996).

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For benzene, factors other than numbers of PWCs or watercraft would affect surface water concentrations. The half-life of benzene in water is less than five hours at summer water temperatures near 30 °C (Verschuren 1983; USEPA 2001). In other words, half the benzene in water would evaporate in five hours, in many cases reducing it to below the human health criterion of 1.2 µg/L. Given that threshold volumes of benzene and human health impacts were greater than calculated threshold volumes for any other compound, this evaporation rate is more applicable to the discussion of water quality impacts than evaporation of unspecified gasoline and additives described in the comment.

The NPS used emission reduction estimates from the EPA (1996) that are readily available for public review and not confidential sales information. Because the Sierra Research analysis is based on "* * *" confidential sales information * * *," the NPS cannot challenge the assumptions in the Sierra Research analysis. The NPS did not "ignore" the manufacturers' confidential sales data.

Use of the Sierra information, if verified, could have potentially reduced the calculated water quality threshold volumes. However, impact estimates for personal watercraft are already negligible to minor (EA pages 26 and 71–85), using the impact threshold descriptions provided on page 68 of the EA. Impacts to water quality from other motorboats are potentially more significant than those due to personal watercraft. Therefore, cumulative impacts from personal watercraft and other motorboats, which are negligible to moderate, would not be reduced substantially by the inclusion of the Sierra emission reduction projections for personal watercraft.

Comments Regarding Air Quality

10. One commenter stated that the use of air quality data collected at Lake Murray, 20 miles from the NRA, in the analysis does not provide the best representation of air quality at the lake.

NPS Response: The Lake Murray monitoring station is the closest air quality monitoring site to the study area. The data from this site were discussed in the EA; however, these data were not used in the impact analysis. The analysis was based on the results of an EPA air emissions model, which used estimated PWC and boat usage at Chickasaw NRA as inputs.

11. One commenter stated that the analysis failed to mention the impact of PWC permeation losses on local air quality.

NPS Response: Permeation losses of volatile organic compounds (VOC) from personal watercraft were not included in the calculation of air quality impacts primarily because these losses are insignificant relative to emissions from operating watercraft. Using the permeation loss numbers in the comment (estimated to be half the total of 7 grams of losses per 24 hours from the fuel system), the permeation losses per hour are orders of magnitude less than emissions from operating personal watercraft. Therefore, including permeation losses would have no effect on the results of the air quality impact analyses. Also, permeation losses were not included because of numerous related unknown contributing factors, such as number of personal watercraft refueling at the reservoir and the location of refueling (inside or outside of the airshed).

12. One commenter stated that the use of the study by Kado *et al.* to suggest that the changeover from two-stroke carbureted to two-stroke direct injection engines may increase emissions of polycyclic aromatic hydrocarbons ("PAH") is in error.

NPS Response: The criteria for analysis of impacts from PWC to human health are based on the National Ambient Air Quality Standards (NAAQSs) for criteria pollutants, as established by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act, and on criteria pollutant annual emission levels. This methodology was selected to assess air quality impacts for all NPS EAs to promote regional and national consistency, and identify areas of potential ambient standard exceedances. PAHs are not assessed specifically as they are not a criteria pollutant. However, they are indirectly included as a subset of Total Hydrocarbons (THC), which are assessed because they are the focus of the EPA's emissions standards directed at manufacturers of spark ignition marine gasoline engines (see 61 FR 52088; October 4, 1996). Neither peak exposure levels nor NIOSH nor OSHA standards are included as criteria for analyzing air quality related impacts except where short-term exposure is included in a NAAQS. The methodology for assessing air quality impacts was based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public.

The "Kado Study" (Kado *et al.* 2000) presented the outboard engine air quality portion of a larger study described in Outboard Engine and Personal Watercraft Emissions to Air and Water: A Laboratory Study (CARB 2001). In the CARB report, results from both outboards and personal watercraft (2-stroke and 4-stroke) were reported. The general pattern of emissions to air and water shown in CARB (2001) was 2-stroke carbureted outboards and personal watercraft having the highest emissions, and 4-stroke outboard and personal watercraft having the lowest emissions. The only substantive exception to this pattern was in NO_X emissions to air—2-stroke carbureted outboards and personal watercraft had the lowest NO_X emissions, while the 4-stroke outboard had the highest emissions. Therefore, the pattern of emissions for outboards is generally applicable to personal watercraft and applicable to outboards directly under the cumulative impacts evaluations.

We agree with the technical statement and summation that adverse health risk to the public would be unlikely from exposure. The methodology for assessing air quality impacts is based on a combination of annual emission levels and the NAAQSs, which are aimed at protection of the public. OSHA and NIOSH standards are intended primarily for workers and others exposed to airborne chemicals for specific time periods. The OSHA and NIOSH standards are not as suitable for application in the context of local and regional analysis of a park or recreational area as are the ambient standards, nor are they intended to protect the general public from exposure to pollutants in ambient air.

13. One commenter expressed concern that PWC emissions were declining faster than forecasted by the EPA. As the Sierra Report documents, in 2002, HC + NO_X emissions from the existing fleet of PWC were already 23% lower than they were before the EPA regulations became effective, and will achieve reductions greater than 80% by 2012.

NPS Response: The U.S. EPA's data incorporated into the 1996 Spark Ignition Marine Engine rule were used as the basis for the assessment of air quality, and not the Sierra Research data. It is agreed that these data show a greater rate of emissions reductions than the assumptions in the 1996 Rule and in the EPA's NONROAD Model, which was used to estimate emissions. However, the level of detail included in the Sierra Research report has not been carried into the EA for reasons of consistency and conformance with the model predictions. Most States use the EPA's NONROAD Model for estimating emissions from a broad array of mobile sources. To provide consistency with State programs and with the methods of analysis used for other similar NPS assessments, the NPS has elected not to base its analysis on focused research such as the Sierra Report for assessing PWC impacts.

It is agreed that the relative quantity of HC + NO_X are a very small proportion of the county based emissions and that this proportion will continue to be reduced over time. The EA takes this into consideration in the analysis.

For consistency and conformity in approach, the NPS has elected to rely on the assumptions in the 1996 S.I Engine Rule which are consistent with the widely used NONROAD emissions estimation Model. The outcome is that estimated emissions from combusted fuel may be in the conservative range, if compared to actual emissions.

14. Several commenters stated that research indicated that direct-injection 2-stroke engines are dirtier than 4-stroke engines.

NPS Response: It is agreed that two-stroke carbureted and two-stroke DI engines generally emit greater amounts of pollutants than four-stroke engines. Only 4 of the 20 PAHs included in the analyses were detected in water: naphthalene, 2-methylnaphthalene, fluorene, and acenaphthylene. The discussion of toxicity of PAHs in the comment must be from another (unreferenced) document since this discussion was not found in CARB (2001). It is agreed that some pollutants (BTEX and formaldehyde) were reported by CARB in the test tanks after 24 hours at approximately 50% the concentrations seen immediately following the test. No results for PAH concentrations after 24 hours were seen in the CARB (2001) results, but a discussion of sampling/analyses of PAHs in the six environmental compartments was presented.

EPA NONROAD model factors differ from those for CARB. As a result of the EPA rule requiring the manufacturing of cleaner PWC engines, the existing carbureted 2-stroke PWC will, over time, be replaced with PWC with less-polluting models. This replacement, with the anticipated resultant improvement in air quality, is parallel to that experienced in urban environments as the automobile fleet becomes cleaner over time.

15. One commenter stated that the analysis failed to consider that the PWC companies have been rapidly converting from carbureted two-stroke engine models to direct injection two-stroke and four-stroke engine models and most PWC units will meet the more stringent CARB standards over time.

NPS Response: The California Air Resources Board regulations were not discussed for Chickasaw because the park is located in Oklahoma. Because CARB regulations are not enforceable in Oklahoma, the schedule for reductions in emissions as stipulated by USEPA (1996, 1997) was applied in the impact analyses. For example, it is estimated that approximately a 50% reduction in hydrocarbon emissions would be seen by 2012 (Table 17 of the EA). This is an interpolation of the fleet emission reduction percentages and associated years (2010 and 2015) by the USEPA (1996) but with a one-year delay in production line testing (USEPA 1997).

Comments Regarding Soundscapes

16. One commenter stated that continued PWC use in the Chickasaw NRA will not result in sound emissions that exceed the applicable Federal or State noise abatement standards and technological innovations by the PWC companies will continue to result in substantial noise reductions.

NPS Response: The NPS concurs that on-going and future improvements in engine technology and design would likely further reduce the noise emitted from PWC. However, given the ambient noise levels in the recreation area, it is unlikely that the improved technology could reduce all cumulative impacts beyond minor to moderate throughout the recreation area.

17. One commenter stated that the NPS places too much hope in new technologies significantly reducing PWC noise since there is little possibility that the existing fleet of more than 1.1 million machines (most of which are powered by conventional two-stroke engines) will be retooled to reduce noise.

NPS Response: The analysis of the preferred alternative states that noise from PWC would continue to have minor to moderate, temporary adverse impacts, and that impact levels would be related to the number of PWC and sensitivity of other visitors. This recognizes that noise will occur and will bother some visitors, but site-specific modeling was not needed to make this assessment. The availability of noise reduction technologies is also growing, and we are not aware of any scientific studies that show these technologies do not reduce engine noise levels. Also, the analysis did not rely heavily on any noise reduction technology. It recognizes that the noise from the operation of PWC will always vary, depending on the speed, manner of use, and wave action present.

Although PWC use does occur throughout the lake, it is concentrated more in certain areas, and this is noted in the soundscapes impact analysis that follows the introductory statements and assumptions listed on page 103 of the EA. The analysis of impacts states that "PWC users generally distribute themselves throughout the lake, although the density of personal watercraft can be higher near launch areas and shoreline use areas, especially near the Buckhorn developed area." The analysis did not assume even distribution of PWC and predicted moderate impacts from concentrated PWC use in one area.

The noise annoyance costs in the "Drowning in Noise" study are recognized in the EA by the moderate impacts predicted, although no monetary costs are assigned. These costs would vary by type and location of user. Given the intended usage of the higher use marina/beach areas of Chickasaw and visitor expectations and tolerances at these areas, it is unlikely that the PWC noise experienced there would meet the definition of "major" impact, as defined in the EA.

18. One commenter stated that the noise associated with PWC is more invasive due to the constantly fluctuating noise levels.

NPS Response: The EA discusses the fluctuating noise aspect of PWC operation in the Affected Environment section (page 53 of the EA), under "Visitor Responses to PWC Noise," and recognizes that the "irregular noise may be more annoying than that of a standard motorboat * * *" The analysis recognizes that different visitors will have different tolerance for PWC noise.

19. One commenter stated that the new technologies proposed by the personal watercraft industry will not reduce noise impacts associated with PWC use.

NPS Response: The analysis did not assume that PWC noise would be substantially reduced in the future, although it does recognize that newer machines, and those powered by 4-stroke engines, are quieter. The analysis does take into account continued noise from PWC and an increase in PWC numbers over time.

20. One commenter stated that there is no evidence that PWC noise adversely affects aquatic fauna or animals.

NPS Response: Typically PWC exhaust below or at the air/water transition areas, not above the water. Sound transmitted through the water is not expected to have more than negligible adverse impacts on fish and the EA does not state the PWC noise adversely affects underwater fauna.

21. One commenter stated that the analysis did not include *Drowning in Noise: Noise Costs of PWC in America* and therefore the noise analysis underrepresents the actual impacts.

NPS Response: One of the initial tasks in the development of the Chickasaw EA was a literature search. *Drowning in Noise: Noise Costs of Jet Skis in America* was one of the many studies reviewed. The reference to that study (Komanoff and Shaw 2000) was discussed in the "Summary of Available Research on the Effects of Personal Watercraft" section of the EA.

Comments Regarding Wildlife and Wildlife Habitat

22. Two commenters stated that the analysis lacked site-specific data for impacts to fish, wildlife, and threatened and endangered species at Chickasaw NRA.

NPS Response: The scope of the EA did not include conducting site-specific studies regarding potential effects of PWC use on wildlife species at Chickasaw National Recreation Area. No admission of an absence of a complete inventory of all NRA wildlife can be found on page 55 of the EA as claimed in the comments. Analysis of potential impacts of PWC use on wildlife at the national recreation area was based on best available data, input from park staff, and the results of analysis using that data. A listing of mammals, amphibians, and reptiles known to occur in Chickasaw NRA is provided in Table 9, and a list of protected species is provided in Table 10 of the EA.

23. One commenter stated that PWC use and human activities associated with their use may not be any more disturbing to wildlife species than any other type of motorized or non-motorized watercraft. The commenter cites research by Dr. James Rodgers, of the Florida Fish and Wildlife Conservation Commission, whose studies have shown that PWC are no more likely to disturb wildlife than any other form of human interaction. PWC posed less of a disturbance than other vessel types. Dr. Rodgers' research clearly shows that there is no reason to differentiate PWC from motorized boating based on claims on wildlife disturbance.

NPS Response: Based on the documents provided as part of this comment, it appears that personal watercraft are no more apt to disturb wildlife than are small outboard motorboats. In addition to this conclusion, Dr. Rodgers recommends that buffer zones be established, creating minimum distances between boats (personal watercraft and outboard motorboats) and nesting and foraging waterbirds. In Chickasaw National Recreation Area, a 150-ft wide no-wake zone along portions of the shoreline is already established where the use of watercraft is restricted. With this restriction in mind, impacts to wildlife and wildlife habitat under all four alternatives were judged to be negligible to minor at most locations along the shoreline.

24. One commenter states that the analysis shows that a ban on PWC could result in "some animals reinhabiting" areas of previously high PWC operation, therefore a ban would be a better alternative.

NPS Response: This apparent inconsistency between discussions of impacts under alternative A and the no-action alternative will be corrected in the EA. The ban on PWC would allow use of some areas currently avoided by animals, but this avoidance does not constitute a change in population or community structure, but rather a temporary and periodic limitation on use of all available habitat.

25. One commenter states that the analysis indicates no impacts to aquatic organisms such as plankton and zooplankton. However, research at Lake Tahoe clearly shows that two-stroke motors release pollutants that are toxic to microscopic organisms at minute levels. Moreover, the NPS leaves the impression that PWC operation that pushes wildlife out of preferred habitat is acceptable.

NPS Response: Results of toxicity studies at Lake Tahoe are not directly applicable to Chickasaw. Many confounding factors, including water transparencies, suspended solids, UV light levels, and a different mix of engine types (2- and 4-stroke) affect the phototoxicity of PAHs in water. Also, the process of photodegradation of PAHs in addition to phototoxicity is occurring in water as described by Fasnacht and Blough (2002). Given that the greatest calculated threshold volume for a PAH (1-methyl naphthalene) released by PWCs is less than 1% of the available volume, it is highly unlikely that there is any measurable impact on aquatic life in the lake.

Regarding flushing of birds along shorelines, full discussions of potential impacts to birds are provided in the *Environmental Consequences* section of the EA. For all alternatives, the impacts to birds from PWCs are described as minor since most PWC use is not in the spring breeding season, and shoreline use of PWCs is around developed facilities where desirable wildlife habitat characteristics are lacking.

26. One commenter stated that wildlife biologists are finding that PWC cause lasting impacts to fish and wildlife.

NPS Response: A large portion of this comment is about potential impacts to marine mammals, in particular, bottlenose dolphins. Marine mammals are not found in Lake of the Arbuckles. The preferred alternative (alternative B) calls for monitoring for the presence of threatened or endangered species, and seasonally or permanently closing areas as needed to protect these species.

It is agreed that most of the PWCs currently in use have 2-stroke engines. However, in response to USEPA (1996, 1997) regulations, all new PWCs must have lower emissions of pollutants, and these lower emission requirements will be met through the use of direct injection 2-stroke engines or 4-stroke engines. By 2006, USEPA requirements will reduce PWC noise, in association with improvements to engine technology (USEPA 1996). Also, in response to public complaints, the PWC industry reportedly is using new technologies to reduce sound by 50 to 70% in 1999 and newer models (Sea-Doo 2000; Hayes 2002). Over the long term, the increased use of new PWC models will help reduce noise levels and organic pollutant emission levels which will minimize effects on fish and wildlife.

Comments Regarding Shoreline/ Submerged Aquatic Vegetation

27. One commenter stated that there has been no documentation of any adverse effects to shoreline vegetation from PWC use.

NPS Response: We agree that PWC use as recommended by the

manufacturer should not adversely affect submerged aquatic vegetation. At Chickasaw NRA, the primary concern is shoreline vegetation, and the analysis recognizes that PWC use would result in only negligible to minor adverse impacts to this vegetation, mostly from PWC operators leaving their vessels and trampling vegetation.

Comments Associated With Visitor Use, Experience, and Safety

28. One commenter stated that the reported accident numbers involving PWC are higher because they get reported more often than other boating accidents.

NPS Response: Incidents involving watercraft of all types, including personal watercraft, are reported to and logged by National Park Service staff. A very small proportion of incidents in the recreation area are estimated to go unreported. In the "Visitor Conflicts and Visitor Safety" section of the "Affected Environment" chapter, it is reported by the National Transportation Safety Board that in 1996 personal watercraft represented 7.5% of State-registered recreational boats but accounted for 36% of recreational boating accidents. In the same year, PWC operators accounted for more than 41% of people injured in boating accidents. PWC operators accounted for approximately 85% of the persons injured in accidents studied in 1997. In other words, personal watercraft are 5 times more likely to have a reportable accident than are other boats. Despite these national boating accident statistics, impacts of PWC use and visitor conflicts are judged to be negligible relative to swimmers and minor relative to other motorboats at the national recreation area.

29. One commenter stated that the analysis did not adequately address PWC fire hazards.

NPS Response: According to the National Marine Manufacturers Association, PWC manufacturers have sold roughly 1.2 million watercraft during the last ten years. Out of 1.2 million PWC sold the U.S. Coast Guard had only 90 reports of fires/explosions in the years from 1995–1999. This is a minute fraction of PWC having reports of problems associated with fires/explosions. As far as the recall campaigns conducted by Kawasaki and Bombardier, the problems that were associated with fuel tanks were fixed. Kawasaki conducted a recall for potentially defective fuel filler necks and fuel tank outlet gaskets on 23,579 models from the years 1989 and 1990. The fuel tank problems were eliminated in Kawasaki's newer models, and the 1989 and 1990 models are most likely not in use anymore since life expectancy of a PWC is only five to seven years according to PWIA. Bombardier also did a recall for its 1993, 1994, and 1995 models to reassess possible fuel tank design flaws. However, the number of fuel tanks that had to be recalled was a very small percent of the 1993, 1994, and 1995 fleets because fuel tank sales only amounted to 2.16% of the total fleet during this period (Bombardier Inc.). The replacement fuel tanks differed from those installed in the watercrafts subject to the recall in that the replacement tanks had revised filler neck radiuses, and the installation procedure now also requires revised torque specifications and the fuel system must successfully complete a pressure leak test. Bombardier found that the major factor contributing to PWC fires/explosions was over-torquing of the gear clamp. Bombardier was legally required by the U.S. Coast Guard to fix 9.72% of the recalled models. Out of 125,349 recalls, the company repaired 48,370 units, which was approximately 38% of the total recall, far exceeding their legal obligation to repair units with potential problems.

Further fuel tank and engine problems that could be associated with PWC fires has been reduced significantly since the National Marine Manufacturers Association set requirements for meeting manufacturing regulations established by the U.S. Coast Guard. Many companies even choose to participate in the more stringent Certification Program administered by the National Marine Manufacturers Association (NMMA). The NMMA verifies annually, or whenever a new product is put on the market, boat model lines to determine that they satisfy not only the U.S. Coast Guard Regulations but also the more rigorous standards based on those established by the American Boat and Yacht Council.

30. Several commenters stated that the analysis does not adequately assess the safety threat posed to park visitors by PWC use.

NPS Response: The concern about PWC operation and safety is discussed in the EA. Some of the provisions of the preferred alternative, such as extended no wake zones, and the formation of a PWC user group and PWC user education program, were included to provide a higher level of safe PWC operations and to lessen potential conflicts with other park users. The NPS agrees that some PWC users operate their vessels in an unsafe manner, and has provided for additional locational restrictions and safety—focused education in its preferred alternative (see response above). In addition, enforcement will be increased to enforce new restrictions and promote education about safe operation. Finally, the NPS' analysis recognizes the danger of PWC operation. However, not all PWC operation results in loss of a "safe and healthful" environment, and NPS cannot regulate activities based on the type of injuries likely to be sustained if the public wishes to participate in an activity that is supported by the park's enabling legislation. However, NPS is providing safe operating instruction, use restrictions, and enforcement to minimize the possibility of any serious injuries.

31. One commenter, Personal Watercraft Industry Association, stated that there is no basis to impose no-wake restrictions on PWC only, as proposed in Alternative B, and doing so would endanger all boaters.

NPS Response: The proposed no-wake zones under Alternative B would apply to all motorized vessels. The description of Alternative B on page 23 of the EA does not indicate that the no wake zone applies only to PWC.

Comments Related to Socioeconomics

32. One commenter stated that the analysis did not adequately assess socioeconomic impacts on the regional economy.

NPS Response: The number of recreational visits at Chickasaw National Recreation Area in calendar year 2002, through November, was 1,609,152. In 2003 through November, the recreational visits were 1,510,270; a reduction of 6.15%. This percentage is similar to the reduction in visitation at Glen Canyon and the eight un-named parks in the above comment. There were no PWCs allowed at Chickasaw during that time. The number of boats on the Lake of the Arbuckles in 2002 through November were 64,500 boats, plus 3,236 PWCs, for a total of 67,736. The total boats through November 2003 were 55,826 (no PWCs). The decrease of boats overall was 17.6 percent. However, the percentage of boats that were PWCs in 2002 was only 4.7 percent. The reduction in usage correlates with the nationwide decrease in visitation regardless of the PWC ban. Several factors including high fuel prices, a general sluggish economy, and the fear of terrorism could also be factors for the decline.

The socioeconomic study did not address the future potential costs of environmental damage. The study looked at the potential effect that the ban would have on the local economy, and the potential effects on socio-economically disadvantaged groups.

The comment is correct in stating that the same level of analysis was not given to the future environmental costs.

33. One commenter stated that by banning PWC use at the park, there would be an increase in other visitors which would offset the economic losses from PWC users.

NPS Response: The evaluation concentrated on the effects of PWC management on the local economy. There is no data available indicating that the presence of PWC has decreased the recreation area visitation by other visitors. Thus, a conclusion cannot be made that banning PWC would increase use by other groups. According to the visitor survey (summer 2000), most visitors identified issues associated with PWC operation within the recreation area as "no problem or slight problem."

Changes to the Final Rule

Based on the preceding comments and responses, the NPS has made no changes to the proposed rule language with regard to PWC operations.

Summary of Economic Impacts

Alternative A would reinstate Personal Water Craft (PWC) use at Chickasaw National Recreation Area as previously managed prior to November 2002, and as described in the 2000 Superintendent's Compendium. That Compendium permitted the use of PWCs in Lake of the Arbuckles under existing boating regulations, closed lakes 100 acres or less to PWCs, and imposed no-wake speed restrictions in certain areas. Alternative B would reinstate PWC use as previously managed, but with additional management restrictions. Alternative C would reinstate PWC use as previously managed, but limit use areas. Alternative D is the no-action alternative and represents the baseline conditions for this economic analysis. PWCs would be banned under Alternative D. All benefits and costs associated with Alternatives A, B, and C are measured relative to that baseline.

The primary beneficiaries of Alternatives A, B, and C would be the park visitors who use PWCs and the businesses that provide services to PWC users such as rental shops, restaurants, gas stations, and hotels. Additional beneficiaries include individuals who use PWCs in substitute areas outside the park where PWC users displaced from Chickasaw National Recreation Area ride due to the ban. Over a ten-year horizon from 2005 to 2014, the present value of benefits to PWC users is expected to range between $5,596,540 and $8,522,620, depending on the alternative analyzed and the discount rate used. The present value of benefits to businesses over the same timeframe is expected to range between $28,850 and $379,750. These benefit estimates are presented in Table 1. The amortized values per year of these benefits over the ten-year timeframe are presented in Table 2.

TABLE 1.—PRESENT VALUE OF BENEFITS FOR PWC USE IN CHICKASAW NATIONAL RECREATION AREA, 2005–2014 (2001 $)

	PWC users	Businesses	Total [a]
Alternative A:			
Discounted at 3% [b]	$8,522,620	$49,780 – $379,750	$8,572,400 – $8,902,370
Discounted at 7% [b]	6,995,650	40,850 – 311,710	7,036,500 – 7,307,360
Alternative B:			
Discounted at 3% [b]	7,670,370	42,500 – 317,680	7,712,870 – 7,988,050
Discounted at 7% [b]	6,296,090	34,890 – 260,760	6,330,980 – 6,556,850
Alternative C:			
Discounted at 3% [b]	6,818,120	35,150 – 255,530	6,853,270 – 7,073,650
Discounted at 7% [b]	5,596,540	28,850 – 209,750	5,625,390 – 5,806,290

[a] Benefits may not sum to the indicated –aves\rules.xmltals due to independent rounding.
[b] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

TABLE 2.—AMORTIZED TOTAL BENEFITS PER YEAR FOR PWC USE IN CHICKASAW NATIONAL RECREATION AREA, 2005–2014 (2001 $)

	Amortized total benefits per year [a]
Alternative A:	
Discounted at 3% [b]	$1,004,947 to $1,043,629
Discounted at 7% [b]	1,001,839 to $1,040,404
Alternative B:	
Discounted at 3% [b]	904,184 to $936,443
Discounted at 7% [b]	901,389 to $933,548
Alternative C:	
Discounted at 3% [b]	803,412 to $829,248
Discounted at 7% [b]	800,929 to $826,685

[a] This is the present value of total benefits reported in Table 1 amortized over the ten-year analysis timeframe at the indicated discount rate.
[b] Office of Management and Budget Circular A–4 recommends a 7% discount rate in general, and a 3% discount rate when analyzing impacts to private consumption.

The primary group that would incur costs under Alternatives A, B, and C would be the park visitors who do not use PWCs and whose park experiences would be negatively affected by PWC use within the park. At Chickasaw National Recreation Area, non-PWC uses include boating, canoeing, fishing, and hiking. Additionally, the public could incur costs associated with impacts to aesthetics, ecosystem protection, human health and safety, congestion, nonuse values, and enforcement. However, these costs

could not be quantified because of a lack of available data.

Because the costs of Alternatives A, B and C could not be quantified, the net benefits associated with those alternatives (benefits minus costs) also could not be quantified. However, from an economic perspective, the selection of Alternative B as the preferred alternative was considered reasonable even though the quantified benefits are smaller than under Alternative A because certain costs could not be quantified. Those costs, relating to non-PWC use, aesthetics, ecosystem protection, human health and safety, congestion, or nonuse values, would likely be greater for Alternative A than for Alternative B due to increasingly stringent restrictions on PWC use. Quantification of these costs could reasonably result in Alternative B having the greatest level of net benefits.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The National Park Service has completed the report "'Economic Analysis of Management Alternatives for Personal Watercraft in Chickasaw National Recreation Area" (MACTEC Engineering) dated June 2003. The report found that this rule will not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact on the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel policy issues. This regulation is one of the special regulations being issued for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management but no significant changes to use are implemented in this rule.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, "Economic Analysis of Management Alternatives for Personal Watercraft in Chickasaw National Recreation Area" (MACTEC Engineering) dated June 2003. The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that the potential loss for these types of businesses as a result of this rule would be minimal to none.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This rule only affects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). The EA was open for public review and comment from March 10, 2003, through April 8, 2003. The EA has been posted on the NPS Web site (*http://www.nps.gov/chic/CHICPWCEA.pdf*). A Finding of No Significant Impact (FONSI) was signed on June 28, 2004.

Copies of these documents may be requested by calling Susie Staples at 580–622–3161, extension 1–220, or by writing the Superintendent, Chickasaw National Recreation Area, 1008 W. 2nd Street, Sulphur, OK 73086.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994,

"Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. The following tribes were contacted; Apache Tribe of Oklahoma, Caddo Tribal Council, The Chickasaw Nation, The Choctaw Nation of Oklahoma, Comanche Tribal Business Committee, The Pawnee Business Council, The Wichita Executive Committee. None of the tribes had any comments on the proposed action.

Administrative Procedure Act

This final rule is effective upon publication in the **Federal Register**. In accordance with the Administrative Procedure Act, specifically, 5 U.S.C. 553(d)(1), this rule, 36 CFR 7.57(h), is exempt from the requirement of publication of a substantive rule not less than 30 days before its effective date.

As discussed in this preamble, the final rule is a part 7 special regulation for Chickasaw National Recreation Area that relieves the restrictions imposed by the general regulation, 36 CFR 3.24. The general regulation, 36 CFR 3.24, prohibits the use of PWC in units of the national park system unless an individual park area has designated the use of PWC by adopting a part 7 special regulation. The proposed rule was published in the **Federal Register** (69 FR 15277) on March 25, 2004, with a 60-day period for notice and comment consistent with the requirements of 5 U.S.C. 553(b). The Administrative Procedure Act, pursuant to the exception in paragraph (d)(1), waives the section 553(d) 30-day waiting period when the published rule "grants or recognizes an exemption or relieves a restriction." In this rule the NPS is authorizing the use of PWCs, which is otherwise prohibited by 36 CFR 3.24. As a result, the 30-day waiting period before the effective date does not apply to the Chickasaw National Recreation Area final rule.

The Attorney General's Manual on the Administrative Procedure Act explained that the "reason for this exception would appear to be that the persons affected by such rules are benefited by them and therefore need no time to conform their conduct so as to avoid the legal consequences of violation. The fact that an interested person may object to such issuance, amendment, or repeal of a rule does not change the character of the rule as being one 'granting or recognizing exemption or relieving restriction,' thereby exempting it from the thirty-day requirement." This rule is within the scope of the exception as described by the Attorney General's Manual and the 30-day waiting period should be waived. See also, *Independent U.S. Tanker Owners Committee* v. *Skinner*, 884 F.2d 587 (DC Cir. 1989). In this case, the court found that paragraph (d)(1) is a statutory exception that applies automatically for substantive rules that relieves a restriction and does not require any justification to be made by the agency. "In sum, the good cause exception must be invoked and justified; the paragraph (d)(1) exception applies automatically" (884 F.2d at 591). The facts are that the NPS is promulgating this special regulation for the purpose of relieving the restriction, prohibition of PWC use, imposed by 36 CFR 3.24 and therefore, the paragraph (d)(1) exception applies to this rule.

In accordance with the Administrative Procedure Act, this rule is also excepted from the 30-day waiting period by the "good cause" exception in 5 U.S.C. 553(d)(3) and is effective upon publication in the **Federal Register**. As discussed above, the purpose of this rule is to comply with the 36 CFR 3.24 requirement for authorizing PWC use in park areas by promulgating a special regulation. "The legislative history of the APA reveals that the purpose for deferring the effectiveness of a rule under section 553(d) was 'to afford persons affected a reasonable time to prepare for the effective date of a rule or rules or to take other action which the issuance may prompt.' S. Rep. No. 752, 79th Cong., 1st Sess. 15 (1946); H.R. Rep. No. 1980, 79th Cong., 2d Sess. 25 (1946)." *United States* v. *Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977). The persons affected by this rule are PWC users and delaying the implementation of this rule for 30 days will not benefit them; but instead will be counterproductive by denying them, for an additional 30 days, the benefits of the rule.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the National Park Service amends 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ 1. The authority citation for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

■ 2. Add new paragraph (b) to § 7.50 to read as follows:

§ 7.50 Chickasaw Recreation Area.

* * * * *

(b) *Personal watercraft (PWC).* (1) PWC may operate on Lake of the Arbuckles except in the following closed areas:

(i) The Goddard Youth Camp Cove.

(ii) A 150 foot wide zone around the picnic area at the end of Highway 110 known as "The Point", beginning at the buoy line on the north side of the picnic area and extending south and east into the cove to the east of the picnic area.

(iii) The cove located directly north of the north branch of F Loop Road.

(iv) A 150 foot wide zone around the Buckhorn Campground D Loop shoreline.

(2) PWC may not be operated at greater than flat wake speed in the following locations:

(i) The Guy Sandy arm north of the east/west buoy line located near Masters Pond.

(ii) The Guy Sandy Cove west of the buoy marking the entrance to the cove.

(iii) Rock Creek north of the east/west buoy line at approximately 034°27′50″ North Latitude.

(iv) The Buckhorn Ramp bay, east of the north south line drawn from the Buckhorn Boat Ramp Breakwater Dam.

(v) A 150 foot wide zone along the north shore of the Buckhorn Creek arm starting at the north end of the Buckhorn Boat Ramp Breakwater Dam and continuing southeast to the Buckhorn Campground D Loop beach.

(vi) The cove south and east of Buckhorn Campground C and D Loops.

(vii) The cove located east of Buckhorn Campground B Loop and adjacent to Buckhorn Campground A Loop.

(viii) The second cove east of Buckhorn Campground B Loop, fed by a creek identified as Dry Branch.

(ix) Buckhorn Creek east of the east/west buoy line located at approximately 096°59′3.50″ Longitude, known as the G Road Cliffs area.

(x) Within 150 feet of all persons, docks, boat launch ramps, vessels at anchor, vessels from which people are fishing, and shoreline areas near campgrounds.

(3) PWC may only be launched from the following boat ramps:

(i) Buckhorn boat ramp.

(ii) The Point boat ramp.

(iii) Guy Sandy boat ramp.

(iv) Upper Guy Sandy boat ramp.

(4) The fueling of PWC is prohibited on the water surface. Fueling is allowed only while the PWC is away from the water surface and on a trailer.

(5) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: August 24, 2004.

Paul Hoffman,

Deputy Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 04–20025 Filed 9–1–04; 8:45 am]

BILLING CODE 4310–2H–P

POSTAL SERVICE

39 CFR Part 111

Experimental Outside-County Periodicals Co-Palletization Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications

AGENCY: Postal Service.

ACTION: Interim rule.

SUMMARY: This interim rule provides standards for a Postal Service™ experiment. The experiment will test whether additional rate incentives would encourage the co-palletization and dropshipment of currently sacked bundles of individual Periodicals publications that have high-editorial content, are heavier weight, and have small mailed circulation. This interim rule will implement editorial per-pound discounts that are based on the entry points and zones skipped resulting from dropshipping and co-palletization. The editorial per-pound discounts, resulting from Docket No. MC2004–1 at the Postal Rate Commission, would apply to pieces in bundles placed on sectional center facility (SCF) and area distribution center (ADC) pallets that are dropshipped to either a destination area distribution center (DADC) or a destination sectional center facility (DSCF). The interim rule includes procedures for preparing and documenting co-palletized mailings and for requesting approval to participate in the experiment.

Co-palletization is designed to move publications, big and small, out of sacks and onto pallets with an additional advantage of mail being entered closer to destination for better service. Both of these changes are expected to make the processing of Periodicals mail more efficient and less expensive. This change is especially beneficial in the case of smaller publications that are prepared in smaller sacks largely entered at the origin.

DATES: This interim rule is effective October 3, 2004. Applications for participation in the experiment will be available beginning September 1, 2004. The starting date for the experiment is October 3, 2004. Comments on the standards must be received on or before October 2, 2004.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying at U.S. Postal Service Headquarters Library, 475 L'Enfant Plaza SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Donald Lagasse, (202) 268–7269; *Donald.T.Lagasse@usps.gov*.

SUPPLEMENTARY INFORMATION: The Postal Service offers certain worksharing incentives in the form of discounts to encourage palletization and dropshipping of Periodicals mailings. Co-palletization allows mailers to combine separately presorted bundles of different titles and editions on pallets to achieve the minimum pallet weight required to take advantage of current pallet and dropshipment discounts for Periodicals mail (*e.g.*, 250 pounds of mail to a destination area distribution center (DADC)).

Effective April 20, 2003, the Postal Service implemented the Experimental Outside-County Periodicals Co-Palletization Classification (Docket No. MC2002–3) that provided two additional per-piece discounts to co-palletized Periodicals that could not otherwise be palletized because they lacked sufficient volume and density. The experimental discounts are available for pieces in Periodicals mailings and mailing segments that would have otherwise been prepared in sacks but now may be prepared on ADC or sectional center facility (SCF) pallets and dropshipped to DADCs and DSCFs as a result of co-palletization.

A report filed with the Postal Rate Commission (See *http://www.prc.gov* under Docket No. MC2002–3) in May 2004 shows over 9 million co-palletized pieces with a corresponding removal of over 180,000 sacks from Postal Service operations. We expect additional publications, printers, and consolidators to participate in the existing experiment, and believe that this experiment will lead to better preparation and deeper penetration of Periodicals mail into the Postal Service system.

While the initial experiment has been reasonably successful, current per-piece incentives under the experiment are not sufficient to encourage co-palletization and dropshipment of publications with high editorial content. The current co-palletization experiment provides additional per-piece incentives when mailers go through the extra step of combining their mailings to build pallets and dropship them to destination ADCs and SCFs. Because the current rate structure has a flat editorial pound rate, publications that contain little or no advertising have little incentive to dropship, especially if they have heavier copy weights and lack the density to make single-publication pallets.

On February 25, 2004, pursuant to 39 U.S.C. 3623, the Postal Service filed with the Postal Rate Commission (PRC) a request for a decision recommending new experimental co-palletization incentives for Outside-County Periodicals. The request was designated as Docket No. MC2004–1 by the PRC. The PRC recommended the experimental classification change and new discounts on July 7, 2004. This recommendation was approved by the Board of Governors on July 19, 2004; and the Board of Governors set October 3, 2004, as the anticipated implementation date for the experiment.

The Postal Service will implement a 2-year experimental classification change to allow high-editorial, heavier weight, small circulation publications to receive the new proposed discounts on editorial pounds for pieces that are co-palletized and dropshipped, and meet all required conditions. The 2-year period will allow the Postal Service to measure the impact of the level of the discount structure. Also, the classification change extends the current co-palletization experiment (Docket No. MC2002–3) so that both experiments conclude at the same time. It is hoped that any future classification or structural change in the rate schedule would address both experiments together. The proposed classification language would also allow both experiments to continue until a proposal for a permanent discount is resolved, if that proposal is filed before the end of the 2-year period.

Based on the response to the current experimental discounts, the Postal Service concluded that an additional rate design solution was needed to provide a fair, equitable, and adequate incentive. The new discounts will apply to editorial pounds based on the cost savings that the Postal Service would realize as a result of the mail being prepared on pallets and having those pallets dropshipped (*i.e.*, skipping zones). The discounts will reflect the difference between the original zone for

the mail if entered at the origin mailer's plant in sacks and the DADC or DSCF entry point resulting from co-palletization and dropshipment.

General Description

The proposed discounts would apply exclusively to publications with the following characteristics:

a. Advertising content of 15 percent or less;

b. Copy weight of 9 ounces or more; and

c. Mailed circulation of 75,000 pieces or less (including all editions, issues, and supplemental mailings).

These characteristics are designed to limit the experiment to those publications most in need of an alternative discount structure to meet the key objectives. The proposed discounts would apply to co-palletized bundles of Periodicals mail that remain intact (the same bundles before and after co-palletization) that move from sacks (absent co-palletization) to pallets presorted to the ADC or SCF and that are entered at the appropriate destination facility. A publication that would otherwise be prepared in sacks, because it cannot meet the required 250-pound minimum for an ADC pallet at the bindery, would qualify for the discounts if it were co-palletized with other publications on an ADC or SCF pallet and dropshipped to either the destination ADC or SCF.

Residual mail from a qualifying publication that remained after pallets were prepared during the initial presort will also qualify for the proposed discounts, as long as it is co-palletized and dropshipped (*e.g.*, less than 250 pounds of mail remaining for an ADC, after SCF pallets are prepared for the ZIP Codes™ in that ADC service area). The consolidator/mailer could preserve originally presorted mail for a single publication on 5-digit, 3-digit (optional), SCF, and ADC pallets of 250 or more pounds, but this mail will not qualify for the experimental co-palletization discounts. Mailers could build upon originally presorted SCF and ADC pallets, but only the co-palletized pieces with less than 250 pounds per title or version for each ADC destination, if the pieces were independently presorted, would qualify for the co-palletization incentives. Multiple versions or titles that are presorted together into bundles through a selective binding operation will qualify, if, as a result of co-palletization, the presorted bundles move from sacks to pallets that are dropshipped, and meet all other standards for the discounts.

Other dropship and palletization incentives available in the current rate schedule will apply to all pieces based on their eligibility (*e.g.*, all dropship discounts and the $0.015 dropship pallet discount for pieces on pallets of 250 or more pounds that are dropshipped to DADCs or DSCFs). The only exceptions are the existing experimental Periodicals co-palletization and dropship discounts of $0.01 and $0.007 per piece. These will not apply to bundles using the proposed per-pound discounts. In other words, mailers may claim either the experimental per-piece or experimental per-editorial-pound discounts, but cannot claim both for the same mail bundles. However, mailers might claim the experimental per-piece discount for some bundles and experimental per-editorial-pound discounts for some other bundles on the same pallet if they are authorized to participate in the co-palletization experiments.

Supplemental mailings (*e.g.*, back issues not part of the mailing of the current issue) meeting the circulation requirement listed above (*i.e.*, total mailed circulation not exceeding 75,000 copies including supplemental mailings, prepared after, and separate from, the original mailing) will be treated as separate mailings and will have to meet the same requirements for pieces to be eligible for the additional incentives (for co-palletization/dropshipment). That is, for the supplemental mailing, only pieces that cannot be prepared on destination ADC pallets of 250 or more pounds under the original presort before co-palletization will be eligible for the new co-palletization incentives.

While mailers will be expected to prepare pallets of at least 250 pounds, the Postal Service recognizes the difficulty in always accurately predicting co-palletized volumes and will allow mailers to claim the new discount for dropshipped pallets weighing less than 250 pounds. It is expected that such pallets will represent an insignificant portion of co-palletized mailings. Less than 250-pound pallets (except overflow pallets) will not be eligible for the existing pallet discounts (*e.g.*, $0.015 for dropshipped mail on pallets of 250 or more pounds and $0.005 for mail on nondestinating entry pallets). To limit the scope of the experiment and simplify administration, any mail that is co-palletized on 5-digit or 3-digit pallets will not be entitled to the proposed co-palletization incentives.

Waiving of Finest-Level Pallet Requirement

In preparing a co-palletized mailing, mailers/consolidators cannot easily predict co-palletized volumes for each destination. Therefore, during the experiment, co-palletized mail will not be required to be placed on the finest level pallet possible. For example, even if a co-palletized ADC pallet were to contain more than 500 pounds to a particular SCF, an SCF pallet would not be required. Mailers/consolidators will be encouraged to periodically re-evaluate mail volumes for each ADC and SCF destination to determine whether additional SCF pallets can be created on a regular basis.

Documentation

The consolidator/mailer will provide documentation (*e.g.*, Mail.dat files that can be printed, if necessary) only for the mail that is co-palletized, both before and after co-palletization. To substantiate that mail would have been prepared in sacks, the "before" documentation must be in Mail.dat or similar files that permit easy identification of mailings (*e.g.*, by job ID, segment ID, and container) included in the co-palletization program, separate from mailings that are not included in the program. The "after" documentation must identify publications or segments with 250 or more pounds on a pallet (mail that does not qualify for added co-palletization incentives), and publications or segments with less than 250 pounds remaining for an ADC that do qualify for the new discounts. Documentation will be by title and version, segment, or edition, or by codes representing each title and version, segment, or edition. The consolidator/mailer will develop a new file (*e.g.*, Mail.dat) for the mail after co-palletization showing how the mail was presorted and where it was entered. Data in the "after co-palletization" files will be prepared so that they can be easily reconciled with the "before" Mail.dat files to validate that proper postage has been paid for all pieces (*e.g.*, the same job IDs and mailing segment IDs appear in "before" Mail.dat files and "after" documentation).

The primary goal of this documentation is to substantiate that, without co-palletization, the mail would have been prepared in sacks (*i.e.*, ADC pallets of 250 or more pounds for any individual title, independently presorted version, or selectively bound pool could not have been made).

In addition to the above, for each title and version for which the per-pound discount is claimed, the mailer will have to provide a detailed listing documenting the distribution of total advertising and editorial pounds to each zone "before" co-palletization, based on origin entry of the mail at the plant

where it is printed and presorted into bundles ready for co-palletization and mailing (*e.g.*, a modified version of the "before" postage statement showing the zoned distribution of total copies, total pounds, and advertising pounds, if any, plus an added column showing editorial pounds). This listing will be provided for all publications claiming the discount, including publications with no advertising content. The mailer will also provide a detailed listing that shows the total editorial weight and experimental per-pound discount claimed for each title and version by zone, based on the original zones reported on the zone listing "before" co-palletization. For example, for 210 editorial pounds of mail that would have been entered in Zone 3, if entered in sacks at the origin mailer's plant, the "after" documentation might show for Zone 3: 120 editorial pounds qualifying for the DADC per-pound discount and 90 pounds qualifying for the DSCF per-pound discount.

The Postal Service retains the right to disallow any documentation showing a change in the office of origin entry if the physical printing of the title has not moved to a different location.

All other mailing documentation described in DMM P012 (*i.e.*, USPS Qualification Report and Detailed Zone Listing) must be presented or made available at the time of acceptance with each co-palletized mailing.

Discounts

The proposed discounts in table 1 apply to the editorial pounds of the co-palletized mail prepared on an ADC or SCF pallet and entered at the destination ADC or SCF. The discounts vary by the zones skipped as a result of preparing and dropshipping mail on pallets. For example, as a result of co-palletization, 10,000 pounds of editorial material are entered at destination ADCs instead of origin ADCs (defined as the Postal Service facility that serves the plant where the mail is printed and presorted into packages before co-palletization). The original delivery zone for the mail is determined using the zone charge for the 3-digit ZIP Code for the origin plant. In this example, of the total 10,000 editorial pounds, if 3,400 pounds would have been mailed to addresses in Zone 6; 2,700 pounds would have been mailed to addresses in Zone 5; and the remaining 3,900 pounds would have been mailed to addresses in Zone 4, and the mail is now co-palletized and entered at the appropriate destination ADCs, then the value of the discount for that portion of the mailing would be ($0.073 × 3,400 = $248.20) plus ($0.050 × 2,700 = $135.00) plus ($0.028 × 3,900 = $109.20) for a total of $492.40.

TABLE 1.—DISCOUNTS FOR CO-PALLETIZED PIECES PREPARED ON AN ADC OR SCF PALLET

Original zone	DADC	DSCF
Zones 1 & 2	$.008	$.014
Zone 3	.013	.019
Zone 4	.028	.034
Zone 5	.050	.056
Zone 6	.073	.079
Zone 7	.101	.107
Zone 8	.125	.131

Postage Statement

The Postal Service is issuing a new edition of postage statement PS Form 3541, *Postage Statement—Periodicals One Issue or One Edition*, which includes the new co-palletization per-editorial-pound discounts. Periodicals mailers must use this postage statement or an approved facsimile for mailings that qualify for and claim the new discounts.

Publications mailed under the CPP program may be included as part of a co-palletized mailing. Publishers may elect to (1) remove the co-palletized portion of a mailing job from the Centralized Postage Payment (CPP) consolidated postage statement and pay postage at the consolidation point, or (2) provide, to the preparer of the consolidated postage statement, information about the co-palletized portion of their mailing to be included on the consolidated postage statement submitted to the New York Rates and Classification Service Center.

Publishers that co-palletize multiple editions of the same publication must submit a consolidated postage statement and register of mailings.

Data Reporting

In order to collect data required by the PRC's Rules 54 and 64, and desired for Postal Service management's evaluation of the proposed discounts, the Postal Service will get the following monthly data from the experiment's participants using a spreadsheet similar to the one being used in the current experiment:

1. Number of pieces receiving the DADC discount.

2. Number of pieces receiving the DSCF discount.

3. Number of titles receiving one or both of the co-palletization discounts.

4. Number of containers that would have been sacks without co-palletization, as well as their weight and the number of addressed pieces.

5. Number of sacks after consolidation, as well as their weight and the number of addressed pieces.

6. Number of pallets qualifying for the DADC discount, as well as their weight and the number of addressed pieces.

7. Number of pallets qualifying for the DSCF discount, as well as their weight and the number of addressed pieces.

8. Editorial and total pounds shifting to destination ADCs from the various zones.

9. Editorial and total pounds shifting to destination SCFs from the various zones.

Application Process

Parties interested in participating in the experimental per-pound discounts must request approval from the Postal Service. Send your requests to the Manager, Mailing Standards, at 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. Your request must include the following information, which will be treated as confidential by the Postal Service:

1. A completed application form. Application forms will be available from the Manager, Mailing Standards, beginning September 1, 2004. Application forms may be requested via e-mail to *Donald.T.Lagasse@usps.gov*.

2. A process map and narrative describing mail movement from production through the co-palletization process to dispatch to destination entry Postal Service facilities.

3. Samples of presort documentation (before and after co-palletization), and a description of when and how presort documentation and postage statements are generated.

4. Samples of the detailed listing documenting the distribution of total advertising and editorial pounds to each zone "before" co-palletization, based on origin entry of the mail (*i.e.*, the plant where it is printed and presorted into bundles ready for co-palletization and mailing).

5. An explanation of how data for mailings included under the co-palletization experiment will be collected and reported to the Postal Service, including whether the model spreadsheet provided by the Postal Service can be used.

6. A list of the publications to be included in the test initially and evidence that each publication has obtained the appropriate authorizations at the office(s) where mailings will be verified and postage paid. If the applicant is not a printer and/or is consolidating publications for other printers, a list of these printers must also be included with the application. If the location where mail will be

consolidated currently does not have a detached mail unit (DMU), arrangements must be made to establish one with the local Post Office responsible for the acceptance and verification of mailings.

Requests to participate will be accepted beginning September 1, 2004. Applicants meeting all requirements for the co-palletization test will receive a 90-day conditional authorization. The Postal Service will give final approval after the successful completion of the 90-day conditional period.

The implementation date is October 3, 2004.

Accordingly, the Postal Service hereby adopts the following regulations on an interim basis. Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 410 (a)), the Postal Service invites comments on the following revisions to the *Domestic Mail Manual* (DMM™), incorporated by reference in the *Code of Federal Regulations* (CFR). *See* 39 CFR part 111.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 is revised to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. Amend the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

G General Information

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G900 Experimental Classification and Rate Filings

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G990 Experimental Classifications and Rates

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[Renumber current 993 as new 994 and add new 993 to read as follows:]

Outside-County Periodicals Co-Palletization Drop-ship Discounts for High-Editorial, Heavy-Weight, Small-Circulation Publications

1.0 Eligibility

1.1 Description

The standards in G993 apply to mailings that are produced by mailers and consolidators who are approved to use the outside-county Periodicals co-palletization drop-ship discounts for high-editorial, heavy-weight, small-circulation publications.

1.2 Rate Application

The outside-county co-palletization drop-ship per-pound discounts apply to pieces meeting the standards in G993.

1.3 Basic Standards

The basic standards for eligibility under G993 are as follows:

a. The advertising content of the publication must be 15 percent or less.

b. The weight per copy must be 9 ounces or more.

c. The total mailed circulation must be 75,000 addressed pieces or less (including all editions, issues, and supplemental mailings).

d. Each mailing must consist of at least two different Periodicals publications or two different editions, segments, or versions of a Periodicals publication. Each mailing must be presented with the correct postage statement(s) and register of mailing. Mailings consisting of different Periodicals publications must be accompanied by separate postage statements for each publication. Mailings consisting of different editions or versions of the same Periodicals publication must be accompanied by one consolidated postage statement and a register of mailings.

e. Each mailing must meet the documentation and postage payment standards outlined in 2.0 and P200.

f. Each mailing must be entered, and postage must be paid, at the post office where consolidation takes place, except that postage for publications authorized under the Centralized Postage Payment (CPP) system may be paid to the New York Rates and Classification Service Center (RCSC). Each publication included in a mailing under these standards must be authorized for original entry or additional entry at the post office where the co-palletized mailing is entered.

1.4 Discount Eligibility

To be eligible for the discounts, mailpieces must be:

a. Part of a Periodicals mailing meeting the standards in M200, M820, or M900.

b. Part of a mailing segment with less than 250 pounds per title or version per ADC destination, if independently presorted. This includes mail for an ADC service area that remains after finer levels of pallets are prepared.

c. Prepared as packages on pallets under M041 and M045, or under M900.

d. Prepared on either an ADC or SCF pallet of co-palletized pieces. Mailers may build on ADC or SCF pallets of 250 or more pounds prepared as part of the original presort. However, the pieces originally on these pallets (250 or more pounds per title or edition) do not qualify for the co-palletization discounts.

2.0 Documentation

Each mailing must be accompanied by documentation meeting the standards in P012, as well as any other mailing information requested by the USPS to support the postage claimed (*e.g.*, advertising percentage and weight per copy). Documentation must be presented by title and version, segment, or edition; or by codes representing each title and version, segment, or edition included in the co-palletized mailing. In addition, documentation for the co-palletized mailing must:

a. Include a detailed listing documenting the distribution of total advertising and editorial pounds to each zone "before" co-palletization, based on origin entry of the mail (*i.e.*, entry at, or at the local post office for, the plant where the mail is printed and presorted into bundles ready for co-palletization and mailing).

b. Upon request, include presort reports showing how the pieces would have been prepared prior to co-palletization.

c. Include presort and pallet reports showing how the co-palletized pieces are prepared and where they will be entered (DADC or DSCF).

d. Distinguish publications or segments that do not qualify for the co-palletization discounts (*e.g.*, because there are 250 or more pounds to an ADC destination) from those that do qualify for the discounts (*e.g.*, existing per piece co-palletization discounts and new per-pound discount).

e. Allow easy reconciliation with reports prepared to reflect how mail would have been prepared prior to co-palletization if requested to verify compliance with standards for discount eligibility.

3.0 Data Reporting

Each month, the mailer or consolidator must provide the following data via e-mail to *copal@usps.gov* in spreadsheet format using the model spreadsheet and timelines provided by the USPS:

a. Number of titles receiving the new co-palletization discounts for high editorial publications.

b. Number of sacks that would have been prepared without co-palletization, as well as the total weight, the editorial weight, and the number of addressed pieces that would have been in these sacks, by destination ADC and destination SCF.

c. Number of sacks prepared after co-palletization, as well as the weight and the number of addressed pieces in these sacks.

d. Number of pallets containing mail qualifying for the ADC co-palletization discounts, as well as the weight and the number of addressed pieces receiving the ADC discount on these pallets. Pallets containing some bundles that use the per-piece discounts and some bundles that use the per-pound discount must be counted separately.

e. Number of pallets containing mail qualifying for the SCF co-palletization discounts, as well as the weight and the number of addressed pieces receiving the SCF discount on these pallets. Pallets containing some bundles that use the per-piece discounts and some bundles that use the per-pound discount must be counted separately.

4.0 Discounts

4.1 Basic Standards

Pieces must be prepared on one of the following:

a. An SCF or ADC pallet of 250 or more pounds drop shipped to the appropriate DADC.

b. An SCF pallet of 250 or more pounds drop shipped to the appropriate DSCF.

c. An overflow DSCF or DADC pallet drop shipped to the appropriate DSCF or DADC.

d. An ADC pallet weighing between 100 and 250 pounds and drop shipped to the appropriate DADC.

4.2 Discounts and Description

The discounts in exhibit 4.2 are applicable to editorial pounds of the co-palletized pieces prepared on an ADC or SCF pallet and entered at the destination ADC and SCF. The discounts are dependent on the applicable zones that would have resulted from origin entry of the publications without co-palletization.

EXHIBIT 4.2.—DISCOUNTS FOR CO-PALLETIZED PIECES PREPARED ON AN ADC OR SCF PALLET

Origin zone	DADC	DSCF
Zones 1 & 2	$.008	$.014
Zone 3	.013	.019
Zone 4	.028	.034
Zone 5	.050	.056
Zone 6	.073	.079
Zone 7	.101	.107
Zone 8	.125	.131

5.0 Request To Participate

A mailer or consolidator may request approval to use the outside-county Periodicals co-palletization drop-ship per-pound discounts by submitting a written request to the Manager, Mailing Standards (see G043 for address). The request must be accompanied by the following:

a. A completed application form (available from the Manager, Mailing Standards).

b. A process map and narrative demonstrating how and where presort and co-palletization reports (including "before" and "after" data) are created as they relate to mail movement and consolidation of packages to be co-palletized. The map and narrative must also describe mail movement from production through the co-palletization process including dispatch to destination entry Postal Service facilities.

c. Samples of all required documentation that will be used to substantiate eligibility for the discounts, and of the documentation that must be provided at the time of mailing, including "before" and "after" reports and postage statements. The sample reports must demonstrate:

(1) How the co-palletized portion of the mailing is segregated from other mailing segments on the "before" reports.

(2) How mailing jobs, mailing segments, and containers will be identified in both "before" and "after" reports to allow reconciliation of the reports.

(3) How pieces appearing on the "after" reports that qualify for the co-palletization discounts (mailing segments with less than 250 pounds to an ADC) are differentiated from those that do not (mailing segments with 250 or more pounds to an ADC). How pieces receiving the per-pound discounts are differentiated from those receiving the per-piece discounts.

d. A detailed listing documenting the distribution of total advertising and editorial pounds to each zone "before" co-palletization, based on origin entry of the mail (*i.e.*, entry at the plant or the local post office for the plant, where it is printed and presorted into bundles ready for co-palletization and mailing).

e. An explanation of how data for mailings included under the co-palletization experiment will be collected and reported to the USPS, including whether the model spreadsheet provided by the USPS can be used.

f. A list of the publications to be included initially in the test and evidence that each publication has obtained the appropriate additional entry authorization at the office where mailings will be verified and postage paid. The list must indicate if the publications are authorized under the Centralized Postage Payment (CPP) system. If the applicant is not a printer and/or is consolidating publications for other printers, a list of those printers must be included with the application.

6.0 Decision on Request

The manager, Mailing Standards, approves or denies a written request to use the experimental outside-county Periodicals co-palletization per-pound discounts. If the application is approved, the mailer or consolidator will be notified in writing by the manager, Mailing Standards. Initial approval is for a conditional 90-day period. When the mailer or consolidator has demonstrated the ability to prepare and enter mailings under the standards in G993, final authorization will be granted. If the application is denied, the mailer or consolidator may file at a later date or submit additional information needed to support the request.

7.0 USPS Suspension

The manager, Mailing Standards, may suspend at any time an approval to use the per-pound discounts when there is an indication that Postal Service revenue is not fully protected. The manager will notify the participant in writing of the decision. The suspension becomes effective upon the mailer's receipt of the notification.

* * * * *

We will publish an appropriate amendment to 39 CFR 111 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–19976 Filed 9–1–04; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32, 51 and 65

[WC Docket No. 02–269; CC Docket No. 00–199; CC Docket No. 80–286; CC Docket No. 99–301; FCC 04–149]

Federal-State Joint Conference on Accounting Issues

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses recommendations made by the Federal-State Joint Conference on Accounting Issues (Joint Conference) in a report filed with the Commission on October 9, 2003. It also makes recommendations on

other accounting related matters as well as resolves outstanding petitions for reconsideration of the Commission's *Phase II Report and Order*. Finally, this document further delays the effective date and implementation of four previously adopted accounting and reporting rule changes.

DATES: The effective date for amendments to 47 CFR 32.5200, 32.6560, and 32.6620 published at 67 FR 5670 (February 6, 2002) is further suspended from July 1, 2004, through December 31, 2004. The rules contained in this document are effective March 2, 2005.

FOR FURTHER INFORMATION CONTACT: Jane E. Jackson, Associate Chief, Wireline Competition Bureau, (202) 418–1500.

SUPPLEMENTARY INFORMATION: The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 488–5300, facsimile (202) 488–5563, e-mail *fcc@bcpiweb.com*.

Background

1. On September 5, 2002, the Commission issued an order which was published at 67 FR 66069 (October 30, 2002), convening the Joint Conference "to provide a forum for an ongoing dialogue between the Commission and the states in order to ensure that regulatory accounting data and related information filed by carriers are adequate, truthful, and thorough." The Commission found that the "Joint Conference would provide a focused means by which it and interested state commissions may conduct an open dialogue, collect and exchange information, and consider initiatives that would improve the collection of adequate, truthful, and thorough accounting data for regulatory purposes." In charging the Joint Conference with the task of reexamining federal and state accounting and reporting requirements, the Commission noted that the Joint Conference has a broad mandate to perform its work, including the ability to recommend additions to, or eliminations of, accounting requirements.

2. On November 12, 2002, the Commission released an order which was published at 67 FR 77432 (December 18, 2002), suspending the implementation of the following four accounting and reporting requirement rule changes until July 1, 2003: (1) The consolidation of Accounts 6621 through 6623 into Account 6620, with subaccounts for wholesale and retail; (2) the consolidation of Account 5230, Directory revenue, into Account 5200 Miscellaneous revenue; (3) the consolidation of the depreciation and amortization expense accounts (Accounts 6561 through 6565) into Account 6560, Depreciation and amortization expenses; (4) the revised "Loop Sheath Kilometers" data collection in Table II of ARMIS Report 43–07. The Commission adopted these accounting rules and reporting requirements as part of the Commission's biennial review of accounting requirements and Automated Reporting Management Information System (ARMIS) reporting. The Commission suspended implementation of these four accounting and reporting requirement rule changes in order to allow the recently-established Joint Conference to review these rules and requirements before carriers were required to implement them. These rules had been adopted in 2001 in the *Phase II Report and Order* which was published at 67 FR 5670 (February 6, 2002), in which the Commission had eliminated many part 32 accounts, defined ILECs subject to its accounting rules, streamlined its affiliate transaction rules and revised some of its ARMIS reporting requirements. (The Commission subsequently issued two additional orders further suspending implementation of the four previously-adopted rules which were published at 68 FR 38641 and 68 FR 75455 on June 30, 2003 and December 31, 2003, respectively).

3. On December 12, 2002, as part of its comprehensive review of the Commission's accounting and reporting requirements, the Joint Conference issued a public notice requesting comment on a broad range of regulatory accounting issues. The Joint Conference also sought comment on four groups of specific issues related to the *Phase II Report and Order*: (1) Certain accounts that had been requested by states but not adopted by the Commission; (2) changes to the affiliate transaction rules; (3) the accounting and recordkeeping rules that were suspended by the Commission in its November 12, 2002 Order; and (4) the issues raised by the outstanding petitions for reconsideration of the *Phase II Report and Order*.

4. In a *Notice of Proposed Rulemaking* (NPRM) released on December 23, 2003, which was published at 68 FR 75478 (December 31, 2003), the Commission sought comment on the recommendations of the Joint Conference related to the issues it raised in its December 12, 2002 public notice and on other accounting-related matters.

Paperwork Reduction Act

5. This Order has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget (OMB) as prescribed by the Act, and will go into effect upon announcement in the **Federal Register** of OMB approval.

Synopsis of Report and Order

I. Accounting Rules

6. The Commission adopts the following Joint Conference recommendations: (1) Reinstates Account 5230, Directory revenue; (2) Reinstates Accounts 6621, Call completion services; 6622, Number services; and 6623, Customer services and requires wholesale/retail information only for Account 6623. The wholesale/retail information for Account 6623 will be reported in ARMIS Report 43–03 rather than a part 32 subaccount; (3) Reinstates Accounts 6561, Depreciation expense—telecommunications plant in service; 6562, Depreciation expense—property held for future telecommunications use; 6563, Amortization expense—tangible; 6564, Amortization expense—intangible; and Account 6565, Amortization expense—other. The Commission rejects the Joint Conference recommendation to add new part 32 accounts for: (1) Optical switching; (2) switching software; (3) loop and inter-office transport; (4) interconnection revenue; and (5) universal service revenue and expense. While the Commission rejects the recommendation to add new part 32 accounts, it does, however, require Class A companies to maintain subsidiary record categories to identify interconnection revenues. Finally, the part 32 definition of incumbent local exchange carrier is modified to clarify that a successor/assign company that is found to be nondominant will not be subject to the Commission's accounting requirements.

II. Affiliate Transactions Rules

7. The Commission rejects the Joint Conference recommendations to modify

its affiliate transactions rules pertaining to: (1) Fair market value comparisons for assets totaling less than $500,000; (2) Establishment of floor and ceiling threshold; (3) Prevailing price treatment threshold; (4) Centralized services exception to the estimated fair market value rule; (5) Nonregulated to nonregulated transactions; and (6) Intra-holding company ILEC-to-ILEC transfers of assets or services.

III. Reporting Requirements

8. The Commission adopts the Joint Conference recommendation to reinstate the title of the first section of Table II of the ARMIS Report 43–07 from "loop sheath kilometers" back to "sheath kilometers". The Joint Conference also recommended that the Commission deny the petition for reconsideration regarding the reporting of broadband infrastructure data in ARMIS Report 43–07. The Commission adopts the recommendation and denies the petition for reconsideration.

IV. Suspension of Implementation of Four Accounting and Reporting Requirement Rule Changes

9. As noted above, the Commission has suspended the implementation of four previously-adopted accounting and recordkeeping rules to allow the Joint Conference time to review them, and for the Commission to act upon the Joint Conference's recommendation. The suspension currently is effective through June 30, 2004. The Commission further suspends the rule changes through December 31, 2004, which is the next date to coincide with the start of a fiscal year after six months' notice required by the Act for the rules to take effect.

V. Other Issues

10. Additional proposals and specific areas for investigation submitted by commenters in response to the *NPRM* will continue to be examined by the Joint Conference and the Commission.

Final Regulatory Flexibility Certification

11. The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

12. The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such firms having 1,500 or fewer employees. Under the Commission's rules, there are two classes of ILECs for accounting purposes: Class A and Class B. Carriers with annual revenues from regulated telecommunications operations that are equal to or above the indexed revenue threshold, currently $123 million, are classified as Class A; those falling below that threshold are considered Class B. Class A carriers are required to maintain a more detailed level of accounts than Class B carriers. In addition, Class A carriers are required to file ARMIS Reports annually while Class B carriers are not subject to the ARMIS Reporting requirement. Class A carriers with annual revenues in excess of $123 million but less than $7.240 billion are classified as mid-sized carriers and are permitted to maintain accounts at the less detailed Class B level. The less detailed level of accounting required under Class B was established to accommodate smaller carriers and relieve them of the burdens associated with maintaining the more detailed level of accounts. The accounting and reporting requirements adopted by the Commission in this Report and Order are mandatory only for Class A non-mid sized carriers. These carriers have annual revenues in excess of $7.240 billion, therefore it is likely that these companies employ more than 1,500 employees and are not small businesses under the SBA's definition for Wired Telecommunications Carriers.

13. In this Report and Order the Commission adopts the Joint Conference's recommendations to reinstate the following Part 32 Class A accounts: Account 5230, Directory revenue, Account 6621, Call completion services, Account 6622, Number services, Account 6623, Customer services, Account 6561, Depreciation expense—telecommunications plant in service; Account 6562, Depreciation expense—property held for future telecommunications use; Account 6563, Amortization expense—tangible; Account 6564 Amortization expense—intangible; Account 6565, Amortization expense—other. These accounting changes are mandatory only for non-mid-sized Class A ILECs. The reinstatement of these accounts, however, will not impose any additional burden on non-mid-sized Class A ILECs because the Commission's prior action to aggregate the accounts has been suspended. Similarly, the Commission's reinstatement of the sheath kilometer reporting requirement in the ARMIS 43–07 will not impose any additional burden on non-mid-sized Class A ILECs. Non-mid-sized Class A ILECs are meeting these requirements at the current time, therefore the rule changes in this Report and Order will impose no economic burden.

14. Although the Commission declines to adopt any new accounts, it will require that non-mid-sized Class A ILECs maintain subsidiary record categories for unbundled network element revenues, resale revenues, reciprocal compensation revenues, and other interconnection revenues in the accounts in which these revenues are currently recorded. The use of subsidiary record categories allows carriers to use whatever mechanisms they choose, including those currently in place, to identify the relevant amounts as long as the information can be made available to state and federal regulators upon request. Also, the Commission is requiring the ARMIS reporting of the wholesale and retail percentages applicable to Account 6623, Customer services. The use of subsidiary record categories for interconnection revenue and the ARMIS reporting of wholesale retail percentages do not require massive changes to the ILECs' accounting systems and are far less burdensome alternatives than the creation of new accounts and/or subaccounts.

15. Even if there are mid-sized Class A carriers or Class B carriers that are small businesses within the SBA's definition (*i.e.*, with fewer than 1,500 employees) that may elect to comply with the rules, the impact of the rules is economically *de minimis* and negligible. As discussed above, compliance with the rules adopted herein imposes no new burdens. Accordingly, even if there is economic impact on any such small carrier, it is not significant. Therefore, we certify that the requirements of the Report and Order will not have a significant economic impact on a substantial number of small entities.

16. The Commission will send a copy of the Report and Order, including a copy of this Final Regulatory Flexibility Certification, in a report to Congress pursuant to the Congressional Review Act. In addition, the Report and Order and this final certification will be sent to the Chief Counsel for Advocacy of the

SBA, and will be published in the **Federal Register**. Ordering Clauses

17. Accordingly, *it is ordered* that pursuant to sections 1, 4, 201–205, 215 and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, and 218–220, Part 32 of the Commission's rules, 47 CFR part 32, *is amended* as described above.

18. *It is further ordered* that pursuant to section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. 220(g), changes to our part 32, System of Accounts, adopted in this Report and Order shall take effect six months after publication in the **Federal Register** following OMB approval, unless a notice is published in the **Federal Register** stating otherwise. We will, however, permit carriers to implement Part 32 accounting changes as of January 1, 2005.

19. *It is further ordered* that pursuant to sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition of BellSouth, SBC and Verizon for Reconsideration and the SBC Communications, Inc. Petition for Reconsideration are *granted* in part, to the extent indicated herein, and *denied* in part.

20. *It is further ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–205, 215 and 218–220, FCC Report 43–07, the Infrastructure Report, *is revised* as set forth above.

21. *It is further ordered* that pursuant to sections 1, 4(i), 4(j), 5(c), 201, 202, 219 and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), 155(c), 201, 202, 219 and 220, section 1.3 of the Commission's rules, 47 CFR 1.3, and sections 553(b) and 553(d)(3) of the Administrative Procedure Act, 5 U.S.C. 553(b), 553(d)(3), implementation of certain rule modifications described in paragraph 3, above, *is suspended* from July 1, 2004, through December 31, 2004.

22. *It is further ordered* that pursuant to the authority contained in section 0.291 of the Commission's rules, 47 CFR 0.291, the Wireline Competition Bureau *is delegated* authority to implement all changes to ARMIS reporting as set forth above.

23. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Uniform System of Accounts.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 65

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Rule Changes

■ For the reasons set forth in the preamble, amend parts 32, 51, and 65 of title 47 of the Code of Federal Regulations as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

■ 1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

■ 2. Section 32.11 is amended by revising paragraph (a) to read as follows:

§ 32.11 Classification of companies.

(a) For purposes of this section, the term "company" or "companies" means incumbent local exchange carrier(s) as defined in section 251(h) of the Communications Act, and any other carriers that the Commission designates by Order. Incumbent local exchange carriers' successor or assign companies, as defined in section 251(h)(1)(B)(ii) of the Communications Act, that are found to be non-dominant by the Commission, will not be subject to this Uniform System of Accounts.

* * * * *

■ 3. Section 32.27 is amended by revising paragraph (a) to read as follows:

§ 32.27 Transactions with affiliates.

(a) Unless otherwise approved by the Chief, Wireline Competition Bureau, transactions with affiliates involving asset transfers into or out of the regulated accounts shall be recorded by the carrier in its regulated accounts as provided in paragraphs (b) through (f) of this section.

* * * * *

■ 4. Section 32.1280 is amended by revising paragraph (d) to read as follows:

§ 32.1280 Prepayments.

* * * * *

(d) The cost of preparing, printing, binding, and delivering directories and the cost of soliciting advertisements for directories, except minor amounts which may be charged directly to Account 6622, Number services. These prepaid directory expenses shall be cleared to Account 6622 by monthly charges representing that portion of the expenses applicable to each month.

* * * * *

■ 5. Section 32.2000 is amended by revising paragraph (g)(5) to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

* * * * *

(g) * * *

(5) Upon direction or approval from this Commission, the company shall credit Account 3100, Accumulated Depreciation, and charge Account 1438, Deferred Maintenance, retirements and other deferred charges, with the unprovided-for loss in service value. Such amounts shall be distributed from Account 1438 to Account 6561, Depreciation expense—Telecommunications plant in service, or Account 6562, Depreciation expense—property held for future telecommunications use, over such period as this Commission may direct or approve.

* * * * *

■ 6. Section 32.2005 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 32.2005 Telecommunications Plant Adjustment.

* * * * *

(b) * * *

(1) Debit amounts may be charged in whole or in part, or amortized over a reasonable period through charges to Account 7300, Nonoperating income and expense, without further direction or approval by this Commission. When specifically approved by this Commission, or when the provisions of paragraph (b)(3) of this section apply, debit amounts shall be amortized to Account 6565, Amortization expense—other.

* * * * *

(4) Within one year from the date of inclusion in this account of a debit or credit amount with respect to a current acquisition, the company may dispose of the total amount from an acquisition of telephone plant by a lump-sum

charge or credit, as appropriate, to Account 6565 without further approval of this Commission, provided that such amount does not exceed $100,000 and that the plant was not acquired from an affiliated company.

■ 7. Section 32.2682 is amended by revising paragraph (c) to read as follows:

§ 32.2682 Leasehold improvements.

* * * * *

(c) Amounts contained in this account shall be amortized over the term of the related lease. For Class A companies, except mid-sized incumbent local exchange carriers, the amortization associated with the costs recorded in the Leasehold improvement account will be credited directly to this asset account, leaving a balance representing the unamortized cost.

■ 8. Section 32.2690 is amended by revising paragraph (c) to read as follows:

§ 32.2690 Intangibles.

* * * * *

(c) The cost of other intangible assets, not including software, having a life of one year or less shall be charged directly to Account 6564, Amortization expense—intangible. Such intangibles acquired at small cost may also be charged to Account 6564, irrespective of their term of life. The cost of software having a life of one year or less shall be charged directly to the applicable expense account with which the software is associated.

* * * * *

■ 9. Section 32.3000 is amended by revising paragraph (b) to read as follows:

§ 32.3000 Instructions for balance sheet accounts—Depreciation and amortization.

* * * * *

(b) Depreciation and Amortization Accounts to be Maintained by Class A and Class B telephone companies, as indicated.

Account title	Class A account	Class B account
Depreciation and amortization:		
Accumulated depreciation	3100	3100
Accumulated depreciation—Held for future telecommunications use	3200	3200
Accumulated depreciation—Nonoperating	3300	3300
Accumulated depreciation—Tangible	.....	3400
Accumulated depreciation—Capitalized leases	3410	.....

■ 10. Section 32.3100 is amended by revising paragraphs (b) and (d) to read as follows:

§ 32.3100 Accumulated depreciation.

* * * * *

(b) This account shall be credited with depreciation amounts concurrently charged to Account 6561, Depreciation expense—telecommunications plant in service. (Note also Account 3300, Accumulated depreciation—nonoperating.)

* * * * *

(d) This account shall be credited with amounts charged to Account 1438, Deferred maintenance, retirements, and other deferred charges, as provided in § 32.2000(g)(4) of this subpart. This account shall be credited with amounts charged to Account 6561 with respect to other than relatively minor losses in service values suffered through terminations of service when charges for such terminations are made to recover the losses.

■ 11. Section 32.3200 is amended by revising paragraph (b) to read as follows:

§ 32.3200 Accumulated depreciation—held for future telecommunications use.

* * * * *

(b) This account shall be credited with amounts concurrently charged to Account 6562, Depreciation expense—property held for future telecommunications use.

■ 12. Section 32.3400 is revised to read as follows:

§ 32.3400 Accumulated amortization—tangible.

(a) This account shall be used by Class B companies and shall include:

(1) the accumulated amortization associated with the investment contained in Account 2681, Capital leases.

(2) the accumulated amortization associated with the investment contained in Account 2682, Leasehold improvements.

(b) This account shall be credited with amounts for the amortization of capital leases and leasehold improvements concurrently charged to Account 6563, Amortization expense—tangible. (Note also Account 3300, Accumulated depreciation—nonoperating.)

(c) When any item carried in Account 2681 or Account 2682 is sold, is relinquished, or is otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to Account 7100, Other operating income and expenses, or Account 7300, Nonoperating income and expense, as appropriate.

■ 13. Section 32.3410 is amended by revising paragraph (b) to read as follows:

§ 32.3410 Accumulated amortization—capitalized leases.

* * * * *

(b) This account shall be credited with amounts for the amortization of capital leases concurrently charged to Account 6563, Amortization expense—tangible. (Note also Account 3300, Accumulated depreciation—nonoperating.)

* * * * *

■ 14. Section 32.4999 is amended by revising paragraphs (c), (f) and (n) to read as follows:

§ 32.4999 General.

* * * * *

(c) *Commissions.* Commissions paid to others or employees in place of compensation or salaries for services rendered, such as public telephone commissions, shall be charged to Account 6623, Customer services, and not to the revenue accounts. Other commissions shall be charged to the appropriate expense accounts.

* * * * *

(f) *Subsidiary records—jurisdictional subdivisions and interconnection.* Subsidiary record categories shall be maintained in order that the company may separately report revenues derived from charges imposed under intrastate, interstate and international tariff filings. Class A carriers shall also maintain subsidiary record categories in order that the companies may separately report interconnection revenues derived from the following categories: Unbundled network element revenues, Resale revenues, Reciprocal compensation revenues, and Other interconnection revenues. Such subsidiary record categories shall be reported as required by part 43 of this Commission's Rules and Regulations.

* * * * *

(n) *Revenue accounts to be maintained.*

Account title	Class A account	Class B account
Local network services revenues:		
Basic local service revenue		5000
Basic area revenue	5001	
Private line revenue	5040	
Other basic area revenue	5060	
Network access service revenues:		
End user revenue	5081	5081
Switched access revenue	5082	5082
Special access revenue	5083	5083
Long distance network services revenues:		
Long distance message revenue	5100	5100
Miscellaneous revenues:		
Miscellaneous revenue	5200	5200
Directory revenue	5230	
Nonregulated revenues:		
Nonregulated operating revenue	5280	5280
Uncollectible revenues:		
Uncollectible revenue	5300	5300

■ 15. Section 32.5001 is amended to revise paragraph (b) to read as follows:

§ 32.5001 Basic area revenue.

* * * * *

(b) Revenue derived from charges for nonpublished number or additional and boldfaced listings in the alphabetical section of the company's telephone directories shall be included in account 5230, Directory revenue.

* * * * *

■ 16. Section 32.5200 is revised to read as follows:

§ 32.5200 Miscellaneous revenue.

This account shall include revenue derived from the following sources. For Class B companies, this account shall also include revenue of the type and character required of Class A companies in Account 5230, Directory revenue.

(a) Rental or subrental to others of telecommunications plant furnished apart from telecommunications services rendered by the company (this revenue includes taxes when borne by the lessee). It includes revenue from the rent of such items as space in conduit, pole line space for attachments, and any allowance for return on property used in joint operations and shared facilities agreements. The expense of maintaining and operating the rented property, including depreciation and insurance, shall be included in the appropriate operating expense accounts. Taxes applicable to the rented property shall be included by the owner of the rented property in appropriate tax accounts. When land or buildings are rented on an incidental basis for non-telecommunications use, the rental and expenses are included in Account 7300, Nonoperating income and expense.

(b) Services rendered to other companies under a license agreement, general services contract, or other arrangement providing for the furnishing of general accounting, financial, legal, patent, and other general services associated with the provision of regulated telecommunications services. (See also Account 5230.)

(c) The provision, either under tariff or through contractual arrangements, of special billing information to customers in the form of magnetic tapes, cards or statements. Special billing information provides detail in a format and/or at a level of detail not normally provided in the standard billing rendered for the regulated telephone services utilized by the customer.

(d) The performance of customer operations services for others incident to the company's regulated telecommunications operations which are not provided for elsewhere. (See also §§ 32.14(e) and 32.4999(e)).

(e) Contract services (plant maintenance) performed for others incident to the company's regulated telecommunications operations. This includes revenue from the incidental performance of nontariffed operating and maintenance activities for others which are similar in nature to those activities which are performed by the company in operating and maintaining its own telecommunications plant facilities. The records supporting the entries in this account shall be maintained with sufficient particularity to identify the revenue and associated Plant Specific Operations Expenses related to each undertaking. This account does not include revenue related to the performance of operation or maintenance activities under a joint operating agreement.

(f) The provision of billing and collection services to other telecommunications companies. This includes amounts charged for services such as message recording, billing, collection, billing analysis, and billing information services, whether rendered under tariff or contractual arrangements.

(g) Charges and credits resulting from contractual revenue pooling and/or sharing agreements for activities included in the miscellaneous revenue accounts only when they are not identifiable by miscellaneous revenue account in the settlement process. (See also § 32.4999(e)). The extent that the charges and credits resulting from a settlement process can be identified by miscellaneous revenue accounts they shall be recorded in the applicable account.

(h) The provision of transport and termination of local telecommunications traffic pursuant to section 251(c) of the Communications Act and part 51 of this chapter.

(i) The provision of unbundled network elements pursuant to section 251(c) of the Communications Act and part 51 of this chapter.

(j) This account shall also include other incidental regulated revenue such as:

(1) Collection overages (collection shortages shall be charged to Account 6623, Customer services);

(2) Unclaimed refunds for telecommunications services when not subject to escheats;

(3) Charges (penalties) imposed by the company for customer checks returned for non-payment;

(4) Discounts allowed customers for prompt payment;

(5) Late-payment charges;

(6) Revenue from private mobile telephone services which do not have access to the public switched network; and

(7) Other incidental revenue not provided for elsewhere in other Revenue accounts.

(k) Any definitely known amounts of losses of revenue collections due to fire or theft, at customers' coin-box stations, at public or semipublic telephone stations, in the possession of collectors en route to collection offices, on hand at collection offices, and between collection offices and banks shall be charged to Account 6720, General and Administrative.

■ 17. Section 32.5999 is amended by revising paragraphs (b)(4), (c) and (g) as follows:

§ 32.5999 General.

* * * * *

(b) * * *

(4) In addition to the activities specified in paragraph (b)(3) of this section, the appropriate Plant Specific Operations Expense accounts shall include the cost of personnel whose principal job is the operation of plant equipment, such as general purpose computer operators, aircraft pilots, chauffeurs and shuttle bus drivers. However, when the operation of equipment is performed as part of other identifiable functions (such as the use of office equipment, capital tools or motor vehicles), the operators' cost shall be charged to accounts appropriate for those functions. (For costs of operator services personnel, see Accounts 6621, Call completion services, and 6622, Number services, and for costs of test board personnel see Account 6533.)

(c) *Plant nonspecific operations expense.* The Plant Nonspecific Operations Expense accounts shall include expenses related to property held for future telecommunications use, provisioning expenses, network operations expenses, and depreciation and amortization expenses. Accounts in this group (except for Account 6540, Access expense, and Accounts 6560 through 6565) shall include the costs of performing activities described in narratives for individual accounts. These costs shall also include the costs of supervision and office support of these activities.

* * * * *

(g) Expense accounts to be maintained.

Account title	Class A account	Class B account
Income Statement Accounts		
Plant specific operations expense:		
Network support expense		6110
Motor vehicle expense	6112	
Aircraft expense	6113	
Tools and other work equipment expense	6114	
General support expenses		6120
Land and building expenses	6121	
Furniture and artworks expense	6122	
Office equipment expense	6123	
General purpose computers expense	6124	
Central office switching expense		6210
Non-digital switching expense	6211	
Digital electronic switching expense	6212	
Operators system expense	6220	6220
Central office transmission expenses		6230
Radio systems expense	6231	
Circuit equipment expense	6232	
Information origination/termination expense		6310
Station apparatus expense	6311	
Large private branch exchange expense	6341	
Public telephone terminal equipment expense	6351	
Other terminal equipment expense	6362	
Cable and wire facilities expenses		6410
Poles expense	6411	
Aerial cable expense	6421	
Underground cable expense	6422	
Buried cable expense	6423	
Submarine and deep sea cable expense	6424	
Intrabuilding network cable expense	6426	
Aerial wire expense	6431	
Conduit systems expense	6441	
Plant nonspecific operations expense:		
Other property plant and equipment expenses		6510
Property held for future telecommunications use expense	6511	
Provisioning expense	6512	
Network operations expenses		6530
Power expense	6531	
Network administration expense	6532	
Testing expense	6533	
Plant operations administration expense	6534	
Engineering expense	6535	
Access expense	6540	6540
Depreciation and amortization expenses		6560
Depreciation expense—telecommunications plant in service	6561	
Depreciation expense—property held for future telecommunications use	6562	

Account title	Class A account	Class B account
Amortization expense—tangible	6563	
Amortization expense—intangible	6564	
Amortization expense—other	6565	
Customer operations expense:		
Marketing		6610
Product management and sales	6611	
Product advertising	6613	
Services		6620
Call completion services	6621	
Number services	6622	
Customer services	6623	
Corporate operations expense:		
General and administrative	6720	6720
Provision for uncollectible notes receivable	6790	6790

■ 18. Section 32.6560 is revised to read as follows:

§ 32.6560 Depreciation and amortization expenses.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6561 through 6565.

■ 19. Add § 32.6562 to read as follows:

§ 32.6562 Depreciation expense—property held for future telecommunications use.

This account shall include the depreciation expense of capitalized costs included in Account 2002, Property held for future telecommunications use.

■ 20. Section 32.6620 is revised as follows:

§ 32.6620 Services.

Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6621 through 6623.

PART 51—INTERCONNECTION

■ 21. The authority citation for part 51 continues to read:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 note, unless otherwise noted.

■ 22. Section 51.609 is amended by revising paragraphs (c)(1), (c)(3), and (d) to read as follows:

§ 51.609 Determination of avoided retail costs.

* * * * *

(c) * * *

(1) Include as direct costs, the costs recorded in USOA accounts 6611 (product management and sales), 6613 (product advertising), 6621 (call completion services), 6622, (number services), and 6623 (customer services) (§§ 32.6611, 32.6613, 32.6621, 32.6622, and 32.6623 of this chapter);

* * * * *

(3) Not include plant-specific expenses and plant non-specific expenses, other than general support expenses (§§ 32.6112–6114, 32.6211–6565 of this chapter).

(d) Costs included in accounts 6611, 6613 and 6621–6623 described in paragraph (c) of this section (§§ 32.6611, 32.6613, and 32.6621–6623 of this chapter) may be included in wholesale rates only to the extent that the incumbent LEC proves to a state commission that specific costs in these accounts will be incurred and are not avoidable with respect to services sold at wholesale, or that specific costs in these accounts are not included in the retail prices of resold services. Costs included in accounts 6112–6114 and 6211–6565 described in paragraph (c) of this section (§§ 32.6112–32.6114, 32.6211–32.6565 of this chapter) may be treated as avoided retail costs, and excluded from wholesale rates, only to the extent that a party proves to a state commission that specific costs in these accounts can reasonably be avoided when an incumbent LEC provides a telecommunications service for resale to a requesting carrier.

* * * * *

PART 65—INTERSTATE RATE OF RETURN PRESCRIPTION PROCEDURES AND METHODOLOGIES

■ 23. The authority citation for part 65 continues to read:

Authority: Secs. 4, 201, 202, 203, 205, 218, 403, 48 Stat., 1066, 1072, 1077, 1094, as amended, 47 U.S.C. 151, 154, 201, 202, 203, 204, 205, 218, 219, 220, 403.

■ 24. Section 65.450 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 65.450 Net income.

(a) Net income shall consist of all revenues derived from the provision of interstate telecommunications services regulated by this Commission less expenses recognized by the Commission as necessary to the provision of these services. The calculation of expenses entering into the determination of net income shall include the interstate portion of plant specific operations (Accounts 6110–6441), plant nonspecific operations (Accounts 6510–6565), customer operations (Accounts 6610–6623), corporate operations (Accounts 6720–6790), other operating income and expense (Account 7100), and operating taxes (Accounts 7200–7250), except to the extent this Commission specifically provides to the contrary.

(b) * * *

(1) Gains related to property sold to others and leased back under capital leases for use in telecommunications services shall be recorded in Account 4300, Other long-term liabilities and deferred credits, and credited to Account 6563, Amortization expense—tangible, over the amortization period established for the capital lease;

* * * * *

[FR Doc. 04–18934 Filed 9–1–04; 8:45 am]
BILLING CODE 6712–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1871

RIN 2700–AD02

Removal of MidRange Procurement Procedures

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule revises the NASA FAR Supplement (NFS) by

removing Part 1871, MidRange Procurement Procedures. The FAR provides contracting officers with broad discretion and flexibility in the source selection process in order to achieve a best value outcome. A separate NASA MidRange process is no longer necessary.

EFFECTIVE DATE: September 2, 2004.

ADDRESSES: Interested parties may submit comments, identified by RIN number 2700–AD02, via the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments. Comments may also be submitted to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments can also be submitted by e-mail to: *Celeste.M.Dalton@nasa.gov*.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358–1645; e-mail: *Celeste.M.Dalton@nasa.gov*.

SUPPLEMENTARY INFORMATION: The Office of Federal Procurement Policy approved a test of NASA's MidRange Procurement Procedures in 1993. The objective of the test was to reduce the leadtime and effort associated with the conduct of acquisitions between $25,000 (the small purchase threshold at that time) and $500,000. OFPP test approval was needed to utilize electronic commerce to publicize and post solicitations along with a waiver to the publicizing/response times required by the FAR. Subsequent changes increased the threshold to $10,000,000 for non-commercial items and $25,000,000 for commercial items. The test portion of MidRange procedures (waiver of publicizing/response times) expired in 1997. The MidRange procedures are no longer unique and all the source selection methodologies under NFS Part 1871, MidRange, are directly traceable to FAR Parts 12, 14, and 15. Therefore, retaining a separate NASA MidRange process is no longer necessary.

A. Regulatory Flexibility Act

Removing Part 1871—Midrange Procurement Procedures does not have an impact beyond the internal operating procedures of NASA. The FAR provides contracting officers with broad discretion and the flexibility in the source selection process needed to achieve a best value outcome. The current Midrange Procurement procedure is now redundant of the flexibilities provided by the FAR. Therefore, this final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comment is not required. However, NASA will consider comments from small entities concerning the affected NFS Part 1871 in accordance with 5 U.S.C. 610.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 1871

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

■ Accordingly, under the authority of The National Aeronautics and Space Act of 1958 (Pub. L. 85–568; 42 U.S.C. 2451 *et seq.*), remove 48 CFR Part 1871.

[FR Doc. 04–20074 Filed 9–1–04; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031125292–4061–02; I.D. 082704D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 30, 2004, through 1200 hrs, A.l.t., October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

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

The C season allowance of the pollock TAC in Statistical Area 610 of the GOA is 7,717 metric tons (mt) as established by the final 2004 harvest specifications for groundfish of the GOA (69 FR 9261, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS, has determined that the C season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,667 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

After the effective date of this closure the maximum retainable amounts at 50 CFR 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the C season pollock TAC in Statistical Area 610.

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

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

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

Dated: August 27, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–20053 Filed 8–30–04; 2:21 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 170
Thursday, September 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–18034; Directorate Identifier 2004–CE–18–AD]

RIN 2120–AA64

Airworthiness Directives; Letecké Závody Model L 23 Super-Blanik Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Letecké Závody Model L 23 Super-Blanik sailplanes. This proposed AD would require you to do a repetitive, non-destructive magnetic test (NDMT) inspection on the elevator rocker lever (part number A 730 201 N) for cracks. If cracks are found, this proposed AD would also require you to return the part to the manufacturer. The manufacturer will send you a replacement part for installation. Installing the improved replacement part would terminate the need for the repetitive inspections. This proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. We are issuing this proposed AD to prevent failure of the elevator rocker lever caused by cracks that resulted from a defect in prior manufacturing procedures. Such failure could lead to loss of control of the sailplane.

DATES: We must receive any comments on this proposed AD by October 4, 2004.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* (202) 493–2251.
- *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.

You may get the service information identified in this proposed AD from Letecké Závody a.s., 686 04 Kunovice 1177, Czech Republic.

You may view the comments to this proposed AD in the AD docket on the Internet at http://dms.dot.gov.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, "FAA–2004–18034; Directorate Identifier 2004–CE–18–AD" at the beginning of your comments. We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). This is docket number FAA–2004–18034. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified FAA that an unsafe condition may exist on certain Letecké Závody Model L 23 Super-Blanik sailplanes. The CAA reports that, during an accident investigation, cracks were found on the elevator rocker lever.

The manufacturer has identified a problem with its quality control inspection procedures during the production of the original elevator rocker lever part prior to January 2004. Micro-cracks or voids were not detected when the parts left production and were installed on the affected sailplanes. These discrepancies may cause fatigue failure of the elevator rocker lever.

In January 2004, the manufacturer changed its manufacturing process and is currently replacing any existing defective elevator rocker levers within the specified affected sailplanes.

What is the potential impact if FAA took no action? If not detected and corrected, cracks in the elevator rocker lever could cause the lever to fail. Such

failure could result in loss of control of the sailplane.

Is there service information that applies to this subject? Letechké Závody has issued Mandatory Bulletin MB No.: L23/48a, not dated.

What are the provisions of this service information? The service bulletin includes procedures for:

—Doing a non-destructive magnetic test inspection on the elevator rocker lever (part number A 730 201 N) for cracks; and

—Returning all cracked elevator rocker levers to the manufacturer to get a replacement part for installation.

What action did the CAA take? The CAA classified this service bulletin as mandatory and issued Czech Republic AD Number CAA–AD–T–005/2004, dated January 16, 2004, to ensure the continued airworthiness of these sailplanes in the Czech Republic.

Did the CAA inform the United States under the bilateral airworthiness agreement? These Letecké Závody Model L 23 Super-Blanik sailplanes are manufactured in the Czech Republic and are type-certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Under this bilateral airworthiness agreement, the CAA has kept us informed of the situation described above.

FAA's Determination and Requirements of This Proposed AD

What has FAA decided? We have examined the CAA's findings, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described previously is likely to exist or develop on other Letecké Závody Model L 23 Super-Blanik sailplanes of the same type design that are registered in the United States, we are proposing AD action to prevent failure of the elevator rocker lever caused by cracks. This failure could lead to loss of control of the sailplane.

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

What is the difference between this proposed AD and the CAA AD? The CAA AD requires doing the initial inspection prior to further flight after the effective date of the AD. We propose a requirement that you do the initial inspection within the next 25 hours time-in-service (TIS) after the effective date of this proposed AD.

We do not have justification to require this action prior to further flight. We use compliance times such as this when we have identified an urgent safety of flight situation. We believe that 25 hours TIS will give the owners or operators of the affected sailplanes enough time to have the proposed actions required by this AD done without compromising the safety of the sailplanes.

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

Costs of Compliance

How many sailplanes would this proposed AD impact? We estimate that this proposed AD affects 103 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the proposed inspections:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
2 workhours × $65 per hour = $130	Not applicable	$130	$130 × 103 = $13,390

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspections. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per sailplane
2 workhours × $65 = $130	Parts provided by the manufacturer at no cost	$130 × 103 = $13,390

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2004–CE–18–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

Letecké Závody: Docket No. FAA–2004–18034; Directorate Identifier 2004–CE–18–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by October 4, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Model L 23 Super-Blanik sailplanes, all serial numbers up to and including 039019, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. We are issuing this AD to prevent fatigue failure of the elevator rocker lever. This failure could lead to loss of control of the sailplane.

What Must I Do to Address This Problem?

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

Actions	Compliance	Procedures
(1) Do a non-destructive magnetic test (NDMT) inspection on the elevator rocker lever (part number A 730 201 A) for cracks and deficiencies.	Initially inspect within the next 25 hours time-in-service (TIS) after the effective date of this AD. If no cracks or deficiencies are found, reinstall and respectively inspect thereafter at intervals not to exceed 100 hours TIS until the replacement in paragraph (e)(2) of this AD is done. The replacement in paragraph (e)(2) of this AD is done. The replacement in paragraph (e)(2) of this AD is the terminating action for the repetive inspection requirements in this AD.	Follow the work procedures in LETECKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a, not dated.
(2) If cracks are found during any inspection required in paragraph (e)(1) of this AD, send the cracked part and a report of the inspection that contains the information about the position and size of cracks, the serial number of the sailplane, and the total number of hours TIS since new to LETECKÉ ZÁVODY at the address specified in paragraph (g) of this AD. (i) The manufacturer will send you a replacement part for installation. (ii) The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB Control Number 2120–0056. (3) You may terminate the repetitive inspections required in paragraph (e)(1) of this AD by: (i) Replacing the elevator rocker lever required in with one obtained from the manufacturer at the address specified in paragraph (g) of this AD; and (ii) Prior to installing the new part, place a permanent (paint) blue dot approximately 0.25 inches in diameter in an open location on the elevator rocker lever.	Return the cracked elevator rocker lever to the manufacturer and install the replacement part prior to further flight after the inspection in which cracks are found. Prior to installing the new part, place a permanent (paint) blue dot approximately 0.25 inches in diameter in an open location on the elevator rocker lever. Installing the replacement part received from the manufacturer is the terminating action for the repetitive inspection requirements in paragraph (e)(1) of this AD.	Follow the work procedures in LETECKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a, not dated.
(4) If you have already replaced the defective elevator rocker lever with a manufacturer-approved lever that was produced in January 2004 or later, following LETECKÉ ZÁVODY Mandatory Bulletin MB No.: L23/48a, not dated, you may take credit for compliance with this AD by having an appropriately-rated mechanic do the following: (i) Make a log book entry showing compliance with this AD; and (ii) Place a permanent (paint) blue dot approximately 0.25 inches in diameter in an open location on the newly installed elevator rocker lever.	As of the effective date of this AD.	Not applicable.

May I Request an Alternative Method of Compliance?

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

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from Letecké Závody a.s., 686 04 Kunovice 1177, Czech Republic. You may view the AD docket at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.*

Is There Other Information That Relates to This Subject?

(h) Czech Republic AD Number CAA–AD–T–005/2004, dated January 16, 2004, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on August 25, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20017 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–246–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes. That proposed AD would have required repetitive inspections for evidence of corrosion and sheared attachment bolts of the sensor struts at flap track 4 on the left and right sides of the airplane; related investigative and corrective actions as necessary; and a terminating action for the repetitive inspections, by requiring the eventual replacement of all sensor struts with new, improved sensor struts that are less sensitive to corrosion. This new action revises the proposed AD by changing the threshold for the initial inspection and reducing the compliance time for the terminating action. The actions specified by this new proposed AD are intended to prevent loss of the sensor strut function, resulting in the inability to detect flap drive disconnection at flap track stations 4 and 5, which could lead to separation of the outboard flap from the airplane, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 27, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–246–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–246–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–246–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 25, 2004 (69 FR 15268). That NPRM would have required repetitive inspections for evidence of corrosion and sheared attachment bolts of the sensor struts at flap track 4 on the left and right sides of the airplane; related investigative and corrective actions as necessary; and a terminating action for the repetitive inspections, by requiring the eventual replacement of all sensor struts with new, improved sensor struts that are less sensitive to corrosion. That NPRM was prompted by reports of corroded sensor struts and sheared attachment bolts at flap track 4 on Model A330 series airplanes. That condition, if not corrected, could result in loss of the sensor strut function, resulting in the inability to detect flap drive disconnection at flap track stations 4 and 5, which could lead to separation of the outboard flap from the airplane, and consequent reduced controllability of the airplane.

Comments

Due consideration has been given to the comments received from a single commenter in response to the original NPRM.

Request To Change Compliance Time for Inspection

The commenter notes that the French airworthiness directives mandate a compliance time prior to the accumulation of 18 months after the airplane's entry into service, or within 2,800 flight hours after the effective date of the French airworthiness directive, whichever is later. The original NPRM

has a compliance time of within 2,800 flight hours or 18 months after the effective date of the AD, whichever is later. The commenter states that the compliance time in the original NPRM should be changed to match that of the French airworthiness directives.

We partially agree with the commenter's request to change the compliance time. Although the original NPRM referenced "18 months after the effective date of the AD" instead of "18 months in service," this difference does not affect airplanes on the current U.S. Registry because all affected N-registered airplanes have already been in service for more than 18 months. However, this difference may affect airplanes imported into the United States, so the compliance time in paragraph (a) of this supplemental NPRM has been changed. Because "18 months after entry into service" may be interpreted differently by each operator, we use the following terminology: "Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first." We find that this terminology is generally understood within the industry and records will always exist that establish these dates with certainty. We also added a new grace period of within 6 months after the effective date of the AD. As a result of these changes we have moved the compliance threshold and grace period for the actions required by paragraph (a) to subparagraphs (a)(1), (a)(2), and (a)(3) of this supplemental NPRM.

Request To Change Compliance Time for Terminating Action

The commenter notes that the French airworthiness directives specify that the terminating action must be completed before June 30, 2006. This date is 30 months after the effective dates of the parallel French airworthiness directives. The original NPRM has a compliance time of 42 months after the effective date of the AD, which will be in the year 2007. We infer that the commenter is requesting that the compliance time of the original NPRM be changed so it is the same as the parallel French airworthiness directives.

We partially agree with the commenter's request to revise the compliance time of the terminating action. The compliance time for this supplemental NPRM will be changed to 30 months after the effective date of this AD; however, this compliance time will still exceed the June 30, 2006, date specified in the French airworthiness directives.

Request To Change Applicability Statement

The commenter, the manufacturer, notes that the appearance of the applicability of the original NPRM is different from the parallel French airworthiness directives. The French airworthiness directives list the affected airplanes by specific model dash numbers (*i.e.*, A330 aircraft, model –202, –223, –243, –301, etc.) and the original NPRM lists the affected airplanes as Airbus Model A330, A340–200, and A340–300 series airplanes. We infer that the commenter is requesting to change the applicability of the original NPRM so it is in the same format as the French airworthiness directives.

We do not agree with the commenter's request to change the applicability statement so it is in the same format as the French airworthiness directives. To avoid accidentally omitting airplane models that are listed on the U.S. type certificate data sheet (TCDS), we usually identify airplane series instead of individual model dash numbers in the applicability statement of our AD. The U.S. TCDS for the Model A330 includes Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes. The U.S. TCDS for the Model A340 includes Model A340–200 series, comprising A340–211, –212, and –213 airplanes; and Model A340–300 series, comprising A340–311, –312, and –313 airplanes. Although the applicability statement of this supplemental NPRM does not look the same as the applicability of the French airworthiness directives, the applicability of this supplemental NPRM includes the same specific model dash numbers and the same exceptions as the French airworthiness directives. No change to the supplemental NPRM is necessary in this regard.

Request To Include Reporting Information to the Manufacturer

The commenter states that the original NPRM does not require operators to report inspection results to the manufacturer. The commenter also states that if an operator reports a structural finding, the manufacturer will provide repair information based upon analysis performed on data collected from other reports, or will make a specific recommendation for that particular finding. This would avoid situations where repairs are made outside of the technical responsibility of the manufacturer. We infer that the commenter requests that the original NPRM include a requirement for operators to report inspection findings to the manufacturer.

We do not agree with the commenter's request to include a reporting requirement. The supplemental NPRM requires any cracking or deformation to be repaired prior to further flight in a manner approved by the FAA or the Direction Générale de l'Aviation Civile, the airworthiness authority for France (or its delegated agent). Operators do not need to report findings to the manufacturer in order to obtain repair information. No change to the supplemental NPRM is necessary.

Change to Supplemental NPRM

The applicability statement of this supplemental NPRM has been changed to delete the exclusion of airplanes that have accomplished certain Airbus service bulletins. The applicability of the original NPRM excluded airplanes that accomplished Airbus Service Bulletin A330–27–3092, dated February 14, 2003, in-service; or Airbus Service Bulletin A340–27–4098, dated February 14, 2004, in-service. We have not excluded those airplanes in the applicability of this supplemental NPRM. Paragraph (d) of this supplemental NPRM would require accomplishment of the actions specified in those service bulletins, unless the actions were accomplished previously. This would ensure that the actions are accomplished on all affected airplanes. Operators must continue to operate airplanes in the configuration required by this supplemental NPRM unless an alternative method of compliance is approved.

Conclusion

Since certain changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

We estimate that approximately 9 Airbus Model A330 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed repetitive inspections, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspections on U.S. operators is estimated to be $585, or $65 per airplane, per inspection cycle.

If required, replacement of discrepant sensor struts and attachment bolts would take approximately 3 work hours, at an average labor rate of $65 per work hour. The cost for required parts would be nominal. Based on these figures, the cost impact of the proposed replacement

of sensor struts would be $195 per airplane.

It would take approximately 2 work hours to accomplish the proposed installation of the new, improved sensor struts, at an average labor rate of $65 per work hour. The cost of required parts would be $8,400. Based on these figures, the cost impact of the proposed installation on U.S. operators is estimated to be $76,770, or $8,530 per airplane.

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

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would take approximately 1 work hour per airplane to accomplish the inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspections for Model A340 operators would be $65 per airplane, per inspection cycle.

Should an Airbus Model A340 series airplane be imported and placed on the U.S. Register in the future and have affected sensor struts and attachment bolts replaced, it would take approximately 3 work hours, at an average labor rate of $65 per work hour. The cost for required parts would be nominal. Based on these figures, the cost impact of the replacement of sensor struts for Model A340 operators would be $195 per airplane.

Should an Airbus Model A340 series airplane be imported and placed on the U.S. Register in the future and have new, improved sensor struts installed, it would take approximately 2 work hours, at an average labor rate of $65 per work hour. The cost for required parts would be $8,400. Based on these figures, the cost impact of the proposed installation for Model A340 operators would be $8,530 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–246–AD.

Applicability: Model A330 series airplanes; and Model A340–200 and A340–300 series airplanes; certificated in any category; except those airplanes on which Airbus Modification 48579 was incorporated in production.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the sensor strut function, resulting in the inability to detect flap drive disconnection at flap track stations 4 and 5, which could lead to separation of the outboard flap from the airplane, and consequent reduced controllability of the airplane, accomplish the following:

Inspection

(a) At the latest of the times specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD: Do an inspection, by applying hand force to the piston of the sensor struts and moving the sensor struts longitudinally, for evidence of corrosion in the sensor struts at flap track 4, on the left and right sides of the airplane, by doing all the applicable actions specified in the Accomplishment Instructions of Airbus Service Bulletin A330–27–3091, Revision 03 (for Model A330 series airplanes); or Service Bulletin A340–27–4097, Revision 03 (for Model A340–200 and –300 series airplanes); both dated January 16, 2004; as applicable. If the longitudinal travel range is 60.0mm (2.36 inches) or more: Repeat the inspection thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

(1) Within 18 months since the date of issuance of the original Airworthiness Certificate or the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.

(2) Within 2,800 flight hours after the effective date of this AD.

(3) Within 6 months after the effective date of this AD.

Related Investigative and Corrective Actions

(b) If the result of the inspection required by paragraph (a) of this AD is a longitudinal travel range of less than 60.0mm (2.36 inches): Before further flight, remove all affected sensor struts, and measure the axial force of any affected sensor struts, by doing all of the applicable actions per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3091, Revision 03 (for Model A330 series airplanes); or Service Bulletin A340–27–4097, Revision 03 (for Model A340–200 and –300 series airplanes); both dated January 16, 2004; as applicable.

(1) If the axial force F is less than or equal to 50 daN (112.41 lbf.): Clean and re-install the sensor struts per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

(2) If the axial force F is more than 50 daN (112.41 lbf.): Before further flight, do a detailed inspection for cracking and/or deformation of the adjacent structure and attachment parts per the Accomplishment Instructions of the applicable service bulletin.

(i) If no cracking and/or deformation is found: Within 25 flight cycles after the inspection required by paragraph (b) of this AD, replace the sensor struts and attachment bolts per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

(ii) If any cracking and/or deformation is found: Before further flight, repair any cracked or deformed structure and attachment parts per a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent); and replace the sensor struts and attachment bolts per the Accomplishment Instructions of the applicable service bulletin. Repeat the inspection required by paragraph (a) of this

AD thereafter at intervals not to exceed 18 months, until the requirements of paragraph (d) of this AD are accomplished.

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

Concurrent Requirements

(c) The actions required by paragraphs (a) and (b) of this AD must be done before or concurrently with the requirements of paragraph (d) of this AD. Replacement of any sensor strut with a sensor strut having part number (P/N) F5757492600000, during accomplishment of paragraph (b) of this AD, is acceptable for compliance with paragraph (d) of this AD, for that strut.

Terminating Action

(d) Within 30 months after the effective date of this AD: Replace all existing sensor struts with new, improved sensor struts having P/N F5757492600000 per the Accomplishment Instructions of Airbus Service Bulletin A330–27–3092 (for Model A330 series airplanes); or A340–27–4098 (for Model A340–200 and –300 series airplanes); both dated February 14, 2003; as applicable. Accomplishment of this replacement constitutes terminating action for the repetitive inspections required by paragraphs (a) and (b) of this AD.

Actions Done per Previous Issue of Service Bulletins

(e) Accomplishment of the specified actions before the effective date of this AD per Airbus Service Bulletin A330–27–3091, dated February 2, 2002, Revision 01, dated May 17, 2002, or Revision 02, dated September 5, 2002; or A340–27–4097, dated February 6, 2002, Revision 01, dated May 17, 2002, or Revision 02, dated September 5, 2002; as applicable; is considered acceptable for compliance with the applicable requirements of paragraphs (a) and (b) of this AD.

Submission of Information Not Required

(f) Although the service bulletins specify to send inspection results to the manufacturer, that action is not required by this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directives F–2003–425 and F–2003–426, both dated December 10, 2003.

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

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–20016 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17608; Airspace Docket No. 04–AAL–07]

Proposed Establishment of Class E Airspace; Teller, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error under the airspace description contained in a NPRM that was published in the **Federal Register** on Wednesday, June 9, 2004 (69 FR 32291). The NPRM proposed the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Teller, AK.

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

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 04–12970 published on Wednesday, June 9, 2004 (69 FR 32291), proposed to establish Class E airspace at Teller, AK. The coordinate describing the center point of airspace upward from 1,200 ft. above the surface was incorrect. This action corrects that error.

Accordingly, pursuant to the authority delegated to me, the coordinate describing the center point of airspace upward from 1,200 ft. above the surface as published in the **Federal Register** Wednesday, June 9, 2004 (69 FR 32291), (FR Doc 04–12970), is corrected as follows:

§ 71.1 [Amended]

1 On page 32293, Column 1, under the airspace description, in the sixth line, "166°53′16″ N" should read, "165°53′16″ N".

Issued in Anchorage, AK, on August 23, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–20061 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule on Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Notice announcing publication of Staff Report on the Franchise Rule.

SUMMARY: The Federal Trade Commission ("Commission") announces the publication of the Staff Report on the Franchise Rule. The Staff Report sets forth the staff's recommendations to the Commission on the various proposed amendments to the Franchise Rule.

DATES: Comments on the Staff Report must be submitted on or before November 12, 2004.

ADDRESSES: Interested persons are invited to submit written comments on the Staff Report. Comments should refer to "Franchise Rule Staff Report, R511003" to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159 (Annex W), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential." The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments can be filed in electronic form by clicking on the following weblink: *https://secure.commentworks.com/ftc-franchisereport/* and following the instructions on the web-based form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the *https://secure.commentworks.com/ftc-franchisereport/* weblink. If this notice

appears at *http://www.regulations.gov,* you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Web site at *http://www.ftc.gov/opa/2004/08/franchiserule.htm* to read the Staff Report and the news release describing it, and the FTC Web site at *http://www.ftc.gov/opa/1999/10/franchise-review3.htm* to read the Notice of Proposed Rulemaking and the news release describing this proposed Rule.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Toporoff, (202) 326–3135, Division of Marketing Practices, Room H–238, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Franchise Rule requires the pre-sale disclosure of material information to prospective franchisees about the franchisor, the franchised business, and the terms and conditions that govern the franchise relationship. The Commission has engaged in an ongoing effort to amend the Franchise Rule, starting with a review of the Franchise Rule in 1995,[1] followed by the publication of an Advanced Notice of Proposed Rulemaking in 1997,[2] and the publication of a Notice of Proposed Rulemaking in 1999.[3]

Pursuant to the Commission's Rules of Practice, and the rulemaking procedures specified earlier in the Notice of Proposed Rulemaking, the Commission now announces the availability of the Staff Report on the Franchise Rule. The Staff Report summarizes the rulemaking record to date, analyzes the various alternatives, and sets forth the staff's recommendations to the Commission on the revised Rule. The Staff Report has not been reviewed or adopted by the Commission. The Staff Report is available from the Commission's Public Reference Room, Room H–130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. It is also available on the FTC's Web site, at *http://www.ftc.gov,* by searching on the phrase (with quotation marks): "Staff Report + Franchise".

The Commission invites interested parties to submit written data, views, and arguments on the recommendations announced in the Staff Report, by following the instructions in the **ADDRESSES** section of this Notice. Comments, however, are to be limited to those matters that are already part of the rulemaking record. Further, comments previously submitted in the ongoing rulemaking procedure are already part of the rulemaking record and need not be repeated. Written communications and summaries or transcripts of any oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will also be placed on the public record. *See* 16 CFR 1.26(b)(5).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Upon the completion of the comment period, the staff will make final recommendations to the Commission about the Rule. Assuming the Commission adopts the proposed revised Rule, it will publish another **Federal Register** notice in the future with the final text of the revised Rule, a Statement of Basis and Purpose on the Rule, and an announcement of when the revised Rule will become effective.

List of Subjects in 16 CFR Part 436

Advertising, Business and industry, Franchising, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–19969 Filed 9–1–04; 8:45 am]

BILLING CODE 6750–01–P

[1] 60 FR 17656 (Apr. 7, 1995).

[2] 62 FR 9115 (Feb. 28, 1997).

[3] 64 FR 57294 (Oct. 22, 1999).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 2004N–0214]

Public Information Regulations; Companion Document to Direct Final Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its public information regulations to implement more comprehensively the exemptions contained in the Freedom of Information Act (FOIA). This action incorporates exemptions one, two, and three of FOIA into FDA's public information regulations. Exemption one applies to information that is classified in the interest of national defense or foreign policy. Exemption two applies to records that are related solely to an agency's internal personnel rules and practices. Exemption three incorporates the various nondisclosure provisions that are contained in other Federal statutes. This proposed rule is a companion to the direct final final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments by November 16, 2004.

ADDRESSES: You may submit comments, identified by [Docket No. 2004N–0214], by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

Agency Web site: *http://www.fda.gov/dockets/ecomments.* Follow the instructions for submitting comments on the agency Web site.

E-mail: *fdadockets@oc.fda.gov.* Include [Docket No. 2004N–0214] in the subject line of your e-mail message.

FAX: 301–827–6870.

Mail/Hand delivery/Courier [For paper, disk, or CD-ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and

Docket No. 2004N–0214 for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/dockets/ecomments*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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

FOR FURTHER INFORMATION CONTACT: Betty B. Dorsey, Division of Freedom of Information (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6567.

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and the direct final rule are substantively identical. This companion proposed rule will provide the procedural framework to finalize the rule in the event the direct final rule receives significant adverse comment and is withdrawn. The comment period for the companion proposed rule runs concurrently with the comment period of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and the agency anticipates that it will receive no significant adverse comments. A detailed discussion of this rule is set forth in the preamble of the direct final rule. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document before the date of the direct final rule, to confirm the effetive date of the direct final rule. If FDA receives significant adverse comments, the agency will withdraw the direct final rule. FDA will proceed to consider all of the comments received using the usual notice-and-comment procedures.

FDA is proposing to amend its public information regulations to incorporate exemptions one, two, and three of FOIA (5 U.S.C. 552). FOIA provides that all Federal agency records shall be made available to the public upon request, except to the extent those records are protected from public disclosure by one of nine exemptions (5 U.S.C. 552(b)) or one of three special law enforcement record exclusions (5 U.S.C. 552(c)). FDA originally issued its public information regulations implementing FOIA in 1974. As noted at the time, FDA's 1974 regulations explicitly addressed four of the nine FOIA exemptions that were then perceived to be of particular importance to the agency, those relating to trade secrets, internal memoranda, personal privacy, and investigatory files (39 FR 44602, December 24, 1974) . FDA now finds it necessary to address exemption one (5 U.S.C. 552(b)(1)), given the President's designation of the Secretary of Health and Human Services to classify information under Executive Order 12958 (66 FR 64347, December 12, 2001). Because exemption two (5 U.S.C. 552(b)(2)) applies to, among other types of records, internal matters whose disclosure would risk circumvention of a legal requirement, this exemption is of fundamental importance to homeland security in light of recent terrorism events and heightened security awareness. In addition, FDA now finds that exemption three (5 U.S.C. 552(b)(3)), which incorporates the various nondisclosure provisions that are contained in other Federal statutes, is becoming increasingly important to the agency. As such, FDA is proposing to amend subpart D of its public information regulations in 21 CFR part 20 to incorporate these three exemptions.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(h) and (i) 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.

IV. Federalism

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

V. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because this proposed rule simply incorporates three existing FOIA exemptions, the agency certifies that it will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million, adjusted annually for inflation. As noted previously, we find that this proposed rule would not have an effect of this magnitude on the economy.

VI. Paperwork Reduction Act of 1995

The proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VII. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any written comments, except that individuals may submit one paper copy. Comments are to be identified with the

docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 20 be amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552; 18 U.S.C. 1905; 19 U.S.C. 2531–2582; 21 U.S.C. 321–393, 1401–1403; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1.

2. Section 20.65 is added to read as follows:

§ 20.65 National defense and foreign policy.

(a) Records or information may be withheld from public disclosure if they are:

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy; and

(2) In fact properly classified under such Executive order.

(b) [Reserved]

3. Section 20.66 is added to read as follows:

§ 20.66 Internal personnel rules and practices.

Records or information may be withheld from public disclosure if they are related solely to the internal personnel rules and practices of the Food and Drug Administration (FDA). Under this exemption, FDA may withhold records or information about routine internal agency practices and procedures. Under this exemption, the agency may also withhold internal records whose release would help some persons circumvent the law.

4. Section 20.67 is added to read as follows:

§ 20.67 Records exempted by other statutes.

Records or information may be withheld from public disclosure if a statute specifically allows the Food and Drug Administration (FDA) to withhold them. FDA may use another statute to justify withholding records and information only if it absolutely prohibits disclosure, sets forth criteria to guide our decision on releasing material, or identifies particular types of matters to be withheld.

Dated: August 24, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19995 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–150562–03]

RIN 1545–BC67

Section 1045 Application to Partnerships; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change in date of public hearing; extension of time to submit outlines of oral comments.

SUMMARY: This document changes the date of the public hearing on the notice of proposed rulemaking that relates to the application of section 1045 of the Internal Revenue Code (Code) to partnerships and their partners. It also extends the time to submit outlines of oral comments for the hearing.

DATES: The public hearing originally scheduled for November 2, 2004, at 10 a.m. will be held November 9, 2004, at 10 a.m. Additional outlines of oral comments must be received by October 19, 2004.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–150562–03), Room 5203, Internal Revenue Service, PO Box 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–150562–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the IRS Internet site at *http://www.irs.gov/regs* or via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS and REG–150562–03).

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Charlotte Chyr, (202) 622–3070, or Jian H. Grant, (202) 622–3050; concerning submissions, the hearing, and/or placement on the building access list to attend the hearing, Sonya M. Cruse of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration), at (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Backgrounds

A notice of proposed rulemaking and notice of public hearing , appearing in the **Federal Register** on Thursday, July 15, 2004, (69 FR 42370), announced that a public hearing on the notice of proposed rulemaking relating to the application of section 1045 of the Internal Revenue Code (Code) to partnerships and their partners would be held on November 2, 2004, in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has been changed to November 9, 2004, at 10 a.m. in the IRS Auditorium. Outlines of oral comments must be received by October 19, 2004.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel, (Procedures and Administration).

[FR Doc. 04–20056 Filed 9–1–04; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Periodicals Mail Enclosures With Merchandise Sent at Parcel Post or Bound Printed Matter Rates

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides standards that would allow sample copies of authorized Periodicals publications to be mailed with merchandise mailed at Parcel Post® or Bound Printed Matter rates of postage.

DATES: Comments on the proposed standards must be received on or before October 4, 2004.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at USPS Headquarters Library, 475 L'Enfant Plaza SW., Washington, DC 20260–0004.

FOR FURTHER INFORMATION CONTACT: Donald Lagasse, 202–268–7269, *Donald.T.Lagasse@usps.gov.*

SUPPLEMENTARY INFORMATION: On February 25, 2004, pursuant to 39 U.S.C. 83623, the Postal Service filed with the Postal Rate Commission a request for a decision recommending a minor mail classification change. The proposed change will permit sample copies of authorized and pending Periodicals publications to be enclosed with merchandise mailed at Parcel Post or Bound Printed Matter rates. This change was recommended by the Postal Rate Commission on July 7, 2004, and approved by the Board of Governors on July 19, 2004. The Board of Governors established October 3, 2004, as the implementation date for the change.

The proposed change will not affect any existing classification regarding eligibility (such as the subscriber percentage) for Periodicals rates. The weight of the sample publication would be included in the postage calculation to cover any additional costs in transporting slightly heavier parcels. The proposed change will benefit both publishers and the Postal Service by providing another venue for promoting publications. The proposed change also benefits customers, printers, advertisers, and all affected parties by providing an opportunity to get additional subscriptions by creating more revenue and volume.

Because advertising is not permitted in items mailed at Library Mail and Media Mail rates, enclosures of Periodicals publications sample copies are limited to enclosures in Parcel Post and Bound Printed Matter and will be charged according to the weight of the parcel.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

E Eligibility

* * * * *

E700 Package Services

E710 Basic Standards

1.0 Basic Information

1.1 Definition

[Revise the first sentence in 1.1 to read as follows:]

Package Services mail consists of mailable matter that is neither mailed nor required to be mailed as First-Class Mail nor entered as Periodicals except as permitted under 1.7 unless permitted or required by standard or as Customized MarketMail under E660.

* * *

* * * * *

[Add new section 1.7 to read as follows:]

1.7 Attachments or Enclosures of Periodicals Sample Copies

Sample copies of authorized Periodicals publications may be enclosed or attached with merchandise sent at Parcel Post or Bound Printed Matter rates. Postage at the Parcel Post or Bound Printed Matter rate is based on the combined weight of the host piece and the sample copies enclosure.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–19991 Filed 9–1–04; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Signature Confirmation Service: Elimination of Signature Waiver Option

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides a change to the *Domestic Mail Manual* (DMM™) that would eliminate the signature waiver option for Signature Confirmation™ service under DMM S919.1.10. The Postal Service™ is proposing this change because the signature waiver option is no longer necessary. Additionally, this option has caused confusion for customers.

DATES: Submit comments on or before October 4, 2004.

ADDRESSES: Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW., Room 3436, Washington, DC 20260–3436. Written comments may also be submitted via fax to (202) 268–4955. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 475 L'Enfant Plaza SW., 11th Floor North, Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Donald Lagasse, (202) 268–7269, *Donald.T.Lagasse@usps.gov.*

SUPPLEMENTARY INFORMATION: Signature Confirmation service provides Postal Service customers with information about the date and time a mailpiece was delivered and, if delivery was attempted but not successful, the date and time of the delivery attempt. A delivery record, including the recipient's signature, is maintained by the Postal Service and is available to the customer via fax, e-mail, or mail, upon request. No acceptance record is kept at the office of mailing.

Signature Confirmation service currently includes a signature waiver option that allows the sender to waive the signature requirement and accept the Postal Service delivery employee's signature and date of delivery as proof of delivery. If a customer selects the signature waiver option, the customer is provided only with the date of delivery in the delivery record. The signature waiver option is not available when Signature Confirmation service is combined with other special services.

Signature waiver was requested initially by Delivery Confirmation™ service mailers that agreed to participate in testing the Signature Confirmation service but did not want to inconvenience their customers by requiring them to sign for their items. Now that Signature Confirmation service is fully implemented and widely recognized, the signature waiver feature is no longer necessary.

By definition, Signature Confirmation service is designed to provide a signature. Including an option for waiver of the signature for this service can be confusing for customers who wonder why the Postal Service would offer a signature service where the signature could be waived.

Therefore, the Postal Service proposes to eliminate the signature waiver option for Signature Confirmation service. Customers who do not need to obtain a signature but wish to know if their mailpiece was delivered would be able to do so using Delivery Confirmation service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the

Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual,* incorporated in the *Code of Federal Regulations* (CFR). *See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

Domestic Mail Manual (DMM)

* * * * *

S SPECIAL SERVICES

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S919 Signature Confirmation

1.10 BASIC INFORMATION

* * * * *

[Delete 1.10 in its entirety.]

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if the proposal is adopted.

Neva Watson,

Attorney, Legislative.

[FR Doc. 04–19990 Filed 9–1–04; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Address Visibility on Bundles of Flat-Size and Irregular Parcel Mail

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: The Postal Service is seeking comments on a proposal that adds additional standards for the visibility of address elements and presort designation (*i.e.*, optional endorsement lines, barcoded pressure sensitive package labels, or facing slips) on bundles of flat-size and irregular parcel mailpieces. The proposed new standards apply only to bundles that are candidates for processing on automated bundle sorting equipment. The standards would require that all elements in the delivery address and the presort designation on the top piece of carrier route and presort bundles containing flat-size or irregular parcel mailpieces, either prepared in sacks or placed directly on pallets, be completely visible and readable without the need to manipulate the banding or shrinkwrap.

DATES: Submit comments on or before October 18, 2004.

ADDRESSES: Mail or deliver comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L'Enfant Plaza SW. Rm 3436, Washington, DC 20260–3436. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postal Service Headquarters Library, 11th Floor North, 475 L'Enfant Plaza SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Barry Walsh, Operational Requirements and Integration, U.S. Postal Service, (202) 268–7595; or Vicki Bosch, Mailing Standards, U.S. Postal Service, (202) 268–7277.

SUPPLEMENTARY INFORMATION: To help control mail processing costs, the Postal Service uses automated equipment whenever available to process mail. Automation reduces manual processing costs and helps maintain stable postage rates. The Postal Service has experienced significant savings through the use of automated equipment to sort letter-size and flat-size mailpieces.

To further reduce processing costs, the Postal Service started deployment of new automated package processing system (APPS) equipment to process parcels and bundles. The new APPS equipment will replace many of the small parcel and bundle sorters (SPBSs) now used in major Postal Service processing facilities. The APPS equipment has optical character recognition (OCR) capability that can read the delivery information on bundles of mail and subsequently process mail more efficiently.

Bundle address visibility and the visibility of the presort designation are essential for automated processing of presort bundles with APPS equipment. Banding, shrinkwrap, labels, or facing slips that obscure all or part of the delivery address or presort designation on the top piece of bundles lower the processing efficiency of the APPS equipment. The APPS equipment reads the address on small parcels and presort bundles by scanning the address and presort designation on the top piece, and then directing the parcels or presort bundles to the appropriate sort bin.

During automated induction, there is no opportunity for a postal employee to move strapping, flatten shrinkwrap, or otherwise manipulate bundles to assist the OCR. Bundles or parcels that cannot be read successfully on the first pass must be routed to a semiautomatic induction station, where a postal employee has a limited ability to move strapping away from the address block before re-inducting the bundle into the machine. If address recognition fails again, APPS will reject the bundle or parcel and it will have to be handled manually.

Address Visibility

Except as explained below, presort bundles prepared in sacks or on pallets must have the delivery address information visible and readable to the naked eye, including any barcoded pressure-sensitive bundle label or optional endorsement line (OEL). When plastic bands, string, or rubber bands are used to secure bundles, the mailpiece can typically be divided into four areas formed by the crossing of the banding. Placing the delivery address in one of these four areas will ensure that no part of the address is obscured by the banding material. If the address cannot be placed within an area of the mailpiece not covered by banding, then mailers may secure their bundles using clear plastic banding or clear shrinkwrap, or use an optional bundle label (OBL).

These standards do not apply to bundles of letter-size mail; bundles of First-Class flat-size mail; Customized Market Mail (CMM); bundles placed in 5-digit or 5-digit scheme (L001) sacks or pallets, carrier route or 5-digit carrier routes sacks; carrier route bundles entered at the Destination Delivery Unit (DDU); flats prepared in letter trays under DMM M033; or bundles containing an OBL.

Clear Strapping and Shrinkwrap

If plastic strapping intrudes on any element of the address or presort designation, the strapping must be clear to the degree that the address and presort designation remains visible and readable to the naked eye. The Postal Service recommends that the strapping be clear, meeting manufacturing standards of less than 70 percent haze in accordance with ASTM D1003, and not contain stripes, bands, seams, or texture marks that could obscure address characters despite a level of haze that is less than 70 percent overall. If a strap crossing intrudes on any portion of the address, the haze is measured through both straps.

The Postal Service recommends any shrinkwrap used to secure bundles show less than 70 percent haze, as defined in ASTM D1003, after

shrinkage. Any seam in the shrinkwrap (including any excess layers of the shrinkwrap) must not be located over any part of the address. There cannot be any blister, bloom, pimple, weld-mark, wrinkle, or other protrusion that would obscure any character in the address block.

The Postal Service also recommends that any bundle consisting of multiple layers of packaging materials show less than 70 percent haze through all layers combined.

Optional Bundle Label

Consultation with industry representatives indicated it may be difficult to ensure address visibility on some existing packaging lines that use shrinkwrap or strapping. In these cases, mailers may use optional bundle labels (OBLs) to ensure machine readability. OBLs must include the correct optional endorsement line for the bundle, the words "OPTIONAL BUNDLE LABEL," and the city, state, and ZIP Code of any mailpiece that could properly be in the bundle. To illustrate, if the OEL designates a 3-digit bundle, then any city, state, and ZIP Code combination within that 3-digit area will serve equally well to designate the 3-digit bundle destination. The OBL may be a permanent label or a removable label affixed to the bundle. Any removable label must remain securely attached during normal mail processing. The label cannot cover any portion of the delivery address unless it is attached to the outer shrinkwrap of the bundle. OBLs must not be affixed to the smallest surface of the bundle.

Bundle Height

The APPS equipment has cameras with OCR capability to read the address information on four sides of the bundle or parcel. These cameras are focused on only the top, bottom, left, and right sides of the bundle or parcel, and not on the leading end or trailing end of the bundle or parcel as it proceeds through the machine. The bundles or parcels are automatically inducted and routed through the machine, with the smallest surface of the bundle or parcel entering first, and will not be read by a camera if the address block of the top mailpiece is on that side. This process makes the dimension of the bundle or parcel and the location of the delivery address critical for processing on the APPS.

Currently, parcels must have the delivery address located on one of the larger sides of the parcel. Since APPS inducts the mailpiece with the smallest surface first, it is important that the addresses on bundles of flats and irregular parcels also be located on one of the larger surfaces of the bundle or have an OBL affixed to one of those larger surfaces of the bundle. Some packages of small, thick flats or irregular parcels placed in bundles of 10 or more pieces contain the delivery address on the smallest surface of the bundle. To ensure that bundles of thick flats or irregular parcels can be processed on APPS, the height of the bundle must be at least 1 inch less than the longest dimension of the individual mailpiece, unless an OBL is affixed to one of the larger surfaces of the bundle. For example, a mailpiece measuring 7 inches long, 5 inches high, and ½ inch thick must be placed in bundles less than 6 inches high unless an OBL is used.

Bundle Integrity

The above restriction on bundle height is expected to improve bundle integrity. Nevertheless, bundle integrity remains critical for carrier route and presort bundles processed on the new high-speed APPS. Bundles breaking apart can create serious operational disruptions, and the debris from broken bundles, such as banding or shrinkwrap material, may block the optics or other mechanisms on the equipment and require manual intervention to clear the debris before resuming machine operation.

Presort bundles must be able to withstand normal transit and handling without breakage or injury to employees. Even though string, twine, and rubber bands continue to be permitted at this time as an option to secure bundles, plastic strapping and shrinkwrap are the preferred methods for ensuring the integrity of bundles of irregular parcels and flat-size pieces. With today's standards, banding tension must be sufficient to tighten and depress the edges of the bundle so that banding does not shift and obstruct address information, as well as ensuring that mailpieces in the bundle do not slip out of the banding during transit and processing. As a rule of thumb, a bundle should withstand normal handling if it can be dropped on a corner of the bundle from a height of approximately 4 feet without breaking or becoming so deformed that pieces are likely to escape from the bundle. If the bundle breaks or the deformed bundle would cause the pieces to escape during processing, additional measures should be taken to maintain the bundle integrity.

Proposed Implementation

Recognizing that the mailing industry may have to change some procedures to ensure address visibility, the proposed implementation of these standards is April 1, 2005. Deployment of APPS began in August 2004 and will continue through October 2005.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the *Domestic Mail Manual* (DMM), incorporated by reference in the Code of Federal Regulations (CFR). See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend the following sections of the *Domestic Mail Manual* (DMM) as set forth below:

M Mail Preparation and Sortation

M000 General Preparation Standards

M010 Mailpieces

* * * * *

M013 Optional Endorsement Lines

* * * * *

[Add new 4.0 to read as follows:]

4.0 OPTIONAL BUNDLE LABEL

4.1 Definition and Use

An optional bundle label (OBL) is an adhesive label that provides presort destination information. When used, the label must be affixed to any surface other than the smallest surface of a presorted bundle.

4.2 Label Characteristics

The bundle label must be at least 1¼ inches high by 3½ inches long. The label must be created with permanent adhesive or removable adhesive. Removable adhesive must not seep beyond the label and must be sufficient to keep the label affixed to the bundle without curling or peeling during normal mail processing. Labels must be white with printed information in black ink. The single-spaced lines of printed information must be in a non-narrow variant of Arial or Helvetica, in a range of 10- to 12-point type regardless of the font used in the delivery address on the mailpiece. The information must maintain a clearance of at least 1/25 inch from the top and bottom of the label and ⅛ inch from the left and right sides of the label.

4.3 Required Information on Labels

The OBL must show the following three lines:

Line 1: Optional endorsement line (OEL), without ACS, following the formats in 2.0 and Exhibit 1.1.

Line 2: "OPTIONAL BUNDLE LABEL."

Line 3: City, state, and 5-digit ZIP Code of any mailpiece that could properly be in the bundle.

4.4 Placement

The label must be placed parallel to an edge of the bundle without covering the address of the top mailpiece unless affixed over shrinkwrap securing the bundle. The label must not be placed on the smallest surface of the bundle or obscured by any material.

* * * * *

M020 Bundles

1.0 BASIC STANDARDS

1.1 Facing

[Revise 1.1 to read as follows:]

Except as noted in 1.3, all pieces in a bundle must be "faced" (*i.e.*, arranged with the addresses in the same read direction), with an address visible on the top piece.

[Renumber current 1.2 through 1.9 as new 1.3 through 1.10. Add new 1.2 to read as follows:]

1.2 Address Visibility

Effective April 1, 2005, presort bundles prepared in sacks or on pallets must have the delivery address information visible and readable to the naked eye, including any barcoded pressure-sensitive bundle label or optional endorsement line. These standards do not apply to bundles of letter-size mail; bundles of First-Class flat-size mail; Customized Market Mail (CMM); bundles placed in 5-digit or 5-digit scheme (L001) sacks or pallets, or carrier route or 5-digit carrier routes sacks; carrier route bundles entered at the Destination Delivery Unit (DDU); bundles prepared in letter trays under M033 and all bundles containing an optional bundle label under M013.4.0. Except as provided in 1.5g, bundles of flats or irregular parcels with the delivery address on the smallest surface of the bundle must have an optional bundle label (OBL) affixed to a larger surface. Banding, shrinkwrap, barcoded pressure-sensitive package labels, or facing slips must not obscure any part of the delivery address on bundles covered by this standard.

* * * * *

1.4 Labeling

[Revise the fourth sentence in 1.4 to clarify that the delivery address must not be obscured by the presort bundle label, to read as follows:]

* * * Bundle labels must not obscure the delivery address and must not be obscured by banding or shrinkwrap. * * *

* * * * *

1.5 Securing Bundles—General

* * * * *

[Add new item g to read as follows:]

g. The height of a bundle of flats or irregular parcels must be at least 1 inch less than the longest dimension of the addressed side of any individual mailpiece in the bundle unless an optional bundle label (OBL) is affixed to a larger surface of the bundle.

* * * * *

1.8 Bundle Size—Other Mail Classes

[Revise the introductory sentence to replace "either" with "any" and add new item c to read as follows:]

Except for Bound Printed Matter, an individual package may be prepared with fewer than the minimum number of pieces required by the standards for the rate claimed without loss of rate eligibility under any of these conditions:

* * * * *

c. The height of the bundle would not be at least 1 inch less than the longest dimension under 1.5g.

* * * * *

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes if the proposal is adopted.

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–19992 Filed 9–1–04; 8:45 am]

BILLING CODE 7710–12–P

Notices

Federal Register
Vol. 69, No. 170
Thursday, September 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995. Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be sent via e-mail to *David_Rostker @omb.eop.gov* or fax (202) 395–7285. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0554.

Form Number: None.

Title: Training Results and Information Network (TraiNet).

Type of Submission: Renewal of information collection.

Purpose: The purpose of this information collection is to enable the planning and reporting of information on all USAID training activities, including in-country training. Data collected by USAID and/or its partners via TraiNet includes measures of results and performance monitoring, training participant and program identification, and cost and cost-sharing.

Annual Reporting Burden:

Respondents: 374.

Total annual responses: 15,720.

Total annual hours requested: 2,620 hours.

Dated: August 30, 2004.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 04–20046 Filed 9–1–04; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting; Southwest Oregon Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting; Southwest Oregon Provincial Advisory Committee.

SUMMARY: The Southwest Oregon Provincial Advisory Committee will meet on Tuesday, September 21, 2004 for (1) Updates from working groups; (2) a presentation from the Coquille Indian Tribe; (3) an update on the BLM Resource Plan revision; (4) an update on Interagency Fire Management Plans; (5) an update from National Fire Plan and Cascade-Siskiyou National Monument Livestock study work groups and (6) a Northern Spotted Owl Five Year Review. The meeting will be held at the Coos Bay Bureau of Land Management Office. It begins at 9 a.m., ends at 5 p.m., and the open public forum begins at 11:30 a.m. with a 4-minute limitation per individual presentation. Written comments may be submitted prior to the meeting and delivered to Designated Federal Official, Scott Conroy at the Rogue River-Siskiyou National Forest, PO Box 520, Medford, OR 97501.

FOR FURTHER INFORMATION CONTACT: Rogue River-Siskiyou National Forest Acting Public Affairs Officer Virginia Gibbons at (541) 858–2214, e-mail: *vgibbons@fs.fed.us,* or USDA Forest Service, PO Box 520, 333 West 8th Street, Medford, OR 97501.

Dated: August 27, 2004.

Nancy Rose,

Acting Forest Supervisor, Rogue River-Siskiyou National Forest.

[FR Doc. 04–20009 Filed 9–1–04; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Notice of Meeting

Date and Time: September 8, 2004 12:30 p.m.–2:30 p.m.

Place: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

Closed Meeting: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency section. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

For Further Information Contact: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: August 30, 2004.

Carol Booker,

Legal Counsel.

[FR Doc. 04–20140 Filed 8–31–04; 2:30 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Notice of Preliminary Results of Antidumping Duty New Shipper Review and Rescission of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely and properly filed requests from Qingdao Xiyuan Refrigerate Food Co., Ltd. (Qingdao Xiyuan), Yancheng Fuda Foods Co., Ltd. (Yancheng Fuda), and Siyang Foreign Trade Corporation (Siyang), the Department of Commerce (the Department) initiated new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). We preliminarily determine that Qingdao Xiyuan has made sales in the

United States at prices below normal value (NV). We invite interested parties to comment on these preliminary results. In addition, the Department is rescinding the new shipper reviews for Yancheng Fuda and Siyang.

EFFECTIVE DATE: September 2, 2004.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Matthew Renkey, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1386 or (202) 482–2312, respectively.

Background

The Department published in the **Federal Register** an antidumping duty order on freshwater crawfish tail meat from the PRC 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. As noted above, the Department received timely requests for a new shipper review under the antidumping duty order on freshwater crawfish tail meat from the PRC in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and § 351.214(c) of the Department's regulations, from Qingdao Xiyuan, Yancheng Fuda, and Siyang. In their requests, Yancheng Fuda and Qingdao Xiyuan stated that they produced the crawfish tail meat exported for their new shipper sales. In its request, Siyang stated that it purchased the crawfish tail meat it exported from an unaffiliated producer. On October 31, 2003, the Department initiated these new shipper reviews for the period September 1, 2002, through August 31, 2003, for Qingdao Xiyuan and Yancheng Fuda, and for the period July 1, 2002 through August 31, 2003, for Siyang. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews*, 68 FR 62774 (November 6, 2003).

On November 25, 2003, the Domestic Interested Parties requested that the Department determine whether antidumping duties had been absorbed during the period of review (POR), in accordance with section 751(a)(4) of the Act. We find that section 751(a)(4) of the Act is not applicable to these reviews, and accordingly, we did not determine whether antidumping duties had been absorbed during the POR. *See Memorandum to File From Matthew Renkey Through Maureen Flannery, Duty Absorption Request From the Domestic Interested Parties in Three New Shipper Reviews*, dated August 26, 2004.

On April 27, 2004, the Department extended the time limit for the completion of the preliminary results until July 30, 2004. *See Notice of Extension of Time Limit of Preliminary Results of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China*, 69 FR 24567 (May 4, 2004). On July 29, 2004, the Department further extended the time limit for the completion of the preliminary results until August 26, 2004. *See Notice of Extension of Time Limit of Preliminary Results of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China*, 69 FR 47080 (August 4, 2004).

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 (HTSUS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTSUS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by U.S. Customs and Border Protection (CBP) in 2000, and HTSUS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTSUS subheadings are provided for convenience and CBP purposes only. The written description of the scope of this order is dispositive.

Rescission of New Shipper Reviews

A new shipper request from an exporter in a non-market economy (NME) country must contain a certification that the exporter is not controlled by the central government (*see* § 351.214(b)(2)(iii)(B) of the Department's regulations) and, thus, that it is not part of the NME entity, which was subject to the original investigation, and is eligible for a separate rate. During the course of a new shipper review, the exporter must affirmatively demonstrate that it meets the Department's criteria for receiving a separate rate. As discussed in detail below, we have found that neither Yancheng Fuda nor Siyang demonstrated that it meets the criteria for a separate rate, and as such, we are rescinding these new shipper reviews.

Yancheng Fuda

On November 19, 2003, the Department issued its antidumping questionnaire to Yancheng Fuda. The Department's questionnaire contained instructions for preparing and filing Yancheng Fuda's response. Yancheng Fuda's initial questionnaire response was due on January 5, 2004. On January 6, 2004, Yancheng Fuda's counsel, who filed the request for review on Yancheng Fuda's behalf, informed the Department that it was withdrawing its representation of Yancheng Fuda. On March 3, 2004, the Department sent a letter to Yancheng Fuda noting that it had received neither a response to the questionnaire nor any correspondence from Yancheng Fuda, and requesting that Yancheng Fuda contact the Department immediately if it intended to participate in the new shipper review.

On March 16, 2004, Yancheng Fuda contacted the Department and requested an extension to file its questionnaire response. On March 17, 2004, the Department granted Yancheng Fuda an extension until March 29, 2004, to properly file its questionnaire response. On March 26, 2004, Yancheng Fuda faxed a questionnaire response directly to the Department, without serving parties, without filing the requisite number of copies with the Central Records Unit (CRU), and without an indication as to whether its response contained business proprietary information. The response appeared to be a draft response, as Yancheng Fuda asked that the Department "check it," and further indicated that it would later "mail the original finished questionnaire" to the Department. On the same day, the Department faxed to Yancheng Fuda a letter explaining that the Department does not accept draft questionnaire responses, and reminding Yancheng Fuda that its questionnaire response must be filed in accordance with the Department's regulations, which were provided to Yancheng Fuda on March 17, 2004, via Federal Express and March 18, 2004, via fax. The Department provided the regulations and instructions again on March 26, 2004, via fax. In this letter, the Department granted Yancheng Fuda an additional extension until March 30, 2004, to properly file its questionnaire response.

On March 30, 2004, the Department received, via Federal Express, the same

draft questionnaire response received on March 26, 2004. As this questionnaire response was not filed in accordance with the Department's filing requirements, copies of this document were not placed on the record for this review. *See Memorandum to File From Scot Fullerton Through Maureen Flannery to File, Yancheng Fuda Foods Co., Ltd. Improperly Filed Letters and Questionnaire Response,* dated April 19, 2004.

On April 28, 2004, the Department received a questionnaire response filed by a law firm on behalf of Yancheng Fuda. Given the extensive amount of time which had lapsed since the initial due date for the response, and the subsequent extensions given to Yancheng Fuda, the Department found that the questionnaire response submitted on April 28, 2004, was not timely filed.

As mentioned above, in order to be eligible for a new shipper review, a company is required to certify in its request that it is not controlled by the central government. *See* § 351.214(b)(2)(iii)(B) of the Department's regulations. While Yancheng Fuda did provide such a certification that served as the basis for initiation, it did not provide a timely questionnaire response. Absent a questionnaire response, the Department is unable to determine whether Yancheng Fuda meets the requirements for receiving a separate rate. Because the Department is unable to confirm that Yancheng Fuda is eligible for a separate rate, it must continue to consider Yancheng Fuda to be part of the NME entity. Consistent with the Department's practice, we have therefore determined that Yancheng Fuda does not qualify as a new shipper under § 351.214(a) of the Department's regulations because it is part of an entity that shipped during the original period of investigation. *See, e.g., Brake Rotors From the People's Republic of China: Rescission of Second New Shipper Review and Final Results and Partial Rescission of First Antidumping Duty Administrative Review,* 64 FR 61581 (November 12, 1999) (*Brake Rotors*). On August 12, 2004, we issued a memorandum stating our intent to rescind the new shipper review for Yancheng Fuda because it had not demonstrated its eligiblity for a separate rate. *See Memorandum From Barbara E. Tillman to Jeffrey A. May: Freshwater Crawfish Tail Meat From The People's Republic of China: Intent To Rescind the New Shipper Review of Yancheng Fuda Foods Co., Ltd.*, dated August 12, 2004. We allowed interested parties an opportunity to comment, but received no comments. Accordingly, we are rescinding the new shipper review of Yancheng Fuda.

Siyang

On November 19, 2003, the Department issued its antidumping questionnaire to Siyang. Siyang's initial questionnaire response was due on January 5, 2004. On January 5, 2004, the Department granted Siyang an extension to file its questionnaire response, and on January 21, 2004, Siyang submitted a response to sections A, C, and D of the Department's questionnaire. On May 7, 2004, the Department issued a supplemental questionnaire to Siyang; Siyang filed its response to the supplemental questionnaire on May 24, 2004. On June 2, 2004, Siyang submitted a letter to the Department stating that Siyang and its supplier would not participate in verification for this new shipper review.

As mentioned above, in order to be eligible for a new shipper review, a company is required to certify in its request that it is not controlled by the central government. *See* § 351.214(b)(2)(iii)(B) of the Department's regulations. While Siyang did provide such a certification that served as the basis for initiation, it did not permit verification of its questionnaire responses. Absent the ability to conduct verification, the Department is unable to determine whether Siyang meets the requirements for receiving a separate rate. Therefore, because the Department is unable to confirm that Siyang is eligible for a separate rate, it must continue to consider Siyang part of the NME entity. Consistent with the Department's practice, we have therefore determined that Siyang does not qualify as a new shipper under § 351.214(a) of the Department's regulations because it is part of an entity that shipped during the original period of investigation. *See, e.g., Brake Rotors.* On August 12, 2004, we issued a memorandum stating our intent to rescind the new shipper review for Siyang because it had not demonstrated its eligibility for a separate rate. *See Memorandum From Barbara E. Tillman to Jeffrey A. May: Freshwater Crawfish Tail Meat From The People's Republic of China: Intent To Rescind the New Shipper Review of Siyang Foreign Trade Corporation,* dated August 12, 2004. We allowed interested parties an opportunity to comment, but received no comments. Accordingly, we are rescinding the new shipper review of Siyang.

Analysis for Qingdao Xiyuan

Separate Rates

Qingdao Xiyuan requested a separate, company-specific rate and properly certified in its request for a new shipper review that it was not controlled by the central government. *See* § 351.214(b)(2)(iii)(B) of the Department's regulations. Qingdao Xiyuan provided separate rate information in its questionnaire response. Accordingly, we performed a separate-rate analysis to determine whether Qingdao Xiyuan 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).

The Department has treated the PRC as an 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.

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 Qingdao Xiyuan that its export activities are not controlled by the government. Qingdao Xiyuan submitted evidence of its legal right to set prices independently of all government oversight. The business license of Qingdao Xiyuan 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).

Qingdao Xiyuan 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* indicates a lack of *de jure* government control over privately-owned companies, such as Qingdao Xiyuan. 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). Therefore, we preliminarily determine that there is an absence of *de jure* control over export activity with respect to Qingdao Xiyuan.

With respect to the absence of *de facto* control over export activities, the information submitted on the record indicates that the management of Qingdao Xiyuan 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 Qingdao Xiyuan'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 Qingdao Xiyuan 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. Qingdao Xiyuan 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 Qingdao Xiyuan.

Normal Value Comparisons

To determine whether Qingdao Xiyuan's sales of the subject merchandise to the United States were made at a price below 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 Qingdao Xiyuan'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, which is primarily based on business proprietary information, *See* Memorandum to the File through Maureen Flannery from Scot Fullerton entitled *Bona Fide Nature of the Sale in the New Shipper Review of Qingdao Xiyuan Refrigerate Food Co., Ltd.*, dated August 26, 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 and international freight from the starting price (gross unit price) in accordance with section 772(c) of the Act. Qingdao Xiyuan reported the actual international freight expense it incurred since it used a market economy carrier and paid in U.S. dollars. Qingdao Xiyuan also reported that this international freight charge included brokerage and handling, so we have not made a separate deduction for brokerage and handling.

Normal Value

1. Surrogate Country

When reviewing imports from an NME country, section 773(c)(1) of the Act directs the Department to base NV, 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 NV based on factors of production in accordance with section

773(c)(4) of the Act and § 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, processed seafood. *See* Memorandum to the File from Matthew Renkey through Maureen Flannery: *Surrogate Values Used for the Preliminary Results of the Antidumping Duty New Shipper Review of Freshwater Crawfish Tail Meat From the People's Republic of China*, dated August 26, 2004 (*Surrogate 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 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 used the reported 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. Where applicable, we excluded any imports from NMEs and "unspecified" countries from the import data. We also excluded imports from Indonesia, South Korea, and Thailand because these countries maintain non-specific export subsidies. 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 Surrogate Values Memo.*

In accordance with 19 CFR 351.301(c)(3)(ii), 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 NV. We valued the factors of production as follows:

Materials

Whole, Live Crawfish. To value the input of whole live crawfish, we used publicly available data on Spanish imports of whole live crawfish from Portugal. 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 Administrative Review and New Shipper Reviews of Freshwater Crawfish Tail Meat From the People's Republic of China (PRC): Request for a List of Surrogate Countries*, dated April 30, 2004, on file in the CRU (*Surrogate Countries Memo*); and (2) Spain has a crawfish industry 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) and *Notice of Final Results of Antidumping Duty New Shipper Review: Freshwater Crawfish Tail Meat From the People's Republic of China*, 68 FR 43085 (July 21, 2003). 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 for 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 *Surrogate Values Memo. See also Surrogate Countries Memo.* To achieve comparability of the scrap price to the factor reported for the POR, we adjusted this factor value to reflect inflation during the POR using the Wholesale Price Index (WPI) for Indonesia, as published in the *International Financial Statistics (IFS)* by the International Monetary Fund (IMF).

Energy

Coal and Electricity. To value coal, we relied upon Indian import data for steam coal from the internet version of the *World Trade Atlas.* For transportation distances used in the calculation of freight expenses for coal, 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.* 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).* To achieve comparability of electricity prices to the factor reported for the POR, we adjusted this factor value to reflect inflation during the POR using the WPI for India, as published in the IFS.

Water. 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 achieve comparability of water prices to the factor reported for the POR, we adjusted this factor value to reflect inflation during the POR using the WPI for India, as published in the *IFS.*

Packing Materials. To value packing materials (plastic bags, cardboard boxes and adhesive tape), we relied upon the most recent Indian import data for the POR 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 forpacking materials, we used 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 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 *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 used the publicly available 2002–2003 financial statement of Nekkanti Seafoods Ltd., an Indian seafood processor. We applied these rates to the calculated cost of manufacture. *See Surrogate Values Memo* at 5.

Transportation Expenses

We valued movement expenses as follows: to value domestic ground transport, we used freight prices published in the April 26, 2002, edition of the *Iron & Steel Newsletter,* which cites *http://www.INFreight.com,* an Indian logistics Web site that tracks freight rates for all of India. *Iron & Steel Newsletter* republished freight prices for shipments originating from three cities: Mumbai (Bombay), Delhi and Kolkata (Calcutta). 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 § 351.415 of the Department's regulations at the rates found at *http://ia.ita.doc.gov/exchange/index.html.*

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Exporter/manufacturer	Time period	Margin
Qingdao Xiyuan Refrigerate Food Co., Ltd	9/1/02–8/31/03	59.98%

Cash Deposit Requirements

Upon completion of the review for Qingdao Xiyuan, 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 produced and exported by Qingdao Xiyuan will be the total amount of antidumping duties divided by the total quantity exported during the POR. *See* Memorandum to File dated August 26, 2004, 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 produced and exported by Qingdao Xiyuan 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, but not produced by Qingdao Xiyuan, we will continue to apply the PRC-wide rate, which is currently 223.01 percent, as the cash deposit rate. Since we are rescinding the new shipper reviews of Yancheng Fuda and Siyang, upon publication of this notice in the **Federal Register**, we will instruct CBP that bonding is no longer permitted and that a cash deposit of 223.01 percent must be collected for all entries exported by Yancheng Fuda and Siyang.

Assessment Rates

Upon completion of this new shipper review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries for Qingdao Xiyuan. For assessment purposes for Qingdao Xiyuan, 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 and exported by Qingdao Xiyuan during the POR. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. Since we have rescinded the new shipper reviews of Yancheng Fuda and Siyang, we will issue assessment instructions to CBP within 15 days of publication of this notice to liquidate the entries from these two companies during the POR at the cash deposit rate in effect on the date of entry.

Verification

We plan to conduct verification of Qingdao Xiyuan's questionnaire responses, as provided in section 782(i) of the Act, subsequent to the issuance of these preliminary results. We will use standard verification procedures, including on-site inspection of Qingdao Xiyuan's facilities and the examination of relevant sales and financial records. Our verification results will be summarized in a written report, a public version of which will be on file in the CRU located in room B–099 of the Main Commerce Building.

Schedule for Final Results of Review

Pursuant to 19 CFR 351.224(b), the Department will disclose calculations performed in connection with the preliminary results of the review of Qingdao Xiyuan 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 §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, NW., 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

This notice serves as a 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.

With respect to Yancheng Fuda and Siyang, this notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with §351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2043 Filed 9–01–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–812]

Light-Walled Rectangular Pipe and Tube From Turkey: Notice of Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: September 2, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Rivas (Guven) at (202) 482–0651; Drew Jackson (MMZ) at (202) 482–4406; and Mark Manning (Ozborsan/Onur and Ozdemir) at (202) 482–5253; Office of AD/CVD Enforcement, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW. Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

The Department of Commerce (the Department) has determined that light-walled rectangular pipe and tube (LWRPT) from Turkey is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

Case History

On April 13, 2004, the Department published the preliminary determination of sales at LTFV in the antidumping duty investigation of LWRPT from Turkey. *See Light-Walled Rectangular Pipe and Tube from Turkey; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 69 FR 19390 (April 13, 2004) (*Preliminary Determination*). Since the preliminary determination, the following events have occurred.

The Department received a timely supplemental section D questionnaire response from MMZ Onur Boru Profil Uretim Sanayi Ve. Ticaret A.S. (MMZ) on April 15, 2004. On April 15 and April 19, 2004, the Department returned untimely filed supplemental section D questionnaire responses to Guven Boru Ve. Profil San. Ve. Ticaret Ltd. Sti. (Guven). We conducted a verification of the sales and cost questionnaire responses of MMZ from April 19, 2004, through April 30, 2004. MMZ timely filed its supplemental section C questionnaire response on May 7, 2004. On June 22, 2004, the Department returned an untimely filed, and improperly served, supplemental section A questionnaire response to Ozdemir Boru Profil Sanayi Ve. Ticaret Ltd. Sti. (Ozdemir). We gave interested parties an opportunity to comment on our *Preliminary Determination* and our findings at verification. On July 7, 2004, the petitioners,[1] MMZ, and Ozborsan Boru Sanayi Ve. Ticaret and its affiliated sister company Onur Metal (collectively, Ozborsan/Onur) submitted case briefs. On July 12, 2004, these parties submitted rebuttal briefs. The Department did not receive a request for a public hearing; consequently, no public hearing was held.

Period of Investigation

The period of investigation (POI) is July 1, 2002, through June 30, 2003. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is LWRPT from Turkey, which are welded carbon-quality pipe and tube of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. These LWRPT have rectangular cross sections ranging from 0.375 x 0.625 inches to 2 x 6 inches, or square cross sections ranging from 0.375 to 4 inches, regardless of specification. LWRPT are currently classifiable under item number 7306.60.5000 of the Harmonized Tariff System of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes only. The written product description of the scope is dispositive.

The term "carbon-quality" applies to products in which (i) iron predominates, by weight, over each of the other contained elements, (ii) the carbon content is 2 percent or less, by weight, and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickle, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of

[1] The petitioners in this investigation are California Steel and Tube, Hannibal Industries, Inc., Leavitt Tube Company, LLC, Maruichi American Corporation, Northwest Pipe Company, Searing Industries, Inc., Vest Inc., and Western Tube and Conduit Corporation (collectively, the petitioners).

niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Jeffrey A. May, Deputy Assistant Secretary Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, "Issues and Decision Memorandum," (*Decision Memorandum*) dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Internet at: *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Facts Available

In the *Preliminary Determination*, we based the dumping margin for the respondents Guven, Ozborsan/Onur, and Ozdemir on total adverse facts available (AFA) pursuant to sections 776(a) and 776(b) of the Act. The use of AFA was warranted in this investigation because Guven, Ozborsan/Onur, and Ozdemir failed to timely provide complete and useable responses to the Department's antidumping questionnaire and supplemental questionnaires. *See Preliminary Determination*, 69 FR at 19393–96. The failure to provide the requested information significantly impeded this proceeding because the Department cannot determine a margin without complete and accurate responses to our questionnaires. As AFA, we assigned Guven, Ozborsan/Onur, and Ozdemir the rate of 34.89 percent, the highest margin listed in the notice of initiation. *See Notice of Initiation of Antidumping Investigations: Light-Walled Rectangular Pipe and Tube from Mexico and Turkey*, 68 FR 57667 (October 6, 2003). A complete explanation of the selection, corroboration, and application of AFA can be found in the *Preliminary Determination*. *See Preliminary Determination*, 69 FR at 19393–96. The Department received comments and rebuttal from Ozborsan/Onur and the petitioner regarding this issue. *See Decision Memorandum* at Comment 11. Nothing has changed since the *Preliminary Determination* was issued that would affect the Department's selection and application of facts available. Accordingly, for the final determination, we continue apply as AFA the rate of 34.89 percent to Guven, Ozborsan/Onur, and Ozdemir.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by MMZ for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Changes Since the Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination*. These adjustments are discussed in detail in the *Decision Memorandum* and are listed below:

1. Duty Drawback Adjustment

The Department disregarded the amount of duty drawback reported by MMZ under the yield rate for coils established by the government of Turkey (GOT) and instead calculated the duty drawback using MMZ's own yield rate for steel coils. However, since MMZ does not separately track its consumption of zinc, the Department relied upon the yield rate established by the GOT for the duty drawback on zinc. *See* Memorandum to the File from Drew Jackson, International Trade Compliance Analyst, "Calculation Memorandum for the Final Determination," dated August 26, 2004 (Final Sales Calculation Memorandum).

2. Reclassification of Certain Selling Expenses

Based on comments made by petitioners, we have reclassified the bank commissions and letter of credit fees as direct selling expenses, rather than indirect selling expenses, for the final determination. *See* Final Sales Calculation Memorandum.

3. Revised Production Quantity for Non-Prime Products

Pursuant to a minor error reported on the first day of verification, we have revised the production quantity for non-prime products. *See* Final Sales Calculation Memorandum.

4. Adjustment to MMZ's Raw Material Costs

Based on comments made by MMZ, we have made an adjustment to MMZ's raw material costs to account for an overstatement in these raw material costs discovered during verification. *See* Memorandum from Margaret M. Pusey, Case Accountant, to Neal M. Halper, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination—MMZ Onur Boru Profil Uretim Sanayi ve Ticaret A.S.," dated August 26, 2004 (Final Cost Calculation Memorandum).

5. Adjustment to MMZ's Calculated Financial Expenses

Based on comments made by MMZ, we have made an adjustment to MMZ's calculated financial expense. Specifically, we have granted an adjustment to allow the income on certain investments to offset financial expenses because this income was found to be interest on short-term bank accounts. *See* Final Cost Calculation Memorandum.

6. Adjustment to MMZ's Calculated General and Administrative Expenses

Based upon verification findings, we have adjusted MMZ's calculated general and administrative expenses. *See* Final Cost Calculation Memorandum.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of LWRPT from Turkey that are entered, or withdrawn from warehouse, for consumption on or after April 13, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the normal value exceeds the export price, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Final Determination of Investigation

We determine that the following weighted-average dumping margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Weighted-average margin (percent)
Guven Boru Ve. Profil San. Ve. Ticaret Ltd. Sti/Ozborsan Boru Sanayi Ve. Ticaret and Onur Metal/Ozdemir Boru Profil Sanayi Ve. Ticaret Ltd. Sti	34.89
MMZ Onur Boru Profil Uretim Sanayi Ve. Ticaret A.S	6.12
All Others	6.12

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Part I—MMZ

Comment 1: Whether the Department Should Deny MMZ's Duty Drawback Claim Because MMZ Did Not Use Imported Inputs to Produce Finished Merchandise Sold in the Home Market.

Comment 2: Whether the Department Should Add Duty Drawback to MMZ's Cost of Production and Constructed Value.

Comment 3: Whether the Department Should Classify Certain Bank Commissions and Letter of Credit Fees as Direct Selling Expenses Instead of Indirect Selling Expenses.

Comment 4: Whether the Department Should Classify Sales Made Through the U.S. Commissioned Selling Agent as CEP Transactions.

Comment 5: Whether the Department Should Collapse MMZ and Company A for Purposes of Calculating MMZ's Coil Cost.

Comment 6: Whether the Department Should Find that the Transfer Price Between Company A and MMZ Was Above the Market Price.

Comment 7: Whether the Upward Adjustment for Imported Coil Purchased Through Company A to the Price Paid to Home Market Suppliers in Effect Double-Counts the Duty-Drawback Adjustment to Cost of Production and Constructed Value.

Comment 8: Whether the Department Should Exclude Foreign Exchange Losses Incurred on Payables from MMZ's Computed Financial Expense.

Comment 9: Whether the Department Should Adjust MMZ's Reported Costs to Correct for the Overstatement in MMZ's Raw Material Cost Discovered During Verification.

Part II—Ozborsan/Onur, Guven, and Ozdemir

Comment 10: Whether the Department Erred in its Decision to Collapse Ozborsan/Onur, Guven, and Ozdemir Into a Single Entity.

Comment 11: Whether the Department Erred in Finding that Ozborsan/Onur Metal Failed to Provide Requested Information to the Department and in its Application of Total Adverse Facts Available.

[FR Doc. E4–2044 Filed 9–1–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–832]

Light-Walled Rectangular Pipe and Tube From Mexico: Notice of Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value.

EFFECTIVE DATE: September 2, 2004.

FOR FURTHER INFORMATION CONTACT: Magd Zolak (LM) at (202) 482–4162; Richard Johns (Galvak/Hylsa) at (202) 482–2305, Crystal Crittenden (Regiomontana) at (202) 482–0989, and Maisha Cryor (Prolamsa) at (202) 482–5831; Office of AD/CVD Enforcement, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

The Department of Commerce (the Department) has determined that light-walled rectangular pipe and tube (LWRPT) from Mexico is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Final Determination of Investigation* section of this notice.

Case History

On April 13, 2004, the Department published the preliminary determination of sales at LTFV in the antidumping duty investigation of LWRPT from Mexico. *See Light-Walled Rectangular Pipe and Tube from Mexico; Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 69 FR 19400 (April 13, 2004) (*Preliminary Determination*). Since the *Preliminary Determination*, the following events have occurred.

The Department received a timely supplemental questionnaire response from Perfiles y Herrajes LM, S.A. de CV (LM) on April 6, 2004, and Regiomontana de Perfiles Y Tubos, S.A. de C.V. (Regiomontana) on April 8, 2004. The Department received a post preliminary determination submission from Galvak, S.A. de C.V. and Hylsa, S.A. de C.V. (Galvak/Hylsa) on April 12,

2004. On April 14, 2004, Galvak/Hylsa submitted a ministerial error allegation regarding the Department's calculations in the *Preliminary Determination*. Because the alleged ministerial errors were not significant within the meaning of section 351.224(g)(1) of the Department's regulations, the Department did not issue an amended preliminary determination but has instead addressed the ministerial errors in the *Changes Since the Preliminary Determination* section of this notice. *See* Memorandum from Maisha Cryor, Senior International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, "Antidumping Duty Investigation of Light-Walled Rectangular Pipe and Tube from Mexico: Analysis of Ministerial Error Allegations," dated May 12, 2004. We conducted verification of the sales and cost questionnaire responses of the respondents LM, from April 19, 2004, through April 30, 2004; Galvak/Hylsa from April 19, 2004, through April 30, 2004; Regiomontana from April 26, 2004, through May 7, 2004; and Productos Laminados de Monterrey, S.A. de C.V. (Prolamsa) from May 3, 2004, through May 18, 2004. Regiomontana submitted revisions and data resulting from minor corrections made at verification on May 15, 2004. On July 26, 2004, the Department requested that Galvak/Hylsa submit new sales and cost databases and provided an itemized list of changes to be made to the data. Galvak/Hylsa complied with that request and submitted its post-verification databases on August 5, 2004. We gave interested parties an opportunity to comment on our *Preliminary Determination* and our findings at verification. On July 15, 2004, the petitioners [1], LM, Galvak/Hylsa, Regiomontana, and Prolamsa submitted case briefs. On July 23, 2004, these parties submitted rebuttal briefs. On May 13, 2004, Galvak submitted a request for a public hearing, but subsequently withdrew its request on July 21, 2004; consequently, no public hearing was held.

Period of Investigation

The period of investigation (POI) is July 1, 2002, through June 30, 2003. *See* 19 CFR 351.204(b)(1).

Scope of Investigation

The merchandise covered by this investigation is LWRPT from Mexico, which are welded carbon-quality pipe and tube of rectangular (including square) cross-section, having a wall thickness of less than 0.156 inch. These LWRPT have rectangular cross sections ranging from 0.375 x 0.625 inches to 2 x 6 inches, or square cross sections ranging from 0.375 to 4 inches, regardless of specification. LWRPT are currently classifiable under item number 7306.60.5000 of the Harmonized Tariff System of the United States (HTSUS). The HTSUS item number is provided for convenience and customs purposes only. The written product description of the scope is dispositive.

The term "carbon-quality" applies to products in which (i) iron predominates, by weight, over each of the other contained elements, (ii) the carbon content is 2 percent or less, by weight, and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickle, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in the Appendix to this notice and addressed in the Memorandum from Jeffrey A. May, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, "Issues and Decision Memorandum," (*Decision Memorandum*) dated concurrently with this notice, which is hereby adopted by this notice. Parties can find a complete discussion of the issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Department of Commerce building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov.frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Partial Adverse Facts Available

With respect to Prolamsa, we have determined that the use of partial adverse facts available is warranted, in accordance with sections 776(a)(2)(B) and 776(b) of the Act, to calculate the dumping margin because the respondent did not provide information critical to the calculation of a dumping margin and impeded the conduct of the administrative review by providing information that could not be substantiated. These inadequacies relate to Prolamsa's sales to affiliated resellers. Prolamsa stated that it would not provide the Department with its affiliated resellers downstream sales because sales to its affiliated reseller were made at arm's-length. The Department informed Prolamsa that, pursuant to section 351.403(d) of the Department's regulations, it would allow the exclusion of these sales from Prolamsa's reported data, as long as its statements concerning the arm's-length nature of these sales could be substantiated. However, there were sales made by Prolamsa to its affiliated resellers that failed the arm's-length test. Therefore, the Department determined that partial adverse facts available should be applied to the sales that failed the arm's-length test because Prolamsa failed to provide accurate information concerning its sales to affiliated resellers. To address this inadequacy, we selected the highest gross unit price of comparable merchandise sold to another customer that passed the arm's-length test.

We have considered the arguments raised by petitioners and Prolamsa regarding this issue of partial adverse facts available and have addressed them in the *Decision Memorandum* at Comment 3. Based on our analysis of the parties' comments, we have determined that partial adverse facts available is applicable in this instance.

Verification

As provided in section 782(i) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Changes Since the Preliminary Determination

Based on our findings at verification and analysis of comments received, we have made certain adjustments to the margin calculations used in the *Preliminary Determination*. These adjustments are discussed in detail in the *Decision Memorandum* each respondent's respective calculation memoranda and are listed below:

[1] The petitioners in this investigation are California Steel and Tube, Hannibal Industries, Inc., Leavitt Tube Company, LLC, Maruichi American Corporation, Northwest Pipe Company, Searing Industries, Inc., Vest Inc., and Western Tube and Conduit Corporation (collectively, the petitioners).

1. LM: Based on the verification of LM's responses, we made a revision to the calculation of the U.S. inventory carrying costs to account for a correction relating to the number of days in inventory and correct the formula used to calculate inventory carrying costs by deducting certain discounts from the gross unit price.

2. LM: Based on verification findings, we revised the calculation of the U.S. brokerage and handling charges.

3. LM: We noted that LM inadvertently reported certain expenses as warehousing expenses incurred at the factory, although these expenses are properly categorized as indirect selling expenses. Accordingly, for purposes of the final determination, we set the reported expenses for that warehouse to zero.

4. LM: We deducted, when applicable, warehousing expenses, incurred by the remote warehouses after the merchandise left the factory, from home market prices. The adjustment for these warehousing expenses was inadvertently omitted from the Department's margin calculation in the preliminary determination.

5. LM: We recalculated indirect selling expenses to reflect a correction relating to the indirect selling expense ratio used to calculate these expenses.

6. LM: Since LM was unable during verification to sufficiently document its revisions of the reported charges for freight from its factory to certain of its warehouses, we disallowed any adjustment to home market prices for the freight charges relating to these warehouses.

7. LM: We revised the financial expense ratio calculation to correctly include the monetary correction under Mexican GAAP Bulletin B–10, thus lowering the financial expense ratio.

8. LM: We adjusted the G&A expense ratio calculation for the effect of double counting of indirect selling expenses. This adjustment had the effect of lowering G&A ratio.

9. LM: We adjusted total cost of manufacturing to include the effects of yield loss.

10. Prolamsa: We applied partial adverse facts available to certain sales from Prolamsa to affiliated resellers that failed the arm's-length test, where information concerning downstream sales was not on the record of this investigation.

11. Prolamsa: We excluded inventory carrying costs from the calculation of constructed export price indirect selling expenses.

12. Prolamsa: For certain expenses, we converted the currency by dividing, rather than multiplying.

13. Prolamsa: We increased the reported total cost of manufacturing (TOTCOM) for the unreconciled difference between Prolamsa's cost accounting system and the extended TOTCOM reported to the Department. We also increase the reported TOTCOM to include an amount for the expenses related to the importation of raw material *i.e.*, freight, insurance, and handling charges.

14. Galvak/Hylsa: We corrected the error in the margin calculation program which incorrectly converted U.S. dollar amounts into Mexican pesos using the exchange rate on the date of the home-market sale. The program incorrectly multiplied the U.S. dollar amounts by the dollar-to-peso exchange rate instead of dividing them by the exchange rate. The program then converted the calculated peso amounts back into dollars using the weighted-average exchange rate based on the date of the U.S. sales.

15. Galvak/Hylsa: We corrected the error in the margin calculation program which failed to convert home-market sales prices that were denominated in U.S. dollars into Mexican pesos when determining whether those sales were made at below-cost prices. Instead, the preliminary program incorrectly compared the U.S. dollar prices to the Mexican peso costs.

16. Galvak/Hylsa: We recalculated home market credit expenses to exclude value added taxes.

17. Galvak/Hylsa: We corrected a calculation error for the galvanizing expense variance and applied it to each of the galvanized products.

18. Galvak/Hylsa: In addition to the changes we made to the financial expense ratio at the preliminary determination, we subtracted Galvak and Hylsa's packing expenses from the cost of goods sold denominator. We revised the ratio to include an offset in the numerator of the current portion of the gain on debt restructure from the parent company's 2002 financial statements.

19. Galvak/Hylsa: In addition to the changes we made to the general and administrative expense ratio at the preliminary determination, we subtracted Galvak's packing expenses from the cost of goods sold denominator.

20. Galvak/Hylsa: We revised the reported costs for the coils that were obtained from Hylsa to reflect the major input adjustment made to Hylsa's iron ore purchases.

21. Galvak/Hylsa: We revised the financial expense ratio by including the current portion of the gain on debt restructure as an offset to the numerator and also subtracted Hylsa and Galvak's packing expenses from the denominator.

22. Galvak/Hylsa: We revised the general and administrative expense ratio by adding the income for the sale of land, the gain on restructuring bank liability, and bonus expense to and subtracting debt restructuring expenses and general and administrative expenses attributable to affiliates from the numerator as well as subtracting packing expenses from the denominator.

23. Galvak/Hylsa: We adjusted the per-unit total cost of manufacturing for certain control numbers to include costs that were mis-classified as costs related to products sold to third countries and not reported.

24. Galvak/Hylsa: We revised the reported cost of iron ore obtained from affiliated suppliers and adjusted reported direct material costs to reflect the higher of the transfer price, market price, or cost of production in accordance with the major input rule.

25. Regiomontana: We corrected the error in the comparison market calculation program which incorrectly compared theoretical quantities for home market sales with gross unit prices and adjustments based on actual quantities.

26. Regiomontana: We recalculated credit expense for sales in the U.S. and home market due to minor corrections made at verification.

27. Regiomontana: We included the cost of scrap from all production processes and included all corrections of errors found while preparing supporting documentation for the cost of scrap.

28. Regiomontana: For the interest expense, we included the monetary effect from Regiomontana's financial statements and deducted the year end adjustment for inflation from the cost of goods sold. We also added the depreciation from the revaluation of fixed assets to the cost of goods sold.

29. Regiomontana: We adjusted G&A expense to included the employee profit sharing expense and to exclude the year end adjustment for inflation from the cost of goods sold. We also added the depreciation from the revaluation of fixed assets to the cost of goods sold.

30. Regiomontana: We included the unreconcilable difference from the reconciliation of Regiomontana's cost of manufacture to the reported cost in the RECON field.

31. Regiomontana: We revised the per unit fabrication costs and per unit paint costs to reflect the first day corrections submitted by Regiomontana.

32. Regiomontana: We used the direct material cost from the COP/CV file

submitted with the minor corrections on the first day of corrections.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of LWRPT from Mexico that are entered, or withdrawn from warehouse, for consumption on or after April 13, 2004, the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to continue to require a cash deposit or the posting of a bond for each entry equal to the weighted-average amount by which the normal value exceeds the export price or constructed export price, where appropriate, as indicated below. These instructions suspending liquidation will remain in effect until further notice.

Final Determination of Investigation

We have determined that the following weighted-average dumping margins exist for the period July 1, 2002, through June 30, 2003:

Manufacturer/exporter	Weighted-average margin (percent)
Galvak, S.A. de C.V. and Hylsa, S.A. de C.V	17.46
Perfiles y Herrajes LM, S.A. de C.V	14.45
Productos Laminados de Monterrey, S.A. de C.V	6.08
Regiomontana de Perfiles y Tubos, S.A. de C.V	6.36
All Others	11.23

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury, or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption, on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

I. SALES

General Issues

Comment 1: Whether the Department Should Deny Certain Home Market Billing Adjustments, Rebates and Discounts Not Allocated on a Product-Specific or Sale-Specific Basis.

Comment 2: Whether the Department Properly Indicated Where Sales of Respondents Failed the Cost Test.

Prolamsa

Comment 3: Whether the Department Should Apply Partial Adverse Facts Available (AFA) for Home Market Sales to Affiliated Resellers that Failed the Arm's-Length Test.

Comment 4: Whether the Department Should Apply Partial AFA to Account for Unreported Sales Discovered at Verification.

Comment 5: Whether the Department Should Exclude Pre-Primered LWRPT from the Scope of Any Antidumping Duty Order Issued in this Investigation.

Comment 6: Whether the Department Should Make an Adjustment for Differences in Prolamsa's Coil Costs.

Comment 7: Whether the Department Should Correct Certain Clerical Errors in its Comparison Market and Margin Programs.

Comment 8: Whether the Department Should "Zero" Negative Dumping Margins.

Galvak/Hylsa

Comment 9: Whether Galvak and Hylsa's U.S. Sales Should Be Classified as Constructed Export Price Transactions Because Galvak and Hylsa Were the U.S. Importers of Record.

Comment 10: Whether Galvak and Hylsa's U.S. Sales Made Through an Affiliated U.S. Reseller Should be Classified as Constructed Export Price Transactions.

Comment 11: Whether There Should be a Commission Offset.

Comment 12: Whether Movement Expenses and Value-Added Taxes Should be Excluded from the Calculation of Credit Expense.

Comment 13: Whether the ASTM Grade Should be Considered in the Department's Product Matching Criteria.

Comment 14: Whether the Department Should Revise its Preliminary Level-of-Trade Analysis.

Comment 15: Whether the Department Should Correct Minor Errors in its Preliminary Margin Calculation Program and in Data Submitted by Galvak/Hylsa.

Regiomontana

Comment 16: Whether to Calculate Normal Value and Export Price Based on an Actual or Theoretical-Weight Basis.

Comment 17: Whether the Department Correctly Calculated the Reconciliation of Regiomontana's Home Market Sales in Regiomontana's Sales Verification Report.

Comment 18: Whether the Department Should Classify Sales Made Through U.S. Commissioned Selling Agents as Constructed Export Price Transactions.

LM

Comment 19: Whether the Department Should Deny an Adjustment for Home Market Freight to the Customer for Sales from Warehouses.

Comment 20: Whether the Department Should Deduct Home Market Prices For Warehousing at the Monterrey Warehouse.

II. COST OF PRODUCTION

Comment 21: Whether the Department Should Adjust Depreciation.

Comment 22: Whether the Department Should Account for Total Foreign. Exchange Gains and Losses in Interest Expense.

Comment 23: Whether the Department Should Make a Monetary Correction.

Comment 24: Whether the Department Should Use Period of Investigation. (POI) Data for Calculation of General and Administrative and Interest Expense Rates.

Comment 25: Whether the Department Should Accept a Layered General and Administrative Expense Calculation.

Comment 26: Whether a Reorganization Charge for Transfer of Administrative Activities to an Affiliate Should be Included as an Offset to General and Administrative Expenses.

Comment 27: Whether Labor Charges for Affiliates Should be Included in Hylsa's General and Administrative Expenses.

Comment 28: Whether Gain on Debt Restructuring Should be Included in Interest Expense.

Comment 29: Whether Bonus Compensation Should be Included in Calculating Hylsa's General and Administrative Expense Ratio.

Comment 30: Whether Certain Product Costs Were Mis-Classified.

Comment 31: Whether the Value of Iron Ore Should Reflect the Higher of Transfer Price or Production Costs.

Comment 32: Whether LM's Financial Expenses Are Overstated.

Comment 33: Whether General and Administrative Expenses Should be Reduced to Correct Double Counting.

Comment 34: Whether Overhead Expenses from Affiliates are Overstated.

Comment 35: Whether Yield Loss Should be Adjusted.

Comment 36: Whether Labor Costs Excluded Social Security Taxes.

Comment 37: Whether the Total Cost of Manufacturing Should be Adjusted for an Unreconciled Difference.

Comment 38: Whether Freight, Insurance, and Handling Charges Should be Included in Reported Costs.

Comment 39: Whether the Department Should Correct Minor Errors Relating to Total Cost of Manufacturing.

[FR Doc. E4–2045 Filed 9–1–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-122-838]

Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: September 2, 2004.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b) (2002), Abitibi-Consolidated Inc. (ACI), Abitibi Consolidated Company of Canada (ACCC), Produits Forestiers Petit Paris Inc. (PFPP), Societe en Commandite Scierie Opitciwan (Opiticwan) (collectively, the Abitibi Group) and Produits Forestiers Saguenay Inc. (PFS), Canadian producers of softwood lumber products and interested parties in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada, as described below. In response to this request, the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping duty order on certain softwood lumber from Canada.

FOR FURTHER INFORMATION CONTACT: Constance Handley or Saliha Loucif, at (202) 482-0631 or (202) 482-1779, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

As a result of the antidumping duty order issued following the completion of the less-than-fair-value investigation of certain softwood lumber products from Canada, imports of softwood lumber from the Abitibi Group became subject to a cash deposit rate of 12.44 percent (see *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Certain Softwood Lumber Products from Canada* 67 FR 36068 (May 22, 2002)). On July 29, 2004, the Abitibi Group notified the Department that effective June 1, 2004, PFS, a previously inactive holding company owned by ACCC, began producing softwood lumber and exporting it to the United States. As a result, the Abitibi Group is requesting that PFS be subject to the Abitibi Group's cash deposit rate of 12.44 percent.

Scope of the Order

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate federal register notices.

Softwood lumber products excluded from the scope:

- trusses and truss kits, properly classified under HTSUS 4418.90,
- I-joist beams.
- assembled box spring frames.
- pallets and pallet kits, properly classified under HTSUS 4415.20
- garage doors.
- edge-glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- properly classified complete door frames.
- properly classified complete window frames.
- properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

- *Stringers (pallet components used for runners)*: if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- *Box-spring frame kits*: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- *Radius-cut box-spring-frame components*, not exceeding 1″ in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner.
- *Fence pickets* requiring no further processing and properly classified under HTSUS 4421.90.70, 1 or less in actual thickness, up to 8″ wide, 6′ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- *U.S. origin lumber* shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) the processing occurring in Canada is limited to kiln-drying, planing to create

smooth-to-size board, and sanding, and (2) if the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.

• *Softwood lumber products contained in single family home packages or kits,*[1] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

4. The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

5. The following documentation must be included with the entry documents:

• A copy of the appropriate home design, plan, or blueprint matching the entry;

• A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;

• A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;

• In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the antidumping and countervailing duty orders, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber scope.[2] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

Initiation of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The Abitibi Group contends that PFS, because it is controlled by ACCC, which owns 50 percent or more of PFS' shares, and because it has production facilities similar or identical to other members of the Abitibi Group as well as intertwined sales processes, should be subject to the Abitibi Group cash deposit rate. Based on these circumstances and in accordance with 19 CFR 351.216(b), the Department finds good cause to initiate a changed circumstances review. *Therefore, we are initiating* a changed circumstances administrative review pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(b) to determine whether entries naming PFS as manufacturer and exporter should receive the Abitibi Group cash deposit rate of 12.44 percent.

The Department will publish in the ***Federal Register*** *a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).*

This notice is in accordance with section 751(b)(1) of the Act.

Dated: August 26, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2042 Filed 9–1–04; 8:45 am]

BILLING CODE 3510–DS–P

[1] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

[2] See the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082504B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Draft Generic Amendment to Gulf of Mexico Fishery Management Plans for Offshore Aquaculture

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

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) and NMFS intend to prepare a draft supplemental environmental impact statement (DSEIS) in support of a proposed Generic Amendment for Offshore Aquaculture. The DSEIS will evaluate alternatives for regulating aquaculture activities in the Gulf of Mexico. The purpose of this notice of intent is to solicit public comments on the range of alternatives and scope of issues to be addressed in the DSEIS.

DATES: Written comments on the scope of the DSEIS must be received by 5 p.m. October 4, 2004. See the **SUPPLEMENTARY INFORMATION** section for additional information regarding oral comments.

ADDRESSES: Comments on the scope of the DSEIS and requests for the scoping

document may be directed to the Gulf of Mexico Fishery Management Council, The Commons at Rivergate, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815; fax: 813–225–7015. Comments also may be submitted via e-mail. The mailbox address for providing e-mail comments is *aquaculture.gulf@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Generic Amendment for Offshore Aquaculture. Scoping documents are also available to download at *http://www.gulfcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle (phone: 813–228–2815, fax: 813–225–7015, e-mail: *Wayne.Swingle@gulfcouncil.org*); Andy Strelcheck (phone: 727–570–5305, fax: 727–570–5583, e-mail: *Andy.Strelcheck@noaa.gov*); or visit the Council's web page at *http://www.gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: The Council and NMFS intend to prepare a DSEIS in support of a proposed Generic Amendment for Offshore Aquaculture. The DSEIS will evaluate alternatives for regulating aquaculture activities in the Gulf of Mexico, including: (1) Whether to implement a generic amendment for offshore aquaculture, (2) the overall scope of the generic amendment, (3) permit and operational requirements for aquaculture facilities, (4) fishery management plans that would be affected by the amendment, and (5) stocks that would be affected by the amendment. The DSEIS will also evaluate: best management practices for cage and net-pen facilities, scientific information on the culture of marine fish, and the environmental effects of aquaculture. Alternatives currently under consideration are described in detail in "The Scoping Document for a Generic Amendment to Provide for Regulation of Offshore Marine Aquaculture for Selected Fish." The Council is soliciting public comment on the range of alternatives and scope of issues that should be considered in the DSEIS. Persons may request a copy of the scoping document from the Council (see **ADDRESSES** for contact information).

In accordance with NOAA Administrative Order (NAO) 216–6, Section 502(c)4, the Council previously held eight scoping hearings during February and March 2004 (69 FR 7185) to solicit input from interested parties on proposed actions and alternatives identified in the above-mentioned scoping document. The hearings were held in the following locations: Biloxi, MS; Corpus Christi, TX; Galveston, TX; Key West, FL; Larose, LA; Madeira Beach, FL; Mobile, AL; and Panama City, FL.

Additionally, public comments may be accepted at the following Council meetings and during public hearings that will be announced in future **Federal Register** notices:

1. September 13–17, 2004, Edgewater Beach Resort, 11212 Front Beach Road, Panama City, FL 32407.
2. November 7–10, 2004, Sheraton, 310 Padre Boulevard, South Padre Island, TX 78597.
3. January 10–13, 2005, Sheraton, 102 France Street, Baton Rouge, LA 70802.
4. March 7–10, 2005, Wynfrey, 100 Riverchase Galleria, Birmingham, AL 35244.

The meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Wayne Swingle at the Council (see **ADDRESSES**).

The completed DSEIS associated with the draft Generic Amendment for Offshore Aquaculture will be filed with the Environmental Protection Agency (EPA), announced in the **Federal Register**, and open to public comment for a 45–day period. This procedure is pursuant to regulations issued by the Council on Environmental Quality (CEQ) for implementing the National Environmental Policy Act (NEPA) (and to NAO 216–6 on complying with NEPA and the CEQ regulations).

The Council will consider public comments received on the DSEIS in developing the final supplemental environmental impact statement (FSEIS), and will consider public comments before taking final action on the Generic Amendment for Offshore Aquaculture. The Council will submit both the final amendment and the supporting FSEIS to NMFS for Secretarial review, approval, and implementation under the requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

NMFS will announce, through a notice published in the **Federal Register**, the availability of the final Generic Amendment for Offshore Aquaculture for public review during the Secretarial review period. During Secretarial review, NMFS will also file the FSEIS with the EPA for a final 30–day public comment period. This comment period will be concurrent with the Secretarial review period and will end prior to final agency action to approve, disapprove, or partially approve the final Generic Amendment for Offshore Aquaculture.

NMFS will announce, through a notice published in the **Federal Register**, all public comment periods on the final Generic Amendment for Offshore Aquaculture, any proposed implementing regulations, and its associated FSEIS. NMFS will consider all public comments received during the Secretarial review period, whether they are on the final Amendment, any proposed regulations, or the FSEIS, prior to final agency action.

Dated: August 30, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–20055 Filed 9–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081804F]

New England 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 New England Fishery Management Council (Council) is scheduling a joint public meeting of its Red Crab Oversight Committee and Advisory Panel in September, 2004. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held in conjunction with the Council Meeting on the evening of Wednesday, September 15, 2004 at 6 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee and panel will review recommendations from the Red Crab Plan Development Team related to the specifications for the 2005 fishing year as well as Draft Framework 1 to the Red Crab Fishery Management Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will

be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 27, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2036 Filed 9–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081804D]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will meet in Seattle, WA.

DATES: The meeting will be held on Wednesday, September 15, 2004, from 9 a.m. to 12 noon (PST).

ADDRESSES: The meeting will be held at the Alaska Fishery Science Center (AFSC), 7600 Sand Point Way North East, Building 4, Room 2143, Seattle, WA 98115.

Council address: North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The committee will review the ad hoc group problem statement and suite of alternatives, review draft committee problem statement and suite of alternatives, receive updates on any potential fishery issues for 2005, receive update on Council request for a discussion paper on alternative management strategies for rockfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–2712809 at least 7 working days prior to the meeting date.

Dated: August 27, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2033 Filed 9–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081804E]

North Pacific Fishery Management Council; Notice of Committee Meeting

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

ACTION: Notice of a public committee meeting.

SUMMARY: The North Pacific Fishery Management Council's (NPFMC) Crab Plan Team will meet in Juneau, AK.

DATES: The meeting will be held on September 20, 2004, from 10:30 a.m. to 5 p.m., September 21, 2004, from 9 a.m. to 5 p.m., and September 22, 2004 from 9a.m. to 12 noon.

ADDRESSES: The meeting will be held at NMFS, 709 West 9th Street, Sustainable Fisheries Conference Room, Juneau, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Diana Stram, NPFMC, 907–271–2809.

SUPPLEMENTARY INFORMATION: The committee's agenda includes the following issues: Review and approve agenda, election of officers and any additional membership issues, prepare Stock Assessment Fishery Evaluation (SAFE) report, review status of stocks, review results of snow crab stock assessment, review State Guideline Harvest Levels, receive progress report on revising crab overfishing definitions, discuss current and future research issues.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: August 27, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2034 Filed 9–1–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Logistics Agency announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated

collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 1, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Logistics Agency Headquarters, ATTN: Public Affairs Office, DP, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DP at (703) 767–6200.

Title, Associated Form; and OMB Number: Defense Logistics Agency Readership Survey—LogLines.

Needs and Uses: The Defense Logistics Agency (DLA) is evaluating its public affairs practices to include requesting feedback from readers of its publications. DLA needs to learn how we can better serve our readers and how we are already succeeding. The survey information will be used by DLA to help us improve the customer focus of our publications.

Affected Public: Recipients of LogLines magazine.

Annual Burden Hours: 667.

Number of Respondents: 4,000.

Responses per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are individuals/military service members/Federal employees/ industry who are on the mailing list for LogLines magazine. The survey will seek information concerning their opinions about the articles in the publication. Participation in the survey will be voluntary.

Dated: August 23, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–19982 Filed 9–1–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0025]

Federal Acquisition Regulation; Information Collection; Buy American Act-Trade Agreements Act Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding extension to an existing OMB clearance (9000–0025).

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 the Buy American Act-Trade Agreements Act Certificate. The clearance currently expires on October 31, 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 November 1, 2004.

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 (V), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0025, Buy American Act-Trade Agreements Act Certificate, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA (202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Trade Agreements Act of 1979, unless specifically exempted by statute or regulation, agencies are required to evaluate offers over a certain dollar limitation not to supply an eligible product without regard to the restrictions of the Buy American. Offerors identify excluded end products on this certificate.

The contracting officer uses the information to identify the offered items which are domestic end products. Items having components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a designated country of the Act.

B. Annual Reporting Burden

Respondents: 1,140.
Responses Per Respondent: 10.
Total Responses: 11,400.
Hours Per Response: .167.
Total Burden Hours: 1,238.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (V), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0025, Buy American Act,-Trade Agreements Act Certificate, in all correspondence.

Dated: August 27, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20001 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0018]

Federal Acquisition Regulation; Information Collection; Certification of Independent Price Determination and Parent Company and Identifying Data

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0018).

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 certification of independent price determination and parent company and identifying data. The clearance currently expires November 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 November 1, 2004.

ADDRESSES: Submit comments regarding this burden or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Craig Goral, Contract Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

Agencies are required to report under 41 U.S.C. 252(d) and 10 U.S.C. 2305(d) suspected violations of the antitrust laws (e.g., collusive bidding, identical bids, uniform estimating systems, etc.) to the Attorney General. As a first step in assuring that Government contracts are not awarded to firms violating such laws, offerors on Government contracts must complete the certificate of independent price determination. An offer will not be considered for award where the certificate has been deleted or modified. Deletions or modifications of the certificate and suspected false certificates are reported to the Attorney General.

B. Annual Reporting Burden

Respondents: 64,250.
Responses Per Respondent: 20.
Total Responses: 1,285,000.
Hours Per Response: .0065.
Total Burden hours: 8,352.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, 1800 F Street, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0018, Certification of Independent Price Determination and Parent Company and Identifying Data, in all correspondence.

Dated: August 27, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20002 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0027]

Federal Acquisition Regulation; Information Collection; Value Engineering Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0027).

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 value engineering requirements. The clearance currently expires on October 31, 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 November 1, 2004.

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 (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0027, Value Engineering Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT Cecelia Davis, Contract Policy Division, GSA,(202) 219–0202.

SUPPLEMENTARY INFORMATION:

A. Purpose

Value engineering is the technique by which contractors (1) voluntarily suggest methods for performing more economically and share in any resulting savings or (2) are required to establish a program to identify and submit to the Government methods for performing more economically. These recommendations are submitted to the Government as value engineering change proposals (VECP's) and they must include specific information. This information is needed to enable the Government to evaluate the VECP and, if accepted, to arrange for an equitable sharing plan.

B. Annual Reporting Burden

Respondents: 400.
Responses Per Respondent: 4.
Total Responses: 1,600.
Hours Per Response: 30.
Total Burden Hours: 48,000.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0027, Value Engineering Requirements, in all correspondence.

Dated: August 27, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20004 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0029]

Federal Acquisition Regulation; Information Collection; Extraordinary Contractual Action Requests

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0029).

SUMMARY: Under the provisions of the Paperwork ReductionAct of 1995 (44 U.S.C. Chapter 35), the Federal AcquisitionRegulation (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 extraordinary contractual action requests. The clearance expires October 31, 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 November 1, 2004.

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 (VR), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Craig Goral, Contract Policy Division, GSA (202) 501–3856.

SUPPLEMENTARY INFORMATION:

A. Purpose

This request covers the collection of information as a first step under Public Law 85–804, as amended by Public Law 93–155 and Executive Order 10789 dated November 14, 1958,that allows contracts to be entered into, amended, or modified in order to facilitate national defense. In order for a firm to be granted relief under the Act, specific evidence must be submitted which supports the firm's assertion that relief is appropriate and that the matter cannot be disposed of under the terms of the contract.

The information is used by the Government to determine if relief can be granted under the Act and to determine the appropriate type and amount of relief.

B. Annual Reporting Burden

Respondents: 100.
Responses Per Respondent: 1.
Total Responses: 100.
Hours Per Response: 16.
Total Burden Hours: 1,600.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VR), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0029, Extraordinary Contractual Action Requests, in all correspondence.

Dated: August 26, 2004

Ralph J. De Stefano

Acting Director, Contract Policy Division.

[FR Doc. 04–20005 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.DATES: Interested persons are invited to submit comments on or before October 4, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Carolyn Lovett, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: August 27, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group,Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.
Title: Part B of the Individuals with Disabilities Education Act Annual Performance Report.
Frequency: Annually.
*Affected Public:*State, local, or tribal gov't, SEAs or LEAs; Federal government.
Reporting and Recordkeeping Hour Burden:
Responses: 60. *Burden Hours:* 18,000.
Abstract: State educational agencies are required to establish goals for the performance of children with disabilities in that State that promote the purposes of Part B of the Individuals with Disabilities Education Act (Part B). States must also establish performance indicators that the State will use to assess its progress in achieving these goals. Section 612(a)(16) of Part B requires States to report to the Secretary on the progress that the State has made toward meetings its goals.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the ≥Browse Pending Collections≥ link and by clicking on link number 2610. When you access the information collection, click on ≥Download Attachments ≥ to view. Written requests for information

should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E4–2040 Filed 9–1–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before November 1, 2004. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to Joseph Konrade, EE–2K, Forestal Building, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585, or by fax at 202–586–1233 or by e-mail at *joseph.konrade@ee.doe.gov* and to Susan L. Frey, Director, Records Management Division, IM–11/Germantown Bldg., Office of the Chief Information Officer, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585–1290 or by fax, 301–903–9061 or by e-mail *susan.frey@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Joseph Konrade at the address listed above.

SUPPLEMENTARY INFORMATION: This package contains: *(1) OMB No.:* 1910–New; *(2) Package Title:* Weatherization Assistance Program; *(3) Type of Review:* New; *(4) Purpose:* Implementation of the Weatherization Assistance Program to increase the energy efficiency of dwellings owned or occupied by low income persons, reduce their total residential expenditure and improve their health and safety, especially low income persons who are particularly vulnerable such as the elderly, persons with disabilities, families with children, high residential energy users and households with high energy burden. DOE proposes to institute an electronic database concerning State Low Income Weatherization Assistance Plans to provide Web accessible program information for Congressional, budgetary, and public use. Information for the database is to be collected using four forms to be submitted electronically: (1) Annual File Worksheet; (2) Quarterly Report; (3) Annual Report for Monitoring and Technical Assistance Leveraging, and; (4) Points of Contact. With the exception of the last, these forms will replace forms calling for information that respondents already supply to DOE pursuant to current OMB clearances; *(5) Respondents:* Fifty States and District of Columbia and Native American Tribes; *(6) Estimated Number of Burden Hours:* Burden is estimated at 23 hours per state/territory totaling 1196 hours.

Statutory Authority: This collection of program information is in accordance with 10 CFR 440.

Issued in Washington, DC on August 25, 2004.

Lorretta D. Bryant,

Acting Director, Records Management Division, Office of the Chief Information Officer.

[FR Doc. 04–20031 Filed 9–1–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–381–001]

CenterPoint Energy Gas Transmission Company; Notice of Compliance Filing

August 24, 2004.

Take notice that on August 18, 2004, CenterPoint Energy Gas Transmission Company (CEGT) made a filing to comply with the Commission's July 29, 2004 Order in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2026 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–719–000; EL04–106–000]

MidAmerican Energy Company; Notice of Initation of Investigation and Refund Effective Date

July 14, 2004.

On July 12, 2004, the Commission issued an order in the above-referenced dockets initiating an investigation in Docket No. EL04–106–000 under section 206 of the Federal Power Act to determine whether, absent the condition to submit market-based rate reviews every three years, rates charged by MidAmerican Energy Company pursuant to its market-based rate authority remain just and reasonable, and to determine whether MidAmerican continues to satisfy the Commission's four part test. 108 FERC ¶ 61,043.

The refund effective date in Docket No. EL04–106–000, established pursuant to section 206(b) of the Federal Power Act, will be 60 days following publication of this notice in the **Federal Register**.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2023 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–461–000]

Questar Pipeline Company; Notice of Tariff Filing

August 24, 2004.

Take notice that on August 19, 2004, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, to become effective October 1, 2004:

First Revised Volume No. 1

Thirty-Second Revised Sheet No. 5

Seventeenth Revised Sheet No. 6

Original Volume No. 3

Thirty-Ninth Revised Sheet No. 8

Questar states that this filing incorporates into its storage and transportation rates, the revised annual charge adjustment (ACA) unit rate of $0.00190 per Dth.

Questar states that copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2027 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–98–000, and ER03–746–000]

San Diego Gas & Electric Company, Complainant v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange, Respondents; Investigation of Practices of the California Independent System Operator and the California Power Exchange, California Independent System Operator Corporation; Notice Shortening Comment Period

August 24, 2004.

On August 23, 2004, CP Kelco, U.S., Inc. (CP Kelco) filed a motion to intervene out of time and a motion for an extension of the deadline to submit fuel cost allowance filings, in the above-docketed proceedings. By this notice, the period for filing comments on CP Kelco's August 23, 2004 motion is hereby shortened, to and including August 26, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2022 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–464–000]

Southern LNG Inc.; Notice of Tariff Filing

August 20, 2004.

Take notice that on August 20, 2004, Southern LNG Inc. (SLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 56, to become effective September 20, 2004.

SLNG states that the proposed tariff sheet deletes a sentence from the tariff requiring all insurance policies to waive subrogation rights.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2030 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–463–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2004.

Take notice that on August 20, 2004, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its Tennessee FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, to become effective September 20, 2004:

Fourteenth Revised Sheet No. 315
First Revised Sheet No. 560U
Thirteenth Revised Sheet No. 316
First Revised Sheet No. 574M
Eight Revised Sheet No. 509
First Revised Sheet No. 659U

Tennessee states that the purpose of the filing is to modify the applicable tariff sheets to show address changes due to the centralization of office locations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2029 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–465–000]

Trailblazer Pipeline Company; Notice of Revenue Report

August 24, 2004.

Take notice that on August 20, 2004, Trailblazer Pipeline Company (Trailblazer) tendered for filing its Revenue Report. Trailblazer states that the purpose of this filing is to inform the Commission that Trailblazer collected no penalty revenues in the quarter ended June 30, 2004.

Trailblazer states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern standard time on August 31, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2031 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–462–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 24, 2004.

Take notice that on August 19, 2004, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fifty-Third Revised Sheet No. 50, to become effective August 1, 2004.

Transco states that the purpose of the instant filing is to track fuel percentage changes attributable to transportation service purchased from Texas Gas Transmission, LLC (Texas Gas) under its Rate Schedule FT, the costs of which are included in the rates and charges payable under Transco's Rate Schedule FT–NT.

Transco states that this filing is being made pursuant to tracking provisions under section 4 of Transco's Rate Schedule FT–NT. Transco further states that Appendix A attached to the filing includes the explanation of the fuel percentage changes and details regarding the computation of the revised FT–NT rates.

Transco states that copies of the filing are being mailed to each of its FT–NT customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2028 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–135–000, et al.]

Allegheny Energy, Inc., et al.; Electric Rate and Corporate Filings

August 3, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Allegheny Energy, Inc.

2. Allegheny Energy Supply Company, LLC

[Docket No. EC04–135–000]

Take notice that on July 26, 2004, Allegheny Energy, Inc. (Allegheny) and Allegheny Energy Supply Company, LLC (AE Supply) (collective, Applicants) filed an application for disposition of jurisdictional facilities under section 203 of the Federal Power Act. Applicants request Commission approval to sell to Buckeye Power Generating, LLC (BPG) a wholly-owned subsidiary of Buckeye Power, Inc., and Ohio non-profit corporation, certain jurisdictional assets. The Applicants have requested privileged treatment of certain agreements submitted in support of the application.

Comment Date: 5 p.m. eastern standard time on August 16, 2004.

3. Virginia Electric and Power Company

Multitrade of Pitttsylvania County, L.P.
ESI Pittsylvania, Inc.
ESI Multitrade LP, Inc.
Energy Investors Fund, L.P.
Energy Investors Fund II, L.P.

[Docket No. EC04–139–000]

Take notice that on July 30, 2004, Virginia Electric and Power Company, (Dominion Virginia Power), Multitrade of Pittsylvania County, L.P. (Multitrade), ESI Pittsylvania, Inc., ESI Multritrade LP, Inc., Energy Investors Fund, L.P., and Energy Investors Fund II, L.P. (collectively, Applicants) submitted for filing, pursuant to section 203 of the Federal Power Act 16 U.S.C. 824b, and Part 33 of the Commission's regulations, 18 CFR Part 33 (2003), an application requesting Commission authorization for: (1) The proposed transfer of substantially all of the assets of Multitrade to Dominion Virginia Power, a subsidiary of Dominion Resources, Inc.; and (2) Dominion Virginia Power's acquisition of an approximately 79.6 MW generating facility and its appurtenant transmission facilities located in Pittsylvania County, Virginia resulting from the proposed transaction. The Applicants request Commission action on the Application by September 29, 2004.

Applicants state that copies of the filing were served upon the parties to the transaction, Dominion Virginia Power's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: 5 p.m. eastern standard time on August 20, 2004.

4. Virginia Electric and Power Company

Commonwealth Atlantic Limited Partnership
Chickahominy River Energy Corp.,
James River Energy Corp.

[Docket No. EC04–140–000]

Take notice that, on July 30, 2004, Virginia Electric and Power Company (Dominion Virginia Power), Commonwealth Atlantic Limited Partnership, (CALP) Chickahominy River Energy Corp. (CREC) and James River Energy Corp. (JREC) (collectively, the Applicants) submitted for filing, pursuant to section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application requesting Commission

authorization for: (1) The proposed transfer of 100% of the ownership interests of JREC and CREC in CALP to Dominion Virginia Power, a subsidiary of Dominion Resources, Inc. (DRI); and (2) Dominion Virginia Power's ownership of an approximately 312 MW peaking facility and its appurtenant transmission facilities located in Chesapeake, Virginia resulting from the proposed acquisition. The Applicants request that the Commission act on the application by September 29, 2004.

Applicants states that copies of the filing were served upon the parties to the transaction, Dominion Virginia Power's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: 5 p.m. eastern standard time on August 20, 2004.

5. Hartwell Energy Limited Partnership

Dynegy Power Corp
Centennial Power, Inc.

[Docket No. EC04–141–000]

Take notice that on July 30, 2004, Dynegy Power Corp (Dynegy Power) and Centennial Power, Inc. (Centennial) tendered for filing an application pursuant to section 203 of the Federal Power Act, for themselves and on behalf of Hartwell Energy Limited Partnership (Hartwell), seeking authorization to dispose of jurisdictional facilities. Dynegy Power states that through the sale of its capital stock in certain subsidiaries, it will transfer its indirect 1 percent general partnership and indirect 49 percent limited partnership interests in Hartwell to Centennial's wholly-owned subsidiary, Hartwell, LLC.

Comment Date: 5 p.m. eastern standard time on August 20, 2004.

6. East Texas Electric Cooperative, Inc.

[Docket No. EC04–142–000]

Take notice that on July 30, 2004, East Texas Electric Cooperative, Inc. (ETEC) filed an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, for authorization to purchase jurisdictional facilities associated with a 550 MW coal-fired generating unit.

ETEC seeks authorization to purchase a 9.1percent undivided ownership interest in the jurisdictional facilities associated with Nelson Unit No. 6. ETEC states that it is purchasing the ownership interest from CWL Corp. III, a non-jurisdictional, public benefit, non-profit corporation controlled by the City Water and Light Plant of the City of Jonesboro. ETEC has requested privileged treatment of the Purchase and Sale Agreement submitted as an attachment to the Application.

Comment Date: 5 p.m. eastern standard time on August 20, 2004.

7. Dynegy Midwest Generation, Inc.

Illinois Power Company

[Docket No. EC04–143–000]

Take notice that on July 30, 2004, Dynegy Midwest Generation, Inc. (DMG) and Illinois Power Company (Illinois Power) (collectively, Applicants) filed a joint application under section 203 of the Federal Power Act and Part 33 of the Commission's regulations to request authorization and approval for DMG to transfer and sell to Illinois Power certain transmission and distribution assets and for Illinois Power to sell and transfer to DMG certain generation assets. Applicants state that the assets will be transferred at net book value on the date of thetransfer. Applicants further state that the proposed transaction is related to the transfers by Illinois Power of generation assets to DMG in 1999 and 2001.

Comment Date: 5 p.m. eastern standard time on August 20, 2004.

8. Cinergy Services, Inc.

[Docket No. ER04–719–001]

Take notice that on July 29, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted a compliance filing pursuant to the Commission's Order issued June 4, 2004 in Docket No. ER04–719–000, 107 FERC ¶ 61,260. Midwest ISO submitted Service Agreement No. 1433 under Midwest ISO FERC Electric Tariff, Second Revised Volume No. 1, an Amended and Restated Interconnection Agreement among Cinergy Services, Inc., acting as agent for and on behalf of PSI Energy, Inc., Allegheny Energy Supply Wheatland Generating Company, LLC, and the Midwest ISO.

Midwest ISO states that copies of the filing were served upon the service list compiled by the Secretary in this proceeding and the parties to the agreement.

Comment Date: 5 p.m. eastern standard time on August 19, 2004.

9. California Independent System Operator Corporation

[Docket No. ER04–793–001]

Take notice that on July 29, 2004 the California Independent System Operator Corporation (ISO) submitted a compliance filing pursuant to the Commission's Order issued June 29, 2004 in Docket No. ER04–793–000 concerning Amendment No. 59 to the ISO Tariff, 107 FERC ¶ 61,329.

The ISO states that it has served copies of this letter, and all attachments, upon all parties on the official service list in this proceeding. In addition, the ISO states that it is posting this transmittal letter and all attachments on the ISO Home Page.

Comment Date: 5 p.m. eastern standard time on August 19, 2004.

10. Wabash Valley Power Association, Inc.

[Docket No. ER04–802–002]

Take notice that on July 29, 2004, Wabash Valley Power Association, Inc. (Wabash Valley), submitted a compliance filing pursuant to the Commission's order issued June 29, 2004 in Docket Nos. ER04–789–000 and ER04–802–000, 107 FERC ¶ 61, 327. The filing consists of Wabash Valley Rate Schedule FERC Nos. 1 and 3.

Comment Date: 5 p.m. eastern standard time on August 19, 2004.

11. Virginia Electric and Power Company

[Docket No. ER04–1056–000]

Take notice that on July 28, 2004, Virginia Electric and Power Company, doing business as Dominion Virginia Power, submitted for filing revised tariff sheets under Virginia Electric and Power Company FERC Electric Tariff, Second Revised Volume No. 5 (OATT) modifying the effective date for Backup Supply Service for Unbundled Retail Transmission Customers under Schedule 10 to its OATT. Dominion Virginia Power requests an effective date of May 25, 2004.

Dominion Virginia Power states that copies of the filing were served upon Dominion Virginia Power's customers under its OATT, the SCC and the North Carolina Utilities Commission.

Comment Date: 5 p.m. eastern standard time on August 18, 2004.

12. PJM Interconnection, L.L.C.

[Docket No. ER04–1057–000]

Take notice that on July 28, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed second amended interconnection service agreement between PJM and PSEG Power, L.L.C., designated as Second Revised Service Agreement No. 701 under PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1. PJM requests an effective date of June 29, 2004.

PJM states that copies of this filing were served upon PSEG Power, L.L.C. and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern standard time on August 18, 2004.

13. PJM Interconnection, L.L.C.

[Docket No. ER04–1058–000]

Take notice that on July 28, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing Original Service Agreement No. 1051 under PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1, an executed interim interconnection service agreement among PJM, FPL Energy Marcus Hook, L.P., and PECO Energy Company. PJM requests an effective date of June 28, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern standard time on August 18, 2004.

14. RockGen Energy, LLC

[Docket No. ER04–1059–000]

Take notice that on July 28, 2004, RockGen Energy, LLC (RockGen) submitted for filing RockGen Energy, LLC Rate Schedule No. 3 for reactive power services to American Transmission Company LLC. Applicant requests an effective date of October 1, 2004.

Applicant states that copies of the filing were served upon the American Transmission Company, Midwest Independent System Operator and Public Service Commission of Wisconsin.

Comment Date: 5 p.m. eastern standard time on August 18, 2004.

15. American Electric Power Service Corporation

[Docket No. ER04–1060–000]

Take notice that on July 27, 2004, the American Electric Power Service Corporation (AEPSC) tendered for filing a Notice of Termination of an executed Interconnection and Operation Agreement between Indiana Michigan Power Company and Acadia Bay Energy Company, LLC, designated as First Revised Service Agreement No. 335 under American Electric Power's Open Access Transmission Tariff. AEPSC requests an effective date of November 4, 2003.

AEPSC states that a copy of the filing was served upon Acadia Bay Energy Company, LLC and the Indiana Utility Regulatory Commission and Michigan Public Service Commission.

Comment Date: 5 p.m. eastern standard time on August 17, 2004.

16. New York State Electric & Gas Corporation

[Docket No. ER04–1061–000]

Take notice that on July 29, 2004, New York State Electric & Gas Corporation (NYSEG) submitted for filing Original Service Agreement No. 335 under New York Independent System Operator, Inc. FERC Electric Tariff Original Volume No. 1, an executed Interconnection Agreement between NYSEG and Windfarm Prattsburgh, LLC (WFPB) that sets forth the terms and conditions governing the interconnection between WFPB's generating facility in Steuben and Yates Counties, New York and NYSEG's transmission system.

NYSEG states that copies of the filing were served upon WFPB, the New York State Public Service Commission, and the New York Independent System Operator, Inc.

Comment Date: 5 p.m. eastern standard time on August 19, 2004.

17. Western Systems Power Pool, Inc.

[Docket No. ER04–1062–000]

Take notice that on July 29, 2004, the Western Systems Power Pool, Inc. (WSPP) submitted Second Revised Sheet Nos. 91, 92, 93 and 94 to Western Systems Power Pool Rate Schedule FERC No. 6 to amend the WSPP Agreement to include a revised membership list. WSPP seeks an effective date of July 29, 2004.

WSPP states that copies of this filing will be electronically served upon WSPP members who have supplied e-mail addresses for the Contract Committee and Contacts lists. WSPP further states that this filing also has been posted on the WSPP homepage (*http://www.wspp.org*) thereby providing notice to all WSPP members.

Comment Date: 5 p.m. eastern standard time on August 19, 2004.

18. PJM Interconnection, L.L.C.

[Docket No. ER04–1063–000]

Take notice that on July 29, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed interconnection service agreement (ISA) and an executed construction service agreement among PJM, Granger Energy of Morgantown, LLC, and PPL Electric Utilities Corporation designated as Original Service Agreement Nos. 1053 and 1054, respectively, under PJM Interconnection, L.L.C. FERC Electric Tariff, Sixth Revised Volume No. 1. PJM requests a July 13, 2004 effective date for the ISA and a July 14, 2004 effective date for the CSA.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern standard time on August 19, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2046 Filed 9–1–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

August 24, 2004.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands.

b. *Project No:* 2454–059.
c. *Date Filed:* June 29, 2004.
d. *Applicant:* Minnesota Power (MP).
e. *Name of Project:* Sylvan Hydroelectric Project.
f. *Location:* The project is located on the Crow Wing River, in Cass, Crow Wing, and Morrison Counties, Minnesota.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).
h. *Applicant Contact:* Thomas Houghtaling, Minnesota Power, 30 West Superior Street, Duluth, MN 55802, (218) 722–5642, ext. 3583.
i. *FERC Contact:* Any questions on this notice should be addressed to Shana High at (202) 502-8674.
j. *Deadline for filing comments and /or motions:* September 27, 2004.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (2454–059) on any comments or motions filed. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

k. *Description of Proposal:* MP proposes to convey approximately 151.8 acres of land within the project boundary to The Nature Conservancy (TNC). TNC would then convey the land to the Minnesota Department of Military Affairs (MDMA) for an addition to Camp Ripley, a military base operated by MDMA. The 151.8 acres within Camp Ripley would remain within the project boundary as a site where recreational activities occur. TNC would receive land of equal value from MDMA to expand its Lake Alexander Nature Preserve.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or call toll-free 1–866–208–3676, or for TTY, call (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title **COMMENTS, RECOMMENDATIONS FOR TERMS AND CONDITIONS, PROTEST, OR MOTION TO INTERVENE**, as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,
Secretary.
[FR Doc. E4–2024 Filed 9–1–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–360–000]

Maritimes and Northeast Pipeline, L.L.C.; Notice of Technical Conference

August 24, 2004.

In an order issued on July 29, 2004,[1] the Commission directed staff to convene a technical conference to discuss Maritimes and Northeast Pipeline, L.L.C.'s proposed non-rate modifications to its tariff including, but not limited to, revisions to the fuel retainage percentage, revisions to the right of first refusal, and the proposed action alert.

A technical conference will be held on Wednesday, September 22, 2004, beginning at 9:30 a.m. (e.s.t.), in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

All interested parties and staff are permitted to attend. For further information please contact: David Faerberg at (202) 502–8275 or e-mail *david.faerberg@ferc.gov*.

Magalie R. Salas,
Secretary.
[FR Doc. E4–2025 Filed 9–1–04; 8:45 am]
BILLING CODE 6717–01–P

[1] *Maritimes and Northeast Pipeline, L.L.C.*, 108 FERC ¶ 61,087 (2004).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–374–000; CP04–375–000; CP04–376–000]

Pearl Crossing Pipeline, L.L.C.; Notice of Public Meeting

August 24, 2004.

On August 30 and 31, 2004, the staff of the Office of Energy Projects (OEP) will attend the U.S. Coast Guard's open house and public meeting for the Pearl Crossing Pipeline, L.L.C. (Pearl Crossing) project located in Cameron and Calcasieu counties, Louisiana. Each meeting will consist of an informational open house, from 3 p.m. to 4:30 p.m. (c.s.t.), and a public scoping meeting, from 5 p.m. to 7 p.m. (c.s.t). The meeting locations are as follows:

August 30, 2004, Lake Charles Civic Center, Contraband Room, 900 Lakeshore Drive, Lake Charles, Louisiana 70602, (337) 491–1256;

August 31, 2004, Thomen Community Center, 1413 North 20th Street, Orange, Texas 77630, (409) 883–1017.

All interested parties may attend. For additional information, contact the Commission's Office of External Affairs at 866–208–FERC (3372).

Magalie R. Salas,
Secretary.
[FR Doc. E4–2032 Filed 9–1–04; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7808–9]

Building Health Professional Capacity To Address Children's Environmental Health; Initial Announcement

Part I. Overview Information

Environmental Protection Agency, Office of the Administrator, Office of Children's Health Protection.

Solicitation Title: Building Health Professional Capacity to Address Children's Environmental Health; Initial Announcement.

Funding Opportunity Number: USEPA–AO–OCHP–04–03.

Catalogue of Federal Domestic Assistance (CFDA) Number: 66.609. Protection of Children and the Aging as a Fundamental Goal of Public Health and Environmental Protection, Fiscal Year 2004, Environmental Protection Agency.

Deadline for the Letter of Intent: October 25, 2004, all applicants must submit a Letter of Intent (up to two pages in length according to guidelines) to EPA via e-mail to be considered for award.

Solicitation Closing Date: December 13, 2004, for shipment of Pre-application Proposals invited by EPA based upon evaluation of Letters of Intent. General information, application materials, announcements during the solicitation management process, and answers to questions posted on Office of Children's Health Protection Web site: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.*

Table of Contents

Executive Summary

Funding Opportunity Title: "Building Health Professional Capacity to Address Children's Environmental Health."

Announcement Type: Initial Offering.

Funding Opportunity Number: USEPA–AO–OCHP–04–03.

CFDA Number: 66.609 Protection of Children and the Aging as a Fundamental Goal of Public Health and Environmental Protection, Fiscal Year 2004, EPA.

Purpose of the Funding Opportunity: This funding opportunity is designed to identify competitive projects that increase the number of health professionals who are able to address the broad spectrum of children's environmental health issues in their practices, in the institutions in which they work, in their communities and in academic settings. This solicitation focuses on developing multi-state (at least five states), national, or international (at least three countries) training/education programs for health professionals. These programs will help health professionals understand, diagnose, and develop prevention messages for the full spectrum of children's environmental health issues they encounter. Children's environmental health hazards may include: (1) Air pollutants, both indoor and ambient; (2) toxic chemicals such as lead, mercury, arsenic, organochlorines such as polychlorinated biphenyls and dioxins; (3) endocrine disruptors; (4) environmental tobacco smoke; (5) ultraviolet radiation; (6) water pollution; (6) pesticides; (7) brominated flame retardants; (8) radon; and (9) carbon monoxide. Training should assist health professionals increase understanding of environmental health issues among their patients and their communities, helping them understand the key role of exposure prevention in averting environmentally-related illness and disease. Each proposal must include an evaluation methodology to measure the effectiveness of the training and training approach in fostering the incorporation of children's environmental health issues into the practices of health professionals. Proposals should describe projects that will both: (1) Provide education or training on pediatric environmental health issues to health professionals and, (2) evaluate incorporation of this education or training into individual practice and/or the practices, protocols, and procedures of whole clinics or other institutions.

Awards: EPA anticipates awarding approximately two to three grants from these proposals. Funds available for these projects are expected to total approximately $300,000. Grants are requested for a total of $100,000 to $150,000 for a two-year performance period. No cost sharing or match contributions are required. Projects not funded under this solicitation will be retained on file for a period of one year from the closing date of this solicitation and made available for potential funding by OCHP and other EPA offices.

Eligibility: Eligible applicants include: Academic institutions, non-profit organizations, state, local, and tribal governments. Private businesses, federal agencies, and individuals are not eligible to be grant recipients; however, they may work in partnership with eligible applicants on projects. Applicants must be eligible under at least one of these authorities: Section 103 of the Clean Air Act, section 104 of the Clean Water Act, section 1442 of the Safe Drinking Water Act, section 10 of the Toxic Substances Control Act, and section 102(2)(f) of the National Environmental Policy Act for international awards.

Application and Submission Information: A three-stage application process will be used. Letters of Intent (up to two pages in length) must be submitted to the U.S. EPA Office of Children's Health Protection by e-mail to *blackburn.elizabeth@epa.gov* (or by fax to (202) 564–2733 *only if e-mail is unavailable*) by October 25, 2004. Applicants with satisfactory Letters of Intent will be invited to submit a Pre-application Proposal shipped on or before December 13, 2004. Pre-applications selected for possible award will be contacted individually and asked to complete additional forms for a Full Proposal prior to award.

A Sample Letter of Intent is attached as Appendix I. This solicitation with the sample Letter of Intent, general information and Pre-application materials are available on the Office of Children's Health Protection Web site: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.* If your Letter of Intent is approved, you will be invited to submit a Pre-application Proposal. These Pre-application materials can also be obtained from the Web site above and the EPA Grants Administration Web site: *http://www.epa.gov/ogd/grants/how_to_apply.htm.*

Part II. Full Text of Announcement

Section I. Funding Opportunity Description

1. Background

Children need clean air to breathe, clean water to drink, safe food to eat, and a healthy environment to learn, grow and thrive. Yet everyday, children are exposed to risks that may stand in the way of these basic necessities. Children may be more vulnerable to some environmental risks than adults. Many of the health problems that result from exposure to harmful environmental conditions can be prevented, managed, and treated. The public looks to health professionals to

play a critical role in the identification, prevention, management and treatment of environmentally-related illnesses. Unfortunately most health professionals are ill-prepared to adequately address environmental hazards.

The Institute of Medicine published two studies in the 1990s—*Environmental Medicine: Integrating a Missing Element into Medical Education* and *Nursing, Health and the Environment: Strengthening the Relationship to Improve the Public's Health*—noting the important role of the health professional in addressing environmental health concerns and recommending that a greater effort be made to incorporate environmental health concepts into the training of health professionals. There have been a number of successful efforts in the past decade to support the education and training of health professionals but continued efforts to provide a basic understanding of pediatric environmental health issues to all health professionals must be the ultimate goal.

EPA's *National Agenda to Protect Children's Health from Environmental Threats* directed the Agency to expand educational efforts, in partnership with health professionals, to identify, prevent and reduce environmental health threats to children. EPA has supported a number of efforts to educate health professionals including: (1) A series of workshops for chief pediatric residents; (2) a continuing education program for nurses; (3) the development of materials for a national health professional training program; (4) an initiative to educate health professionals about pesticides; (5) Pediatric Environmental Health Specialty Units; and (6) training modules for school nurses on environmental triggers of asthma. This request for proposals seeks to build on these efforts to increase the number of health professionals who are able to address environmental health risks to children.

2. Funding Priorities

In accordance with EPA's *National Agenda to Protect Children's Health from Environmental Threats,* EPA requests proposals that will strengthen the capacity of health professionals to address environmental health risks to children. Health professionals who have a basic understanding of environmental health issues will be better able to identify, prevent, manage and reduce environmental health threats to children. This is an initial announcement for "Building Health Professional Capacity to Address Children's Environmental Health."

The purpose of this solicitation is to continue to build on the efforts to educate health professionals and to understand how these efforts have been incorporated into practice. The ultimate outcome of this effort will be to increase the number of health professionals who have knowledge about children's environmental health and are incorporating that knowledge into their practice.

Many factors can affect health outcomes, such as asthma attacks. It can be difficult to quantify the exact contribution that improved health professional knowledge of environmental health risks to children might have on a specific health outcome. While it may be difficult to understand how many asthma attacks were prevented as a result of the education of health professionals, it is possible to understand what health professionals are doing to incorporate environmental health concepts into their daily practice. This should in turn lead to prevention and reduction of environmental exposures to children.

Proposals must address *both* phases of this project: (1) Provide education or training on pediatric environmental health issues to health professionals and (2) evaluate the incorporation of this education or training into individual practices and/or the practices, protocols, and procedures of whole clinics or other institutions.

All proposals must detail how they will deliver education or training in pediatric environmental health to health professionals to achieve each of these seven competencies adapted from the Institutes of Medicine (IOM) publications: *Nursing, Health, and the Environment: Strengthening the Relationship to Improve the Public's Health* (page 5) and *Environmental Medicine: Integrating a Missing Element into Medical Education* (page 3) and from The National Environmental Education and Training Foundation's *National Pesticide Competency Guidelines for Medical and Nursing Education* (page 20).

Upon completion of this project, health professionals should be able to:

(1) Understand the influence of environmental agents on children's health;

(2) Recognize signs, symptoms, diseases and sources of exposure relating to common environmental agents and conditions;

(3) Complete a pediatric environmental health history and recognize potential environmental hazards and sentinel illnesses;

(4) Recommend a course of preventative action or make appropriate referrals for conditions with probable environmental etiologies as appropriate for their professional disciplines;

(5) Demonstrate a knowledge of risk communication in patient care and community intervention with respect to the potential adverse effects of the environment on health; and;

(6) Recognize the full range of resources available to support their work in the field of pediatric environmental health; and

(7) Understand reporting requirements and regulations.

Further, the proposal must define how they will measure the impact of the training or education upon both the knowledge base of the practitioner and the effect that this program has had upon the individual's daily practice and/or the practices, protocols, and procedures of whole clinics or other institutions.

Proposals must meet the statutory criterion detailed below and the program criteria listed in Section V.

3. Authorities

To be eligible to compete for these funds, applicants must be eligible under section 103 of the Clean Air Act, section 104 of the Clean Water Act, section 1442 of the Safe Drinking Water Act, section 10 of the Toxic Substances Control Act, and section 102(2)(f) of the National Environmental Policy Act for international awards.

The following statutory criterion must be met for projects to be considered for funding:

A project must consist of activities authorized under one or more authorities cited above. Most of the statutes authorize grants for: "research, investigations, experiments, demonstrations, surveys and studies." These activities relate generally to the gathering or transferring of knowledge. Grant proposals should emphasize a "learning" concept, as opposed to "fixing" a specific environmental problem through a well-established method. The project's activities must advance the state of knowledge or transfer information to other practitioners in the field. The statutory term "demonstration" can encompass the first application of an approach or an innovative application of a previously used method. The term "research" may include the application of established practices as they contribute to "learning" about the effectiveness of an environmental approach.

The goal of the Children's Environmental Health Protection program is to minimize and/or eliminate children's exposure to environmental

health threats—recognizing children's special vulnerability to these threats and recognizing the possibility of preventable childhood exposures leading to lifelong, irreversible consequences. This program is included within the Catalogue for Domestic Assistance (CFDA) listing number: 66.609 found at *http://www.cfda.gov.*

Section II. Award Information

EPA anticipates awarding approximately two to three grants from these proposals. Funds available for these projects are expected to total approximately $300,000. Grants may be requested for a total of $100,000 to $150,000 for a two year performance period. Proposals for less than $100,000 and more than $150,000 will not be considered. Final grants are subject to the availability of funds. EPA reserves the right to make no awards. No cost sharing or match contributions are required. It is expected that grants will begin around June 15, 2005 and be completed no later than September 30, 2007.

Projects not funded under this solicitation will be retained on file for a period of one year from the closing date of this solicitation and made available for potential funding by OCHP and other EPA offices.

Projects may expand upon ongoing work within the focus of this solicitation. However, the boundaries of the previous and proposed work under this solicitation must be clear in terms of the new work to be done and the budget to support the new proposal.

The applicant may propose either a grant or cooperative agreement. If the applicant chooses to submit a proposal for a cooperative agreement, the Agency will have substantial involvement in the project. The applicant must define the expectations for Agency involvement in the project. Such involvement may mean EPA review and approval of project scope and phases; EPA participation in and collaboration on, various phases of the work; EPA review of draft and final work products; regular e-mail, phone and conference calls.

Section III. Eligibility Information

1. Eligible Applicants

a. Eligible Applicants:

Applicants must be eligible under at least one of these authorities: Section 103 of the Clean Air Act, section 104 of the Clean Water Act, section 1442 of the Safe Drinking Water Act, section 10 of the Toxic Substances Control Act, and section 102(2)(f) of the National Environmental Policy Act for international awards. Eligible applicants include: academic institutions, non-profit organizations, state, local, and tribal governments. Private businesses, federal agencies, and individuals are not eligible to be grant recipients; however, they may work in partnership with eligible applicants on projects.

b. Non-profit Status:

Applicants are not required to have a formal Internal Revenue Service (IRS) non-profit designation, such as 501(c)(3) or 501(c)(4); however, they must present in their Pre-application Proposal their letter of incorporation or other documentation demonstrating their non-profit or not-for-profit status. This requirement does not apply to public agencies or federally-recognized tribes. Failure to enclose a letter of incorporation or other documentation demonstrating non-profit or not-for-profit status will render Pre-application Proposals incomplete and they will not be reviewed. Applicants who do have an IRS 501(c)(4) designation are not eligible for grants if they engage in lobbying, no matter what the source of funding for the lobbying activities. No recipient may use grant funds for lobbying. For profit enterprises are not eligible to receive sub-grants from eligible recipients, although they may receive contracts, subject to EPA regulations on procurement under assistance agreements, 40 Code of Federal Regulations (CFR) 30.40 (for non-governmental recipients) and 40 CFR 31.36 (for governments).

c. Tribal Status:

Tribal applicants must supply documentation of their authorizing tribal resolution.

d. Intergovernmental Review of Federal Programs (SPOC List):

Applicants must adhere to the provisions of The Executive Order 12372, "Intergovernmental Review of Federal Programs" (SPOC List) applies. See *http://www.whitehouse.gov/omb/grants/spoc.html* for further information.

e. Incurring Costs:

Pre-award costs will not be covered under this solicitation. Grant recipients may begin incurring allowable costs on the date identified in the EPA award agreement. Activities must be completed and funds spent within the time frames specified in the award agreement. EPA grant funds may be used only for the purposes set forth in the grant agreement and must conform to the Federal cost principles contained in OMB Circular A–87; A–122; and A–21, as appropriate. Ineligible costs will be reduced from the final grant.

2. Cost Sharing or Matching

Cost sharing or matching funds are not required for this solicitation.

3. Other-Eligibility Criteria

a. Responsiveness Criteria That Will Make an Application Ineligible:

(1) Letters of Intent

The Letter of Intent must comply with the following responsiveness criteria to be eligible to submit a Pre-application Proposal: applicant eligibility, completeness, administrative responsiveness, and timeliness of submission.

(2) Pre-Application Proposal

The Pre-application Proposal must comply with the following responsiveness criteria for the Pre-application Proposal to be reviewed for possible award: timeliness of shipment, administrative responsiveness, order of materials presentation, completeness, original signatures as required, required number of copies and the absence of unnecessary materials and extraneous information.

b. Multiple Proposals:

Applicants may submit only one proposal under this solicitation. Applicants are encouraged to collaborate with other organizations with complementary expertise in a joint proposal.

c. Responsible Officials:

Projects must be performed by the applicant or a person approved by the applicant and EPA. Proposals must identify any person(s) other than the applicant who will assist in carrying out the project. Recipients are responsible for receiving the grant award agreement from EPA and ensuring that grant conditions are satisfied. Recipients are responsible for the successful completion of the project.

Section IV. Application and Submission Information

1. Address To Request Application Package

A three-stage application process will be used. Stage 1 Letters of Intent (up to two pages in length) must be submitted to the U.S. EPA Office of Children's Health Protection by e-mail to *blackburn.elizabeth@epa.gov* (or by fax (202) 564–2733 *only if e-mail is unavailable*) by October 25, 2004. Applicants with satisfactory Letters of Intent will be invited to submit a Stage 2 Pre-application Proposal which must be shipped on or before December 13, 2004. Applicants whose Pre-applications are selected for possible award will be contacted individually

and asked to complete additional forms for the Stage 3 Full Proposal prior to award.

This solicitation notice contains all the instructions needed for preparing the Stage 1 Letter of Intent and, if invited by EPA, the Stage 2 Pre-application Proposal. A sample Letter of Intent is provided at the end of this solicitation. Paper copies of this announcement, the sample Letter of Intent and the requisite forms for the Pre-application Proposal can be obtained by contacting EPA personnel listed in Section VII of this solicitation. Electronic copies of the requisite forms for the Pre-application Proposal are available at *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm* or at: *http://www.epa.gov/ogd/grants/how_to_apply.htm*. If your Pre-application Proposal is selected for possible award, you will receive the forms and individual instruction in completing Stage 3, the Full Proposal. These forms, known as the EPA Application Kit for Federal Assistance, will be available at: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm*. or at: *http://www.epa.gov/ogd/grants/how_to_apply.htm*.

2. Content and Form of Application Submission

a. Stage 1 Letter of Intent:

Stage 1 of this three-stage application process is a Letter of Intent (up to two pages in length) which is due via e-mail to *blackburn.elizabeth@epa.gov* by October 25, 2004. *Letters of Intent* must have an e-mail subject line starting with Letter of Intent: followed by your Project Title. E-mail confirmation of receipt will be sent promptly.

E-mail submission of the Letter of Intent is strongly preferred. However, if e-mail is not available, the Letter of Intent may be faxed to the attention of Elizabeth Blackburn at (202) 564–2733. If a confirming phone call for fax transmissions is not received within two business days, a phone call should be made to Elizabeth Blackburn at (202) 564–2192 to initiate a trace.

Applicants submitting a Letter of Intent will be notified via e-mail on or before November 1, 2004 if they are invited to submit a Pre-application Proposal.

A sample Letter of Intent is provided at the end of this solicitation. A copy also can be found at: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm*. Your Letter of Intent must provide *all* of the following information in the following order in no more than two pages:

(Section 1) Contact Information for the Applicant Organization

a. Name of your organization.
b. Project name.
c. Name of authorized representative.
d. Address.
e. Phone number and fax number.
f. E-mail address.
g. Web site, if any.

(Section 2) Project Summary Including

a. Amount of the Request ($);
b. Description of how this project responds to the statutory criterion defined in this solicitation;
c. Description of the organization which will lead/oversee the project;
d. Description of the organizations and individuals expected to participate in the two phases (training/education and measurement) of the project;
e. Description of the general children's environmental health areas to be addressed;
f. Description of the general approach and format that is planned for the two phases (training/education and measurement) of the project;
g. Description of the specific audience(s), *e.g.*, type of health professional(s) to be trained; expected numbers you hope to reach; geographic range of applicability [multi-state (at least 5 states), national, international (at least 3 countries)];
h. Description of the types of materials (*e.g.*, classroom guides, checklists, pamphlets for patients, etc.) you expect to produce. (*Note*: A wide variety of children's environmental health training materials for health professionals, developed by both government and non-governmental agencies, already exist. Support for the development and production of new training/educational materials will be considered only if the applicant demonstrates a compelling need not filled by existing materials. Justifications for the development of new educational materials should include a literature search demonstrating a strong familiarity with the range of existing materials available);
i. List of other types of health professionals to whom this training/education might be applicable;
j. Transferability of training, materials and measurement tools to others to train additional groups of health professionals.

b. Stage 2 Pre-application Proposals, If Invited By EPA:

Stage 2 of this three-stage application process is a Pre-application Proposal. Note: *If* your Letter of Intent is *accepted*, you will be invited to participate in Stage 2.

Note: Applicants should periodically check the web page below for updated information to applicants: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm*.

a. List of Required Content Elements of Pre-application Proposal:

(1) Table of Contents with page numbers for all elements of this submission;
(2) Summary Cover Page (Described Below);
(3) Copy of the previously submitted Letter of Intent;
(4) Completed Federal Forms: SF–424 and SF–424(A) (Section B–Budget Categories). *http://www.epa.gov/ogd/grants/how_to_apply.htm* contains information about completing SF–424(A) Budget Forms and Understanding Cost Principles for a Federal grant;
(5) Budget Narrative;
(6) Brief Resume or Bio of the Principle Investigator or Project Director; and
(7) Project Narrative;
Appendices;

b. Detailed Content and Form of Pre-application Proposal:

The overall Pre-application Proposal is limited to 14 pages excluding the SF–424 and SF–424(A) and the Appendices. Materials must follow *exactly* the format outlined below. *Pages and information submitted out of order will not be reviewed.* Text may be single or double spaced, no smaller than 12 point font. The pages must be letter sized (8½ × 11 inches). Margins are not specified. Proposals must be legible. *Note:* All proposals should be well explained and easily read. Information should be clear and concise, well organized and contain no unnecessary jargon. Please submit the original (with original signatures in contrasting) and nine copies of the complete Pre-application Package including:

(1) *Table of Contents* with page numbers for all elements of this submission
(2) *Summary Cover Page* (Not more than one page): The summary cover page should not exceed one page in length and should include, in this order;
(a) Building Health Professional Capacity to Address Children's Environmental Health; USEPA–AO–OCHP–04–03;
(b) Project title and location;
(c) Applicant's name, address, telephone and fax numbers, and mailing address;
(d) Name and title of project contact (including how to reach if different from above);
(e) Type of applicant organization (*e.g.*, non-profit, university, etc.); non-profit number;

(f) Total budget request, dollar amount, from the U.S. EPA for this project;

(g) Brief abstract of this proposal (5–10 lines);

(3) Completed SF–424 and SF–424(A) (Section B—Budget Categories). For federal government forms including Budget Forms and Understand Cost Principles for a Federal Grant: See *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm*

(4) *Budget Narrative: (1–2 pgs.)*;

(a) Personnel (For Each Position: % of Time Worked, Annual Salary, Salary Proposed for this Project);

(b) Fringe Benefits (Full-time Rate);

(c) Long Distance Travel (Destination, Cost of Trip, No. of Travelers, No. of Trips, Amt. Proposed);

(d) Air Fare (Destination, No. Travelers, No. Trips);

(e) Local Travel (Destination, Distance, Mileage, No. Travelers);

(f) Direct Cost-Equipment (Quantity, Cost per Unit, Amt. Proposed);

(g) Direct Cost-Supplies (Quantity, Cost per Unit, Amt. Proposed);

(h) Direct Cost-Other, *e.g.*, Phone, Postage, Conference Calls (Quantity, Cost per Unit, Amt. Proposed);

(i) Direct Cost-Contracts (Direct Labor, Overhead @__rate, Materials and Supplies, G&A Rate);

(j) Direct Cost-Consultants (Skill, Quantity, Rate);

(k) Indirect Cost Charges (Total Direct Costs × __% (indirect cost rate) = Estimated);

Note: Eligible Expenses-salaries/fringe, travel, communications, equipment rental, indirect overhead, public outreach efforts (workshops, public forums, meeting expenses), office expenses, printing and copying (conference and promotional materials), and Web site dissemination of information related to the project.

Note: Ineligible Expenses-capital expenditures, construction expenses, lobbying, endowments, formal educational expenses, entertainment, remediation and removal expenses, medical equipment and supplies, air sampling, and equipment purchases as the sole focus of the assistance agreement.

(5) *Letter of Intent:* Include a copy of your previously submitted Letter of Intent as a project summary;

(6) *Project Description* (Up to 5 pages): Describe precisely what your project will achieve. In your narrative, answer these questions in this order;

(a) Description of the lead organization for the project including information to establish this organization has a proven track record and is viewed as an authority in the design and implementation of (1) The training of health professionals on children's environmental health *and*, (2) the measurement of the application of this training in their practices over time;

(b) Description of who will conduct the project; what are the specific roles of all major participants? What experience do any partners have in training health professionals or measuring the outcome of training upon the trainee's practice?

(c) Who is the target audience for this training? How will they be targeted, identified and recruited?

(d) Brief summary of the project's goals and objectives;

(e) Brief summary of the method that will be used to accomplish Phase 1 (training). (Note: A wide variety of children's environmental health training materials for health professionals, developed by both government and non-governmental agencies, already exist. Support for the development and production of new training/educational materials will be considered only if the applicant demonstrates a compelling need not filled by existing materials. Justifications for the development of new educational materials should include a literature search demonstrating a strong familiarity with the range of existing materials available.);

(f) Brief summary of the method that will be used to accomplish Phase 2 (measurement): How will you evaluate the impact of the training upon the practices of these health care providers as well as their patients and their families over time?

(g) Brief description of why this type of training is important for this group of health professionals. How do you anticipate that this training will change the practice of health care following this training?

(h) How will the learning that has occurred during this training be reinforced? How can this training be sustained beyond the life of this EPA grant?

(i) How will this training model, materials and findings be presented/packaged to be shared with and replicated by others who might seek to train health professionals on children's environmental health?

(7) *Brief Resume or Bio* of Principal Investigator or Project Director (no more than one page;

(8) *Appendices:* Include letters of commitment for all major partners or organizations including resumes or bios of key personnel other than the Principal Investigator as appendices. Be certain that letters of commitment focus on partners' roles in the proposed project. Do not include any material other than letters of commitment and information on key personnel;

c. Other Instructions;

(1) To support the EPA review process, the proposal must contain one complete Pre-application Proposal package with original signatures in contrasting ink and *nine duplicate hard copy sets* of the Pre-application Proposal package as defined above both in terms of exact format and content;

(2) DUNS Instructions: Grant applicants are required to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements. The DUNS number will supplement other identifiers required by statute or regulation, such as tax identification numbers. Organizations can receive a DUNS number in one day, at no cost, by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Individuals who would personally receive a grant or cooperative agreement award from the Federal government apart from any business or non-profit organization they may operate are exempt from this requirement. The Web site where an organization can obtain a DUNS number is: *http://www.dnb.com.* This process takes 30 business days and there is no cost unless the organization requests expedited (1-day) processing, which includes a fee of $40;

(3) Successful Stage 2 Applicants must submit the following information after EPA notifies them of its intent to make an award: quality assurance plan for any project involving environmental data; evidence of compliance with human subjects requirements where research is found to be involved.

3. Submission Dates and Times

(a) All questions must be sent by e-mail to the following address: *blackburn.elizabeth@epa.gov.* The word "*QUESTION*" in Capital Letters and the name of the solicitation should appear in the Subject Line. Answers to allowable questions will be provided in a timely manner at: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.* EPA will not respond to technical questions by phone or fax.

(b) A required Letter of Intent is due via e-mail to *blackburn.elizabeth@epa.gov* by October 25, 2004. **Letters of Intent must have an e-mail subject line starting with Letter of Intent: followed by your Project Title.** E-mail confirmation of receipt will be sent promptly. E-mail submission of the Letter of Intent is strongly preferred. However, if e-mail is not available, the Letter of Intent may be faxed to the

attention of Elizabeth Blackburn at (202) 564–2733. If a confirming phone call for fax transmissions is not received within two business days, a phone call should be made to Elizabeth Blackburn at (202) 564–2192 to initiate a trace.

(c) Applicants submitting a Letter of Intent will be notified via e-mail on or before November 1, 2004 if they are invited to submit a Pre-application Proposal.

(d) To ensure fair and open competition, EPA will respond to questions submitted by e-mail up to December 6, 2004.

(e) Due Date—December 13, 2004 for Pre-application Proposals from invited eligible applicants to be **delivered to the courier for shipment** or postmarked (see note below re: postal mailing). Pre-application Proposals shipped or mailed after this date will not be considered for funding under this solicitation. Date of shipment will be determined by the shipping company's shipping information or the U.S. Post Office (not a private postage meter) postmark on the shipping package depending upon the method of shipment. To support the EPA review process, the proposal must contain one complete Pre-application Proposal package with original signatures and *nine duplicate hard copy sets* of the Pre-application Proposal package including materials *in the order* listed above in Section IV.

(f) Applicants will receive an e-mail notification of receipt of the Pre-application Proposal within two weeks of receipt by the Agency.

(g) The Selected Projects will be announced as their award negotiations are completed around late spring 2005. Those projects not selected for award in this funding cycle will also be notified at this time.

(h) Start Date for Projects: June 15, 2005 is the earliest start date that applicants should plan on and enter on their proposal forms and time lines. Grant recipients may begin incurring allowable costs on the start date identified in the EPA grant award agreement. Budget periods may run up to 24 months from the date of award.

4. Intergovernmental Review

Applicants may be subject to Executive Order 12372. "Intergovernmental Review of Federal Programs." See *http://www.whitehouse.gov/omb/grants/spoc.html* for more details.

5. Funding Restrictions

a. Eligible Expenses:

Salaries/fringe, travel, communications, equipment rental, indirect overhead, public outreach efforts (workshops, public forums, meeting expenses), office expenses, printing and copying (conference and promotional materials), and Web site dissemination of information related to the project.

b. Ineligible Expenses:

Capital expenditures, construction expenses, lobbying, endowments, formal educational expenses, entertainment, remediation and removal expenses, medical equipment and supplies, air sampling, and equipment purchases as the sole focus of the assistance agreement.

c. Incurring Costs:

No pre-award costs should be incurred by the recipient. Grant recipients may begin incurring allowable costs on the start date identified in the EPA grant award agreement. Activities must be completed and funds spent within the time frames specified in the award agreement. EPA grant funds may be used only for the purposes set forth in the grant agreement and must conform to the Federal cost principles contained in OMB Circular A–87, A–122, and A–21, as appropriate. Ineligible costs will be reduced from the final grant award.

6. Other Submission Requirements

a. Do not submit additional items. Unnecessary materials (*i.e.*, unrequested forms or binders) create extra burden for the reviewers and will not be reviewed. Failure to follow instructions may render your project ineligible.

b. A required Letter of Intent is due via e-mail to *blackburn.elizabeth@epa.gov* by October 25, 2004. *Letters of Intent* must have an e-mail subject line starting with Letter of Intent: followed by your Project Title. E-mail confirmation of receipt will be sent promptly.

E-mail submission of the Letter of Intent is strongly preferred. However, if e-mail is not available, the Letter of Intent may be faxed to the attention of Elizabeth Blackburn at (202) 564–2733. If a confirming phone call for fax transmissions is not received within two business days, a phone call should be made to Elizabeth Blackburn at (202) 564–2192 to initiate a trace.

c. Due to continued mail delays in the Washington, DC area, applicants invited to submit a Pre-application Proposal are strongly encouraged to ship their proposals by private courier (*e.g.*, Federal Express, UPS, DHL, *etc.*) to the attention of: Elizabeth Blackburn, U.S. EPA, Office of Children's Health Protection, 1200 Pennsylvania Ave, NW., Mail Code 1107A, Room 2512 Ariel Rios North, Washington, DC 20004.

If Pre-application Proposals are must be *mailed*, send them with tracking to: Elizabeth Blackburn, U.S. EPA, Office of Children's Health Protection, 1200 Pennsylvania Ave, NW., Mail Code 1107A, Room 2512 Ariel Rios North, Washington, DC 20460.

Note: To document the date of shipment, Full Proposal packages must be postmarked by the U.S. Post Office, not by a private postage meter.

d. If the applicant experiences technical difficulties in making a submission, contact Elizabeth Blackburn at (202) 564–2192 immediately.

3. Stage 3 (Full Proposal) Required Content and Form of Full Proposal if Selected by EPA

The EPA Application Kit for Federal Assistance can be obtained at: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm*. or at: *http://www.epa.gov/ogd/grants/how_to_apply.htm*.

Section V. Application Review Information

1. Criteria

a. Letter of Intent:

(1) Administrative Responsiveness Criteria

The Letter of Intent must comply with the following responsiveness criteria to be eligible to submit a Full Proposal: applicant eligibility, completeness, administrative responsiveness, and timeliness of submission.

(2) Technical Responsiveness Criteria

The Letters of Intent will also be compared to the statutory criterion and evaluation criteria in Section I of this solicitation. Applicants whose projects are clearly not responsive to the published evaluation criteria may not be invited to submit a Pre-application Proposal.

b. Pre-application Proposal, If Invited by EPA:

(1) Administrative Responsiveness Criteria

The Pre-application Proposal must comply with the following responsiveness criteria for the Pre-application Proposal to be reviewed for possible award: timeliness of shipment, administrative responsiveness, order of materials presentation, completeness, original signatures as required, required number of copies and the absence of unnecessary materials and extraneous information.

(2) Multiple Proposals

Applicants may submit more than one proposal if the proposals are for

different projects. However, no more than one grant will be awarded under this offering to any given applicant.

(3) Technical Review

Applications that pass the Administrative Review will be evaluated by a team of reviewers from both EPA and outside who are authorities in the field. Reviewers will score each proposal in the areas listed below. In summary, the maximum score of 110 points can be reached as follows:

(a) Organization—up to 10 points.
(b) Target Audience—up to 15 points.
(c) Training Design—up to 25 points.
(d) Measurement Design—up to 25 points.
(e) Materials—up to 10 points.
(f) Budget and Timeline—up to 15 points.
(g) Bonus—up to 10 points.

(a) Organization (up to 10 points)

The proposal should demonstrate that the organization(s) designing and delivering the training has/have a proven track record and is/are viewed as an authority in: (1) The training or education of health professionals on children's environmental health *and*, (2) the measurement of the application of this training or education into their individual practice and/or the practices, protocols, and procedures of whole clinics or other institutions, over time;

(b) Target Audience (up to 15 points)

The proposed project should reach a large group of health professionals who interact directly or indirectly with children and should address the following questions. How has the target audience been defined? How relevant is the children's environmental health message to the work of this particular group of health professionals? How will the target audience be recruited? What incentives (*i.e.*, CEUs/CMEs, stipends, tuition reimbursement *etc.*) will be used and how effective are they likely to be with this audience? How many health professionals will be trained directly and/or trained through train-the-trainer agreements? What is the demonstrated reach of the health professionals to influence their peers and others in allied health professions following the training?;

(c) Training Design (up to 25 points)

The Training Design should incorporate the seven competencies described above and outline how they will be incorporated into the training or education project. The Training Design should include the specific goals, objectives, outputs, and outcomes of this project and discuss the relationship of these to the target audience. In addition, the following questions should be addressed: How comprehensive is the scope of children's environmental health issues to be addressed? What activities and delivery methods will be used to present the materials and reinforce the learning? Is the list of training activities comprehensive (including all steps) and logical to achieve the children's environmental health competencies relevant to this group of health professionals? How adaptable is this training to other groups of health professionals? Will this material be made available to other presenters by this organization?

(d) Measurement Design (up to 25 points)

Understanding the effectiveness of the training or education project is key to supporting future efforts to build health professional capacity to address pediatric environmental health. The proposal should outline the project's Measurement Design. The Measurement Design should include discussion of: (1) How the actual training or education program will be evaluated (how will the training or education program increase the knowledge of health professionals regarding pediatric environmental health); (2) how achievement of each of the seven competencies will be evaluated; (3) how replicability of the project will be evaluated; and (4) how the effect that this training or education program has had upon the individual's daily practice and or the practices, protocols, and procedures of whole clinics or other institutions will be evaluated. The following questions may assist you in the description of the Measurement Design. How will the design measure the impact of the training upon both the knowledge base of the practitioner and the effect that this training has had upon the individual's daily practice both immediately and over time. How well will these new children's environmental health messages reach the children, their families and care givers? How will the measurement findings (quantitative and qualitative) be used to improve the effectiveness of future training on children's environmental health competencies by this organization? How will the accomplishments of this training program be shared with others in the field?

(e) Materials (up to 10 points)

A wide variety of children's environmental health training materials for health professionals, developed by both government and non-governmental agencies, already exist. Support for the development and production of new training/educational materials will be considered only if the applicant demonstrates a compelling need not filled by existing materials. Justifications for the development of new educational materials should include a literature search demonstrating a strong familiarity with the range of existing materials available. Describe the educational products and materials that will be used train the target audience in the children's environmental health competencies. Have existing materials been utilized to the maximum extent practicable? Do training materials consistently reference peer reviewed science? Are training materials readily adaptable to other audiences? How do the training materials reinforce competencies?

(f) Budget, and Time Line (up to 15 points)

The budget information must clearly and accurately demonstrate how funds will be used. Is the funding request reasonable given the activities proposed? Do the funds provide a good return on the investment? Is the time line well laid out, comprehensive, reasonable and feasible to support the accomplishment of the stated goals and objectives of this project's two phases?

(g) Bonus Points (up to 10 points)

(1) Ultimately the training or education of the health professional should lead to a reduction in environmental exposures and healthier children. Does the project measure the impact of the health professionals' training on behavior changes in parents and care givers? How will the project measure a reduction in exposure of children to environmental hazards?

(2) Education and training is a continuous process. This solicitation recognizes the importance of developing and sustaining mechanisms that can support health professionals in their efforts to identify, prevent, and manage environmental risks to children. Bonus points can be awarded if mechanisms are developed and supported to reinforce this training or education. (Examples include, but are not limited to: Networks, list serves, materials to guide the health professional to address the key children's environmental health issues in patient histories and evaluations, publications, efforts to develop committees and local chapters on children's environmental health within the health professionals' societies, presentations at conferences).

2. Review and Selection Process

After individual projects are evaluated and scored and ranked against the published criteria by EPA staff and peers external to the Agency, EPA may take into account the following factors in making the final selections:

a. Effectiveness of collaborative activities and partnerships, as needed to successfully implement the project;

b. Range of disciplines trained through this project; Transferability of this training to other health professional disciplines; and

c. Geographic reach and distribution of projects.

Section VI—Award Administration Information

1. Award Notices

Organizations submitting Letters of Intent will be notified regarding their successful or unsuccessful Stage 1 application via e-mail on or before November 1, 2004. Successful Pre-applicants will be notified on or about February 1, 2005. Unsuccessful applicants will be informed through a letter or e-mail sent to the Project Director provided in the Pre-application Proposal. Successful Pre-applicants will be contacted by the EPA grants project officer to discuss the completion of a Full Proposal. Upon the satisfactory completion of all necessary materials, the applicant will receive written notice of award. The applicant must receive this document prior to drawing funds for this project. This document will serve as the authorizing document. The award notice will be faxed to the Key Contact designated by the applicant in the Full Proposal.

2. Administrative and National Policy Requirements

a. Responsible Officials:

Projects must be performed by the applicant/recipient or a designee within that organization who is satisfactory to the applicant and EPA. All proposals must identify any other person(s) and their organization(s) who will assist in carrying out the project. Recipients are responsible for receiving the grant award agreement from EPA and ensuring that all grant conditions are satisfied. Recipients are responsible for the successful completion of the project.

b. Incurring Costs:

No pre-award costs should be incurred by the recipient. Grant recipients may begin incurring allowable costs on the start date identified in the EPA grant award agreement. Activities must be completed and funds spent within the time frames specified in the award agreement. EPA grant funds may be used only for the purposes set forth in the grant agreement and must conform to the Federal cost principles contained in OMB Circular A–87, A–122, and A–21, as appropriate. Ineligible costs will be reduced from the final grant award.

c. *Materials to be Provided by the Successful Stage 2 Applicants After EPA Notifies Them of its Intent to Make an Award:*

The Successful Stage 2 Pre-applicant must submit the following information after EPA notifies them of its intent to make an award, but prior to the award: quality assurance plan for any project involving environmental data; evidence of compliance with human subjects requirements where research is found to be involved.

3. Reporting

Specific financial and other reporting requirements will be identified in the EPA grant award agreement. Grant recipients must submit the standard formal quarterly progress reports, unless otherwise instructed in the award agreement. A quality assurance plan will be required if environmental data are collected. Also, two copies of the final report and two copies of all work products must be sent to the EPA project officer within 90 days after the expiration of the budget period. This submission will be accepted as the final requirement, unless the EPA project officer notifies the recipient that changes must be made.

Section VII—Agency Contact

1. Contact Information

Elizabeth Blackburn, Office of Children's Health Protection; 1200 Pennsylvania Ave, NW.; Mail Code 1107A; Room 2512 Ariel Rios North; Washington, DC 20004–2403; *blackburn.elizabeth@epa.gov*; Phone: (202) 564–2192; FAX: (202) 564–2733; Web site: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.*

2. Mechanisms for Questions and Answers

a. Applicants who need more information about this grant or clarification about specific requirements of this Solicitation Notice, should periodically check the Web page *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm* for posted information (*e.g.*, administrative clarification and responses to Qs & As).

b. Specific clarifying questions can be posed via e-mail to *blackburn.elizabeth@epa.gov*. The word "*QUESTION*" in capital letters and the name of the solicitation should appear in the subject line. Responses to allowable questions will be posted in a timely manner on the OCHP Web site at: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.*

c. If e-mail is absolutely not available, questions and requests for materials may be made by FAX to 202–564–2733. Requests should be sent to the attention of Elizabeth Blackburn.

d. *To ensure fair and open competition, EPA will answer no clarifying questions in person.*

e. Applicants may submit questions via e-mail to *blackburn.elizabeth@epa.gov*. Answers will be posted on the Web page *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.*

f. To ensure fair and open competition, EPA will respond to questions submitted by e-mail up to December 6, 2004. Questions and answers will be posted in a timely manner at: *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.*

3. If paper copies of the EPA Application Kit for Federal Assistance are required, contact Elizabeth Blackburn at *blackburn.elizabeth@epa.gov.*

Section VIII—Other Information

1. Resources

a. Please visit our Web site, *http://yosemite.epa.gov/ochp* for information on children's environmental health issues. Copies of these grant materials can be found at *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/grants.htm.*

b. We *strongly* suggest that applicants examine the Institute of Medicine documents *Environmental Medicine: Integrating a Missing Element into Medical Education* and *Nursing, Health, and the Environment: Strengthening the Relationship to Improve the Public's Health* as well as The National Environmental Education and Training Foundation *National Pesticide Competency Guidelines for Medical and Nursing Education* for background on children's environmental health competencies for health professionals.

c. A non-comprehensive, unendorsed sample list of additional references related to building health professional capacity to address children's environmental health is provided in Appendix II.

d. First time recipients of Federal funds are encouraged to familiarize themselves with the regulations applicable to assistance agreements found in the Code of Federal Regulations (CFR) Title 40, Part 31 for State and local government entities. See *http://www.epa.gov/docs/epacfr40/*

chapt-I.info/subch-B.html. Applicants may also obtain a copy of the CFR Title 40, Part 31 at the local U.S. Government Bookstore, or through the U.S. Government Printing Office. This solicitation notice contains all the information and forms necessary to prepare a Letter of Intent. If your project is selected as a finalist after the evaluation process is concluded, EPA will provide you with additional Federal forms needed to process your Full Proposal.

2. Regulatory References

EPA's regulations on procurement under assistance agreements can be found in 40 Code of Federal Regulations (CFR) 30.40 for non-governmental recipients.

3. Dispute Resolution Process

Dispute Resolution Process: Procedures are in 40 CFR 30.63 and 40 CFR 31.70.

4. Shipping Information and Mailing Addresses

a. *Letters of Intent should be e-mailed to: blackburn.elizabeth@epa.gov.* E-mail submission of the Letter of Intent is strongly preferred. However, if e-mail is not available, the Letter of Intent may be faxed to the attention of Elizabeth Blackburn at (202) 564–2733. If a confirming phone call for fax transmissions is not received within two business days, a phone call should be made to Elizabeth Blackburn at 202–564–2192 to initiate a trace.

b. *Pre-application Proposals, If Invited By EPA:*

Due to on-going mail delays in the Washington, DC area, applicants who are invited to submit a Pre-application Proposal are strongly encouraged to send all the original Pre-application Proposals signed in contrasting ink by an authorized representative of their eligible organization and requisite nine copies by way of a private shipping company (*e.g.*, Federal Express, UPS, DHL, or courier) to the attention of: Elizabeth Blackburn, U.S. EPA, Office of Children's Health Protection, 1200 Pennsylvania Ave, NW., Mail Code 1107A, Room 2512 Ariel Rios North, Washington, DC 20004.

If the applicant has no ability to send the Pre-application Proposal original and requisite nine copies in by way of a private shipping company, the Pre-application Proposal may be mailed to the attention of: Elizabeth Blackburn, U.S. EPA, Office of Children's Health Protection, 1200 Pennsylvania Ave, NW., Mail Code 1107A, Room 2512 Ariel Rios North, Washington, DC 20460.

5. The Agency reserves the right to make no awards under this solicitation

Appendix I—Sample Letter of Intent (up to 2 pages)

All applicants should supply this information in this order and return it to EPA via e-mail to blackburn.elizabeth@epa.gov by October 25, 2004.

Section 1

Organization Name:
Project Name:
Applicant Address:
Street:
City:
State:
Zip Code:
Applicant Phone Number:
Applicant FAX Number:
Applicant E-mail Address:
Applicant Web Site (if any):
Authorized Representative of the Organization:

Section 2

Project Summary.
(a) Dollar Value of the Request;
(b) Description of the organizational which will lead/oversee the project;
(c) Description of the organizations and individuals expected to participate in the two phases (training/education and measurement) of the project;
(d) Description of the goals of each phase of the project;
(e) Description of the general children's environmental health areas to be addressed;
(f) Description of the general approach and format that is planned for the two phases of the project;
(g) Description of the specific audience(s) *e.g.* type of health professional(s) to be trained; expected numbers you hope to reach; geographic range of applicability [multi-state (at least five states), national, international (at least three countries)];
(h) Description of the types of materials (*e.g.* classroom guides, check-lists, pamphlets for patients etc.) you expect to produce;
(i) List of other types of health professionals to whom this training/education might be applicable;
(j) Transferability of training, materials and measurement tools to others to train additional groups of health professionals.

Appendix II—Sample List of References—Building Health Professional Capacity

Disclaimer: The following products are not EPA products. Some have been funded through an assistance agreement. EPA cannot attest to the accuracy of information provided in these products. This list represents a limited and non-exhaustive group of references provided as general background information to the assist the applicant.

Agency for Toxic Substances and Disease Registry, Centers for Disease Control and Prevention, United States Department of Health and Human Services: *Case Studies in Environmental Medicine*; *http://www.atsdr.cdc.gov/HEC/CSEM/*

Description: The *Case Studies in Environmental Medicine* (CSEM) are a series of self-instructional publications designed to increase the primary care provider's knowledge of hazardous substances in the environment and to aid in the evaluation of potentially exposed patients. Continuing medical education credits, continuing nursing education units, and continuing education units are offered by the Agency for Toxic Substances and Disease Registry (ATSDR) in support of this series.

Institute of Medicine: *Nursing, Health & the Environment: Strengthening the Relationship to Improve the Public's Health*; Washington, DC: National Academy Press; 1995

Description: Nursing, Health and Environment details a series of recommendations to integrate and enhance environmental health in nursing education, practice and research.

Institute of Medicine: *Environmental Medicine: Integrating a Missing Element into Medical Education*; Washington, DC: National Academy Press; 1995.

Description: Environmental Medicine describes a series of recommendations of how to facilitate the integration of environmental health into medical education.

American Academy of Pediatrics: *Pediatric Environmental Health, 2nd edition*; 2003 *Description: Pediatric Environmental Health 2nd edition* is a comprehensive reference manual for pediatric clinicians to help identify, prevent and treat environmental health problems in children. All original chapters, addressing issues such as carbon monoxide, indoor air pollutants, lead, mercury, drinking water and pesticides, have been updated. New chapters cover topics such as arsenic, irradiation and prenatal exposures.

American Nurses Foundation: *Children's Health and the Environment*; *http://yosemite.epa.gov/ochp/ochpweb.nsf/content/whatwe_health.htm#nurses.*

Description: Children's Health and the Environment is a three part continuing education series featuring (1) Environmentally Healthy Homes and Communities; (2) Safe Workplaces and Healthy Learning Places: Environmentally Healthy Schools; and (3) Environmental Health in the Health Care Setting.

National Education and Training Foundation: *National Pesticide Practice Skills Guidelines for Medical & Nursing Practice and National Pesticide Competency Guidelines for Medical & Nursing Education; http://www.neetf.org/Health/publications.shtm#PestPractice.*

Description: National Pesticide Practice Skills Guidelines for Medical & Nursing Practice outlines the knowledge and skills that professionals in the health professions need to have about pesticides. *National Pesticide Competency Guidelines for Medical & Nursing Education* outlines the knowledge and skills that students in the health professions need to have about pesticides. These documents are part of a national initiative aimed at ensuring that pesticides issues become integral elements of education and practice of primary care providers.

Greater Boston Physicians for Social Responsibility: *In Harm's Way Training*

Programs for Health Professionals; http://psr.igc.org/ihw-training-programs.htm.

Description: The training is based on the peer-reviewed report *In Harm's Way: Toxic Threats to Child Development*, released in May, 2000. The training is relevant to physicians, nurses, midwives, staff of community health centers, students, childbirth educators, psychologists, and other health care providers, and is designed to provide Continuing Medical Education (CME) credits to physicians as well as Contact Hours for Nurses. Many materials are available in downloadable versions at: *http://psr.igc.org/ihw-training-materials.htm.*

Dated: August 19, 2004.

Elizabeth Blackburn,

Acting Director, Office of Children's Health Protection.

[FR Doc. 04–20039 Filed 9–1–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0210; FRL–7372–2]

Benfluralin; Availability of Reregistration Eligibility Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability of EPA's Reregistration Eligibility Decision (RED) document for the pesticide active ingredient Benfluralin. Benfluralin is a pre-emergent dinitroaniline herbicide used to control weeds in turf and ornamental plants, lettuce, alfalfa, clover, birdsfoot trefoil, nonbearing fruit and nut trees, nonbearing berries, and nonbearing vineyards. The Agency has completed its assessment of the occupational, residential, and ecological risk associated with the use of pesticide products containing the active ingredient benfluralin. Based on a review of these data and on public comments on the Agency's assessments for the active ingredient benfluralin, the Agency has sufficient information on the human health and ecological effects of benfluralin to make decisions as part of the tolerance reassessment process under the Federal Food, Drug, and Cosmetic Act (FFDCA) and reregistration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act (FQPA). The Agency has determined that benfluralin containing products are eligible for reregistration provided that: Current data gaps and confirmatory data needs are addressed; the risk mitigation measures outlined in the RED are adopted; and label amendments are made to reflect these measures.

FOR FURTHER INFORMATION CONTACT: Katie Hall, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0166; e-mail address: *hall.katie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the FIFRA or the FFDCA; environmental, human health, and agricultural advocates; pesticides users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0210. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell Street, Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* To access RED documents and RED fact sheets electronically, go directly to the REDs table on EPA's Office of Pesticide Programs Home Page, at *http://www.epa.gov/pesticides/reregistration/status.htm.*

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 previously submitted public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket.EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

II. Background

A. What Action is the Agency Taking?

The Agency has issued a RED for the pesticide benfluralin. Benfluralin is a pre-emergent dinitroaniline herbicide used to control weeds in turf and ornamental plants, lettuce, alfalfa, clover, birdsfoot trefoil, nonbearing fruit and nut trees, nonbearing berries, and nonbearing vineyards. Most of the benfluralin used is applied to turf. Under FIFRA, as amended in 1988, EPA is conducting a reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of benfluralin is substantially complete, and its risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling. In addition, EPA is reevaluating existing pesticides and

reassessing tolerances under FQPA of 1996. The benfluralin tolerances have been found to meet the FQPA safety standard.

Through the Agency's public participation process, EPA worked extensively with stakeholders and the public to reach the regulatory decisions for benfluralin. During the public comment period on the risk assessments, which closed on April 26, 2004, the Agency received comments from two commentors, Dow Agrosciences and the U.S. Fish and Wildlife Service. An individual response to these comments is being prepared by EPA and will be made available in the public docket. Because so few comments were received in the earlier comment period, the Agency does not anticipate significant interest from stakeholders on the RED for benfluralin. Therefore, EPA is not having a comment period on this document.

B. What is the Agency's Authority for Taking this Action?

The legal authority for these REDs falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, "the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration, "before calling in product specific data on individual end-use products, and either reregistering products or taking "other appropriate regulatory action."

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 18, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–20045 Filed 9–1–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0074; FRL–7809–1]

RIN 2040–AD92

Notice of Availability of 2004 Effluent Guidelines Program Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of final 2004 effluent guidelines program plan.

SUMMARY: Today's notice describes EPA's 2004 annual review of existing effluent guidelines under CWA section 304(b) and presents EPA's final 2004 Effluent Guidelines Program Plan under CWA section 304(m). Under the Clean Water Act (CWA), EPA establishes technology-based national regulations, termed "effluent guidelines," to reduce pollutant discharges from categories of industrial facilities to waters of the United States. Section 304(m) of the Clean Water Act requires EPA to publish an Effluent Guidelines Program Plan every two years after allowing for public review and comment on the plan prior to final publication. The Agency published the preliminary Effluent Guidelines Program Plan on December 31, 2003 (68 FR 75515), and public comments on the preliminary plan are discussed in today's notice and in the docket accompanying the plan. After reviewing additional data and considering public comments, EPA is publishing its final 2004 Effluent Guidelines Program Plan. In this Plan, EPA identifies four industries for effluent guidelines rulemaking. Two of these industries—Airport Deicing Operations and Drinking Water Supply and Treatment—are not subject to existing effluent guidelines. The other two industries—Vinyl Chloride Manufacturing, which is part of the Organic Chemicals, Plastics, and Synthetic Fibers point source category; and Chlor-Alkali manufacturing, which is part of the Inorganic Chemicals point source category—are subject to existing effluent guidelines, which EPA is identifying for possible revision. EPA expects to combine its analysis of the OCPSF and Inorganic Chemicals effluent guidelines into one rulemaking. Today's notice describes the schedule for these effluent guidelines rulemakings. This notice also describes EPA's preliminary thoughts concerning its 2005 annual review under CWA section 304(b) and solicits comments, data and information to assist EPA in performing that review.

ADDRESSES: Submit your comments, data and information for the 2005 annual review, identified by Docket ID No. OW–2004–0032, by one of the following methods:

A. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Agency Web Site: http://www.epa.gov/edocket.* EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments, data and information. Follow the on-line instructions for submitting comments.

C. E-mail: OW-Docket@epa.gov.

D. *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2004–0032. Please include a total of 3 copies.

E. *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OW–2004–0032. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments, data and information to Docket ID No. OW–2004–0032. EPA's policy is that all comments, data and information received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket*, including any personal information provided, unless the material includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, *http://www.regulations.gov*, or e-mail. The EPA EDOCKET and the federal regulations.gov websites are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102). For additional instructions on obtaining access to comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is

not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Water Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Mr. Carey A. Johnston at (202) 566–1014 or *johnston.carey@epa.gov*, or Mr. Tom Wall at (202) 566–1060 or *wall.tom@epa.gov*.

SUPPLEMENTARY INFORMATION: The outline of today's notice follows.

I. General Information

A. Regulated Entities

Today's notice does not contain regulatory requirements. Rather, today's notice describes the Agency's 2004 annual review of existing effluent guidelines under CWA section 304(b) and the 2004 Effluent Guidelines Plan under CWA section 304(m) ("Plan"). As required by CWA section 304(m), the Plan presents a schedule for EPA's annual review of existing effluent guidelines under CWA section 304(b) and a schedule for the possible revision of two of those guidelines; it identifies industries for which EPA has not promulgated effluent guidelines but may decide to do so through rulemaking; and it establishes schedules for these rulemakings.

B. How Can I Get Copies of Related Information?

1. Docket

EPA has established an official public docket for the Agency's 2004 annual review of existing effluent guidelines under CWA section 304(b) and the 2004 Effluent Guidelines Plan under CWA section 304(m) under Docket ID No. OW–2003–0074. 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, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute is not included in the materials available to the public. 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.

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 in section I.B.1. Once in the system, select "search," then key in the appropriate docket identification number.

II. Legal Authority

Today's notice is published under the authority of the CWA, 33 U.S.C. 1251, *et seq.*, and in particular sections 301(d), 304(b), 304(g), 304(m), and 306, 33 U.S.C. 1311(d), 1314(b), 1314(g), 1314(m), and 1316.

III. What Is the Purpose of Today's Federal Register Notice?

Today's **Federal Register** notice consists of three parts. First, it describes EPA's 2004 annual review of the effluent guidelines that EPA has promulgated under CWA section 304(b). Second, it describes EPA's plans for its 2005 annual review of existing effluent guidelines. Third, as required by CWA section 304(m), this notice presents EPA's final 2004 Effluent Guidelines Program Plan.

IV. Background

A. What Are Effluent Guidelines?

The CWA directs EPA to promulgate effluent limitations guidelines and standards that reflect pollutant reductions that can be achieved by categories or subcategories of industrial point sources using specific technologies. *See* CWA sections 301(b)(2), 304(b), 306, 307(b), and 307(c). For point sources that introduce pollutants directly into the waters of the United States (direct dischargers), the effluent limitations guidelines and standards promulgated by EPA are implemented through National Pollutant Discharge Elimination System (NPDES) permits. *See* CWA sections 301(a), 301(b), and 402. For sources that discharge to publicly owned treatment works (POTWs) (indirect dischargers), EPA promulgates pretreatment standards that apply directly to those sources and are enforced by POTWs and State and Federal authorities. *See* CWA sections 307(b) and (c).

1. Best Practicable Control Technology Currently Available (BPT)—CWA Sections 301(b)(1)(A) & 304(b)(1)

EPA defines Best Practicable Control Technology Currently Available (BPT) effluent limitations for conventional, toxic, and non-conventional pollutants. Section 304(a)(4) designates the following as conventional pollutants: biochemical oxygen demand (BOD_5), total suspended solids, fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease as an additional conventional pollutant on July 30, 1979. *See* 44 FR 44501 (July 30, 1979). EPA has identified 65 pollutants and classes of pollutants as toxic pollutants, of which 126 specific substances have been designated priority toxic pollutants. *See* Appendix A to part 423. All other pollutants are considered to be non-conventional.

In specifying BPT, EPA looks at a number of factors. EPA first considers the total cost of applying the control technology in relation to the effluent reduction benefits. The Agency also considers the age of the equipment and facilities, the processes employed and any required process changes, engineering aspects of the control technologies, non-water quality

environmental impacts (including energy requirements), and such other factors as the EPA Administrator deems appropriate. *See* CWA Section 304(b)(1)(B). Traditionally, EPA establishes BPT effluent limitations based on the average of the best performances of facilities within the industry of various ages, sizes, processes or other common characteristics. Where existing performance is uniformly inadequate, BPT may reflect higher levels of control than currently in place in an industrial category if the Agency determines that the technology can be practically applied.

2. Best Conventional Pollutant Control Technology (BCT)—CWA Sections 301(b)(2)(E) & 304(b)(4)

The 1977 amendments to the CWA required EPA to identify effluent reduction levels for conventional pollutants associated with Best Conventional Pollutant Control Technology (BCT) for discharges from existing industrial point sources. In addition to considering the other factors specified in Section 304(b)(4)(B) to establish BCT limitations, EPA also considers a two part "cost-reasonableness" test. EPA explained its methodology for the development of BCT limitations in 1986. *See* 51 FR 24974 (July 9, 1986).

3. Best Available Technology Economically Achievable (BAT)—CWA Sections 301(b)(2)(A) & 304(b)(2)

For toxic pollutants and non-conventional pollutants, EPA promulgates effluent guidelines based on the Best Available Technology Economically Achievable (BAT). *See* CWA Section 301(b)(2)(A), (C), (D) & (F). The factors considered in assessing BAT include the cost of achieving BAT effluent reductions, the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and other such factors as the EPA Administrator deems appropriate. *See* CWA Section 304(b)(2)(B). The technology must also be economically achievable. *See* CWA Section 301(b)(2)(A). The Agency retains considerable discretion in assigning the weight accorded to these factors. BAT limitations may be based on effluent reductions attainable through changes in a facility's processes and operations. Where existing performance is uniformly inadequate, BAT may reflect a higher level of performance than is currently being achieved within a particular subcategory based on technology transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

4. New Source Performance Standards (NSPS)—CWA Section 306

New Source Performance Standards (NSPS) reflect effluent reductions that are achievable based on the best available demonstrated control technology. New sources have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. As a result, NSPS should represent the most stringent controls attainable through the application of the best available demonstrated control technology for all pollutants (*i.e.*, conventional, non-conventional, and priority pollutants). In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

5. Pretreatment Standards for Existing Sources (PSES)—CWA Section 307(b)

Pretreatment Standards for Existing Sources (PSES) are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly-owned treatment works (POTWs), including sludge disposal methods at POTWs. Pretreatment standards for existing sources are technology-based and are analogous to BAT effluent limitations guidelines. The General Pretreatment Regulations, which set forth the framework for the implementation of national pretreatment standards, are found at 40 CFR part 403.

6. Pretreatment Standards for New Sources (PSNS)—CWA Section 307(c)

Like PSES, Pretreatment Standards for New Sources (PSNS) are designed to prevent the discharges of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. PSNS are to be issued at the same time as NSPS. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

B. What Are EPA's Review and Planning Obligations Under Sections 304(b) and 304(m)?

Section 304(b) requires EPA to review effluent guidelines for existing direct dischargers each year and to revise such regulations as appropriate. Section 304(b) also specifies factors that EPA must consider when deciding whether revising an effluent guideline is appropriate. *See* Section IV.A. Section 304(m) supplements the core requirement of section 304(b) by requiring EPA to publish a plan every two years announcing its schedule for performing this annual review and its schedule for rulemaking for any effluent guideline selected as a result of that annual review for possible revision. Section 304(m) also requires the plan to identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or NSPS under section 306. *See* CWA section 304(m)(1)(B); S. Rep. No. 50, 99th Cong., 1st Sess. (1985); WQA87 Leg. Hist. 31. Finally, under section 304(m), the plan must present a schedule for promulgating effluent guidelines for industrial categories for which it has not already established such guidelines, with final action on such rulemaking required not later than three years after the industrial category is identified in a final Effluent Guidelines Program Plan. *See* CWA section 304(m)(1)(C). EPA is required to publish its Effluent Guidelines Program Plan for public comment prior to taking final action on the plan. *See* CWA section 304(m)(2).

In addition, CWA section 301(d) requires EPA to review every five years the effluent limitations required by CWA section 301(b)(2) and to revise them if appropriate pursuant to the procedures specified in that section. Section 301(b)(2), in turn, requires point sources to achieve effluent limitations reflecting the application of the best available technology economically achievable (for toxic pollutants and non-conventional pollutants) and the best conventional pollutant control technology (for conventional pollutants), as determined by EPA under sections 304(b)(2) and 304(b)(4), respectively. For nearly three decades, EPA has implemented sections 301 and 304 through the promulgation of effluent limitations guidelines. *See E.I. du Pont de Nemours & Co.* v. *Train*, 430 U.S. 113 (1977). Consequently, as part of its annual review of effluent limitations guidelines under section 304(b), EPA is also reviewing the effluent limitations they contain, thereby fulfilling its obligations under section 301(d) and 304(b) simultaneously.

C. How Has EPA Met the Requirements of Sections 304(b) and 304(m)?

Since 1992, EPA has performed detailed studies of eleven industrial activities. *See* 63 FR 47285, 47288 (Sept. 4, 1998); 61 FR 52582, 52585 (Oct. 7, 1996). EPA also published ten preliminary data summaries in 1989. *See* 59 FR 44234, 44236–37 (Aug. 26, 1994). Since 1992, EPA has identified 20 point source categories or classes for new or revised effluent guidelines. EPA completed a rulemaking process for each identified point source category or class, and has promulgated new or revised effluent guidelines for 18 of those point source categories or classes. EPA has also published a final effluent guidelines program plan under CWA section 304(m) every even-numbered year since 1990 that describes these activities. For a list of effluent guidelines rulemakings conducted by EPA since 1992, see the Docket accompanying this notice (*see* DCN 2003–0074).

Since 1992, the content and timing of EPA's 304(m) Plans have been governed by a consent decree between EPA and the Natural Resources Defense Council and Public Citizen, Inc. *See Natural Resources Defense Council, et al.* v. *Leavitt,* No. 89–2980 (RCL) (D.D.C. Jan. 31, 1992). However, since publication of the preliminary Effluent Guidelines Plan in December 2003, EPA has met all of its obligations under the consent decree by taking final action in the three remaining effluent guidelines rulemakings. *See* Table IV–1. The Court terminated this consent decree on August 9, 2004. *See Natural Resources Defense Council, et al.* v. *Leavitt,* No. 89–2980 (RCL), slip op. at 1 (D.D.C. Aug. 9, 2004).

TABLE IV.—1: FINAL THREE POINT SOURCE CATEGORIES GOVERNED BY 1992 CONSENT DECREE

Point source category (EPA web sites)	CFR part	Federal Register citation: proposal (Date)	Final action date
Meat and Poultry Products † *(http://www.epa.gov/guide/mpp/)*	432	67 FR 8581 (Feb. 25, 2002)	Signed February 26, 2004.
Construction and Development *(http://www.epa.gov/guide/construction/)*	‡450	67 FR 42644 (June 24, 2002)	Signed March 31, 2004.
Aquatic Animal Production *(http://www.epa.gov/guide/aquaculture/)*	451	67 FR 57872 (Sept. 12, 2002)	Signed June 30, 2004.

† NOTE: EPA changed the title of 40 CFR part 432 from "Meat Products" to "Meat and Poultry Products."
‡ NOTE: EPA proposed to add part 450 to Title 40 of the Code of Federal Regulations but withdrew this proposal in the final action.

V. EPA's 2004 Review of Effluent Guidelines Promulgated Under Section 304(b)

A. What Process Did EPA Use To Review Effluent Guidelines Promulgated Under CWA Section 304(b)?

1. Background

The annual review obligation created under section 304(b) and described in section 304(m)(1)(A) applies to effluent guidelines promulgated under section 304(b). This refers to BPT, BCT and BAT effluent limitations guidelines codified for different point source categories at 40 CFR parts 405–471 (representing a total of 56 point source categories and over 450 subcategories). Consistent with section 304(b) and section 301(d), in 2004, EPA reviewed existing effluent limitations guidelines and standards for direct dischargers. EPA also reviewed under CWA section 306 the NSPS promulgated by EPA under that section. Finally, when EPA reviewed effluent guidelines under section 304(b) for a point source category composed of both direct and indirect dischargers, EPA also reviewed under CWA section 304(g) the pretreatment standards EPA had promulgated for that category under CWA section 307(b) & (c). EPA intends to review the pretreatment standards for industrial point source categories composed entirely or almost entirely of indirect dischargers under a separate process under section 304(g).

EPA's annual review of existing effluent guidelines under section 304(b) represents a considerable effort by the Agency to consider the hazards or risks to human health and the environment from industrial point source categories. The 2003 and 2004 annual reviews reflect a lengthy outreach effort to involve stakeholders in the planning process. In performing its 2004 annual review, EPA carefully considered all information and data submitted during the public comment period for the preliminary Effluent Guidelines Program Plan published in December 2003, which discussed EPA's 2003 annual review. EPA reviewed all industrial sectors and conducted more focused detailed reviews for a select number of industrial sectors (*see* DCN 01088, section 1.5). As noted in the 2004 Effluent Guidelines Program Plan discussed elsewhere in today's notice, EPA has selected some of these industrial sectors for an effluent guidelines rulemaking.

As discussed in more detail below, EPA used pollutant loadings information and technological, economic, and other information in evaluating whether revising its promulgated effluent guidelines would be appropriate. EPA also examined the processes and operations of each category for which EPA had already promulgated effluent guidelines in order to decide whether it might be appropriate to address (through additional subcategories) other industrial activities that are similar in terms of type of operations performed, wastewaters generated, and available pollution prevention and treatment options. Because issues associated with such additional subcategories very often are interwoven with the structure and requirements of the existing regulation, EPA believes that incorporating its review of these potential subcategories into its annual review of the larger categories with which they likely belong is the most efficient way to fulfill its statutory obligations under section 304(b) and 304(m). This is especially important given the large number of existing categories and potential additional subcategories that EPA must review annually.

One example where EPA established effluent guidelines for an additional subcategory under an existing category is the agricultural refilling establishments subcategory (Subpart E) that EPA added to the Pesticide Chemicals point source category (40 CFR part 455). *See* 61 FR 57518 (Nov. 6, 1996). The BPT limitations in Part 455 did not cover refilling establishments and their industrial operations (*e.g.*, refilling of minibulks) because these industrial operations did not begin until well after the limitations were first promulgated. EPA considered refilling establishments a subcategory of

the Pesticide Chemicals point source category because of similar types of industrial operations performed, wastewaters generated, and available pollution prevention and treatment options.

EPA's annual review under section 304(b) also focused on identifying pollutants that are not regulated by an existing effluent guideline for a point source category but that comprise a significant portion of the estimated toxic-weighted pollutant discharges for that category. EPA believes that it is reasonable to consider new pollutants for regulation in the course of reviewing existing effluent guidelines under CWA section 304(b). EPA has several reasons for this. First, a newly identified pollutant might be adequately addressed through existing regulations or through the additional control of already regulated pollutants in an existing set of effluent guidelines. In some cases, revising existing limitations for one set of pollutants will address hazards or risks associated with a newly identified pollutant, thus obviating the need for EPA to promulgate specific limitations for that pollutant. Second, EPA believes it is necessary to understand the effectiveness (or ineffectiveness) of existing effluent guidelines in controlling newly identified pollutants before EPA can identify potential technology-based control options for these pollutants. For example, EPA revised effluent guidelines for the Oil and Gas Extraction point source category (40 CFR part 435) to add limitations for new pollutants that resulted from a new pollution prevention technology (synthetic-based drilling fluids). *See* 66 FR 6850 (January 22, 2001). Similarly, EPA revised effluent limitations for the bleached papergrade kraft and soda and papergrade sulfite subcategories within the Pulp and Paper point source category to add BAT limitations for dioxin, which was not measurable when EPA first promulgated the effluent guidelines. *See* 63 FR 18504 (Apr. 15, 1998).

In general, treatment technologies address multiple pollutants and it is important to consider their effects holistically in order to develop limitations that are both environmentally protective and economically achievable. In short, EPA believes that the appropriateness of creating an additional subcategory or addressing a newly identified pollutant is best considered in the context of revising an existing set of effluent guidelines. Accordingly, EPA performed these analyses as part of its annual review of existing effluent guidelines under CWA section 304(b).

2. What Factors Does EPA Consider in Its Annual Review of Effluent Guidelines Under Section 304(b)?

The starting point of EPA's analysis is CWA section 301(b)(2)(A), which requires dischargers to achieve effluent limitations that reflect the best available technology economically achievable (BAT), as identified by the Administrator under the authority of CWA section 304(b)(2). Section 304(b), in turn, requires EPA to consider many factors in identifying BAT. These are discussed in section IV.A.3. Section 304(b) also directs EPA to revise the existing effluent guidelines when it deems appropriate. By using the statutory factors in section 304(b) and section 301(b)(2)(A) as the framework for its annual review of existing guidelines, EPA can investigate a variety of technological, economic, and environmental issues that ultimately will help determine whether it should revise the effluent guidelines for a particular industrial category. In the draft *Strategy for National Clean Water Industrial Regulations* ("draft Strategy"), *see* 67 FR 71165 (Nov. 29, 2002), EPA identified four major factors—based on section 304(b)—that the Agency would examine, in the course of its annual review, to determine whether it would be appropriate to revise an existing set of effluent guidelines.

The first factor considers the amount and toxicity of the pollutants remaining in an industrial category's discharge and the extent to which these pollutants pose a hazard or risk to human health or the environment. This helps the Agency assess the extent to which additional regulation may contribute reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as specified in Section 301(b)(2)(A). The second factor identifies and evaluates the cost and performance of an applicable and demonstrated technology, process change, or pollution prevention alternative that can effectively reduce the pollutants remaining in the industrial category's wastewater and, consequently, substantially reduce the hazard or risk to human health or the environment associated with these pollutant discharges. Cost is a factor specifically identified in Section 304(b) for consideration in establishing BPT, BAT and BCT. The third factor evaluates the affordability or economic achievability of the technology, process change, or pollution prevention measures identified using the second factor pursuant to section 304(b)(2)(A). If the financial condition of the industry indicates that it would experience significant difficulties in implementing the new technology, process change, or pollution prevention measures, EPA might conclude that Agency resources would be more effectively spent developing more efficient, less costly approaches to reducing pollutant loadings that would better satisfy applicable statutory requirements.

The fourth factor addresses implementation and efficiency considerations and recommendations from stakeholders. Here, EPA considers opportunities to eliminate inefficiencies or impediments to pollution prevention or technological innovation, or opportunities to promote innovative approaches such as water quality trading, including within-plant trading. For example, in the 1990s, industry requested in comments on the Offshore and Coastal effluent guidelines rulemakings that EPA revise these effluent guidelines because they inhibited the use of a new pollution prevention technology (synthetic-based drilling fluids). EPA agreed that revisions to these effluent guidelines were appropriate for promoting synthetic-based drilling fluids as a pollution prevention technology and promulgated revisions to the Oil and Gas Extraction point source category. *See* 66 FR 6850 (Jan. 22, 2001). This factor might also prompt EPA, during an annual review, to decide against identifying an existing set of effluent guidelines for revision where the pollutant source is already efficiently and effectively controlled by other regulatory or non-regulatory programs. While this factor is not specifically mentioned in the CWA, EPA believes it is appropriate to consider as an "other factor" that the Administrator deems appropriate, as specified in Section 304(b) for BPT, BAT and BCT.

EPA intends to finalize the draft *Strategy* in connection with the final 2006 Effluent Guidelines Program Plan. This will allow time for EPA to better refine the *Strategy* as it performs future reviews under section 304(b).

3. How Did EPA's 2003 Annual Review Influence Its 2004 Annual Review of Point Source Categories With Existing Effluent Guidelines?

In view of its annual nature, EPA believes that each annual review can and should influence succeeding annual reviews, *e.g.*, by indicating data gaps, identifying new hazards or technologies, or otherwise highlighting industrial categories for more detailed scrutiny in subsequent years. During its 2003

annual review, which concluded in December 2003, EPA identified two industrial categories for detailed investigation in its 2004 annual review: Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) (Part 414); and Petroleum Refining (Part 419). As part of its 2003 review of the OCPSF effluent guidelines, EPA identified a potential additional subcategory for more detailed review: Chemical formulating, packaging, and repackaging (including adhesives and sealants) operations. EPA also identified for more detailed review a potential additional subcategory of the Petroleum Refining effluent guidelines: Petroleum bulk stations and terminals. In addition, EPA identified potentially high risks or hazards associated with discharges from two other industrial categories: Inorganic Chemicals (Part 415) and Nonferrous Metals Manufacturing (Part 421). Finally, EPA identified seven other industrial point source categories with relatively high estimates of toxic-weighted pollutant discharges. EPA's 2003 annual review, including stakeholder comments received as of that date, is discussed in the preliminary Effluent Guidelines Program Plan published in December 2003. *See* 68 FR 75515, 75526 (Table VI–2), 75530 (Table VII–1) (Dec. 31, 2003). EPA used the results of the 2003 annual review to inform its 2004 annual review.

4. What Actions Did EPA Take in Performing Its 2004 Annual Review of Existing Effluent Guidelines?

a. Screening-level review.

The first component of EPA's 2004 annual review consisted of a screening-level review of all promulgated effluent guidelines. As a starting point for this review, EPA examined screening-level data from its 2003 annual review. In its 2003 annual review, EPA focused its efforts on collecting and analyzing screening-level data to identify industrial categories whose pollutant discharges potentially pose the greatest hazard or risk to human health because of their magnitude and toxicity (*i.e.*, highest estimates of toxic-weighted pollutant discharges). In particular, EPA ranked point source categories according to their discharges of toxic and non-conventional pollutants (reported in units of toxic-weighted pound equivalent or TWPE), based primarily on data from the Toxics Release Inventory (TRI) and the Permit Compliance System (PCS). EPA estimated the hazard of the discharged pounds of pollutants by calculating hazard scores using pollutant-specific toxic weighting factors (TWFs). Where data is available these TWFs reflect both aquatic life and human health effects. Multiplying the pounds of pollutants discharged by their TWFs results in an estimate of toxic-weighted pound equivalents (TWPE). EPA also analyzed available data linking water quality impairments with point source discharges, and considered implementation and efficiency issues and water quality issues raised by EPA Regions and stakeholders. The full description of EPA's methodology to synthesize screening-level results for the 2004 annual review is presented in the Docket accompanying this notice (see DCN 01088, section 1.5).

In its 2004 annual review, EPA re-examined the categories listed in the 2003 screening review, with particular emphasis on those for which EPA had reason to believe the Factor 1 risk or hazard assessment had changed. For example, when stakeholders identified existing effluent guidelines for revision in their comments on the 2003 review and the preliminary Plan, EPA re-considered the extent to which the pollutants in the industrial category's wastewater discharge posed a hazard or risk to human health or the environment. EPA also used data and information in these comments to revise pollutant estimates. For example, EPA refined its assessment of dioxin discharges in petroleum refining wastewaters based on industry comments on the preliminary Plan (see section V.B.2). Additionally, in response to comments, EPA reviewed pollutant discharges from oil and gas extraction facilities in Cook Inlet, Alaska, to estimate toxic-weighted pollutant discharges. Accordingly, EPA revised the industrial category toxic-weighted discharges, and assigned those categories with the lowest estimates of toxic-weighted pollutant discharges a lower priority for revision.

EPA also developed and used a quality assurance project plan (QAPP) as a tool to document the type and quality of data needed to make the decisions in this annual review and to describe the methods for collecting and assessing those data (see DCN 00694, section 2.1). EPA used the following document to develop the QAPP for this annual review, "EPA Requirements for QA Project Plans (QA/R–5), EPA–240-B01–003." Using the QAPP as a guide, EPA performed extensive quality assurance checks on the data used to develop estimates of toxic-weighted pollutant discharges (*i.e.*, verifying data reported to TRI and the Permit Compliance System) to determine if any of the pollutant discharge estimates relied on incorrect or suspect data. For example, EPA contacted facilities and permit writers to confirm and, as necessary, correct PCS and TRI data for industries EPA identified in the preliminary Plan as the significant dischargers of toxic and non-conventional pollution.

EPA did not, however, conduct a comprehensive screening-level review of the availability of treatment or process technologies that might reduce hazard or risk. As was the case in the 2003 annual review, EPA was unable to gather the data needed to perform a comprehensive screening-level analysis of the availability of treatment or process technologies to reduce hazard or risk beyond the performance of technologies already in place for the 56 industrial categories. EPA did consider information on the availability of treatment or process changes for some industries, where such information was provided by commenters on the preliminary Plan or otherwise identified by EPA. Similarly, EPA could not identify a suitable screening-level tool for comprehensively evaluating the economic affordability of treatment or process technologies because the universe of facilities is too broad and complex. However, EPA did consider economic information for the two industries identified in the Preliminary Plan (*i.e.*, Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF) and Petroleum Refining. For example, as a result of its 2004 annual review, EPA is not scheduling the coal tar refining industrial sector (a subcategory of OCPSF) for an effluent guidelines revision due, in part, to the declining health of this subcategory (*see* section V.B.1.). However, EPA could not find a reasonable way to prioritize many of the remaining industries based on a broad economic profile. In the past, EPA has gathered information regarding technologies and economic considerations through detailed questionnaires distributed to hundreds of facilities within a category or subcategory for which EPA has commenced rulemaking. (*See* DCN 01196 for an example of the Questionnaire used by EPA for the Meat and Poultry Products rulemaking, and DCN 01195 for an example of the Questionnaire used for the Iron and Steel Rulemaking.) Such information-gathering efforts are subject to the requirements of the Paperwork Reduction Act, 33 U.S.C. 3501, *et seq.* The information acquired in this way is invaluable to EPA in its rulemaking efforts, but the process of gathering, validating and analyzing the data—even for only a few subcategories—can

consume considerable time and resources. Consequently, EPA is working to develop more streamlined screening-level tools for technological and economic achievability as part of future annual reviews under section 304(b).

In order to further focus its inquiry during the 2004 annual review, EPA applied less scrutiny to categories for which effluent guidelines rulemakings were then underway or for which EPA had promulgated effluent guidelines within the past seven years. EPA chose seven years because this is the time it customarily takes for the effects of effluent guidelines to be fully reflected in pollutant loading data and Toxic Release Inventory reports (in large part because effluent limitations guidelines are often incorporated into NPDES permits only upon reissuance, which could be up to five years after the effluent guidelines are promulgated). Because there are 56 point source categories (including over 450 subcategories) with existing effluent guidelines that must be reviewed annually, EPA believes it is important to prioritize its review so as to focus especially on industries where changes to the existing effluent guidelines are most likely to be needed. In general, industries for which new or revised effluent guidelines have recently been promulgated are less likely to warrant such changes. However, in cases where EPA becomes aware of the growth of a new segment within a category for which EPA has recently revised effluent guidelines, or where new concerns are identified for previously unevaluated pollutants discharged by facilities within the industrial category, EPA would apply a heightened level of scrutiny to the category in a subsequent review, but EPA identified no such instance during the 2004 review.

EPA also identified some industries where the estimated toxic-weighted pollutant discharges were unclear and more data were needed to determine their magnitude. For these industries, EPA intends to collect additional information for the next annual review.

As part of its 2004 review, EPA also considered the number of facilities responsible for the majority of the estimated toxic-weighted pollutant discharges associated with an industrial activity. Where only a few facilities accounted for the vast majority of toxic-weighted pollutant discharges, EPA believes that revision of individual permits may be more effective at addressing the toxic-weighted pollutant discharges than a national effluent guidelines rulemaking because requirements can be better tailored to these few facilities, and because individual permitting actions may take considerably less time than a national rulemaking. The Docket accompanying this notice lists facilities that account for the vast majority of the estimated toxic-weighted pollutant discharges for particular categories (*see* DCN 01089, section 3.0). EPA will consider identifying pollutant control and pollution prevention technologies that will assist permit writers in developing facility-specific, technology-based effluent limitations on a best professional judgment (BPJ) basis. In future annual reviews, EPA also intends to re-evaluate each category based on the information available at the time in order to evaluate the effectiveness of the BPJ permit based support.

EPA received comments urging EPA, as part of its annual review, to encourage and reward voluntary efforts by industry to reduce pollutant discharges, especially when the voluntary efforts have been widely adopted within an industry and the associated pollutant reductions have been significant. EPA agrees that industrial categories demonstrating significant progress through voluntary efforts to reduce hazard or risk to human health and the environment associated with their effluent discharges would be a comparatively lower priority for effluent guidelines revision, particularly where such reductions are achieved by a significant majority of individual facilities in the industry. Although during this annual review EPA could not complete a systematic review of voluntary pollutant loading reductions, EPA's review did account for the effects of successful voluntary programs: such programs could be expected to produce significant reductions in pollutant discharges, which in turn would be reflected in discharge monitoring and TRI data, as well as any data provided directly by commenters, that EPA used to assess the toxic-weighted pollutant discharges.

In summary, EPA focused its 2004 screening-level review on analyzing any new data provided by stakeholders to identify industrial categories whose pollutant discharges potentially pose the greatest hazards or risks to human health and the environment because of their toxicity. EPA also considered efficiency and implementation issues raised by stakeholders and commenters on the preliminary Plan. By using this multi-layered screening approach, the Agency concentrated its resources on those point source categories with the highest estimates of toxic-weighted pollutant discharges (based on best available data), while assigning a lower priority to categories that the Agency believes are not good candidates for effluent guidelines revision at this time.

b. Detailed review of effluent guidelines for certain industries.

For a number of the industries that appeared to offer the greatest potential for reducing hazard or risk to human health or the environment, EPA gathered and analyzed additional data on hazard and risk, economic factors, and technology issues during its 2004 annual review. EPA examined: (1) Wastewater characteristics and pollutant sources; (2) the pollutants driving the toxic-weighted pollutant discharges; (3) treatment technology and pollution prevention information; (4) the geographic distribution of facilities in the industry; (5) any pollutant discharge trends within the industry; and (6) any relevant economic factors.

EPA relied on many different sources of data including: (1) 1997 U.S. Economic Census; (2) TRI and PCS data; (3) contacts with reporting facilities to verify reported releases and facility categorization; (4) contacts with regulatory authorities (states and EPA regions), to understand how category facilities are permitted; (5) NPDES permits and their supporting fact sheets; (6) EPA effluent guidelines technical development documents; (7) relevant EPA preliminary data summaries or study reports; (8) technical literature on pollutant sources and control technologies; (9) information provided by industry in response to EPA requests made under CWA section 308 authority; (10) stormwater data submitted to EPA as required by the storm water Multi-Sector General Permit for industrial activities. *See* 65 FR 64746 (Oct. 30, 2000); and (11) public comments on the 2003 annual review and the preliminary Plan.

The 2004 detailed review focused first on Organic Chemicals, Plastics and Synthetic Fibers (OCPSF) (Part 414) and Petroleum Refining (Part 419), which were identified in the preliminary Plan as offering the greatest potential for reducing hazard or risk to human health and the environment. EPA performed a review of technology innovation and process changes in these industrial categories. EPA considered cost and affordability of potential technologies options where data and information were available. EPA also considered whether new subcategories are needed for either of these categories. The purpose of the detailed investigation was to determine whether it would be appropriate to revise the existing effluent guidelines for these industrial categories. The results of the detailed review of the effluent guidelines for

these two categories are presented in Section V.B., below.

EPA also conducted additional reviews of industrial categories suggested by stakeholders as offering potential for reducing hazard or risk based on available technologies. As part of these reviews, EPA considered not only the estimates of toxic-weighted pollutant discharges from the category, but also technological availability and affordability when the information was available. For example, commenters suggested that EPA scrutinize the provision in the coastal subcategory of the Oil and Gas Extraction effluent guidelines (40 CFR part 435, Subpart D) that allows for the discharge of produced water, drilling fluid, and cuttings in Cook Inlet, Alaska. The commenters suggested that this provision should be revised to conform to the effluent guidelines for coastal oil and gas extraction conducted elsewhere, which must meet a zero discharge requirement for these pollutants. EPA evaluated technology and economic factors for Cook Inlet facilities as part of its 2004 review of the effluent guidelines for part 435 and determined based on these factors that it is not appropriate to schedule those guidelines for revision at this time (*see* DCN 01088, section 1.5).

c. Review of public comments on the 2003 Annual Review.

EPA's annual review process has historically considered information provided by stakeholders regarding the need for new or revised effluent guidelines or regarding issues associated with effluent guidelines implementation and efficiency. For the 2004 annual review, EPA obtained information from public comments on the December 2003 **Federal Register** notice, discussions with stakeholder groups with an interest in the Effluent Guidelines Program, and with staff from States and EPA Regions charged with implementing effluent guidelines in NPDES permits, as well as from public comments submitted to EPA on the draft *Strategy*.

The Agency received 59 comments from a variety of commenters including industry and industry trade associations, municipalities and sewerage agencies, environmental groups, other advocacy groups, two tribal governments, a private citizen, a Federal agency, and a State government agency. Stakeholder's suggestions played a significant role in the 2004 annual review of existing categories, as well as in EPA's assessment of potential new industrial categories under section 304(m)(1)(B). EPA's responses to comments are presented in this notice and in the Docket accompanying this notice. EPA contacted stakeholders, as necessary, for more information on their recommendations. EPA hopes that public review of the 2004 annual review and this final Plan and future annual reviews and final Plans will elicit additional information and suggestions for improving the Effluent Guidelines Program. To that end, EPA has established a docket for its 2005 annual review to provide the public with an opportunity to provide additional information to assist the Agency in its annual review. *See* section VI.

B. What Were EPA's Findings From Its Annual Review for 2004?

As a result of its 2004 annual review of all existing effluent guidelines, EPA is identifying vinyl chloride manufacturing, which is subject to the Organic Chemicals, Plastics, and Synthetic Fibers (Part 414) point source category, and chlor-alkali manufacturing, which is subject to the Inorganic Chemicals (Part 415) point source category, for possible effluent guidelines revisions. In section VII.A.2., below, EPA establishes a schedule for this rulemaking as required by section 304(m)(1)(A).

1. Organic Chemicals, Plastics, and Synthetic Fibers (OCPSF)

EPA identified OCPSF in the preliminary Plan because during the 2003 annual review it ranked high in terms of toxic and non-conventional pollutant discharges among the industrial point source categories investigated in the screening-level analyses. Three pollutants influenced OCPSF's hazard ranking: dioxin compounds, polycyclic aromatic compounds (PACs), and aniline. EPA's screening-level analysis during the 2003 annual review was based primarily on information reported to TRI for the year 2000. For the 2004 annual review, EPA obtained and reviewed additional information to supplement that data. One source was comments to the preliminary Plan. Data sources on dioxin generation and discharges included facility-provided information (*see* DCNs 00897, 00898, 00899, 01027, and 01034–01037, section 4.4), the Chlorine Chemistry Council (*see* DCN 01039, section 4.4), the Vinyl Institute (*see* DCN 01038, section 4.4), and EPA studies (*see* DCN 01088, section 1.5).

In general, industry comments stated that: (1) EPA's preliminary Plan prematurely identified target industries without demonstrating a compelling reason to pursue detailed study of these industries; (2) EPA's preliminary Plan deviates from the sound, risk-based focus of the Agency's draft *Strategy*; (3) EPA did not establish a credible link between estimated pollutant discharges from OCPSF facilities and actual water quality impairments; (4) EPA fell far short of its stated goal of involving the regulated community in the initial screening steps of the effluent guidelines planning process; and (5) EPA must ensure that treatment technologies for the OCPSF industry are both cost-effective and applicable to the wide variety of sites in the industry. One industry commenter provided specific data to correct reporting errors in the PCS database. Another industry commenter stated that using half of the detection limit for concentrations below detection limits overstates the actual pollutant discharges. The Vinyl Institute provided data on dioxin releases from ethylene dichloride (EDC), vinyl chloride monomer (VCM), and polyvinyl chloride (PVC) operations, including emission factors relating dioxin releases to production.

Industry commenters also stated that it was not appropriate to include chemical formulation, packaging, and repackaging (including adhesives and sealants) operations (CFPR) as an additional subcategory in the OCPSF point source category. Industry commenters assert that there is a clear distinction between CFPR and OCPSF industries because CFPR industries formulate products by mixing or blending without a chemical reaction while OCPSF industries perform chemical synthesis or reaction operations. Industry commenters further assert that formulation processes are much different than synthesis/reaction processes, with the result that the wastewaters are different and pollution prevention and treatment options are not the same.

Environmental commenters encouraged revision of the OCPSF effluent guidelines. Their comments were based on the magnitude of the OCPSF industry's pollutant loadings to surface waters, the apparent connection between the industry's discharges and impairment of receiving waters, and the availability of technologies that can mitigate pollution from the industry.

EPA identified over 1,500 facilities as OCPSF manufacturing facilities. During review of this industry, EPA found that the wastewater discharge hazard estimate for the entire OCPSF category was largely driven by only three sectors: aniline dischargers, coal tar refiners, and vinyl chloride manufacturing. Each of these is discussed below.

As part of its review of the OCPSF industry, EPA considered whether any subcategories should be added. For example, EPA identified in its

preliminary Plan chemical formulating, packaging, and repackaging (including adhesives and sealants) operations (CFPR) as a possible additional subcategory because most CFPR discharges are from facilities that also engage in other OCPSF operations. Although EPA is scheduling the OCPSF category for possible revision, EPA does not expect to promulgate national categorical effluent limitations guidelines for this industrial subcategory at that time because the vast majority of the estimated toxic-weighted pollutant discharges were attributable to only a few facilities. Additionally, most facilities performing CFPR operations do not discharge wastewater. These few facilities with the vast majority of the estimated toxic-weighted pollutant discharges also engage in other chemical manufacturing operations already regulated by existing effluent guidelines and it is not clear how much of these discharges come from CFPR operations. Rather, EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for these facilities based on best professional judgment (BPJ). However, as EPA proceeds with its OCPSF rulemaking, EPA may reconsider this approach.

EPA also conducted a screening analysis of the potential impact from the discharge of nutrients (*i.e.*, nitrogen and phosphorus) from OCPSF facilities on receiving waters. Employing available data and using conservative assumptions (*i.e.*, the absence of all other sources of nitrogen and low flow conditions), EPA estimated that nutrient loads from 19 OCPSF facilities could potentially cause in-stream nitrogen concentrations to exceed the levels generally expected to be found in 25% of freshwater streams and rivers with the lowest concentrations nationally. (EPA recommends that States and Tribes begin development of nutrient standards by considering the nutrient levels found in the least impacted 25% of their waters.) EPA estimated that nutrient loads from four facilities could potentially cause in-stream nitrogen concentrations to exceed the levels generally expected to be found in the least impacted 50% of freshwater streams and rivers nationally. Using a similar analysis, EPA estimated that the discharge of phosphorus from OCPSF facilities would not cause in-stream phosphorus concentrations to exceed the levels generally expected to be found in the least impacted 25% of freshwater rivers and streams nationally. While EPA will continue to examine nutrient issues as it moves forward with an effluent guidelines rulemaking for vinyl chloride and chlor-alkali manufacturing, based on this screening analysis, the discharge of nutrients from OCPSF facilities does not appear to support the development of national categorical effluent limitations for these pollutants at this time. The complete analysis is available in the Docket accompanying this notice.

EPA evaluated aniline wastewater discharge information from 3 direct dischargers and 12 indirect dischargers. The pollutants in these discharges result from the manufacture of aniline or dyes. Census information shows 38 dye manufacturers in the United States; however, this information is not specific enough to identify which dye manufacturers discharge aniline in their wastewater. According to EPA's National Risk Management Research Laboratory treatability database (*see http://www.epa.gov/ORD/NRMRL/treat.htm*), biological treatment is expected to achieve greater than 90% removal of aniline (*see* DCN 01040, section 4.4). Additional information collected from POTWs that receive these aniline discharges supports the conclusion that aniline is well treated by the biological treatment at POTWs (*see* DCNs 01041–01045, section 4.4). Furthermore, EPA did not find documentation that these aniline discharges contributed to POTW interferences or upsets. Moreover, one large aniline discharger discontinued operations after 2000 (*see* DCN 01044, section 4.4). Therefore, based on the information in its docket at this time, EPA has concluded it is not appropriate to schedule for possible revision the limitations and standards for the aniline and dye production sectors at this time.

EPA has information on three companies that perform coal tar refining operations. These three companies own ten facilities, with six currently in operation. EPA has 2000 TRI discharge data for four coal tar refining facilities. The primary pollutant contributing to the potential hazard estimated for discharges from these facilities is polycyclic aromatic compounds (PACs). This sector is declining, and the economic health of this sector is poor. Coal tar is formed as a byproduct during the process of producing metallurgical coke from coal, called coking. Coal tar refiners in North America have been faced with the challenge of dealing with a coal tar deficit due to the closing of several U.S. coke ovens. One of the three companies closed all three of its coal tar facilities since 2000. Another company shut down its only coal tar refining facility. The third company documented the declining production of coal tar and the potential substitution of bitumen as feedstock. Due to the small and declining number of facilities in this sector, the poor economic health of these facilities, and available discharge monitoring data indicating that these facilities are discharging PACs at or near treatable levels, EPA concluded that it is not appropriate to schedule for possible revision the effluent guidelines for the coal tar refining industrial sector at this time (*see* DCN 01088, section 1.5).

Dioxin is, by far, the pollutant primarily responsible for the OCPSF industry's very large toxic-weighted pollutant discharge. Dioxin is one of the most toxic and environmentally stable tricyclic aromatic compounds of its structural class. Due to its very low water solubility, most of the dioxin discharged to surface waters will adhere to sediments and suspended silts. Dioxin has a very great tendency to accumulate in aquatic life, from algae to fish. Due to its toxicity and ability to bioaccumulate, the various forms (congeners) of dioxin have high toxic weighting factors (TWFs). Consequently, even small mass amounts of dioxin discharges translate into high toxic weighted pounds equivalents (TWPEs). As previously stated, EPA estimated the hazard of the discharged pounds of pollutants by calculating hazard scores using pollutant-specific TWFs. Where data are available, these TWFs reflect both aquatic life and human health effects. Multiplying the pounds of pollutants discharged by their TWFs results in an estimate of toxic-weighted pound equivalents (TWPE).

EPA reviewed dioxin discharge information available from several sources, including the TRI database, information collected by the Chlorine Chemistry Council (an industry group), and information provided by industry in response to EPA requests made under the authority of CWA section 308. Based on information in the docket, EPA believes the manufacture of ethylene dichloride (EDC) and vinyl chloride monomer (VCM) are sources of dioxin discharges. The manufacture of polyvinyl chloride (PVC) may also be a source of dioxin discharges. EPA refers to these collectively as vinyl chloride manufacturing. EPA found that the largest dioxin discharges (98% of the 2000 TRI toxicity-weighted dioxin discharges) occurred at large integrated facilities that also operated chlor-alkali plants (whose wastewaters are subject to the Inorganic Chemicals effluent guidelines (part 415)). However, based on information in the docket from one facility with stand-alone vinyl chloride operations, and from integrated facilities that have separately monitored their

vinyl chloride operations, EPA believes that vinyl chloride manufacturing, with or without co-located chlor-alkali operations, has the potential to discharge significant amounts of dioxin. *See* section 6 of DCN 01088. While investigating the role of chlor-alkali plants in generating dioxins at large integrated organic chemical plants, EPA learned that dioxin discharges from stand-alone chlor-alkali plants are also significant (98,600 toxic-weighted pounds). EPA estimates that there are 20 facilities that perform vinyl chloride manufacturing operations (with no chlor-alkali operations), 24 facilities that perform chlor-alkali operations (with no organic chemicals operations identified), and 12 facilities that perform both vinyl chloride and chlor-alkali manufacturing operations.

Based on information from the Chlorine Chemistry Council, EPA estimated that the 2000 dioxin discharges from 21 vinyl chloride and chlor-alkali manufacturing facilities (*i.e.*, 26 grams-TEQ) represented 24 million toxic weighted pounds equivalents (TWPE). The industry voluntarily verified the 2000 TRI dioxin data using outside consultants (*see* DCNs 00831–00834 and 01039, section 4.4). The industry is in the process of implementing corporate voluntary reduction strategies to reduce dioxin discharges to all media. These strategies have been extremely successful at some facilities. As a result, Chlorine Chemistry Council discharge information for 2002 indicates that 11 vinyl chloride and chlor-alkali manufacturing facilities reduced their wastewater discharges of dioxin from 22 million toxic-weighted pound-equivalents (23.8 grams-TEQ) in 2000 to 7 million toxic weighted pound-equivalents (7.6 grams-TEQ) in 2002. However, not all facilities have been successful in reducing their dioxin discharges. The data demonstrate that the overall estimated industry dioxin discharges are declining because some individual facilities have achieved significant reductions; however, other individual facilities are showing increases in dioxin discharges.

Therefore, because the vinyl chloride manufacturing sector of OCPSF discharges significant quantities of toxic weighted pound-equivalents, EPA is selecting the vinyl chloride manufacturing segment of the organic chemicals industry for possible revision. In addition, because many chlor-alkali operations are co-located with vinyl chloride manufacturing and because these operations discharge significant quantities of TWPEs, EPA also selected the chlor-alkali industrial segment of the inorganic chemicals industry for possible revision.

2. Petroleum Refining (Part 419)

In the preliminary Plan, EPA identified Petroleum Refining as a candidate for detailed analysis, because EPA's screening-level analysis indicated some petroleum refining facilities were discharging significant amounts of dioxin compounds, polycyclic aromatic compounds (PACs), and metal pollutants to surface waters. EPA's screening analysis during the 2003 review was based primarily on information reported to TRI for the year 2000. For the 2004 annual review, EPA obtained and reviewed additional information to supplement that data, including wastewater sampling data provided by the industry and the Washington State Department of Ecology, EPA's 1996 Petroleum Refining Preliminary Data Summary, and effluent data. Commenters on the preliminary Plan explained that 2000 was the first year industry was required to report releases of dioxin compounds and PACs to TRI. In addition, many industry commenters explained that their corporate policies require that the estimates of these pollutants be based on one half the detection level multiplied by total facility flow, regardless of whether these pollutants are detected in the final effluent by actual wastewater sampling data. Commenters also provided updates to the TRI information, as well as documentation supporting their statements that some of the information included errors.

With regard to PACs, TRI requires facilities to report the total releases of 21 specific pollutants as a single value for a PAC bulk parameter. EPA determined that most of the reported releases were not based on measured concentrations in refinery effluents. Even where effluent concentrations were measured and individual PACs were not detected, refineries estimated releases using one half the analytical detection limit and refinery effluent flow rate. Ten refineries have NPDES permit limits for either PAHs, as a class, or individual PACs. (PAHs are polynuclear aromatic hydrocarbons, 16 compounds measured by Method 610. Eight individual compounds included in the PAH group are also included in the PAC compounds category reportable to TRI.) In 2000, none of the refineries reporting to PCS measured individual PACs above detection limits. Two of six refineries required to monitor for PAHs, as a class, reported PAH concentrations above detection limits. One of these two refineries also monitors for eight individual PACs—none of which were detected in 2000. In comments on the preliminary plan, the American Petroleum Institute provided effluent data collected at ten refineries in 1993/4. These data show individual PACs were never measured above analytical detection limits. Therefore, based on the information in the docket, EPA has concluded that there is little evidence that PACs are present in concentrations above the detection limit in refinery wastewater discharges.

EPA found that most petroleum refineries do not monitor for dioxins. For TRI reporting year 2000, 17 refineries reported wastewater dioxin releases. For 15 of the 17 dioxin-reporting refineries, reported releases either were not based on measured concentrations or, when dioxin congeners were not detected, releases were estimated using one half the analytical detection limit and refinery effluent flow. For two of the 17 dioxin-reporting refineries, the reported releases were based on measured concentrations in refinery effluents. EPA also reviewed PCS data and identified only three petroleum refineries that are required to monitor their effluent for the most toxic form of dioxin (*i.e.*, 2,3,7,8–TCDD or its equivalent). Only one of them detected dioxin in its effluent in 2000 (NPDES Permit No. CA0004961). Discharge monitoring data shows its discharge as 0.664 mg/yr TCDD-equivalents. In 1997, this facility completed an extensive study characterizing the source and characterization of dioxin in their wastewaters (*see* DCN 00710, section 4.06). The study determined that storm water is the largest contributor to dioxin in the final effluent (50%), with its coke pond and clean canal forebay as the second largest (45%). The facility also reported that the wastewater treatment plant (*i.e.*, treated process wastewater) contributed 2% of the dioxins in the final effluent. In 1993, this refinery installed a granular activated carbon (GAC) treatment system that successfully removed 95 to 99 percent of the dioxins found in the washwater from its reformer catalyst regeneration operation. Two samples of GAC effluent were analyzed and the results reported as 0.012 pg/L TEQ for one sample and 0.00 pg/L TEQ for the other sample.

EPA also looked at wastewater sampling data from studies that four Washington state refineries were required, by their permits, to undertake, as well as data collected for the 1996 Preliminary Data Summary. High concentrations of dioxins, including 2,3,7,8–TCDD and 2,3,7,8–TCDF, were detected in catalytic reformer

regeneration wastewaters. The Washington state refineries also detected high concentrations of dioxins in separator sludge collected at the time reformer catalyst regeneration wastewater was treated. In the treated wastewater effluent, two of the Washington refineries detected no dioxins, one detected octochlorodibenzo dioxin in one of two wastewater samples, and the fourth detected several dioxin congeners in several effluent samples. EPA concludes that most dioxins discharged to treatment in reformer catalyst regeneration wastewater settle with the solids and become part of the separator sludge. These sludges are being disposed of as hazardous wastes. Consequently, EPA concludes that while dioxins may be produced in high concentrations at petroleum refining facilities during catalytic reforming and catalyst regeneration operations, dioxins are only occasionally discharged and only in low concentrations in treated refinery effluent. In addition, sludges are properly handled as RCRA hazardous wastes. As a result, based on the information in its docket, EPA concludes that consideration of national categorical limitations on dioxin in refinery discharges is not warranted at this time.

In 2004, EPA also reviewed its database for information on metal and other non-conventional pollutants. Based on information from Year 2000 reports in PCS, the top hazard loads of pollutants being discharged by refineries include metal pollutants, sulfide, and ammonia-nitrogen. Based on data as reported to PCS and TRI, metals contribute 17 to 22 percent of the toxicity-weighted pollutant discharges reported released by petroleum refineries in 2000. From its detailed review, EPA concludes that the concentration of metal pollutants in refinery wastewaters is at or near treatable levels, leaving little to no opportunity to reduce metals discharges through conventional end-of-pipe treatment. Further, EPA did not identify an in-process wastestream with high concentrations of metals, so could not identify appropriate in-process treatment technology or pollution prevention opportunities. The existing effluent guidelines for petroleum refining facilities include limitations for sulfide and ammonia-nitrogen. EPA's 2004 analysis of this information demonstrates that these pollutants are being discharged in concentrations at or near the detection level.

EPA also conducted a screening analysis to investigate the potential impact from the discharge of nutrients (*i.e.*, nitrogen and phosphorus) from petroleum refining facilities on the facilities' receiving waters. Employing available data and using conservative assumptions (*i.e.*, the absence of all other sources of nitrogen and low flow conditions), EPA estimated that nutrient loads from 12 petroleum refining facilities could potentially cause in-stream nitrogen concentrations to exceed the levels generally expected to be found in 25% of freshwater streams and rivers with the lowest concentrations nationally. (EPA recommends that States and Tribes begin development of nutrient standards by considering the nutrient levels found in the least impacted 25% of their waters.) EPA estimated that nutrient loads from one facility could potentially cause in-stream nitrogen concentrations to exceed the levels generally expected to be found in the least impacted 50% of freshwater streams and rivers nationally. Using a similar analysis, EPA estimated that the discharge of phosphorus from petroleum refining facilities would not cause in-stream phosphorus concentrations to exceed the levels generally expected to be found in the least impacted 25% of freshwater rivers and streams nationally. Based on this screening analysis, the discharge of nutrients from petroleum refining facilities does not appear to support the development of national categorical effluent limitations for these pollutants at this time. The complete analysis is available in the Docket accompanying this notice.

In light of the foregoing information, EPA has concluded that scheduling the existing effluent guidelines for Petroleum Refining (Part 419) for possible revision to address dioxin or PACs or to revise the limitations on sulfide and ammonia-nitrogen would not be an appropriate use of the Agency's resources at this time.

Even though EPA has no present plans to revise the effluent guidelines for the petroleum refineries category to include limitations on dioxin or PACs, EPA notes that permit writers can include limitations for these pollutants on a case-by-case, best professional judgment basis under 40 CFR 125.3. Moreover, EPA encourages all permit writers and refineries to consider pollution prevention opportunities to the extent possible in developing and complying with permit limitations in the future. Indeed, EPA has received information on pollution prevention opportunities currently employed at refineries. In particular, the Washington Sate Department of Ecology published a document entitled "Water Pollution Prevention Opportunities in Petroleum Refineries," which describes opportunities in the area of general operating and maintenance practices and procedures, and design revisions and modifications to various refining processes.

As part of its review of the Petroleum Refining effluent limitations guidelines, EPA considered whether any additional subcategories should be added. EPA identified petroleum bulk stations and terminals (PBSTs) as a potential additional subcategory. In considering whether the Petroleum Refining effluent guidelines should be revised to address discharges from PBSTs, EPA gathered all readily available information during the 2004 annual review. EPA decided to consider PBSTs in its review of the Petroleum Refining point source category (Part 419) because of potential similarities in operations performed, wastewaters generated, and available pollution prevention and treatment options. EPA learned that large numbers of PBSTs discharge no toxic wastewater. Year 2000 TRI data indicate that two-thirds of the industry are zero-discharge facilities (335 of 502 TRI reporting facilities). Two of the facilities with high TWPE discharges of polynuclear aromatic compounds (PACs) in the PCS data base were associated with groundwater remediation, not discharges from PBST operations, according to comments received. These data are generally in agreement with what the Agency has been able to learn from control authorities across the country. By and large, control authorities believe that small dischargers prefer to collect their contaminated wastewaters (*e.g.*, contaminated storm water, tank bottoms water, and equipment wash water) and send them to a refinery or commercial recycler for oil recovery or ship them offsite for treatment. The use of Best Management Practices (BMPs) and pollution prevention techniques is becoming more widespread in this industrial sector, although EPA has no data as yet quantifying the effects of these measures.

Available data indicate that toxic discharges from this industry segment are contributed by a small number of facilities. Only four facilities account for more than 95 percent of the total TWPE reported in Year 2000 TRI data. The top reporting facility represents more than 40 percent of the total TRI TWPE discharges and is no longer in operation. The number two facility, accounting for 33% of the total loading, is associated with a former refinery, and these discharges represented groundwater remediation discharges, not discharges associated with operation of the

terminal. An assessment of the PCS data provides similar results. Only two facilities account for more than 99 percent of the total TWPE reported in Year 2000 PCS data. Given these toxic discharge distributions, EPA concluded that individual facility permit support, rather than a national effluent guidelines rulemaking, may be the most appropriate course of action.

While EPA is deferring the development of effluent guidelines for PBSTs as an additional subcategory under Part 419, EPA will continue to examine this industrial activity in future review cycles.

3. Review of Other Effluent Guidelines Promulgated Under Section 304(b)

Table V–1 presents additional findings from EPA's 2004 annual review. The Table uses the following codes to describe the reasons EPA has decided at this time not to schedule for possible revision the effluent guidelines promulgated for particular industrial categories. More discussion on each point source category is presented in the Docket accompanying this notice.

(1) Effluent guidelines for this industrial category were recently revised or reviewed through an effluent guidelines rulemaking.

(2) A national effluent guidelines rulemaking is not the best tool for establishing technology-based effluent limitations for this industrial category because most of the toxic and non-conventional pollutant discharges are from one or a few facilities in this industrial category. EPA will consider assisting permitting authorities in identifying pollutant control and pollution prevention technologies for the development of technology-based effluent limitations by best professional judgment (BPJ) on a facility-specific basis.

(3) Not identified as a hazard or risk priority based on data available at this time.

(4) Incomplete data available for full analysis. EPA intends to collect more information for the next annual review.

(5) All or nearly all sources engaged in this industrial activity are indirect dischargers, subject to review under 304(g) not 304(b).

TABLE V–1.—FINDINGS FROM THE 2004 ANNUAL REVIEW OF OTHER EFFLUENT GUIDELINES PROMULGATED UNDER SECTION 304(B)

No.	Industry category (listed alphabetically)	40 CFR part	Findings†
1	Aluminum Forming	467	(3)
2	Aquatic Animal Production Industry	451	(1)
3	Asbestos Manufacturing	427	(3)
4	Battery Manufacturing	461	(3)
5	Canned and Preserved Fruits and Vegetable Processing	407	(3)
6	Canned and Preserved Seafood Processing	408	(3)
7	Carbon Black Manufacturing	458	(3)
8	Cement Manufacturing	411	(3)
9	Centralized Waste Treatment	437	(1)
10	Coal Mining	434	(1) and (3)
11	Coil Coating	465	(5)
12	Concentrated Animal Feeding Operations (CAFO)	412	(1)
13	Copper Forming	468	(3)
14	Dairy Products Processing	405	(3)
15	Electrical and Electronic Components	469	(3)
16	Electroplating	413	(1)
17	Explosives Manufacturing	457	(3)
18	Ferroalloy Manufacturing	424	(3)
19	Fertilizer Manufacturing	418	(4)
20	Glass Manufacturing	426	(3)
21	Grain Mills	406	(3)
22	Gum and Wood Chemicals	454	(3)
23	Hospitals	460	(5)
24	Ink Formulating	447	(3)
25	Iron and Steel Manufacturing	420	(1)
26	Landfills	445	(1)
27	Leather Tanning and Finishing	425	(3)
28	Meat and Poultry Products	432	(1)
29	Metal Finishing	433	(1)
30	Metal Molding and Casting	464	(4)
31	Metal Products and Machinery	438	(1)
32	Mineral Mining and Processing	436	(3)
33	Nonferrous Metals Forming and Metal Powders	471	(3)
34	Nonferrous Metals Manufacturing	421	(4)
35	Oil and Gas Extraction	435	(1) and (4)
36	Ore Mining and Dressing	440	(4)
37	Paint Formulating	446	(3)
38	Paving and Roofing Materials (Tars and Asphalt)	443	(3)
39	Pesticide Chemicals	455	(3)
40	Petroleum Refining	419	See section V.B.2
41	Pharmaceutical Manufacturing	439	(1)
42	Phosphate Manufacturing	422	(3)
43	Photographic	459	(3)
44	Plastic Molding and Forming	463	(3)
45	Porcelain Enameling	466	(3)
46	Pulp, Paper, and Paperboard	430	(1), (2), (4)
47	Rubber Manufacturing	428	(3)

TABLE V–1.—FINDINGS FROM THE 2004 ANNUAL REVIEW OF OTHER EFFLUENT GUIDELINES PROMULGATED UNDER SECTION 304(B)—Continued

No.	Industry category (listed alphabetically)	40 CFR part	Findings†
48	Soaps and Detergents Manufacturing	417	(3)
49	Steam Electric Power Generation	423	(4)
50	Sugar Processing	409	(3)
51	Textile Mills	410	(4)
52	Timber Products Processing	429	(4)
53	Transportation Equipment Cleaning	442	(1) and (5)
54	Waste Combustors	444	(1)

†Note: The descriptions of the "Findings" codes are presented immediately prior to this table.

VI. EPA's 2005 Review of Effluent Guidelines Promulgated Under Section 304(b)

As discussed in section V and further in section VII, EPA is coordinating its annual review obligation under CWA section 304(b) with the requirements to provide for public comment on a preliminary Plan and then publish a biennial Effluent Guidelines Program Plan under section 304(m). EPA's 2003 review and public comments received on the preliminary Plan helped the Agency prioritize its analysis of existing categories during the 2004 review. The information gathered during the 2004 annual review, including the identification of data gaps in the analysis of certain existing industry categories, in turn provides a starting point for EPA's 2005 annual review. See Table V–1 above and Section 5 of the Technical Support Document. In 2005, EPA intends to conduct a screening-level analysis of all 56 industry categories and compare the results against those from previous years. Based on these results and other information gathered during previous years, EPA will conduct more detailed analyses of those industries that rank high in terms of toxic and non-conventional discharges among all point source categories. EPA specifically invites comment and data on the various 56 sets of effluent guidelines.

VII. The Final 2004 Effluent Guidelines Program Plan Under Section 304(m): Identification of Point Source Categories and Schedule for Future Effluent Guidelines Rulemakings

On December 31, 2003, EPA published and sought public comments on the preliminary Effluent Guidelines Program Plan for 2004/2005. *See* 68 FR 75515 (Dec. 31, 2003). The comment period closed on March 18, 2004. *See* 69 FR 6984 (Feb. 12, 2004). The Agency received 59 comments from a variety of commenters including industry and industry trade associations, municipalities and sewerage agencies, environmental groups, other advocacy groups, two tribal governments, a private citizen, a Federal agency, and a State government agency. Many of these public comments are discussed in today's notice. The Docket accompanying today's notice includes a complete set of all of the comments submitted, as well as the Agency's responses (*see* DCN 01026, section 4.0).

A. EPA's Schedule for Annual Review and Revision of Existing Effluent Guidelines Under Section 304(b)

1. Schedule for 2005 and 2006 Annual Reviews under Section 304(b)

As noted in section IV.B, CWA section 304(m)(1)(A) requires EPA to publish a plan every two years that establishes a schedule for the annual review and revision, in accordance with section 304(b), of the effluent guidelines that EPA has promulgated under that section. Today's plan announces EPA's schedule for performing its section 304(b) reviews for 2005 and 2006. The schedule is as follows: to coordinate its annual review of existing effluent guidelines under section 304(b) with its publication of preliminary and final Effluent Guidelines Program Plan under CWA section 304(m). In other words, in odd-numbered years, EPA intends to complete its annual review upon publication of the preliminary Effluent Guidelines Program Plan that EPA must publish for public review and comment under CWA section 304(m)(2). In even-numbered years, EPA intends to complete its annual review upon the publication of the final Plan. EPA's 2005 annual review is the review cycle ending upon the publication of the preliminary Plan in 2005 and its 2006 annual review is the review cycle ending upon publication of the 2006 final Plan.

As previously mentioned, the CWA requires the final Plan to be published biennially with an opportunity for public comment. During the current planning cycle, EPA published the results of its 2003 review along with the preliminary Plan on December 31, 2003 (68 FR 75515). This gave EPA approximately five months to consider public comments and to gather and analyze additional data for the 2004 review and final 2004 Plan. EPA would expect to follow a similar schedule for the 2005 review and the preliminary and final 2006 Plan. Specifically, EPA intends to publish and take comment on the next preliminary Effluent Guidelines Plan in 2005. EPA will consider these public comments and take final action on the final 2006 Plan by August 26, 2006.

EPA is coordinating its annual reviews under section 304(b) with publication of plans under section 304(m) for several reasons. First, the annual review is inextricably linked to the planning effort, because the results of each annual review can inform the content of the preliminary and final Effluent Guidelines Program Plans, *e.g.*, by calling to EPA's attention point source categories for which EPA has not promulgated effluent guidelines. Second, even though not required to do so under either section 304(b) or section 304(m), EPA believes that the public interest is served by periodically presenting to the public a description of each annual review (including the review process employed) and the results of the review. Doing so at the same time EPA publishes preliminary and final plans makes both processes more transparent. Third, by requiring EPA to review all existing effluent guidelines each year, Congress appears to have intended that each successive review would build upon the results of earlier reviews. Therefore, by describing the 2004 annual review along with the 2004 effluent limitations guidelines Plan, EPA hopes to gather and receive data and information that will inform its review for 2005 and beyond.

2. Schedule for Possible Revision of Effluent Guidelines Promulgated Under Section 304(b).

EPA intends to start the rulemaking for the vinyl chloride and chlor-alkali industrial sectors in March 2005. Using its authorities under CWA section 308

and consistent with the requirements of the Paperwork Reduction Act, EPA, as its first rulemaking step, expects to develop and distribute a questionnaire to facilities within these sectors. These data becomes the foundation for any proposed rule because they provide the record basis for EPA's assessment of candidate technologies and their economic achievability. Therefore, only after gathering, validating and analyzing the data would EPA be ready to propose revised effluent guidelines for these sectors. Based on past experience, this stage of the process can take several years. EPA's schedule for this rulemaking also will need to take into account the need for the Agency to first focus on guidelines rulemakings for the Airport Deicing Operations and the Drinking Water Supply and Treatment industrial sectors, which EPA is required under CWA section 304(m)(1)(C) to complete within three years. *See* Section VI.B, below. EPA is not scheduling any other existing effluent guidelines for rulemaking at this time. *See* Section V.B.1.

EPA emphasizes that announcing a rulemaking schedule for these point source categories does not constitute a final decision to revise the applicable effluent guidelines. Identifying an existing effluent guideline for possible revision is not the end of a regulatory process, but rather the beginning of one. EPA would make any such effluent guidelines revisions—supported by an administrative record following an opportunity for public comment—only in connection with a formal rulemaking process, subject to the authorities and constraints of CWA sections 301(b), 304(b) and 306 and the Administrative Procedure Act. At any point in this process, EPA may find that regulatory revisions are not appropriate and may discontinue regulatory revision efforts at that time. EPA would use the 304(m) planning process to announce and solicit public comment on any such decision. EPA would continue to review the existing effluent guidelines, however, as part of each annual review under section 304(b).

B. Identification of Point Source Categories Under CWA Section 304(m)(1)(B)

The Effluent Guidelines Program Plan must identify categories of sources discharging non-trivial amounts of toxic or non-conventional pollutants for which EPA has not published effluent limitations guidelines under section 304(b)(2) or new source performance standards (NSPS) under section 306. See CWA section 304(m)(1)(B). The Plan must also establish a schedule for the promulgation of effluent guidelines for the categories identified under section 304(m)(1)(B) not later than three years after such identification. See CWA section 304(m)(1)(C). Today's 2004 Effluent Guidelines Program Plan identifies two industrial categories pursuant to section 304(m)(1)(B).

1. Process for Identifying Industrial Categories for Which EPA Has Not Promulgated Effluent Guidelines

The universe of industrial categories potentially subject to section 304(m)(1)(B) is limited. First, this analysis applies only to industrial categories for which EPA has not promulgated effluent guidelines, not to unregulated subcategories or pollutants within a currently regulated industrial category. The distinction between a category (reflecting an industry as a whole) and a subcategory (reflecting differences among *segments* of the industry) has long been recognized by the U.S. Supreme Court. *See, e.g., Chemical Mfrs. Ass'n* v. *NRDC,* 470 U.S. 116, 130, 132 n.24 (1985). Thus, EPA's first decision criterion asks whether an industrial operation or activity in question is properly characterized—in a broad sense—as an industry "category" or more narrowly as a segment of that industry (*i.e.*, a subcategory). The list of "categories of sources" set forth at section 306(b)(1)(A) (*e.g.*, pulp and paper mills, organic chemicals manufacturing, steam electric powerplants) suggests that this term encompasses a broad array of related industrial operations and is not meant to refer to specific activities within the industrial sector itself. The concept that "category" is a broad term is reinforced by section 304(b)(2) itself: When promulgating effluent limitations guidelines and standards for a "category," EPA must take into account specific factors that, as the U.S. Supreme Court recognized, often lead to the use of "subcategories." *See E.I.du Pont de Nemours & Co.* v. *Train,* 430 U.S. 112, 131 n.21 (1977). Indeed, the effluent guideline considered by the U.S. Supreme Court in *du Pont* was divided into 22 subcategories, each with its own set of technology-based limitations reflecting variations in processes, products, and pollutants. *Id.* at 122 & nn 9 & 10.

EPA interprets section 304(m)(1)(B) in view of this long history and consequently construes that section to apply to categories, not subcategories, for which EPA has not promulgated effluent limitations guidelines and standards. This does not mean, however, that EPA ignores these subcategories. To the contrary, EPA considers the need to address additional subcategories and pollutants as part of its annual review of existing effluent guidelines. For example, as part of its annual review under CWA section 304(b), EPA reviewed the following industrial operations as potential additional subcategories of existing effluent guidelines: (1) Petroleum Bulk Stations and Terminals (SIC 5171), which EPA reviewed as a potential additional subcategory under Petroleum Refining (Part 419); and (2) Chemical Formulating, Packaging, and Repackaging (including Adhesives and Sealants) operations, which EPA reviewed as a potential additional subcategory under Organic Chemicals, Plastics, and Synthetic Fibers (Part 414).

The second criterion EPA considers when implementing section 304(m)(1)(B) also derives from the plain text of that section. By its terms, CWA section 304(m)(1)(B) applies only to industrial categories to which effluent guidelines under section 304(b)(2) or section 306 would apply, if promulgated. Therefore, for purposes of section 304(m)(1)(B), EPA would not identify industrial categories composed exclusively or almost exclusively of indirect discharging facilities regulated under section 307 (*see* section 304(g)) or categories for which other CWA controls take precedence over effluent guidelines, *e.g.*, POTWs regulated under CWA section 301(b)(1)(B) or municipal storm water runoff regulated under CWA section 402(p)(3)(B).

Third, the analysis under CWA section 304(m)(1)(B) applies only to industrial categories of sources that are discharging non-trivial amounts of toxic or non-conventional pollutants to waters of the United States. EPA did not consider, under this analysis, industrial activities where conventional pollutants, rather than toxic or non-conventional pollutants, are the pollutants of concern. For example, although EPA had identified stormwater discharges from construction and development as a new category in its 2000 and 2002 effluent guidelines program plans, EPA is not identifying construction and development in this 2004 plan based on new information that discharges from this activity consist predominately of conventional pollutants under CWA § 304(a)(4), in this case total suspended solids. In addition, even when toxic and non-conventional pollutants might be present in an industrial category's discharge, the analysis under 304(m)(1)(B) does not apply when those discharges occur in trivial amounts. EPA does not believe that it is necessary, nor was it Congressional

intent, to develop national effluent guidelines for categories of sources that are likely to pose an insignificant risk to human health or the environment due to their trivial discharges. *See* Senate Report Number 50, 99th Congress, 1st Session (1985); WQA87 Legislative History 31. This decision criterion leads EPA to focus on those remaining industrial categories where, based on currently available information, new effluent guidelines have the potential to address a non-trivial hazard or risk to human health or the environment associated with toxic or non-conventional pollutants. Thus, EPA might judge in 2004, based on information available at that time, that the toxic and non-conventional pollutant discharges from sources within an industrial category are trivial, and then, based on changes in the industry or new information, reach a different conclusion in 2006 or later.

Moreover, priority-setting is intrinsic to any planning exercise, and EPA regards this criterion as a priority-setting tool. Because section 304(m)(1)(C) requires that EPA complete an effluent guidelines rulemaking within three years of identifying an industrial category in a 304(m) plan, it is important that EPA have the discretion to prioritize its identification of new industrial categories so that it can use available resources effectively, and identify only those industrial categories where an effluent guideline is an appropriate tool to achieve environmental results. The Clean Water Act specifically contemplated that effluent guidelines would not be the only solution to all water quality problems.

EPA interprets section 304(m), including its requirement that EPA identify in a plan any industrial categories for which it might promulgate effluent guidelines, as a mechanism designed to promote regular and transparent priority-setting on the part of the Agency. A plan, ultimately, is a statement of choices and priorities. *See Norton* v. *Southern Utah Wilderness Alliance, et al.*, 124 S. Ct. 2373, 2383 (2004). Identifying an industrial activity for possible effluent guideline rulemaking reflects EPA's view, at the time the plan is issued, that a national categorical regulation may be an appropriate tool to accomplish the desired environmental results. Similarly, announcing a schedule reflects EPA's assignment of priorities, taking into account all of the other statutory mandates and policy initiatives designed to implement the CWA's goals and the funds appropriated by Congress to execute them. By requiring EPA to publish its plan, Congress assured that EPA's priority-setting processes would be available for public viewing. By requiring EPA to solicit comments on preliminary plans, Congress assured that interested members of the public could contribute ideas and express policy preferences. Finally, by requiring publication of plans every two years, Congress assured that EPA would regularly re-evaluate its past policy choices and priorities (including whether to identify an industrial activity for effluent guidelines rulemaking) to account for changed circumstances. Ultimately, however, Congress left the content of the plan to EPA's discretion—befitting the role that effluent guidelines play in the overall structure of the CWA and their relationship to other tools for addressing water pollution. Considering the full scope of the mandates and authorities established by the CWA, of which effluent guidelines are only a part, EPA needs the discretion to promulgate new effluent guidelines in a phased, orderly manner. Otherwise, EPA might find itself commencing an effluent guidelines rulemaking when none is actually needed for the protection of human health or the environment. By crafting section 304(m) as a planning mechanism, Congress has given EPA that discretion.

In its exercise of this discretion, EPA has identified two new candidates for effluent guidelines rulemaking for this final Plan: (1) Airport Deicing Operations; and (2) Drinking Water Supply and Treatment. Pursuant to section 304(m)(1)(C), EPA is scheduling two effluent guidelines rulemakings for these industrial point source categories and intends to take final action for each of these effluent guidelines rulemakings by September 3, 2007. No other industrial category met the criteria of section 304(m)(1)(B).

As noted above, announcing a rulemaking schedule for these point source categories does not constitute a final decision that effluent guidelines in fact are appropriate for the identified point source categories. EPA would make any such effluent guidelines revisions—supported by an administrative record following an opportunity for public comment—only in connection with a formal rulemaking process, subject to the authorities and constraints of CWA sections 301(b), 304(b) and 306 and the Administrative Procedure Act. At any point in this process, EPA may find that promulgating effluent guidelines are not appropriate and may discontinue the rulemaking process at that time. EPA would use the 304(m) planning process to announce and solicit public comment on any such decision.

2. Discharges From Airport Deicing Operations

In the preliminary Plan, EPA noted that it had inadequate data to determine if discharges from this industry were non-trivial, and stated that it would obtain more data in future planning cycles. Public comments on the preliminary Plan suggested that EPA consider developing effluent guidelines for this industrial sector because of the potential for facilities in this industrial sector to discharge non-trivial amounts of non-conventional and toxic pollutants. In particular, commenters stated that airport deicing fluid (ADF) is not properly recaptured and re-used or properly treated before discharge. Commenters also stated that these discharges can cause significant harm to natural resources such as fish kills, algae blooms, and contamination to surface or ground waters.

In the docket for the preliminary Plan, EPA's primary source of wastewater discharge information for this industry is its "Preliminary Data Summary: Airport Deicing Operations" which was published in August 2000 (EPA–821–R–00–016). This study focused on approximately 200 airports in the United States with potentially significant deicing/anti-icing operations. The major source of pollutant discharges from deicing operations is storm water contaminated by deicing agents, which typically contain water, glycols and additives. However, the study showed that there was great disparity among airports in terms of permit requirements. Some airports, generally those with stringent storm water discharge permits, had made great strides in terms of wastewater collection, containment, pollution prevention and/or recycling/treatment programs. Other airports, however, were much less advanced.

At the time of the study, EPA estimated that the industry annually discharged to surface waters approximately 21 million gallons of ADF. EPA also estimated that full implementation of storm water permits would reduce these discharges to 17 million gallons annually. Finally, the study also estimated possible reductions in ADF discharges if effluent limitations guidelines and standards were implemented for discharges resulting from aircraft deicing operations. Using results from technologies and pollution prevention practices employed at some of the better performing airports, EPA estimated annual surface water discharges could be reduced to 4

million gallons. Due to the variety of ADFs in use and the limited information on the chemical composition of these ADFs, EPA was unable to estimate the toxic-weighted pollutant discharges associated with these potential effluent reductions. Following the publication of the preliminary Plan, EPA collected additional information and revisited the information in its docket.

Since the preliminary Plan, EPA conducted a review of current and proposed discharge permits for over twenty airports. This review indicates that while some airports have more stringent permits and have reduced their ADF discharges since EPA's earlier study was conducted, significant disparity continues among discharge requirements. For example, some airports are required to comply with numeric effluent limitations, *e.g.*, 2 mg/L ADF, while others are required to meet non-numeric effluent limitations, in the form of BMPs. Monitoring requirements vary as well. Based on the information in its study and a review of this permit information, EPA has concluded that it is appropriate to identify the discharges from airport deicing operations in this final Plan and to take final action on effluent guidelines within three years of the publication of today's notice. *See* CWA section 304(m)(1)(C).

Consistent with CWA section 301(a), effluent guidelines for this point source category would only apply to wastewaters from airport deicing operations that are considered point source discharges. In particular, wastewaters from airport deicing operations that discharge through a "conveyance used for collecting and conveying storm water" are considered point source discharges and are required to obtain NPDES permits (*see* 40 CFR 122.26). Like any NPDES permit, these permits must contain technology-based limits, and any more stringent limitations necessary to achieve applicable water quality standards. *See* CWA section 301(b)(2)(A) and 301(b)(1)(C). If EPA promulgates effluent limitation guidelines for this industrial category, technology-based limitations in such permits would need to be based on the applicable effluent guideline. *See* CWA section 301(b)(2)(A). As is currently the case, discharges from airport deicing operations that are non-point sources (*e.g.*, ADF shedding from the airplane after it leaves the airport) would not require an NPDES permit to discharge to navigable waters of the U.S. and would not be subject to any potential effluent guidelines. In other words, any new effluent guidelines for this point source category would affect the content of technology-based permit limitations, but would not change the universe of airports that are or are not required to obtain NPDES permits.

3. Drinking Water Supply and Treatment

EPA did not identify the Drinking Water Supply and Treatment industrial sector (SIC Code 4941) as a potential candidate for effluent guidelines development in the preliminary Plan. At that time, EPA concluded that almost all of the hazard posed by this industrial sector was due to a few facilities. In particular, EPA's analysis showed that a single facility was contributing over 96% of the toxic-weighted pollutant discharges included in PCS for the entire industrial sector. Public comments on the preliminary Plan suggested that EPA consider developing effluent guidelines for this industrial sector because of the potential of drinking water supply and treatment plants to discharge non-trivial amounts of non-conventional and toxic pollutants (*e.g.*, metals and salts). In particular, commenters stated that many drinking water facilities have the potential to discharge significant quantities of conventional and toxic pollutants, and noted that the source of these pollutants can include drinking water treatment sludges and reverse osmosis reject wastewaters. Consequently, EPA attempted to collect additional information and re-evaluated the information in the docket supporting today's final Plan.

Based on information in the 1997 Economic Census, EPA estimates there are 3,700 drinking water treatment and supply facilities in the United States. EPA's primary source of wastewater data for this industry is EPA's Permit Compliance System (PCS). This database contains information required by the NPDES Permit Program for major dischargers across the country. A major discharger is any NPDES facility or activity classified as such by the Regional Administrator, or, in the case of approved State Programs, the Regional Administrator in conjunction with the State Director. Major industrial facilities are determined based on specific ratings criteria developed by EPA and approved State Programs. EPA does not require States to include data for other dischargers (*e.g.*, minor and indirect dischargers) in PCS, so little information is available about industries like this one that are dominated by minor and indirect dischargers. PCS lists approximately 900 drinking water supply and treatment facilities as having minor permits for the year 2000, but includes only limited data on discharge flow or pollutant concentrations for these dischargers. Consequently, EPA was unable to quantify discharges from these facilities. PCS also contained information on sixteen drinking water supply and treatment facilities with major permits for the year 2000 which EPA was able to analyze.

EPA found that the toxic-weighted pollutant discharges for these sixteen facilities ranged from significant to very low, with the majority attributable to the discharges from three facilities. Total residual chlorine and metals (*e.g.*, iron, manganese, and aluminum) represent most of the TWPE discharges from these three facilities. For the remaining 13 facilities, PCS data indicate that pollutants are being discharged at or near the detection levels, raising questions about further treatability of these pollutants using end-of-pipe treatment. More recent PCS information suggests the TWPE discharges at some of these sixteen facilities have decreased. In particular, two of the three facilities with top hazard scores for the year 2000 had significant reductions in their pollutant discharges within the last four years. One facility discontinued its wastewater discharges and the other facility recently added technology to properly dewater its wastewater treatment sludges which resulted in pollutant reductions of 85% or more.

While this PCS data suggest that many drinking water supply and treatment facilities with direct discharging permits are not discharging pollutants in significant concentrations, it also supports commenters' statements that some drinking water treatment and supply facilities may be discharging non-trivial amounts of toxic and non-conventional pollutants. Because EPA only has discharge data on a limited number of facilities in this category, and this data shows at least one facility with potentially non-trivial discharges, EPA cannot rule out the possibility that a significant number of the facilities in this category have non-trivial discharges. Therefore, EPA has decided to identify the drinking water supply and treatment industry sector in this final Plan and to complete an effluent guidelines rulemaking for this industry within three years. See CWA section 304(m)(1)(C). As the first step in this process, EPA will attempt to gather additional discharge data on this point source category.

Under Executive Order 12866, [58 **Federal Register** 51735 (October 4, 1993)] the Agency must determine whether a "regulatory action" is "significant" and therefore subject to

OMB review and the requirements of the Executive Order. The Order defines the term "regulatory action" to include any substantive action by an agency (normally published in the **Federal Register**) that is expected to lead to the promulgation of a final rule or regulation. While EPA does not normally publish plans and priority-setting documents such as this 2004 Plan in the **Federal Register**, EPA is required by statute to do so here. The Order also 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."

Pursuant to the terms of Executive Order 12866, it has been determined that this notice constitutes a "significant regulatory action" within the meaning of the Executive Order. EPA has thus submitted this notice to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Dated: August 26, 2004.

Benjamin H. Grumbles,

Acting Assistant Administrator for Water.

[FR Doc. 04–20040 Filed 9–1–04; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Workshop on National Nanotechnology Initiative Research Directions Sponsored with the National Science and Technology Council, Subcommittee on Nanoscale Science, Engineering and Technology

ACTION: Notice of open meeting.

SUMMARY: This notice announces a workshop sponsored by the Nanoscale Science, Engineering and Technology (NSET) Subcommittee of the Committee on Technology, National Science and Technology Council (NSTC) and the National Nanotechnology Coordination Office (NNCO) to review the current program of the National Nanotechnology Initiative (NNI) and to make program recommendations for the next five to ten years.

DATES: The Nanoscale Science, Engineering and Technology Subcommittee (NSET) and the National Nanotechnology Coordination Office will hold a two-day workshop on Wednesday, September 8, 2004, 10:30 a.m. to 6 p.m.; and Thursday, September 9, 2004, 8:30 a.m. to 6 p.m.

ADDRESSES: All sessions of the workshop will be held at the National Academy of Sciences Building, 2100 C St., NW., Washington, DC 20418, USA.

FOR FURTHER INFORMATION CONTACT: For information regarding this Notice, please contact Cate Alexander, National Nanotechnology Coordination Office. Telephone: (703) 292–4399. E-mail: *calexand@nnco.nano.gov.*

SUPPLEMENTARY INFORMATION: The Nanoscale Science Engineering and Technology (NSET) Subcommittee coordinates planning, budgeting, program implementation and review to ensure a balanced and comprehensive National Nanotechnology Initiative. The NSET Subcommittee is composed of representatives from agencies participating in the NNI.

The purpose of this workshop is to provide feedback to the NSET regarding the current NNI program and to make recommendations to guide the development of a new NNI strategic plan for the next five to ten years. Following presentations on research progress in funded program areas, workshop participants will be asked to review current NNI research areas and to evaluate and make recommendations about the future structure and funding components of the NNI including the grand challenge areas. Background materials on current funding areas can be found in the report National Nanotechnology Initiative; Research and Development Supporting the Next Industrial Revolution, Supplement to the President's FY2004 Budget, October 2003, which is posted on the Internet at *http://www.nano.gov/html/res/fy04-pdf/fy04-main.html.*

Public Participation: This meeting is open to the public. Time has been reserved for public comments (restricted to 5 minutes maximum for each participant; written statements may be submitted) at 5 p.m. on September 8, 2004. Registration for the workshop is required. Interested persons can register at *https://nnco.nano.gov/public_rd2/index.php.*

The NNCO assists the NSET Subcommittee of the Committee on Technology of the NSTC in coordinating the NNI. The NSTC was established under Executive Order 12881.

Ann F. Mazur,

Assistant Director for Budget and Administration.

[FR Doc. 04–20139 Filed 9–1–04; 8:45 am]

BILLING CODE 3170–WF–P

EXPORT-IMPORT BANK OF THE U.S.

Agency Information Collection Activities: Submission for OMB Review; Comment Request (Public Notice 65)

AGENCY: Export-Import Bank of the United States (Ex-Im Bank).

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed information collection as required by the Paperwork Reduction Act of 1995.

SUPPLEMENTARY INFORMATION: This notice is soliciting comments from the public concerning the proposed collection of information to (1) Evaluate whether the proposed collection is necessary for the paper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collection of information on those who are to respond including through the use of appropriated automated collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

DATES: Comments due on or before October 4, 2004.

ADDRESSES: Direct all requests for additional information to Wendy Wright, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, *wendy.wright@exim.gov*, (202) 565–3774. Address all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897.

OMB Number: 3048–0012.

Titles and Form Numbers: Export-Import Bank of the U.S. Content Report on Products, & Services In Ex-Im Bank Transactions, EIB 01–02, and Export-Import Bank of the U.S. Annual Aggregate Foreign Content Cause Report, EIB 01–02–A.

Type of Review: Extension of a currently approved collection.

Need and Use: The Information requested creates less of a burden on our exporters who previously certified foreign content for each shipment of goods. With the use of the forms, Ex-Im Bank documents the amount of foreign content in transactions through up-front reporting and back-end verification.

Affected Public: Business and other for-profit/not-for-profit institutions, farms.

Respondents: Entities involved in the export of U.S. goods and services, including exporters, banks, and other non-financial lending institutions that act as facilitators.

Estimated Annual Respondents: 600.

Estimated Time Per Respondent: 1 hour.

Estimated Annual Burden: 600 hours.

Frequency of Response: Every medium and long-term transaction.

Dated: August 27, 2004.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Content Report on Products & Services In Ex-Im Bank Transactions*

Date: _____

Name and Address of Supplier: _____

_____

_____

Representative of Supplier (Name and Title): _____

RE: Ex-Im Bank Credit/Guarantee/Insurance Policy Number: _____

Supply Contract Reference Number: _____

Purchaser: _____

The Export-Import Bank of the United States ("Ex-Im Bank") has issued a Credit/Guarantee/Insurance Policy to support Products and Services, as listed in the **attached report**, that were provided to the purchaser by the undersigned.

To the best of our knowledge the above information is true and accurate, and represents the identifiable Products and Services (U.S. & non-U.S. content) supplied by us and covered under the above referenced Credit/Guarantee/Insurance Policy Number. If requested by Ex-Im Bank, we agree to reasonably provide supplemental information to the content information described above. Ex-Im Bank will use the information reported herein to create an aggregate report to illustrate broad trends and patterns. Ex-Im Bank will treat all case-specific information as business confidential.

* Complete a Content Report for transactions supported by Medium- and Long-Term Loans, Guarantees, and Medium-Term Export Credit Insurance. For informational and reporting purposes only, Ex-Im Bank requests that Exporters submit a Content Report with the application for Medium-Term transactions, and with the initial Exporter's Certificate for Long-Term transactions. If at the completion of the work performed under a Supply Contract/Purchase Order(s), the foreign content amount changed by one percentage point or more of the value of the Net Contract Price, Exporters should submit a final revised Content Report within 60 days. Ex-Im Bank may contact Exporters to reconfirm the information provided in the Content Report.

Content Report on Goods & Services In Ex-Im Bank Transactions

Column A	Column B
Description of Goods & Services including manufacturer, model, and number of units financed under the Ex-Im Bank financing – Include SIC or NAICS code	*Identify the foreign content (may include multiple components) included in good/service shown in column "A", including the manufacturer and the country of origin. (See note 1 below)*
Description **Value ($US)** 1.	**Description** **Value ($US)** i. ii. iii
Description **Value ($US)** 2.	**Description** **Value ($US)** i. ii. iii.
Description **Value ($US)** 3.	**Description** **Value ($US)** i ii. iii.

Note 1– For this purpose, foreign content may apply to either the whole good/service or any part(s) of the good/service identified in Column "A". The foreign content must be listed in Column "B" if the foreign content in the good/service or part(s) of the good/service identified in Column "A" is valued at more than $500,000.00 or is more than 10% of the value of the good/service, whichever is less.

EIB-01-02 OMB 3048-0012

EXPORT-IMPORT BANK OF THE UNITED STATES

ANNUAL AGGREGATE FOREIGN CONTENT "CAUSE" REPORT

Period:

Exporter:

Aggregate Goods and Services by 4-Digit SIC:	_____	_____	_____	_____	_____
1. The aggregate value of significant foreign content identified in Column B of the Content Report that is 50% or more of the value of the goods and services identified in Column A of the Content Report[1]	$____	$____	$____	$____	$____
2. Of foreign content in 1 above, the % due to:					
A. Not made in US	____%	____%	____%	____%	____%
B. Not readily available	____%	____%	____%	____%	____%
C. Price	____%	____%	____%	____%	____%
(% of C above sourced from a less developed country)	(___%)	(___%)	(___%)	(___%)	(___%)
D. Other (Specify Other)	____%	____%	____%	____%	____%
	100%	100%	100%	100%	100%

Instructions for the Annual Aggregate Foreign Content Cause Report

This form should be completed by the same entity that completed the individual transaction-based Content Reports. The information reported herein should be taken from Column B of the Content Report. Only the individual components that represent foreign content that is 50% or more of the total value of the goods and services should be aggregated and included in this report.

Each of the goods and services (that meet the above 50% criteria) should be grouped into the appropriate 4-digit SIC, the same SIC used for the Content Report purposes. All information pertaining to the calendar year activity of a specific exporter may be reported on an aggregate basis within the 4-digit SIC classification. Ex-Im Bank requests exporters to submit this report by March 31 for activity supported by Ex-Im Bank during the previous calendar year.

EIB 01-02-A OMB 3048-0012

[1] This information should be obtained from the Content Reports which were submitted to Ex-Im Bank on a transactional basis for final authorizations made during the previous calendar year. The same SIC identified in the Content Report should be used for this report.

[FR Doc. 04–20047 Filed 9–1–04; 8:45 am]
BILLING CODE 6690–01–C

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, September 9, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 2004–27: Quayle 2000, Inc. by William R. Neale, Treasurer.

Advisory Opinion 2004–28: Iowa Ethics and Campaign Disclosure Board by W. Charles Smithson, Executive Director and Legal Counsel.

Advisory Opinion 2004–30: Citizens United by Michael Boos, Vice President and General Counsel.

Advisory Opinion 2004–31: Russ Darrow Group, Inc. by counsel, Cleta Mitchell.

Advisory Opinion 2004–33: The Ripon Society and U.S. Representative Sue Kelly by counsel, Jan Witold Baran and Lee E. Goodman.

Candidate Debates—Notice of Disposition of Petition for Rulemaking.

Routine Administrative Matters.

DATE AND TIME: Tuesday, September 14, 2004, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Biersack, Acting Press Officer, telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 04–20174 Filed 8–31–04; 3:34 pm]

BILLING CODE 6715–01–M

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 September 17, 2004.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Bethard Family, Coushatta, Louisiana, including James Guenard Bethard, Henry William Bethard, III, Olive Ann Bethard, Robert Edgerton Bethard, all of Coushatta, Louisiana, and Suzanne Bethard Hearne and Shirley Bethard Hegenwald, both of Shreveport, Louisiana; all acting in concert, to retain voting shares of, and to acquire additional voting shares of Coushatta Bancshares, Inc., Coushatta, Louisiana, and thereby indirectly acquire voting shares of Bank of Coushatta, Coushatta, Louisiana.

Board of Governors of the Federal Reserve System, August 30, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–20070 Filed 9–1–04; 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 September 27, 2004.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Enterprise Banking Company, Inc., Stockbridge, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Dorsey State Bank, Abbeville, Georgia.

Board of Governors of the Federal Reserve System, August 27, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–19993 Filed 9–1–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Cancellation for "Voluntary Customer Surveys Generic Clearance for AHRQ" OMB Information Collection

The notice mentioned above was published in the **Federal Register** on August 13, Volume 69, Number 156, Page 50204, *http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/04-18653.htm*, allowing 30 days for comments from its date of publication August 13.

With this notice of cancellation, the Agency for Healthcare Research and Quality is deactivating the published **Federal Register** notice mentioned above so that the **Federal Register** notice published on July 13, 2004, Volume 69, Number 133, Pages 42057–42058, *http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/04-15786.htm*, allowing 60 days for

comments, continues its comment cycle until September 10, 2004.

A future notice asking for comments for an additional 30 days will be published in the **Federal Register** on September 13.

Dated: August 23, 2004.

Carolyn M. Clancy,

AHRQ Director.

[FR Doc. 04–19989 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Dates: September 23–24, 2004 (open from 8 a.m. to 8:15 a.m. on September 23 and closed for remainder of the meeting).

2. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Dates: October 21–22, 2004 (open from 8 a.m. to 8:15 a.m. on October 21 and closed for remainder of the meeting).

3. *Name of Subcommittee:* Health Systems Research.

Dates: October 21–22, 2004 (open from 8 a.m. to 8:15 a.m. on October 21 and closed for remainder of the meeting).

4. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: October 29, 2004 (open from 8 a.m. to 8:15 a.m. on October 29 and closed for remainder of the meeting).

5. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Dates: October 28–29, 2004 (open from 8 a.m. to 8:15 a.m. on October 28 and closed for remainder of the meeting).

All the meetings above will take place at: Agency for Healthcare Research and Quality, John Eisenberg Conference Center, 540 Gaither Road, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, AHRQ, 540 Gaither Road, Suite 2000, Rockville, Maryland 20850, telephone (301) 427–1554. Agenda items for these meetings are subject to change as priorities dictate.

Dated: August 24, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–19988 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Pulmonary Function Testing Course Approval Program, 29 CFR 1910.1043, OMB No. 0920–0138—Correction; Assessment of Occupational Electric and Magnetic Field (EMF) Exposures—Validation of Interview Procedures Used in a Brain Tumor Study Against Measurements of Biologically-Based Exposure Metrics—Correction

A notice announcing proposed data collections submitted for public comment and recommendations was published in the **Federal Register** August 18, 2004, (69 FR 51314). The notices are corrected as follows:

On page 51314, in the second column, second line from end of second paragraph, the comment period should be changed from 14 to 60.

On page 51315, in the first column, second line from end of first paragraph, the comment period should be changed from 14 to 60.

All other information of the August 18, 2004, notice remains the same.

Dated: August 27, 2004.

Betsey Dunaway,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–20010 Filed 9–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Times and Dates: 8:30 a.m.–6 p.m., October 4, 2004. 8:30 a.m.–4 p.m., October 5, 2004.

Place: Westin Buckhead, 3391 Peachtree Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: Agenda items will include public comments on the Draft Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings; guidance document on public reporting of healthcare-associated infection rates; infection control issues in ambulatory care settings; strategies for surveillance of healthcare-associated infections; and updates on CDC activities of interest to the committee. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Harriett Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–20011 Filed 9–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee (HICPAC): Conference Call Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Healthcare Infection Control Practices Advisory Committee.

Time and Date: 1 p.m.–3 p.m., September 10, 2004.

Place: The conference call will originate at the Division of Healthcare Quality Promotion (DHQP), in Atlanta, Georgia. Please see **SUPPLEMENTARY INFORMATION** for details on accessing the conference call.

Status: Open to the public, limited only by the availability of telephone ports.

Purpose: The committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, the Director, CDC, and the Director, National Center for Infectious Diseases (NCID), regarding: (1) The practice of hospital infection control; (2) strategies for surveillance, prevention, and control of infections (*e.g.*, nosocomial infections), antimicrobial resistance, and related events in settings where healthcare is provided; and (3) periodic updating of guidelines and other policy statements regarding prevention of healthcare-associated infections and healthcare-related conditions.

Matters To Be Discussed: The HICPAC will convene by conference call to discuss the draft Guidance Document on Public Reporting of Healthcare-associated Infection Rates.

Supplementary Information: This conference call is scheduled to begin at 1 p.m., Eastern Time. To participate in the conference call, please dial 1–877–675–5901 and enter Pass Code 254137. You will then be automatically connected to the call.

For Further Information Contact: Harriette Lynch, Committee Management Specialist, HICPAC, Division of Healthcare Quality Promotion, NCID, CDC, 1600 Clifton Road, NE, M/S A–07, Atlanta, Georgia 30333, telephone 404/498–1182, fax 404/498–1188.

Due to programmatic issues that had to be resolved, the **Federal Register** notice is being published less than fifteen days before the date of the meeting.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–20012 Filed 9–1–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Privacy Act of 1974; Computer Matching Program (Match No. 2001–03)

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice announces a new computer matching agreement that CMS plans to conduct with the Internal Revenue Service (IRS), Social Security Administration (SSA), and Centers for Medicare & Medicaid Services (CMS). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. The Privacy Act provides an opportunity for interested persons to comment on the proposed matching program, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section below for comment period.

EFFECTIVE DATES: CMS filed a report of the Computer Matching Program with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 19, 2004. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group, Office of Information Services, HCFA, Mailstop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: John Albert, CMS, Center for Medicare Management Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7457, or facsimile (410) 786–9963.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act (CMPPA) of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 100–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Boards (DIB) approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all of the computer matching programs that this agency participates in complies with the requirements of the Privacy Act of 1974, as amended.

Dated: August 19, 2004.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

CENTER FOR MEDICARE & MEDICAID SERVICES

Computer Match No. 2001–03

NAME:

Medicare Secondary Payer Program.

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

Internal Revenue Service (IRS), Social Security Administration (SSA) and Centers for Medicare & Medicaid Services (CMS).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This agreement implements the provisions of section 1862(b)(5) of the Social Security Act, (42 U.S.C. 1395y(b)(5)), section 6103(l)(12) of the Internal Revenue Code, (26 U.S.C 6103(1)(12)), and the Privacy Act, (5 U.S.C. 552a) as amended.

PURPOSE(S) OF THE MATCHING PROGRAM:

1. The purpose of this agreement is to establish the conditions under which:

a. The Internal Revenue Service (IRS) agrees to disclose return information relating to taxpayer identity to the Social Security Administration (SSA); and

b. The SSA agrees to disclose return information relating to employer identity, commingled with taxpayer identity information disclosed by the IRS, to the Centers for Medicare & Medicaid Services (CMS).

2. These disclosures will provide CMS with information for use in determining the extent to which any Medicare beneficiary is covered under any Group Health Plan (GHP). This Matching Agreement between the Department of the Treasury Internal Revenue Service (IRS), and the Social Security Administration (SSA) and the Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS) is executed pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), as amended and the Office of Management and the Budget (OMB) Final Guidance interpreting that Act. This agreement implements the information matching provisions of 26 U.S.C. 6103(1)(12) and 42 U.S.C. 1395y(b)(5).

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

IRS—IRS will disclose taxpayer identity information from the Individual Master File (IMF), Treas/IRS 24.030, published at 63 FR 69854 (12/17/ 98). The IRS component responsible for the disclosure of the return information is the Office of Government Liaison and Disclosure. **SSA**—SSA will extract identifying information of Medicare beneficiaries from the Master Beneficiary Record (MBR), SSA/OSR 09–60–0090, published at 65 FR 46997 (08/01/00). SSA will validate the taxpayer SSN by matching information from the IMF against the Master Files of Social Security Number Holders, (NUMIDENT), SSA/OSR 09–60–0058, published at 63 FR 14165 (03/24/98). SSA will extract employer identity information from the Earnings Recording and Self-Employment Income System, SSA/0SR 09–60–0059, referred to as the Master Earnings File (MEF), published at 62 FR 11939 (03/13/97). The SSA component responsible for the disclosure of the return information is the Office of Systems Requirements (OSR). **CMS**—CMS will utilize a database, System Number 09–70–4001, published at 57 FR 60818 (12/22/92), of the GHP information received from employers containing verified instances of employment and GHP coverage for Medicare beneficiaries and Medicare eligible spouses identified from the IMF and MEF extracts. CMS will match the GHP information against the Carrier Medicare Claims Records, System Number 09–70–0501, published at 59 FR 37243–02 (7/21/94), maintained at the CMS Common Working File (CWF), System Number 09–70–0526, published at 53 FR 52792 (12/29/88). CMS will match GHP information against the Carrier Medicare Claims Records, System Number 09–70–0501, published at 59 FR 37243–02 (7/21/94), maintained at the CMS Common Working File (CWF), System Number 09–70–0526, published at 53 FR 52792 (12/29/88), which is the repository database for current MSP information. This file contains information or records needed to properly process and pay medical insurance benefits to, or on behalf of, entitled beneficiaries who have submitted claims for Supplementary Medical Insurance Benefits (Medicare Part B). The file is accessed when a claim is submitted for payment. CMS will match GHP information against the Intermediary Claims Records, System Number 09–70–0503, published at 59 FR 37243–02 (7/21/94), maintained at the CWF.

This file contains information or records needed to properly process and pay Medicare benefits to, or on behalf of, eligible individuals. The file is accessed when a claim is submitted for payment. CMS will match GHP information against the National Claims History (NCH), which is contained in the National Claims History File, Privacy Act System, HHS, CMS, BDMS 09–70–0005 published at 59 FR 19181 (4/22/94), maintained at CMS Data Center (HDC), located in Baltimore, Maryland. NCH contains records needed to facilitate obtaining Medicare utilization review data that can be used to study the operation and effectiveness of the Medicare program. The CMS component responsible for receipt and verification of the return information is the Office of Information Services (CMS/OIS).

INCLUSIVE DATES OF THE MATCH:

The Matching Program shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 04–20096 Filed 9–1–04; 8:45 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0320]

Guidance for Industry and Clinical Investigators on the Use of Clinical Holds Following Clinical Investigator Misconduct; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry and clinical investigators entitled "The Use of Clinical Holds Following Clinical Investigator Misconduct." This guidance provides information on FDA's use of its authority to impose a clinical hold on a study if FDA finds that a clinical investigator conducting the study has committed serious violations of our regulations pertaining to clinical trials involving human drug or biological products or has submitted false information to FDA or to the study's sponsor in any report. The guidance is intended to inform interested persons of the circumstances in which we may impose a clinical hold following the discovery of a clinical investigator's misconduct and the steps

we might take to protect human subjects from investigator misconduct.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests.

Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Rachel Behrman, Center for Drug Evaluation and Research (HFD–40), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852, 301–594–6758; or Patricia Holobaugh, Center for Biologics Evaluation and Research (HFM–664), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6347.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry and clinical investigators entitled "The Use of Clinical Holds Following Clinical Investigator Misconduct." The guidance provides information on one use of our authority to impose a clinical hold on a study or a study site if FDA finds that human subjects are or would be exposed to an unreasonable and significant risk of illness or injury. The guidance describes the circumstances in which FDA may impose clinical hold based on credible evidence that a clinical investigator conducting the study has committed serious violations of our regulations pertaining to clinical trials involving human drug or biological products or has submitted false information to us or to the study's sponsor in any required report. The guidance is intended to inform interested persons of the circumstances in which we may impose a clinical hold following the discovery of a clinical investigator's misconduct and the steps we might take to protect human subjects from investigator misconduct.

In the **Federal Register** of August 27, 2002 (67 FR 55025), FDA announced the availability of a draft version of the guidance entitled "The Use of Clinical Holds Following Clinical Investigator Misconduct." The August 2002 guidance gave interested persons an opportunity to submit comments through November 25, 2002. All comments received during the comment period have been carefully reviewed and, where appropriate, incorporated in the guidance. As a result of the public comments and editorial changes, the guidance is clearer than the draft version.

The guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in the guidance were approved under OMB control number 0910–0014.

The guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on the use of clinical holds to protect human subjects following clinical investigator misconduct in a clinical trial of a human drug or biological product. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, we do not intend this document to be all-inclusive, and we caution that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cber/guidelines.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/oc/gcp/guidance.html*.

Dated: August 23, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–19983 Filed 9–1–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Modification of the National Customs Automation Program Test Regarding Reconciliation

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: General notice.

SUMMARY: This document modifies the Customs and Border Protection Automated Commercial System (ACS) Reconciliation prototype test by: Adding to the kinds of issues that may be subject to Reconciliation post-entry importation claims arising under the United States-Chile Free Trade Agreement; requiring the use of compact disks (CDs) instead of floppy disks for submitting Reconciliation spreadsheets; requiring that the name identifying the spreadsheet on the CD be the Reconciliation entry number; and requiring use of .txt or .xls format for the spreadsheet. Other than these modifications, the test remains the same as set forth in previously published **Federal Register** notices. The document also announces the new addresses for the Reconciliation team (e-mail) and for Reconciliation submissions for the port of NY/Newark.

DATES: The test modifications set forth in this document are effective on October 4, 2004. The two-year testing period of this Reconciliation prototype commenced on October 1, 1998, and was extended indefinitely starting October 1, 2000. Applications to participate in the test will be accepted throughout the duration of the test.

ADDRESSES: Written inquiries regarding participation in the Reconciliation prototype test and/or applications to participate should be addressed to Mr. Richard Wallio, Reconciliation Team, Customs and Border Protection, 1300 Pennsylvania Ave., NW., Room 5.2A, Washington, DC 20229–0001. The e-mail address for inquiries regarding the

test is also available at *Recon.Help@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Richard Wallio at (202) 344–2556.

SUPPLEMENTARY INFORMATION:

Background

Initially, it is noted that on November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub. L. 107–296 (the HS Act), establishing the Department of Homeland Security and, under section 403(1) (6 U.S.C. 203(1)), transferring the U.S. Customs Service, including functions of the Secretary of the Treasury relating to the Customs Service, to the new department, effective on March 1, 2003. Most of the elements that comprised the U.S. Customs Service are now collectively known as U.S. Customs and Border Protection (CBP). The agency will be referred to by that name in this document, unless reference to the Customs Service (or Customs) is appropriate in a given context.

Reconciliation, a planned component of the National Customs Automation Program (NCAP), as provided for in Title VI (Subtitle B) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057 (December 8, 1993)), is currently being tested by CBP under the CBP Automated Commercial System (ACS) Prototype Test. Customs initially announced and explained the test in a general notice document published in the **Federal Register** (63 FR 6257) on February 6, 1998. Clarifications and operational changes were announced in six subsequent **Federal Register** notices: 63 FR 44303, published on August 18, 1998; 64 FR 39187, published on July 21, 1999; 64 FR 73121, published on December 29, 1999; 66 FR 14619, published on March 13, 2001, 67 FR 61200, published on September 27, 2002, and 67 FR 68238, published on November 8, 2002. A **Federal Register** (65 FR 55326) notice published on September 13, 2000, extended the prototype indefinitely. This document modifies the Reconciliation test by: (1) Expanding the issues subject to Reconciliation to include post-entry importation claims arising under the United States-Chile Free Trade Agreement; (2) requiring the use of compact disks (CDs) instead of floppy disks for submitting Reconciliation spreadsheets; (3) requiring that the name identifying the spreadsheet on the CD be the Reconciliation entry number; and (4) requiring use of .txt or .xls format for the spreadsheet. Aside from these modifications, the test remains as set forth in the previously published **Federal Register** notices.

The document also sets forth the new address for submitting Reconciliation entries for the port of NY/Newark and the new e-mail address for the Reconciliation team.

For application requirements, see the **Federal Register** notices published on February 6, 1998, and August 18, 1998. Additional information regarding the test can be found at *http://www.cbp.gov/xp/cgov/import/cargo_summary/reconciliation/.*

Reconciliation Generally

Reconciliation is the process that allows an importer, at the time an entry summary is filed, to identify undeterminable information (other than that affecting admissibility) to CBP and to provide that outstanding information at a later date. The importer identifies the outstanding information by means of an electronic "flag" which is placed on the entry summary at the time the entry summary is filed. The issues for which an entry summary may be "flagged" (for the purpose of later reconciliation) are limited and relate to: (1) Value issues; (2) classification issues, on a limited basis; (3) issues concerning value aspects of entries filed under heading 9802, Harmonized Tariff Schedule of the United States (HTSUS); (9802 issues); and (4) post-entry claims under 19 U.S.C. 1520(d) for the benefits of the North American Free Trade Agreement (NAFTA) for merchandise as to which such claims were not made at the time of entry.

The flagged entry summary (the underlying entry summary) is liquidated for all aspects of the entry except those issues that were flagged. The means of providing the outstanding information at a later date relative to the flagged issues is through the filing of a Reconciliation entry. The flagged issues will be liquidated at the time the Reconciliation entry is liquidated. Any adjustments in duties, taxes, and/or fees owed will be made at that time. (The Reconciliation test procedure for making post-entry NAFTA claims is explained in the February 6, 1998, and December 29, 1999, **Federal Register** notices.)

Test Modification

Use of Reconciliation To Make a Post-Entry US–CFTA Claim

On June 6, 2003, the United States and the Republic of Chile (Chile) entered into an agreement, the United States-Chile Free Trade Agreement (US–CFTA), which provides for, among other things, preferential tariff treatment (including duty free treatment) for goods that qualify as goods originating in the United States or Chile. The provisions of the US–CFTA were adopted by the United States with enactment of the United States—Chile Free Trade Agreement Implementation Act, Pub. L. 108–78, 117 Stat. 909 (19 U.S.C. 3805 note) (the Implementation Act).

Ordinarily, a claim for preferential tariff treatment under the US–CFTA is made at the time of entry, in accordance with the terms of the US–CFTA, the Implementation Act, and any applicable regulations. However, in some instances an importer is unable to make the claim at that time. In that instance, an importer can make a post-entry US–CFTA claim under 19 U.S.C. 1520(d) (section 1520(d)), pursuant to an amendment to that statute made by the Implementation Act. Under this amendment to section 1520(d), entries of goods qualifying under US–CFTA rules of origin were made eligible for liquidation or reliquidation when preferential tariff treatment under the US–CFTA was not claimed at the time of entry, notwithstanding that a protest under 19 U.S.C. 1514 (section 1514) was not filed. A claimant must file a claim under section 1520(d) within one year of the applicable importation and meet other requirements, such as documentary requirements. CBP has accepted post-entry 1520(d) US–CFTA claims before liquidation; these claims do not require reliquidation.

This notice announces that a post-entry 1520(d) claim for preferential tariff treatment under the US–CFTA also can be made under the Reconciliation test, in the same way as can a post-entry NAFTA claim. This alternative requires that an importer follow the Reconciliation test procedure which, in contrast to the ordinary section 1520(d) procedure described above, requires action at the time of entry. That action is to flag the entry summary for Reconciliation and later file a Reconciliation entry within one year of the applicable importation. As programming for US–CFTA Reconciliations is not yet complete, for the time being, a participant wishing to file a US–CFTA Reconciliation must follow the NAFTA Reconciliation process by flagging the entry summary for NAFTA. When programming is complete, participants will be notified with instructions on how to make a post-entry US–CFTA Reconciliation claim.

CBP emphasizes that once an importer flags an entry summary for US–CFTA issues (by, for the time being, actually flagging the entry summary for NAFTA), indicating that it is pursuing

the post-entry section 1520(d) claim through the Reconciliation process, the only means of perfecting the US–CFTA claim is by completing the Reconciliation process by filing a timely Reconciliation entry. (See the September 27, 2002, **Federal Register** notice for an explanation of this same limitation relative to NAFTA issues.) In this way, the flagging of an entry summary constitutes a commitment by the importer to perfect the US–CFTA 1520(d) claim through the Reconciliation process. Thus, once a Reconciliation program participant flags an entry summary to make a US–CFTA 1520(d) claim under the Reconciliation process, CBP will not accept a claim filed under the ordinary section 1520(d) procedure.

CBP notes that a NAFTA 1520(d) claim and a US–CFTA 1520(d) claim cannot be made together on the same Reconciliation entry. They must be filed as separate Reconciliation entries.

CBP recommends the use of the Reconciliation test for making post-entry US–CFTA claims because the test procedure provides the importer with several benefits. First, using the test procedure is a simpler means of filing claims: *i.e.*, the importer is able to make potentially thousands of US–CFTA claims on one Reconciliation entry. Second, the importer can receive one check from CBP rather than many (even up to thousands) upon CBP's liquidation of a Reconciliation entry and issuance of a refund. Third, because processing US–CFTA claims under Reconciliation is simpler for CBP, the refund delivery system is more efficient.

The test modification discussed above will be effective 30 days from the date this notice is published in the **Federal Register**. (The Reconciliation test procedure for making post-NAFTA claims is explained in the February 6, 1998, and the December 29, 1999, **Federal Register** notices.)

Other Changes

This notice also announces other changes to the Reconciliation test program procedure relative to submission of the Reconciliation spreadsheets. Because floppy disks are destroyed by X-ray and irradiation applications now used to screen government mail, participants must use CDs for submitting Reconciliation spreadsheets. CBP will upload the spreadsheet information on the CD to a secure Web site where it will be identified according to the Reconciliation entry number. Therefore, participants must save the spreadsheet on the CD according to the Reconciliation entry number in .txt or .xls format. Use of these formats is required to better protect the information from computer viruses. Finally, the CDs must be labeled as previously required (see the ACS *Reconciliation Prototype: A Guide to Compliance* at *http://www.cbp.gov/xp/cgov/import/cargo_summary/reconciliation*).

These modifications to the test are effective 30 days from the date this notice is published in the **Federal Register**.

Change of Addresses

Finally, this notice announces the new mailing address for Reconciliation submissions for importers assigned to the port of NY/Newark (port 1001) and the new e-mail address for Recon.Help. The new mailing address is: U.S. Customs and Border Protection, 1100 Raymond Blvd., Newark, NJ 07201. Participants may still transmit the ABI portion of their Reconciliations to port 1001. The new e-mail address is *Recon.Help@dhs.gov*.

Dated: August 27, 2004.

Jason P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 04–19977 Filed 9–1–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

Meeting Date and Time: Friday, September 10, 2004, time 1:30 p.m. to 4 p.m.

Address: Blue Mountain Health System Community Services Center, 217 Franklin Avenue, Palmerton, PA 18071.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042; (610) 923–3548.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988, and extended through Public Law 105–355, November 13, 1998.

Dated: August 26, 2004.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 04–20013 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Information (ACWI)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum 92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans that may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations were invited by the Secretary of the Interior to be representatives on ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8:30 a.m., on September 14, 2004, and

will adjourn on September 15, 2004, at 4:30 p.m.

ADDRESSES: Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, September 8, 2004. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI Meeting.

Dated: August 26, 2004.

Katherine Lins,

Chief, Office of Water Information, U.S. Geological Survey.

[FR Doc. 04–20007 Filed 9–1–04; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved amendments to Tribal-State Compacts.

SUMMARY: This notice publishes approval of Amendments to the Tribal-State Compacts between the State of California and the following 5 California Indian tribes: Rumsey Band of Wintun Indians, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians, United Auburn Indian Community, and Viejas Band of Kumeyaay Indians.

EFFECTIVE DATE: September 2, 2004.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Office of the Deputy Assistant Secretary—Policy and Economic Development, Washington, DC 20240, (202) 219–4066.

SUPPLEMENTARY INFORMATION: Under Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Public Law 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish in the **Federal Register** notice of approved Tribal-State compacts for the purpose of engaging in Class III gaming activities on Indian lands.

The compacts listed in the summary are amended to offer additional consumer protections and to facilitate arrangements to mitigate, to the extent practicable, the off-reservation environmental and direct fiscal impacts on local communities and local governments. A new section is added to require the testing of gaming devices, a provision of the existing compact regarding applicable building codes is expanded, the provision relating to patron disputes is enhanced to facilitate the resolution of patron complaints, the provision relating to third party injuries is modified to enhance the protection of patrons, and the provision relating to off-reservation impacts is amended to require the development and processing of a Tribal Environmental Impact Report. There are also minor amendments to sections relating to the licensure of financial sources and labor relations. Finally, the term of the compacts is extended until December 31, 2030 (ten-year extension over previous term). The Amendments also authorize annual payments to the State in exchange for geographical exclusivity. The Secretary of the Interior is publishing notice that the Amendments to the Tribal-State Compacts between the State of California and the Rumsey Band of Wintun Indians, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians, United Auburn Indian Community, and Viejas Band of Kumeyaay Indians are now in effect.

Dated: August 27, 2004.

George T. Skibine,

Director, Office of Indian Gaming Management.

[FR Doc. 04–20000 Filed 9–1–04; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

National Park Service, Northeast Region

Notice of Intent To Prepare an Environmental Impact Statement and Hold Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Notice of intent.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190, Section 102(2)(c)), the National Park Service is preparing an Environmental Impact Statement (EIS) for the special resource study of the Coltsville historic industrial district in Hartford, CT, as authorized by Pub. L. 108–94.

Coltsville is a 260-acre industrial area where inventor Samuel Colt and his company manufactured firearms from 1855 until the 1990s. It was recognized as the Colt Industrial National Register District in 1976. Within this historic district is inventor Samuel Colt's house Armsmear, which was designated as a National Historic Landmark in 1966. The purpose of the EIS/study is to determine if Coltsville has the national significance, suitability, and feasibility for designation as a unit of the national park system. If the study also finds that federal management of the site is appropriate, Congress could designate Coltsville a unit of the national park system. The study will identify alternative management options to preserve and interpret the historic site. The alternatives will describe the site boundaries; current land ownership and land use; potential impacts on cultural and natural resources; possible management entities; participation of State and local governments and private and public organizations; estimated project costs; anticipated levels of visitation; and economic and social benefits.

The Draft EIS/study is expected to be completed and available for public review in the winter of 2006. After public and interagency review of the draft document, comments will be considered and a final EIS/study report, followed by a Record of Decision, will be prepared.

DATES: The NPS will hold a public scoping meeting in October 2004 that will provide opportunities to ask questions, make suggestions, and raise issues concerning the Coltsville special resource study. Information on the time and place of the public scoping meeting will be publicized through the local news media in Hartford, CT.

ADDRESSES: Those persons who wish to comment orally or in writing, or who require further information are invited to contact James O'Connell, Project Manager, at the National Park Service, Northeast Region Boston Office, 15 State Street, Boston, MA 02109–3572, (617) 223–5222; fax -5164; or via e-mail at *Jim_O'Connell@nps.gov.*

Dated: July 23, 2004.

Robert W. McIntosh,

Associate Regional Director, Planning and Partnerships, Northeast Region.

[FR Doc. 04–20020 Filed 9–1–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Banks Lake Drawdown, Douglas and Grant Counties, WA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability of Record of Decision.

SUMMARY: This notice is issued under authority of the National Environmental Policy Act (NEPA). The Record of Decision (ROD) signed on June 29, 2004, contains the decision of the Department of the Interior, Bureau of Reclamation (Reclamation) Pacific Northwest Region to select and implement the Preferred Alternative (No Action Alternative), as described in the Final Environmental Impact Statement (EIS), INT-FES-04-09, **Federal Register** Notice of Availability, dated May 25, 2004. The No Action Alternative is the environmentally preferred alternative. This alternative will best promote the national environmental policy as expressed in NEPA, and will cause the least damage to the biological and physical environment, while best protecting and preserving historic, cultural, and natural resources.

ADDRESSES: Copies of the ROD are available for public inspection and review at the following locations:

- Bureau of Reclamation, U.S. Department of the Interior, Room 7455, 1849 C Street, NW., Washington, DC 20240.
- Bureau of Reclamation, Denver Office Library, Denver Federal Center, Building 67, Room 167, Denver, Colorado 80225.
- Bureau of Reclamation, Pacific Northwest Regional Office, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706-1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington 98901.
- Bureau of Reclamation, Ephrata Field Office, 32 C Street, Ephrata, Washington 98823.

Libraries

- Bridgeport Community Library, Douglas County, 1206 Columbia Street, Bridgeport, WA 509-686-7281.
- Coulee City Community Library, 405 W. Main Street, Coulee City, WA 509-674-2313.
- Des Moines Library, 21620 11th Avenue S, Des Moines, WA 206-824-6066.
- East Wenatchee Community Library, Douglas County, 271 9th Street NE., East Wenatchee, WA 509-886-7404.
- Ephrata Public Library, 45 Alder NW., Ephrata, WA 509-754-3971.
- Grand Coulee Community Library, 225 Federal, Grand Coulee, WA 509-633-0972.
- Moses Lake Public Library, 418 E 5th Avenue, Moses Lake, WA 509-765-3489.
- Quincy Community Library, 108 B Street SW., Quincy, WA 509-787-2359.
- Royal City Community Library, 356 Camelia, Royal City, WA 509-346-9281.
- Seattle Public Library, 800 Pike Street, Seattle, WA 206-386-4636.
- Soap Lake Community Library, 32 E Main, Soap Lake, WA 509-246-1313.
- Warden Community Library, 305 S Main, Warden, WA 509-349-2226.
- Wenatchee Public Library, Chelan County, 310 Douglas Street, Wenatchee, WA 509-662-5021.

Internet

The ROD is also available on the Internet at *http://www.usbr.gov/pn*.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Blanchard, Special Projects Officer, at 509-754-0226 (relay users may dial 711). Those wishing to obtain a copy of the ROD in the form of a printed document or a compact disk (CD-ROM with reader included) may contact Mr. Blanchard.

SUPPLEMENTARY INFORMATION: The Final EIS was developed in response to the December 2000 National Marine Fisheries Service's (NMFS; now the National Oceanic and Atmospheric Administration Fisheries) Biological Opinion (BiOp) issued to Reclamation, Bonneville Power Administration, and the U.S. Army Corps of Engineers for the operation of the Federal Columbia River Power System (NMFS 2000). The BiOp included a Reasonable and Prudent Alternative (RPA), of which Action 31 advised Reclamation to "assess the likely environmental effects of operation of Banks Lake up to 10 feet down from full pool during August."

Reclamation complied with RPA Action 31 by preparing the Banks Lake Drawdown EIS, which describes and analyzes the environmental effects of lowering the August water surface elevation of Banks Lake annually to elevation 1560 feet, which is 10 feet below the full pool of elevation of 1570 feet.

Two alternatives were described and analyzed in the Final EIS. The No Action Alternative, which has a five foot drawdown, described the potential Banks Lake August operations if Reclamation decided not to implement the Action Alternative. Four scenarios were presented to illustrate how the water surface might be drafted to elevation 1565 feet by August 31. The Action Alternative, also with four illustrative scenarios, described the proposed operational modification of August water surface elevations to achieve elevation 1560 feet by August 31.

Reclamation is implementing the No Action Alternative to avoid adverse impacts identified in the Final EIS to recreation, resident fish, vegetation, cultural resources, the local economy around Banks Lake, and Federal and non-Federal power production. Reclamation has concluded the very small incremental benefit to Endangered Species Act-listed salmon and steelhead associated with the contribution from the drawdown of Banks Lake (1-2 percent of the flow objective at McNary Dam) is not sufficient to outweigh the adverse impacts to other resources.

Dated: June 30, 2004.

Kenneth R. Pedde,

Deputy Regional Director, Pacific Northwest Region.

[FR Doc. 04-20032 Filed 9-1-04; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1056 (Preliminary)]

Certain Aluminum Plate From South Africa

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determined on December 1, 2003, 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 South Africa of certain aluminum plate, provided for in subheading 7606.12.30 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 Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also commenced the final phase of its investigation on December 1, 2003. Due to inadvertence, notice of the commencement of the final phase of the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

investigation was not published at the time. The Commission, however, issued a final phase notice of scheduling, which was published in the **Federal Register** (69 FR 33401, June 15, 2004) as provided in section 207.21 of the Commission's rules. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. 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 investigation.

Background

On October 16, 2003, a petition was filed with the Commission and Commerce by Alcoa, Inc., Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain aluminum plate from South Africa. Accordingly, effective October 16, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1056 (Preliminary).

Notice of the institution of the Commission's investigation 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 October 24, 2003 (68 FR 61012). The conference was held in Washington, DC, on November 6, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 1, 2003. The views of the Commission are contained in USITC Publication 3654 (December 2003), entitled **Certain Aluminum Plate from South Africa: Investigation No. 731–TA–1056 (Preliminary).**

By order of the Commission.

Issued: August 27, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19997 Filed 9–1–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–463]

Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: August 27, 2004.

SUMMARY: Following receipt of a request on August 6, 2004 from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–463, *Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments*, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Michael Nunes, Project Leader (202–205–3462; *michael.nunes@usitc.gov*), Amanda Horan, Deputy Project Leader, (202–205–3459; *amanda.horan@usitc.gov*), or Richard Brown, Chief, Services and Investment Division (202–205–3438; *richard.brown@usitc.gov*), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. Media should contact Peg O'Laughlin, Public Affairs Officer (202–205–1819; *margaret.olaughlin@usitc.gov*). For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *willam.gearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202)–205–1810.

SUPPLEMENTARY INFORMATION:

Background: In his request letter, the USTR noted that the globalization of manufacturing and electronic commerce have increased demand for logistic services, which involve planning, implementing, managing, and controlling the flow and storage of goods, services, and related services from the point of origin to the point of consumption. As requested by USTR, the Commission's report will focus on foreign logistic services markets and their relationship to trade. The report will, to the extent possible: (1) Provide an overview of the global logistic services market, including major industry players, factors driving growth, and industry operations; (2) examine trade and investment in selected regional logistic service markets, including impediments to the provision of international logistic services, if any; and (3) discuss and, to the extent possible, analyze the potential effects of removing impediments to logistic services on trade and economic welfare.

The USTR asked that the Commission furnish its report by May 6, 2005, and that the Commission make the report available to the public in its entirety.

Public Hearing: A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on November 18, 2004. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., November 4, 2004. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., November 8, 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., December 14, 2004. In the event that, as of the close of business on November 4, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any persons interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1806) after November 4, 2004, for information concerning whether the hearing will be held.

Written Submissions: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission will not include any confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the

earliest practical date and should be received no later than the close of business on December 14, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000; *edis@usitc.gov*).

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

WTO, GATS, Logistic services, Transportation services, Maritime services, Air transport services, Courier services, Express delivery services.

By order of the Commission.

Issued: August 27, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–19998 Filed 9–1–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act, the Clean Water Act, and the Oil Pollution Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9622, notice is hereby given that on August 20, 2004, a proposed consent decree in *United States and State of Indiana* v. *Atlantic Richfield Company; ARCO Environmental Remediation, L.L.C.; BP Products North America Inc.; E.I. du Pont De Nemours and Company; Exxon Mobil Corporation; GATX Corporation; Georgia-Pacific Corporation; Ispat Inland Inc.; and United States Steel Corporation*, No. 2:04CV348 (N.D. Ind.), was lodged with the United States District Court for the Northern District of Indiana.

In the complaint, the United States and the State of Indiana, pursuant to the Comprehensive Environmental Response, Compensation, land Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9601, *et seq.*, the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*, commonly known as the Clean Water Act ("CWA"), and the Oil Pollution Act ("OPA"), 33 U.S.C. § 2701 *et seq.*, seek declaratory relief, response costs and damages for injury to, destruction of, or loss of natural resources belonging to, managed by, held in trust by, controlled by or appertaining to the United States and the State of Indiana, as trustees for those resources, including the costs of assessing such injury, resulting from releases and/or threat of releases of hazardous substances, and discharges and/or substantial threats of discharges of oil, into or within the Grand Calumet River and/or the Indiana Harbor Canal, comprising a portion of the Grand Calumet River/Indiana Harbor Canal Site in northwest Indiana.

Under the proposed consent decree, the Defendants will pay $53,653,000 toward restoration of the natural resources, and a total of $2.7 million to the United States Department of the Interior and the Indiana Department of Environmental Management to reimburse them for their costs of conducting natural resource damage assessments, and convey to the State 233 acres of habitat that will be protected.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States, et al.* v. *Atlantic Richfield, et al.*, No. 2:04CV348 (N.D. Ind.), and D.J. Ref. 90–11–3–1683. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of Resource Conservation Recovery Act, 42 U.S.C. § 6973(d).

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Northern District of Indiana, 5400 Federal Plaza, Suite 1500, Hammond, Indiana 46320 (contact Asst. U.S. Attorney Wayne Ault (219–937–5500)); (2) the offices of the U.S. Fish and Wildlife Service, 620 S. Walker St., Bloomington, Indiana 47403 (contact Daniel Sparks (812–334–4261)); (3) Indiana Department of Environmental Management Northwest Regional Office, 8315 Virginia Street, Suite 1, Merrillville, Indiana 46410 (Office Hours: 8:15–4:45) (contact Malani Goel, Director (219–757–0265 or 888–209–8892 toll free in Indiana)); and (4) U.S. EPA Region 5, 7th Floor Records Center, 77 West Jackson Blvd., Chicago, Illinois 60604 (contact Assoc. Regional Counsel Richard Nagle (312–353–8222)).

During the public comment period, the proposed consent decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $17.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

William Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–19979 Filed 9–1–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

Under Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), and 28 CFR 50.7, notice is hereby given that on August 24, 2004, a proposed Consent Decree in *United States* v. *Ralph Bello, et al.*, Civil Action No. 3:01 CV 1568 (SRU), was lodged with the United States District Court for the District of Connecticut.

In this action, the United States sought recovery of response costs incurred by the United States Environmental Protection Agency in conducting a soil cleanup removal action at the National Oil Service Superfund Site in West Haven, Connecticut. The United States filed its complaint pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607(a), seeking recovery of response costs incurred at the Site. Defendant, The Torrington Company, named several

third party defendants, alleging that the third party defendants sent hazardous substances to the Site. Third party defendants Armstrong Rubber; Carpenter Technology; and Pratt & Whitney (collectively "the Settling Defendants") are participating in the proposed settlement. The proposed Consent Decree resolves the Settling Defendants' liability to the United States for unreimbursed response costs at the Site. Under the proposed Decree, the Settling Defendants collectively agree to pay $35,745.05 in partial reimbursement of the United States' response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Ralph Bello, et al.*, D.J. Ref. 90–11–3–07333/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Connecticut Financial Center, New Haven, CT, and at U.S. EPA Region 1, One Congress Street, Boston, MA. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation no. (202) 514–1547. For a copy of the proposed Consent Decree including the signature pages and attachments, please enclose a check in the amount of $4.25 (25 cents per page reproduction cost) payable to "U.S. Treasury."

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–19980 Filed 9–1–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980

Under 28 CFR 50.7, notice is hereby given that on July 26, 2004, a proposed consent decree in *United States* v. *Leonard Chemical Company, Inc. et al.*, Civil Action No. 0 04 2479 10, was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9606 and 9607 injunctive relief against the defendants Leonard Chemical Company, Inc. and its president, Lawrence K. Leonard, as the alleged owner operator of a hazardous waste facility known as the Leonard Chemical Company, Inc. Superfund Site ("the Site") located in York County, South Carolina, and 11 corporate defendants, General Electric Company, Coleman Cable, Inc., K2, Inc., BASF Corporation Company, Inc., State Line Printing Company, Inc., Textron, Inc., Rexham, Inc., DMC, Inc., Springs Industries, Inc., and The Stanley Works, generators who are alleged to have arranged for their respective waste containing hazardous substances to be disposed of by the subject facility, for the remediation and cleanup of pollution released into the soil and groundwater at the Site. In addition, the federal government sought to recover from the defendants, the costs incurred by the federal government in addressing the release of hazardous substances at the facility. The proposed consent decree provides that the corporate generators will implement a Remedial Design/Remedial Action ("RD/RA") selected by the United States Environmental Protection Agency, Region 4 to address impacted soils and groundwater at a facility and the owner operator will implement necessary institutional restrictions required under the RD/RA. Additionally, the corporate generators have also agreed under the proposed consent decree to pay EPA's past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Leonard Chemical Company, Inc. et al.*, D.J. Ref. No. 90–11–2–1174.

The consent decree may be examined at the Office of the United States Attorney, 1st Union Bldg., 1441 Main Street Suite 500, Columbia, South Carolina 29201, and at U.S. EPA Region 461 Forsyth Street, SW., Atlanta, GA 30303–8960. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $83.75 for the consent decree and its exhibits (25 cents per page reproduction cost) payable to the U.S. Treasury. A copy of the consent decree exclusive of any exhibits may be obtained for $26.05.

Ellen Mahan,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–19978 Filed 9–1–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement In In re Special Metals Corporation, et al. Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on August 25, 2004, a Settlement Agreement has been filed with the United States Bankruptcy Court for the Eastern District of Kentucky in *In re Special Metals Corporation, et al.*, Case No. 02–10335–02–100338, Adversary No. 03–1010 (Bankr. E.D. Ky.), concerning liabilities of the Debtor under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) relating to the Ludlow Sand and Gravel Superfund Site in Paris, New York. This Settlement Agreement would resolve the Complaint for declaratory relief brought by Debtor against the United States and State of New York in this adversary proceeding and would require Debtor to participate in the environmental remediation at the Site by contributing $1,000,000 towards remediation at the Site.

The Department of Justice will receive comments relating to the Settlement Agreement for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Special Metals Corporation, et al., (E.D.*

Ky), D.J. Ref. 90–11–3–08084. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Settlement Agreement may be examined at the Office of the United States Attorney for the Eastern District of Kentucky, 110 West Vine Street, Lexington, KY 40507–1671, by request to Assistant U.S. Attorney David Middleton; and at the United States Environmental Protection Agency, Region 2, 290 Broadway, New York, NY 10007 by request to Assistant Regional Counsel George Shanahan. During the public comment period, the Settlement Agreement may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald G. Gluck,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–19981 Filed 9–1–04; 8:45 am]

BILLING CODE 4410–15–M

NATIONAL COUNCIL ON DISABILITY

Cultural Diversity Advisory Committee Meetings (Teleconference)

Time and Date: 4 p.m. e.d.t., September 24, 2004.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Agency: National Council on Disability (NCD).

Status: All parts of this meeting will be open to the public. Those interested in participating in this meeting should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for the call.

Agenda: Roll call, announcements, reports, new business, adjournment.

Contact Person for More Information: Geraldine (Gerrie) Drake Hawkins, Ph.D., Program Analyst, NCD, 1331 F Street, NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov*.

Cultural Diversity Advisory Committee Mission: The purpose of NCD's Cultural Diversity Advisory Committee is to provide advice and recommendations to NCD on issues affecting people with disabilities from culturally diverse backgrounds. Specifically, the committee will help identify issues, expand outreach, infuse participation, and elevate the voices of underserved and unserved segments of this nation's population that will help NCD develop Federal policy that will address the needs and advance the civil and human rights of people from diverse cultures.

Dated: August 30, 2004.

Ethel D. Briggs,

Executive Director.

[FR Doc. 04–20037 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–MA–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 4, 2004. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. *Applicant:* Bruce C. Sidell, School of Marine Sciences, University of Maine, 5751 Murray Hall, Orono, ME 04469–5751. Permit Application No. 2005–015.

Activity for Which Permit Is Required

Enter Antarctic Specially Protected Area. The applicant proposes to enter marine Antarctica Specially Protected areas to conduct experimental fishing to capture Channichthyid icefishes for studies of their physiology and biochemistry. Capture by use of benthic otter trawling is restricted to only those areas where the bottom is known to be relatively flat and muddy, in order to avoid damage to the net. A very limited number of areas meet these criteria, but included are marine Antarctic Specially Protected Areas, Western Bransfield Strait (ASPA #152) and Dallman Bay (ASPA #153) Arrival Heights (ASPA #122).

Location

Western Bransfield Strait (ASPA #152) and Dallman Bay (ASPA #153).

Dates

April 1, 2005 to June 30, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 04–20044 Filed 9–1–04; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Committee on Education and Human Resources; Sunshine Act Meeting

DATE AND TIME: September 14, 4 p.m.–5:30 p.m. (e.d.t.).

PLACE: The National Science Foundation, Stafford I Building, Room 130, 4201 Wilson Boulevard, Arlington, VA 22230.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Tuesday, September 14, 2004

Open Session (4 p.m. to 5:30 p.m.): Consideration of the Broadening

Participation in Science and Engineering Research and Education draft revisions by the National Science Board Committee on Education and Human Resources.

FOR FURTHER INFORMATION CONTACT: Robert Webber, Senior Policy Analyst, NSB, (703) 292–7000, *http://www.nsf.gov/nsb.*

Robert Webber,

Senior Policy Analyst.

[FR Doc. 04–20115 Filed 8–31–04; 12:03 pm]

BILLING CODE 7555–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33–8479; 34–50282; 35–27887; IA–2285; IC–26584, File No. S7–49–02]

RIN 3235–AI73

Strengthening the Commission's Requirements Regarding Auditor Independence

AGENCY: Securities and Exchange Commission.

ACTION: Notice of OMB Approval of Collections of Information.

FOR FURTHER INFORMATION CONTACT: Robert E. Burns, Chief Counsel, Office of the Chief Accountant, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506, at (202) 942–4400.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget has approved the collection of information requirements contained in Strengthening the Commission's Requirements Regarding Auditor Independence,[1] titled:

(1) "Proxy Statements—Regulation 14A (Commission Rules 14a–1 through 14a–15 and Schedule 14A)" (OMB Control No. 3235–0059);

(2) "Information Statements—Regulation 14C (Commission Rules 14c–1 through 14c–7 and Schedule 14C)" (OMB Control No. 3235–0057);

(3) "Form 10–K" (OMB Control No. 3235–0063);

(4) "Form 10–KSB" (OMB Control No. 3235–0420);

(5) "Form 20–F" (OMB Control No. 3235–0288);

(6) "Form 40–F" (OMB Control No. 3235–0381); and

(7) "Form N–CSR" (OMB Control No. 3235–0570).

[1] Securities Exchange Act Release No. 47265 (Jan. 28, 2003), 68 FR 6006 (Feb. 5, 2003).

Dated: August 27, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20033 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 52; File No. 270–81; OMB Control No. 3235–0369.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 52 permits public utility subsidiary companies of registered holding companies to issue and sell certain securities without filing a declaration if certain conditions are met. The purpose of collecting the information is to determine the existence of detriment to interests the Act was designed to protect. The Commission estimates that the total annual reporting and recordkeeping burden of collections under rule 52 is 133 hours (*i.e.*, 133 responses × one hour = 133 burden hours).

The estimates of average burden hours are made for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (1) 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; (2) the accuracy of the agency's estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

August 26, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2014 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Chromcraft Revington, Inc. To Withdraw Its Common Stock, $.01 par Value, From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–13970

August 27, 2004.

On August 9, 2004, Chromcraft Revington, Inc. a Delaware corporation ("Issuer"), filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.01 par value ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Board of Directors ("Board") of the Issuer adopted a resolution on April 29, 2004 to withdraw the Issuer's Security from listing on the NSE and to list on the American Stock Exchange LLC ("Amex"). The Issuer stated that it decided to seek withdrawal of its Security from the NYSE because proposed changes to the continued listing requirements of the NYSE[3] would have made it more difficult for the Issuer to continue to have the Security qualified for listing on the NYSE. The Issuer further stated in its application that the Security is currently trading on the Amex.

The Issuer represented in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security and with all applicable laws in effect in the State of Delaware, the state in which it is incorporated. The Issuer's application relates solely to the withdrawal of the Security from listing on the NYSE, and

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] *See* Securities Exchange Act Release No. 49917 (June 25, 2004), 69 FR 40439 (July 2, 2004) (File No. SR–NYSE–2004–20).

shall not affect its continued listing on the Amex or its obligation to be registered under section 12(b) of the Act.[4]

Any interested person may, on or before September 17, 2004 comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 1–13970 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–13970. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–20067 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78*l*(b).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26582; 812–12970]

ASA Limited, et al.; Notice of Application

August 27, 2004.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 7(d) of the Investment Company Act of 1940 (the "Act").

Summary of Application: Applicants ASA Limited ("ASA"), a South African closed-end management investment company registered under section 7(d) of the Act, and ASA (Bermuda) Limited ("ASAB"), a Bermuda limited liability company, request an order that would permit ASA to change its country of incorporation from South Africa to Bermuda by reorganizing into ASAB and permit ASAB to register under the Act. Applicants also seek approval of certain changes to the custodian agreement and the conditions governing their custodial arrangements.

Filing Dates: The application was filed on May 1, 2003, and amended on August 13, 2004.

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 Commission's Secretary 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 September 17, 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 Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o R. Darrell Mounts, Kirkpatrick & Lockhart LLP, 1800 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Marc R. Ponchione, Senior Counsel, at (202) 942–7927, or Janet M. Grossnickle, 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 is available for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. ASA is a closed-end management investment company organized in 1958 in South Africa. ASA is registered under the Act.[1] ASA's investment objective is to invest primarily in equity securities of South African issuers conducting, as the major portion of their business, gold mining and related activities in South Africa. As of April 30, 2004, approximately 74% of ASA's portfolio securities consist of equity securities issued by such companies. As of April 30, 2004, ASA has approximately $372 million in assets and is internally managed by its director and chief executive officer who is a U.S. citizen residing in Buffalo, New York. Shares of ASA trade on the New York Stock Exchange ("NYSE").

2. ASA recently became subject to, or will soon become subject to, certain taxes in South Africa. ASA is presently subject to South African tax on its income from interest and foreign dividends. Interest received from funds held on deposit in South Africa is taxed at a rate of 30%. Beginning with the fiscal year ended November 30, 2002, interest received from funds held outside South Africa also became subject to a 30% tax. In addition, certain dividends received from investments outside South Africa are subject to a 30% tax. South Africa also imposes a capital gains tax ("CGT") on investment gains and a secondary tax on corporations ("STC") on dividends and

[1] Investment Company Act Release Nos. 2739 (July 3, 1958) (notice) and 2756 (Aug. 13, 1958 (order) (the "Original Order"). Since 1958, the Original Order has been amended on a number of occasions. See Investment Company Act Release Nos. 24321 (Feb. 29, 2000) (notice) and 24367 (Mar. 27, 2000) (order) (the "CSD Order"); Investment Company Act Release Nos. 21161 (June 23, 1995) (notice) and 21220 (July 20, 1995) (order); Investment Company Act Release Nos. 17904 (Dec. 17, 1990) (notice) and 17945 (Jan. 15, 1991) (order); Investment Company Act Release Nos. 14826 (Dec. 4, 1985) (notice) and 14878 (Dec. 31, 1985) (order); Investment Company Act Release Nos. 11669 (Mar. 6, 1981) (notice) and 11722 (Apr. 7, 1981) (order) (collectively with the CSD Order, the "Custody Orders"); Investment Company Act Release Nos. 8278 (Mar. 20, 1974) (notice) and 8312 (Apr. 17, 1974) (order); Investment Company Act Release Nos. 7860 (June 12, 1973) (notice) and 7894 (July 10, 1973) (order); Investment Company Act Release Nos. 2944 (Dec. 14, 1959) (notice) and 2957 (Dec. 29, 1959) (order); Investment Company Act Release Nos. 2883 (May 22, 1959) (notice) and 2886 (June 9, 1959) (order); and Investment Company Act Release Nos. 2817 (Jan. 5, 1959) (notice) and 2821 (Jan 20, 1959) (order) (collectively with the Custody Orders, the "Subsequent Orders" and together with the Original Order, the "Prior Orders").

liquidation distributions to shareholders. At the time of its organization in 1958, ASA received from the South African government an exemption from the CGT and the STC. Recently, South African authorities indicated that ASA's exemption from these taxes will be repealed effective November 30, 2004.

3. Applicants request an order to permit ASA to change its country of incorporation from South Africa to Bermuda by reorganizing into ASAB ("Reorganization"), and to permit ASAB to register under the Act.[2] ASAB is a limited liability company organized in Bermuda on April 29, 2003 for the purpose of the Reorganization. ASAB's investment policies and limitations will be the same in all material respects as ASA's. ASAB will be internally managed and the current directors and substantially all of the officers of ASA, including the chief compliance officer, will serve as the directors and officers of ASAB. Aside from the Reorganization, ASAB has no current plans to make any additional public offerings of its securities. Prior to issuing its shares in the Reorganization, ASAB intends to take the actions necessary for its shares to be listed and traded on the NYSE. Following the Reorganization, ASA will be wound up in South Africa and will deregister under the Act.

4. JP Morgan Chase Bank ("Chase") has served as ASA's custodian since 1995.[3] ASA requests an order to permit ASA to amend its custodian agreement with Chase and modify certain conditions of the Prior Orders to the extent they involve the custodian to more closely reflect current global custody standards for registered investment companies organized in the United States ("U.S. funds").

Applicants' Legal Analysis

1. Section 7(d) of the Act prohibits an investment company organized outside the U.S. ("foreign fund") from making a public offering of its securities in the U.S., but authorizes the Commission by order to permit a foreign fund to register under the Act and make a public offering of its securities in the U.S. if the Commission finds that "by reason of special circumstances or arrangements, it is both legally and practically feasible effectively to enforce the provisions of [the Act] against such company and that the issuance of such order is otherwise consistent with the public interest and protection of investors." Rule 7d–1 under the Act sets forth the conditions that an investment company organized in Canada must satisfy in order to receive an order under section 7(d) of the Act. Applicants seek an order under section 7(d) to permit the Reorganization and allow ASAB to register under the Act, subject to conditions that, among other things, would require ASAB to comply with substantially all of rule 7d–1 under the Act.

2. Applicants state that ASA's board of directors (the "Board") considered reincorporating ASA in the U.S. This alternative was rejected due principally to two significant adverse tax effects. First, ASA's shareholders would incur significant federal income tax consequences on an exchange of their ASA shares for shares of a domestic corporation. Because ASA is incorporated outside the U.S., it cannot take advantage of the tax-free reorganization provisions in the Internal Revenue Code of 1986 ("Code"). In addition, under Subchapter M of the Code, a regulated investment company ("RIC") that satisfies certain requirements may pass through all its income and gain to its shareholders and thus avoid the payment of federal taxes at the RIC level. One of the requirements under Subchapter M, however, is that a RIC may not have any accumulated undistributed income and gains that arose in a taxable year during which it was not subject to Subchapter M. Because any U.S. corporate successor to ASA would inherit all of ASA's undistributed income and gains accumulated while it was a South African company, it would have to distribute approximately $127 million before the end of its first taxable year to qualify for RIC pass-through treatment. That distribution would amount to 34% of ASA's total assets.

3. Applicants state that the Board also considered reincorporating ASA in Canada. Although this alternative did not present the same adverse tax consequences as moving to the U.S., the Board concluded that it presented significant structural difficulties. In order to benefit from favorable tax treatment in Canada, ASA would have to qualify as either a mutual fund trust or a mutual fund corporation. To qualify as a mutual fund trust, ASA would have to meet certain asset diversification requirements that are incompatible with ASA's current portfolio holdings. To qualify as a mutual fund corporation, ASA would have to issue redeemable securities, a requirement ASA cannot meet because it is a closed-end investment company. In addition, ASA is internally managed, an arrangement that applicants state does not appear to exist under Canadian regulations.

4. Applicants state that the requested order allowing the Reorganization and ASAB's registration under the Act meets the standards of section 7(d) due to ASA's unique circumstances, the fact that ASA has been complying with the Act since 1958 and ASAB will continue to comply with substantially all of the requirements of rule 7d–1 under the Act, and the sophistication and stability of the legal system in Bermuda. Applicants also state that, under the requested order, ASAB will not be exempt from any provisions of the Act.

5. Applicants state that certain of the conditions and arrangements of rule 7d–1 are incorporated as conditions of the requested order, which are designed to ensure that it is both legally and practically feasible effectively to enforce the provisions of the Act against ASAB. Applicants also note that, since 1958, ASA has received the Custody Orders that address, among other things, the arrangements governing the custody of its assets. The Custody Orders exempted ASA from the requirement under rule 7d–1 that a foreign fund's assets be maintained in the U.S. in the custody of a U.S. bank. Under the Custody Orders, ASA is required to maintain at least 5% of its total assets in the U.S. in the custody of a U.S. bank, and may, subject to the 5% requirement, maintain up to 100% of its eligible securities in a central securities depository in South Africa ("CSD").[4] ASA currently does not maintain assets in any foreign country except South Africa.[5] Applicants state that, under the requested order, ASAB will maintain at least 20% of its assets in the U.S. Otherwise, applicants state that ASAB's custody arrangements would be the same as those the Commission previously had approved for ASA with

[2] The Reorganization is subject to approval by ASA's shareholders. Applicants plan to mail the proxy statement/prospectus early in October 2004, with a shareholder meeting to be held in early to mid-November 2004.

[3] The Standard Bank of South Africa Limited ("Standard Bank") has served as ASA's South African subcustodian since August 1995 and will serve as ASAB's South African subcustodian.

[4] The CSD Order, supra note 1. The Custody Orders have permitted ASA to keep up to 5% of its assets in rand-denominated interest bearing accounts in South Africa and up to 3% of its assets in South Africa in short-term rand denominated investments issued or guaranteed by the Republic of South Africa. The Custody Orders have also permitted ASA to maintain $200,000 in cash in a checking account with a South African bank to cover administrative expenses. ASA currently maintains this account with Nedbank Limited.

[5] The Custody Orders have permitted ASA to maintain up to 5% of its assets in each of Great Britain, Japan, Canada, Australia, and Switzerland, if removal of these securities to the U.S. becomes either prohibited by law or financially impracticable.

respect to the location of ASAB's assets.[6]

6. Applicants further state that the Bermuda legal system is founded upon the English common law, the doctrines of equity, and Bermuda statute law. Many of the provisions of the Bermuda Companies Act 1981 are derived from the English Companies Act 1948. Bermuda's judicial system also is similar to that of the United Kingdom. Applicants state that the duties of directors and the rights of shareholders under Bermudian law generally are comparable to those contained in state law in the U.S. The extradition treaty between the U.S. and the United Kingdom also is applicable to Bermuda. Applicants represent that, as is the case in South Africa, Bermuda law permits ASAB to subject itself to the provisions of the Act and that it will be legally and practically feasible effectively to enforce the provisions of the Act against ASAB after the reorganization. Moreover, Bermuda law will permit ASAB to be subject to the same investor protections found in the Act as South African law permitted ASA.

7. Applicants state that ASAB's charter and bylaws taken together will contain, in effect, the substantive provisions of the Act applicable to closed-end investment companies, which provisions ASAB has agreed may be enforced as a matter of contract right in the U.S. and Bermuda by ASAB's shareholders. ASAB submits that the undertakings and agreements contained in the application constitute a contract among ASAB, the Commission, and ASAB's shareholders under which ASAB and its present and future officers, directors, investment advisers, and principal underwriters are required to comply with the Act. Other undertakings and agreements contained in the application are designed to facilitate the enforcement of the Act by the Commission or ASAB's shareholders in appropriate courts of the U.S. or Bermuda, including, among other things, an agreement that ASAB's present and future directors, officers, or investment advisers who are not residents of the U.S. will designate ASAB's custodian as an agent in the U.S. for service of process.

8. ASA and ASAB seek to amend certain conditions of the Prior Orders with respect to certain responsibilities of the custodian. Specifically, they seek to (a) delete the condition requiring the custodian to comply with the charter and bylaws of ASA or ASAB; (b) modify a condition so that the shareholders of ASA and ASAB will not have the status of third party beneficiaries to any agreement between the custodian and ASA or ASAB; (c) modify another condition so that only the Commission will have the right to initiate a proceeding, based on the custodian's violation of the Act or the requested order, for the revocation of the requested order or for the liquidation of ASA or ASAB and a distribution of assets; and (d) modify another condition so that the custodian will no longer be required to monitor applicants' portfolio transactions itself, but will agree not to transfer ASA or ASAB's assets unless the instructions contain the written approval of the Chief Compliance Officer (as defined below).[7]

9. Applicants note that custodians are not usually required to monitor compliance with a U.S. fund's organizational documents and assert that U.S. fund shareholders generally are not considered third-party beneficiaries of the custody contracts of their U.S. funds. Applicants state that the Commission will retain the ability to initiate proceedings based on a custodian's violation of the Act or the requested order, and the custodian will continue to perform certain duties designed to ensure U.S. jurisdiction, *e.g.*, act as agent for service of process on non-residents and settle certain portfolio transactions in the U.S. Applicants further state that the compliance-related duties historically performed by the custodian will be performed instead by a chief compliance officer appointed by the Board in accordance with rule 38a–1 under the Act ("Chief Compliance Officer") or a registered public accountant.[8] Applicants thus assert that the proposed conditions will continue to ensure that it is both legally and practically feasible effectively to enforce the provisions of the Act against ASA and ASAB.

10. Applicants submit that the undertakings and agreements contained in the application (including those required under rule 7d–1) and the Bermuda legal system, are special arrangements supporting the issuance of the requested order to ASAB under section 7(d) of the Act. Applicants further submit that the requested order is consistent with the public interest and the protection of investors due to the special nature of ASAB's circumstances, including the fact that ASA has been registered under section 7(d) of the Act since 1958, the recently imposed significant adverse tax consequences for ASA in South Africa, and the uniquely adverse tax consequences for ASA if it were to reincorporate in the U.S.

ASAB's Conditions

ASAB agrees that any order granting the requested relief will be subject to the following conditions: [9]

1. Chase will serve as ASAB's custodian and will continue to meet the qualifications of a custodian under section 17(f) of the Act, and Standard Bank will serve as Chase's subcustodian in South Africa. As long as Standard Bank holds ASAB's assets, Standard Bank will designate Chase as its agent for service of process in the U.S. ASAB will comply with rule 17f–5 under the Act as if it were a registered management investment company organized or incorporated in the U.S. with respect to any of its assets held by eligible foreign custodians (including Standard Bank and the CSD) or overseas branches of U.S. banks (including Chase) outside the U.S.

2. The Board will serve as foreign custody manager and will not delegate such functions to its custodian or any other person.

3. ASAB will seek an order of the Commission prior to any amendment of its custodian agreement with its custodian.

4. ASAB will cause each present and future officer, director, investment adviser, and principal underwriter of ASAB to enter into an agreement ("Agreement") (to be filed by ASAB with the Commission when that person assumes office), which will provide that each person agrees: (a) To comply with ASAB's charter and bylaws, the Act and the rules of the Commission under the Act, and the undertakings and agreements contained in the application as applicable to each person and as each

[6] Applicants state that ASAB will maintain the cash account in South Africa with Nedbank Limited until ASA's affairs have been wound up, which could take up to a year. Any cash remaining in the account following ASA's termination will be placed by ASAB in the custody of Chase in the U.S. ASAB does not intend to maintain a cash account in either South Africa or Bermuda for its own administrative expenses.

[7] ASAB's proposed conditions reflect these changes. ASA would reflect these changes by replacing conditions 4, 6, 8 and 20 of the Prior Orders with proposed conditions 4, 6, 8 and 20 below and adding proposed conditions 28, 29, 30 and 31.

[8] Under the proposed conditions, the responsibility for monitoring for affiliated transactions is placed on the Chief Compliance Officer. The registered public accountants of ASA and ASAB also will review procedures for ensuring that they are in compliance with the conditions governing the location of their assets.

[9] The terms "eligible foreign custodian," "U.S. bank" and "foreign custody manager" used in the conditions have the same meaning as defined in rule 17f–5 under the Act.

may be amended from time to time, as applicable to each person; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order, and (d) each Agreement constitutes a contract between the person and ASAB and the shareholders of ASAB with the intent that ASAB's shareholders will be beneficiaries of and will have the status of parties to the Agreement so as to enable them to maintain actions at law or in equity within the U.S. or Bermuda. In addition, each Agreement of each officer and director of ASAB will contain provisions similar to those contained in condition 20 below.[10]

5. So long as ASAB is registered under the Act, ASAB's charter and bylaws, together, will contain in substance the provisions required by rule 7d–1(b)(8) under the Act, and neither the charter nor the bylaws will be changed or amended in any manner inconsistent with rule 7d–1(b)(8) under the Act or the Act and the rules and regulations under the Act, unless authorized by the Commission.

6. ASAB's custodian will not transfer any assets of ASAB unless the instructions it receives from ASAB include the written approval of ASAB's Chief Compliance Officer. ASAB will submit instructions relating to any transfer of assets to its Chief Compliance Officer, who will review them prior to the submission of any approved instructions to ASAB's custodian. ASAB's Chief Compliance Officer will not approve a transfer of assets if an agent, broker-dealer, or counterparty is an affiliated person of ASAB or an affiliated person of any director, officer, or investment adviser of ASAB, unless the transaction is of a type permitted by the Act or any regulation under the Act or specifically permitted by order of exemption issued under the Act. In addition to providing any other information relevant to the Chief Compliance Officer's review, ASAB will require each of its officers, directors, and investment advisers to transmit quarterly a list of affiliated persons or a statement that there has been no change since the last list so transmitted to ASAB's Chief Compliance Officer. No person will qualify to serve as a director or officer of ASAB until he or she has transmitted to ASAB a list of his or her affiliated persons, as that term is defined in section 2(a)(3) of the Act.

7. Prior to acquiring the assets of ASA, ASAB will furnish to the Commission a list of persons affiliated with ASAB and will furnish revisions of such list, if any, concurrently with the filing of periodic reports required to be filed under the Act. Such revised lists will include persons affiliated with any future investment adviser or principal underwriter of ASAB.

8. The chief executive officer of ASAB, a majority of the directors of ASAB, a majority of the officers, and the Chief Compliance Officer of ASAB will be both citizens and residents of the U.S.

9. ASAB will hold all of its shareholder meetings in the U.S.

10. ASAB will maintain in the U.S. a transfer agent for transfer of its shares, and a registrar for the registration of its shares.

11. ASAB will file, and will cause each of its present or future directors, officers, or investment advisers who is not a resident of the U.S. to file with the Commission irrevocable designation of ASAB's custodian as an agent in the U.S. to accept service of process in any suit, action, or proceeding before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission, or to enforce any right or liability based upon ASAB's charter or bylaws, contracts, or the respective undertakings and agreements of any of these persons required by the terms and conditions of the requested order, or which alleges a liability on the part of any of these persons arising out of their services, acts, or transactions relating to ASAB.

12. After receipt of the requested order, ASAB will file with the Commission a copy of the subcustodian agreement that irrevocably designates ASAB's custodian as an agent in the U.S. to accept service of process in any suit, action, or proceeding (collectively, "Proceeding") before the Commission or any appropriate court to enforce the provisions of the laws administered by the Commission in connection with the subcustodian agreement with Standard Bank ("Subcustodian Agreement"), or to enforce any right or liability ("Liability") based on the Subcustodian Agreement or which alleges a liability on the part of Standard Bank arising out of its services, acts, or transactions under the Subcustodian Agreement relating to ASAB's assets. This designation will automatically terminate upon Standard Bank ceasing to hold ASAB's assets, except as to a Proceeding or a Liability based on an action or inaction of Standard Bank prior to Standard Bank having ceased holding ASAB's assets.

13. ASAB will perform every action and thing necessary to cause and assist the custodian of its assets to distribute the same, or the proceeds, if the Commission or a court of competent jurisdiction will have so directed by final order.[11] ASAB also will perform every action and thing necessary to cause and assist its shareholders or the Commission to collect (a) any monetary amount specified in a Commission order or (b) a final judgment entered by a court of competent jurisdiction.

14. ASAB will take all steps necessary to insure that it will be listed on the NYSE, including the publishing of financial statements and other information required by the NYSE for the benefit of holders of the shares listed on the NYSE and the performance of all the covenants contained in its listing agreement.

15. The Commission, in its discretion, may revoke its order permitting registration of ASAB and the public offering of its securities if the Commission finds, after notice and opportunity for hearing, that there has been a violation of the requested order or the Act and may determine whether distribution of ASAB's assets is necessary or appropriate in the interests of investors and may so direct.

16. ASAB waives any counsel fees to which it may be entitled and waives security for costs in any action brought against it in Bermuda by any shareholder based on its charter or bylaws or any of the undertakings and agreements contained in the application. ASAB will cause each of its present or future directors who is a non-resident of the U.S. to make similar waivers.

17. ASAB will promptly notify the Commission in the event that there is any change in Bermudian law that will be contrary to any provision of the Act or detrimental to or inconsistent with the protection afforded by the undertakings and agreements contained in the application.

18. ASAB's use of the CSD will comply with rule 17f–7 under the Act as if ASAB were a registered

[10] ASAB acknowledges that: (a) every agreement and undertaking of ASAB, its officers, directors, investment adviser, and principal underwriters contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASAB, the Commission, and ASAB's shareholders with the same intent as set forth in condition 4 above; and (b) the failure by ASAB or any of the persons listed above to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

[11] A court of competent jurisdiction means any U.S. federal court that has jurisdiction to issue such an order.

management investment company organized or incorporated in the U.S.

19. Any shareholder of ASAB or the Commission, on its own motion or on request of any of ASAB's shareholders, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASAB; or (b) before a court of competent jurisdiction for the liquidation of ASAB and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASAB, its officers, directors, investment adviser, or principal underwriter has violated any provision of the Act or the requested order.

20. Any shareholder of ASAB will have the right to bring suit at law or equity, in any court of the U.S. or Bermuda having jurisdiction over ASAB, its assets, or any of its officers or directors to enforce compliance by ASAB, its officers and directors with any provision of ASAB's charter or bylaws, the Act, the rules under the Act, or the undertakings and agreements required by the conditions of the requested order, in so far as applicable to these persons. The court may appoint a trustee or receiver of ASAB with all powers necessary to implement the purposes of the suit, including the administration of the estate, the collection of corporate property including choses-in action, and distribution of ASAB's assets to its creditors and shareholders. ASAB and its officers and directors waive any objection they may be entitled to raise and any right they may have to object to the power and right of any shareholder of ASAB to bring such suit, reserving, however, their right to maintain that they have complied with these provisions, undertakings and agreements, and otherwise to dispute the suit on its merits. ASAB and its officers and directors also agree that any final judgment or decree of any U.S. court may be granted full faith and credit by a court of competent jurisdiction of Bermuda and consent that the Bermudian court may enter judgment or decree on ASAB at the request of any shareholder, receiver, or trustee of ASAB.

21. ASAB will settle its purchases and sales of portfolio securities in the U.S. by use of the mails or means of interstate commerce, except for: (a) Purchases and sales on an "established securities exchange" (defined as a national securities exchange as defined in section 2(a)(26) of the Act, the JSE Securities Exchange South Africa, the London Stock Exchange, the Tokyo Stock Exchange, the Toronto Stock Exchange, the Australian Stock Exchange Limited, and the Effektenborsenverein Zurich Exchange (collectively the "Established Exchanges")) and (b) purchases and sales, through its custodian or its custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities, or CSD-eligible securities. Assets purchased on an Established Exchange will be maintained in the U.S. with ASAB's custodian, unless prohibited by law or regulation or financially impracticable as provided in condition 24 below.

22. Contracts of ASAB, other than those executed on an Established Exchange which do not involve affiliated persons, will provide that: (a) The contracts, irrespective of the place of their execution or performance, will be performed in accordance with the requirements of the Act, the Securities Act of 1933, and the Securities Exchange Act of 1934, each as amended, if the subject matter of the contracts is within the purview of these acts; and (b) in effecting the purchase or sale of assets, the parties to the contracts will utilize the U.S. mails or means of interstate commerce.

23. ASAB will keep at least 20% of its assets in the U.S. in the custody of a U.S. bank ("20% Requirement"). ASAB's remaining assets (which may include U.S. dollars invested in time deposits and bank certificates of deposit) will be kept in the custody of such a U.S. custodian, except:

a. Subject to the 20% Requirement, up to 100% of its CSD-eligible securities may be kept in the CSD through its custodian and subcustodian;

b. $200,000 may be kept in cash to cover administrative expenses and expenses related to the winding up of ASA's affairs in South Africa, to be kept in a checking account with a South African bank;

c. Up to 3% of its assets may be kept in South Africa in short-term rand-denominated investments issued or guaranteed by the Republic of South Africa; and

d. Up to 5% of its assets may be kept in rand-denominated interest bearing bank accounts with eligible foreign custodians or overseas branches of U.S. banks.

24. If removal of securities purchased on the Established Exchanges becomes either prohibited by law or regulation or financially impracticable, up to 5% of ASAB's assets may be held by an eligible foreign custodian or overseas branch of ASAB's custodian in each of London, Japan, Australia, Switzerland, and Canada.

25. If an eligible foreign custodian or an overseas branch of the custodian is to be appointed as subcustodian, ASAB will comply with the requirements of rule 17f–5 under the Act prior to the purchase of securities on an Established Exchange.

26. ASAB will withdraw its assets from the care of a subcustodian as soon as practicable, and in any event within 180 days of the date when a majority of the Board makes the determination that a particular subcustodian may no longer be considered eligible under rule 17f–5 under the Act or may no longer be considered an overseas branch of the custodian, or that continuance of the subcustodian arrangement would not be consistent with the best interests of ASAB and its shareholders.

27. ASAB will cause each custodian of ASAB to enter into an Agreement (to be filed by ASAB with the Commission when that person assumes office), which will provide that each custodian agrees: (a) To comply with the Act and the rules of the Commission under the Act and the undertakings and agreements contained in the application as applicable to the custodian and as each may be amended from time to time, as applicable to the custodian; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; and (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order.[12]

28. So long as ASAB is registered under the Act, ASAB's custody contract with its custodian will provide that the custodian will: (a) Consummate all purchases and sales of securities by ASAB through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, except for (i) purchases and sales on the Established Exchanges, and (ii) purchases and sales, through ASAB's custodian or custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities, or CSD-eligible securities; and (b) distribute ASAB's assets, or the proceeds thereof, to ASAB's creditors

[12] ASAB acknowledges that: (a) Every agreement and undertaking of ASAB and its custodian contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASAB and the Commission; and (b) the failure by ASAB or the custodian to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in conditions 15, 19, and 29.

29. With respect to an alleged violation of the Act or the requested order by ASAB's custodian, the Commission, on its own motion, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASAB; or (b) before a court of competent jurisdiction for the liquidation of ASAB and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASAB's custodian has violated any provision of the Act or the requested order.

30. ASAB will adopt procedures reasonably designed to ensure that ASAB complies with conditions 21, 23, and 24 regarding the location of ASAB's assets. For two years following the issuance of an order granting the requested relief, the registered public accountant for ASAB shall prepare an annual report that evaluates ASAB's assertion that it has established procedures reasonably designed to achieve compliance with conditions 21, 23, and 24 regarding the location of ASAB's assets. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR, as such Statements or Form may be revised, amended, or superseded from time to time. After the final report is filed, ASAB's registered public accountant, in connection with its annual audit of ASAB's financial statements, will continue to review ASAB's compliance with conditions 21, 23, and 24 regarding the location of ASAB's assets and its review will form the basis, in part, of the registered public accountant's report on internal controls in Form N–SAR.

ASA's Conditions

ASA agrees that the Prior Orders and any order granting the relief it requests will be subject to the conditions of the Prior Orders (other than conditions 4, 6, 8 and 20) and the following conditions:

4. ASA will cause each present and future officer, director, investment adviser, and principal underwriter of ASA to enter into an agreement ("Agreement") (to be filed by ASA with the Commission when that person assumes office), which will provide that each person agrees: (a) To comply with ASA's charter and bylaws, the Act and the rules of the Commission under the Act, and the undertakings and agreements contained in the application as applicable to each person and as each may be amended from time to time, as applicable to each person; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order, and (d) each Agreement constitutes a contract between the person and ASA and the shareholders of ASA with the intent that ASA's shareholders will be beneficiaries of and will have the status of parties to the Agreement so as to enable them to maintain actions at law or in equity within the U.S. or South Africa. In addition, each Agreement of each officer and director of ASA will contain provisions similar to those contained in condition 20 below.[13]

6. ASA's custodian will not transfer any assets of ASA unless the instructions it receives from ASA include the written approval of ASA's Chief Compliance Officer. ASA will submit instructions relating to any transfer of assets to its Chief Compliance Officer, who will review them prior to the submission of any approved instructions to ASA's custodian. ASA's Chief Compliance Officer will not approve a transfer of assets if an agent, broker-dealer, or counterparty is an affiliated person of ASA or an affiliated person of any director, officer, or investment adviser of ASA, unless the transaction is of a type permitted by the Act or any regulation under the Act or specifically permitted by order of exemption issued under the Act. In addition to providing any other information relevant to the Chief Compliance Officer's review, ASA will require each of its officers, directors, and investment advisers to transmit quarterly a list of affiliated persons or a statement that there has been no change since the last list so transmitted to ASA's Chief Compliance Officer. No person will qualify to serve as a director or officer of ASA until he or she has transmitted to ASA a list of his or her affiliated persons, as that term is defined in section 2(a)(3) of the Act.

8. The chief executive officer of ASA, a majority of the directors of ASA, a majority of the officers, and the Chief Compliance Officer of ASA will be both citizens and residents of the U.S.

20. Any shareholder of ASA or the Commission, on its own motion or on request of any of ASA's shareholders, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASA; or (b) before a court of competent jurisdiction for the liquidation of ASA and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASA, its officers, directors, investment adviser, or principal underwriter has violated any provision of the Act or the requested order.

28. ASA will cause each custodian of ASA to enter into an Agreement (to be filed by ASA with the Commission when that person assumes office), which will provide that each custodian agrees: (a) To comply with the Act and the rules of the Commission under the Act and the undertakings and agreements contained in the application as applicable to the custodian and as each may be amended from time to time, as applicable to the custodian; (b) to do nothing inconsistent with the undertakings and agreements contained in the application, the provisions of the Act, or the rules under the Act; and (c) that the undertakings described in (a) and (b) above constitute representations and inducements to the Commission to issue the requested order.[14]

29. So long as ASA is registered under the Act, ASA's custody contract with its custodian will provide that the custodian will: (a) Consummate all purchases and sales of securities by ASA through the delivery of securities and receipt of cash, or vice versa as the case may be, within the United States, except for (i) purchases and sales on the Established Exchanges, and (ii) purchases and sales, through ASAB's custodian or custodian's agent, in South Africa of South African Treasury Bills from or to the South African Treasury, South African Reserve Bank securities,

[13] ASA acknowledges that: (a) Every agreement and undertaking of ASA, its officers, directors, investment adviser, and principal underwriters contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASA, the Commission, and ASA's shareholders with the same intent as set forth in condition 4 above; and (b) the failure by ASA or any of the persons listed above to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

[14] ASA acknowledges that: (a) Every agreement and undertaking of ASA and its custodian contained in the application constitute (i) inducements to the Commission for the issuance and continuance in effect of the requested order, and (ii) a contract among ASA and the Commission; and (b) the failure by ASA or the custodian to comply with any of the agreements or undertakings, unless permitted by the Commission, will constitute a violation of the requested order.

or CSD-eligible securities; and (b) distribute ASA's assets, or the proceeds thereof, to ASA's creditors and shareholders, upon service upon the custodian of an order of the Commission or court directing such distribution as provided in conditions 15, 20, and 30.

30. With respect to an alleged violation of the Act or the requested order by ASA's custodian, the Commission, on its own motion, will have the right to initiate a proceeding: (a) Before the Commission for the revocation of the order permitting registration of ASA; or (b) before a court of competent jurisdiction for the liquidation of ASA and a distribution of its assets to its shareholders and creditors. The court may enter the order in the event that it finds, after notice and opportunity for hearing, that ASA's custodian has violated any provision of the Act or the requested order.

31. ASA will adopt procedures reasonably designed to ensure that ASA complies with conditions 22, 24, and 25 regarding the location of ASA's assets. For two years following the issuance of an order granting the requested relief, the registered public accountant for ASA shall prepare an annual report that evaluates ASA's assertion that it has established procedures reasonably designed to achieve compliance with conditions 22, 24, and 25 regarding the location of ASA's assets. The report shall be prepared in accordance with the Statements on Standards for Attestation Engagements No. 10 and it shall be filed pursuant to Item 77Q3 of Form N–SAR, as such Statements or Form may be revised, amended, or superseded from time to time. After the final report is filed, ASA's registered public accountant, in connection with its annual audit of ASA's financial statements, will continue to review ASA's compliance with conditions 22, 24, and 25 regarding the location of ASA's assets and its review will form the basis, in part, of the registered public accountant's report on internal controls in Form N–SAR.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2018 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26583]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 27, 2004.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August 2004. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 21, 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 Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW., Washington, DC 20549–0504.

Eaton Vance Insured Minnesota Municipal Bond Fund (Formerly Eaton Vance Insured Minnesota Municipal Bond Fund I)

[File No. 811–21223]

Eaton Vance Insured Arizona Municipal Bond Fund (Formerly Eaton Vance Insured Arizona Municipal Bond Fund I)

[File No. 811–21228]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applications were filed on August 10, 2004.

Applicants' Address: the Eaton Vance Building, 255 State St., Boston, MA 02109.

IQ Rising Interest Rate Fund Inc.

[File No. 811–21592]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: The applicant was filed on August 19, 2004.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Eaton Vance Limited Duration Income Opportunity Fund

[File No. 811–21393]

Eaton Vance Limited Duration Income Fund II

[File No. 811–21406]

Eaton Vance Tax-Advantaged Dividend Growth Fund

[File No. 811–21450]

Summary: Each applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicants have never made a public offering of their securities and do not propose to make a public offering or engage in business of any kind.

Filing Date: The applicants were filed on August 17, 2004.

Applicants' Address: The Eaton Vance Building, 255 State St., Boston, MA 02109.

J.P. Morgan Atlas Global Long/Short Equity Fund, L.L.C.

[File No. 811–21305]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on July 20, 2004, and amended on August 10, 2004.

Applicant's Address: 522 Fifth Ave., 10th Floor, New York, NY 10036.

Corporate Investment Trust Fund

[File No. 811–2321]

Prudential Unit Trust National Municipal Trust Discount Series

[File No. 811–2568]

Prudential Unit Trust

[File No. 811–3952]

Prudential Unit Trust Corporate High Yield Series

[File No. 811–5573]

Summary: Each applicant, a unit investment trust, seeks an order declaring that it has ceased to be an investment company. By September 3, 1991, August 3, 2000, March 22, 2002 and November 27, 1995, respectively, each applicant had made a final liquidating distribution to its unitholders, based on net asset value. Expenses incurred in connection with the liquidations were paid by JPMorgan Chase Bank, trustee for each applicant, on behalf of each applicant.

Filing Dates: The applications were filed on June 1, 2004, and amended on August 13, 2004.

Applicants' Address: Prudential Equity Group, LLC, 100 Mulberry St., Gateway Center Three, Newark, NJ 07102.

FBR Fund for Tax-Free Investors, Inc.

[File No. 811–3720]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 27, 2004, two of applicant's series transferred their assets to corresponding series of The FBR Funds, based on net asset value. On March 29, 2004, applicant's remaining series made a liquidating distribution to its shareholders, based on net asset value. Expenses of $78,380 incurred in connection with the reorganization and liquidation were paid by FBR National Trust Company, applicant's administrator, and its affiliates.

Filing Dates: The application was filed on June 30, 2004, and amended on August 6, 2004.

Applicant's Address: 1001 Nineteenth St., N. Arlington, VA 22209.

Alpha Analytics Investment Trust

[File No. 811–9039]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 29, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $1,650 incurred in connection with the liquidation were paid by Alpha Analytics Investment Group, LLC, applicant's investment adviser.

Filing Dates: The application was filed on April 7, 2004, and amended on July 27, 2004.

Applicant's Address: 1901 Avenue of the Stars, Suite 1100, Los Angeles, CA 90067.

AUSA Series Annuity Account B

[File No. 811–8880]

Summary: Applicant seeks an order abandoning the registration statement that was filed on July 5, 2001, by the applicant and declared effective by the Securities and Exchange Commission on February 8, 2002. The applicant has decided not to commence sales of the AUSA Series Annuity Account and therefore now seeks to de-register the fund.

Filing Date: The application was filed on August 27, 2004.

Applicant's Address: 4 Manhattanville Road, Purchase New York 10577.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–20006 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50263; File No. SR–Amex–2004–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Regarding Listed Company Board of Director Independence Standards

August 25, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 2, 2004, the American Stock Exchange LLC (the "Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Amex. On August 23, 2004, the Amex submitted Amendment No. 1 to the proposed rule change.[3] Amex has filed the proposed rule change as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to revise Section 121 of the Amex Company Guide ("Company Guide") to specify that payments received by a director of a listed issuer from the issuer in connection with a banking or brokerage transaction entered into in the ordinary course of business on non-preferential terms will not be included in the types of payments that (if the applicable threshold is reached) would preclude the director's independence. The Amex also proposes to adopt new Commentary .06 to Section 121 of the Company Guide, to specify that such payments must be disclosed to the listed company's board of directors.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.[5]

* * * * *

Sec. 121. Independent Directors and Audit Committee

A. No change.

(a) No change.

(b) a director who accepts or has an immediate family member who accepts any payments from the company or any parent or subsidiary of the company in excess of $60,000 during the current or any of the past three fiscal years, other than *the following*:

(1) compensation for board service,

(2) payments arising solely from investments in the company's securities,

(3) compensation paid to an immediate family member who is a non-executive employee of the company or of a parent or subsidiary of the company,

(4) compensation received for former service as an interim Chairman or CEO,

(5) benefits under a tax-qualified retirement plan,

(6) non-discretionary compensation, [or]

(7) loans permitted under Section 13(k) of the Exchange Act,

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President and Deputy Chief Regulatory Officer, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 20, 2004 ("Amendment No. 1"). Amendment No. 1 made technical and clarifying corrections to the original submission and replaced the original filing in its entirety. The changes made by Amendment No. 1 are incorporated in this notice.

[4] 17 CFR 240.19b–4(f)(6).

[5] The asterisk at the end of paragraph (b) of Amex Rule 121A as set forth below is part of the current text and relates to a note in the rule regarding look-back periods.

(8) loans from a financial institution provided that the loans (i) were made in the ordinary course of business, (ii) were made on substantially the same terms, including interest rates and collateral, as those prevailing at the time for comparable transactions with the general public, (iii) did not involve more than a normal degree of risk or other unfavorable factors, and (iv) were not otherwise subject to the specific disclosure requirements of SEC Regulation S–K, Item 404, or

*(9) payments from a financial institution in connection with the deposit of funds or the financial institution acting in an agency capacity, provided such payments were (i) made in the ordinary course of business, (ii) made on substantially the same terms as those prevailing at the time for comparable transactions with the general public, and (iii) not otherwise subject to the disclosure requirements of SEC Regulation S–K, Item 404.**

(c)–(g) No change.

B. No change.

Commentary

.01–.05 No change.

.06 In order to affirmatively determine that an independent director does not have a material relationship with the listed company that would interfere with the exercise of independent judgment, as specified in paragraph A, the board of directors of each listed company must obtain from each such director full disclosure of all relationships which could be material in this regard, including but not limited to any payments specified in paragraphs A(b)(8) and (9).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Company Guide requires that the board of directors of most listed companies be comprised of a majority of independent directors. Section 121 of the Company Guide generally defines an independent director as "a person other than an officer or employee of the company or any parent or subsidiary" and requires that the board of directors of each listed company affirmatively determine that an independent director has no material relationship with the company that would interfere with the exercise of independent judgment. In addition, Section 121 specifies certain relationships that will preclude a finding of independence, including a director who accepts (or whose immediate family member[6] accepts) any payment from the company (or any parent or subsidiary of the company[7]) in excess of $60,000 during the current or any of the past three fiscal years.[8] Compensation for board service, payments arising solely from investments in the company's securities, compensation paid to an immediate family member who is a non-executive officer employee of the company (or any parent or subsidiary of the company[9]), compensation received for former service as an interim Chairman or Chief Executive Officer, benefits under a tax-qualified retirement plan, non-discretionary compensation, or loans permitted under Section 13(k) of the Securities Exchange Act are not included in the $60,000.[10]

The Amex believes that certain standard, non-preferential transactions by financial institutions that technically involve "payments" by the financial institution to a director (or an immediate family member of the director) as a customer of the financial institution do not impair a director's ability to exercise independent judgment absent preferential terms, and accordingly should not preclude a finding of independence. Consequently, the Amex is proposing to amend Section 121 of the Company Guide to specify that payments received by a director of a listed issuer from the issuer in connection with a banking or brokerage transaction entered into in the ordinary course of business on non-preferential terms will not be included in the types of payments that (if the applicable threshold is reached) would preclude the director's independence. Such payments would include, for example, principal and interest payments on deposits, receipt of a loan check, and agency payments in connection with securities transactions.

The Exchange believes that exclusion of payments arising out of such transactions is consistent with the general intent of the Amex independence requirements, which are designed to prohibit relationships that would interfere with the exercise of independent judgment by an independent director. The fact that a director maintains a savings account or takes out a loan from a bank issuer, where the account is maintained or the loan was made in the ordinary course of business and on non-preferential terms (*i.e.*, on the same terms available to other persons), should not impair the director's independence because the director would have been able to obtain the loan or set up the account on those terms regardless of his or her relationship with the company.

In addition, the Amex is proposing to adopt new Commentary .06 to Section 121 of the Company Guide to clarify that, in order to determine that an independent director does not have a material relationship with the listed company that would interfere with the exercise of independent judgment, as required by Section 121A of the Company Guide, the board of directors of each listed company must obtain from each such director full disclosure of all relationships which could be material in this regard, and that such disclosure must include, but is not limited to, any payments in connection with banking or brokerage transactions entered into in the ordinary course of business on non-preferential terms.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[11] in general and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, in that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest, and promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change, as amended, will

[6] An "immediate family member" includes the director's spouse, parents, children, siblings, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law or anyone who resides in the director's home (other than domestic employees). *See* Commentary .01 to Section 121 of the Amex Company Guide.

[7] Amex states that the reference to a "parent or subsidiary" is intended to cover entities the issuer controls and consolidates with the issuer's financial statements as filed with the Commission (but not if the issuer reflects such entity solely as an investment in its financial statements). *See* Commentary .02 to Section 121 of the Amex Company Guide.

[8] Amex states that the three year look-back period commences on the date the relationship ceases. For example, a director employed by the company is not independent until three years after such employment terminates.

[9] *See* note 6.

[10] *See* Section 121A(b) of the Amex Company Guide.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been designated by the Amex as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act [13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

The foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest, (2) does not impose any significant burden on competition, and (3) by its terms does not become operative for 30 days after the date of this filing, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest. Furthermore, the Amex gave the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. Consequently, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6) thereunder.[16]

Pursuant to Rule 19b–4(f)(6)(iii),[17] a proposed "non-controversial" rule change does not become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The Amex has requested that the Commission waive the 30-day operative delay to permit the Exchange to implement the proposal immediately. The Amex submits that immediate effectiveness is appropriate in that a substantially similar rule change was recently adopted by the Nasdaq Stock Market and became effective upon filing,[18] and the proposed rule change raises no new regulatory issues and is concerned solely with a matter that is not likely to engender adverse comments or require the degree of review attendant with more controversial filings.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that the proposed rule change regarding ordinary-course, non-preferential payments is a reasonable clarification of the rules regarding director independence and that acceleration of the operative date should ease implementation of the new rule and help assure consistent application of corporate governance standards among listing markets. The Commission further believes that the additional proposed commentary to Amex's Independent Director rule, requiring boards of directors to obtain full disclosure from independent directors of all relationships with the company that could be material, including the types of payments described above, clarifies the obligation of boards in meeting their responsibilities and thereby enhances the rule's protections. For these reasons, the Commission designates the proposed rule change, as amended, to be operative immediately.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Amex–2004–60 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File No. SR–Amex–2004–60. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–Amex–2004–60 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2015 Filed 9–1–04; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] *See* Securities Exchange Act Release No. 49903 (June 22, 2004), 69 FR 38941 (June 29, 2004).

[19] For the purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] For purposes of calculating the 60-day abrogation period, the Commission considers the period to commence on August 23, 2004, the date that the Amex filed Amendment No. 1.

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50270; File No. SR–Amex–2004–70]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to an Amendment to the Amex Company Guide To Provide the Amex Board of Governors With Discretion To Defer, Waive or Rebate Listing Fees

August 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 19, 2004, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I and II below, which items have been prepared by Amex. Pursuant to section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] Amex has designated this proposal as non-controversial, which renders the proposed rule change effective immediately upon filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Sections 140, 141, 142 and 146 of the Amex Company Guide ("Company Guide") to provide that the Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the listing fees applicable to stocks, bonds and warrants.

The text of the proposed rule change is available at the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Sections 140, 141, 142 and 146 of the Company Guide to provide that the Amex Board of Governors or its designee may, in its discretion, defer, waive or rebate all or any part of the listing fees applicable to stocks, bonds and warrants. The Nasdaq Stock Market ("Nasdaq") has authority to waive or reduce listing fees, and periodically offers fee waivers in order to induce issuers to list on Nasdaq.[5] In order to enable the Amex to respond to specific competitive situations, the Exchange believes that it is appropriate to provide authority to defer, waive or rebate all or any part of the listing fees applicable to the listed securities of operating companies (*i.e.*, stocks, bonds, warrants, rights, *etc.*). Such authority could only be exercised by the Amex Board of Governors or its designee.[6] The Exchange asserts that it is contemplated that fee reductions would be granted only infrequently when necessary, as noted above, to respond to a specific competitive situations, and will not impact the Exchange's resource commitment to regulatory oversight of the listing or other regulatory programs.[7]

2. Statutory Basis

Amex believes that the proposed rule change is consistent with section 6(b) of the Act[8] in general and furthers the objectives of section 6(b)(5) of the Act[9] in particular in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanisms of a free and open market. In addition, Amex believes that the proposed rule change is consistent with section 6(b)(4) of the Act[10] in that it will promote the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Amex neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that the foregoing proposed rule change has become effective upon filing pursuant to section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)[12] thereunder because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.[13]

The Amex has requested that the Commission waive the 30-day pre-operative period, which would make the rule change operative immediately. The Exchange believes that immediate effectiveness of the proposed rule change is appropriate in that it is substantially similar to existing Nasdaq rules, raises no new regulatory issues, and is concerned solely with a matter that is not likely to engender adverse comments or require the degree of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See, e.g.*, NASD Rules 4510(a)(5), 4510(b)(4), 4510(c)(2), 4510(d)(3), 4520(a)(3), 4520(b)(4) and 4520(c)(3), as well as IM–4500–1, IM–4500–2 and IM–4500–3.

[6] At its July 21, 2004, meeting, the Amex Board of Governors delegated authority to a staff committee, as its designee, to determine whether to grant fee reductions. The committee is comprised of management representatives from the Office of the Chairman and the Equities, Finance and Listing Qualifications Departments. In addition, an attorney from the Office of the General Counsel will provide legal counsel to the committee.

[7] Amex believes that if it determines to defer, waive or rebate listing fees in a comprehensive and/or recurring manner that would constitute a stated policy, practice or interpretation of an existing rule, the Amex will file an additional rule change, pursuant to Commission Rule 19b–4(f)(1), with respect to such policy, practice or interpretation.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] As required under Rule 19b–4(f)(6)(iii), Amex provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date.

review attendant with more controversial filings.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the 30-day pre-operative period in this case and designate the proposed rule change as operative on August 19, 2004, the date it was submitted to the Commission.[14] The Commission notes that the proposed rule change is similar to existing rules of Nasdaq[15] and, therefore, does not raise any new regulatory concerns.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2004–70 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Amex–2004–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2004–70 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2017 Filed 9–1–04; 8:45 am]

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[14] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] *See supra* note 5.

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50278; File No. SR–Amex–2004–64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange LLC Relating to the Listing and Trading of Notes Linked to the Performance of the Standard and Poor's 500 Index

August 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 4. 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade notes, the performance of which is linked to the Standard and Poor's 500 Index ("S&P 500" or "Index").

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, 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.

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 Amex Company Guide ("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 notes issued by Citigroup, linked to the performance of the S&P 500 (the "S&P 500 Notes" or "Notes").[4] The S&P 500 is determined, calculated and maintained solely by S&P.[5] At maturity

[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] Citigroup Global Markets Holdings, Inc. ("Citigroup") and Standard & Poor's, a division of The McGraw-Hill Companies, Inc. ("S&P") have entered into a non-exclusive license agreement providing for the use of the S&P 500 by Citigroup and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible for and will not participate in the issuance and creation of the Notes.

[5] The S&P 500 Index is a broad-based stock index which provides an indication of the performance of the U.S. equity market. The Index is a capitalization-weighted index reflecting the total market value of 500 widely-held component stocks relative to a particular base period. The Index is computed by dividing the total market value of the 500 stocks by an Index divisor. The Index Divisor keeps the Index comparable over time to its base period of 1941–1943 and is the reference point for all maintenance adjustments. The securities

Continued

the Notes will provide for a multiplier of any positive performance of the S&P 500 during such term subject to a maximum payment amount or ceiling to be determined at the time of issuance (the "Capped Value"). The Capped Value is expected to be $11.65 per Note.[6]

The S&P 500 Notes will conform to the initial listing guidelines under Section 107A [7] and continued listing guidelines under Sections 1001–1003 [8] of the Company Guide. The Notes are senior non-convertible debt securities of Citigroup. The Notes will have a term of at least one (1) but no more than ten (10) years.[9] Citigroup will issue the Notes in denominations of whole units (a "Unit"), with each Unit representing a single Note. The original public offering price will be $10 per Unit and the size of the initial issuance will be $3,400,000. The Notes will entitle the owner at maturity to receive an amount based upon the percentage change of the S&P 500. The Notes will not have a minimum principal amount that will be repaid, and accordingly, payment on the Notes prior to or at maturity may be less than the original issue price of the Notes.[10] The Notes are also not callable by the issuer, Citigroup, or redeemable by the holder.

The cash payment that a holder or investor of a Note will be entitled to receive (the "Redemption Amount") will depend on the relation of the level of the S&P 500 at the close of the market on a single business day (the "Valuation Date") shortly prior to maturity of the Notes (the "Final Level") and the closing value of the Index on the date the Notes are priced for initial sale to the public (the "Initial Level"). The Final Level will be set three days prior to the maturity date of February 28, 2006.[11] If there is a "market disruption event" [12] when determining the Final Level of the Index, the Final Level maybe deferred up to two (2) business days if deemed appropriate by the calculation agent.

If the percentage change of the Index is positive (*i.e.*, the Final Level is greater than the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 + \left[\$10 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right) \times \text{Participation Rate}\right], \text{ not to exceed the Capped Value.}$$

If the ending value of the S&P 500 exceeds its starting value, the Participation Rate is 300% of the percent increase in the Final Level of the S&P 500, which will be subject to the Capped Value of 5.5% of the appreciation of the S&P 500 or $1.65. Therefore, at maturity, the payment cannot exceed $11.65 per Note.

If the percentage change of the Index is zero or negative (i.e., the Final Level is less than or equal to the Initial Level), the Redemption Amount per Unit will equal:

$$\$10 \times \left(\frac{\text{Final Level}}{\text{Initial Level}}\right)$$

Thus, if the Final Level of the S&P 500 is less than the Initial Level, an investor would receive less than his initial $10 per share investment. However, the Notes are not leveraged in the downside; the return would be directly proportional to the decline in the S&P 500.

The Notes are cash-settled in U.S. dollars and do not give the holder any

included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through NASDAQ. The Index reflects the price of the common stocks of 500 companies without taking into account the value of the dividend paid on such stocks. The Index Value is disseminated once every fifteen seconds through numerous data providers. Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on August 26, 2004 (pertaining to dissemination of Index Value).

On March 1, 2004 S&P announced that it intends to shift its major indexes, such as the S&P 500, to a "float-adjusted" market capitalization index. In the "float adjusted" market capitalization index, the value of the index will be calculated by multiplying the public float of each component by the price per share of the component. The result is then divided by the divisor. Accordingly, a "float-adjusted" market capitalization index will exclude those blocks of stocks that do not publicly trade from determining the weight for a stock in the index. The transition from a market capitalization weighted index to a "float-adjusted" capitalization weighted index will be implemented over an 18 month period. In September 2004, S&P will publish procedures and float adjustment factors, and begin calculation of provisional float adjusted indexes. At that time, S&P will start calculating a provisional index alongside the regular index, although there will still be only one official set of index values. In March 2005, the non-provisional index values will then shift to partial float adjustment, using float adjustment factors that represent half of the total adjustment, based on the information published in September 2004. In September 2005, the shift to float adjustment will be completed so that official index values will be fully float-adjusted, and the provisional indexes will be discontinued.

[6] *See* prospectus supplement, dated August 23, 2004.

[7] The initial listing standards for the Notes 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. In addition, the listing guidelines provide that the issuer has 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 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.

[8] 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 Notes, the Exchange will rely, in part, 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.

[9] The term of the Notes is expected to be 1½ years and will be disclosed in the prospectus supplement dated August 23, 2004.

[10] A negative return of the S&P 500 will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[11] Telephone conference between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation ("Division"), Commission on August 26, 2004 (pertaining to dissemination of Index Value).

[12] A "market disruption event" is defined as (i) the occurrence of a suspension, absence or material limitation of trading of 20% or more of the component stocks of the Index on the primary market for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such primary market; (ii) a breakdown or failure in the price and trade reporting systems of any primary market as a result of which the reported trading prices for 20% or more of the component stocks of the Index during the last one-half hour preceding the close of the principal trading session on such primary market are materially inaccurate; and (iii) the suspension, material limitation or absence of trading on any major securities market for trading in options contracts, future contracts or any options on such futures contracts related to the Index for more than two hours of trading or during the one-half hour period preceding the close of the principal trading session on such market, and (iv) a determination by Citigroup that any event described in clauses (i)–(iii) above materially interfered with the ability of Citigroup or any of its affiliates to unwind or adjust all or a material portion of the hedge position with respect to the Notes.

right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the S&P 500. The Notes are designed for investors who want to participate in or gain enhanced upside exposure to the S&P 500, subject to the Capped Value, and who are willing to forego principal protection and market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and related options linked to the performance of the S&P 500 Index.[13]

As of August 2, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of $347.9 billion to a low of $613.9 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 26.020 million shares to a low of 119,000 shares. The Index value will be disseminated at least once every fifteen (15) seconds throughout the trading day.

The Exchange notes that S&P has announced a change to its methodology so that Index weightings are based on the "public float" of a component stocks and not those shares of stock that are not publicly traded.[14]

Because the Notes are issued in $10 denominations, the Amex's existing equity floor trading rules will apply to the trading of the Notes. 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 Notes.[15] Second, the Notes will be subject to the equity margin rules of the Exchange.[16] Third, the Exchange will, prior to trading the Notes, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Notes and highlighting the special risks and characteristics of the Notes. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Notes: (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. In addition, Citigroup will deliver a prospectus in connection with initial sales of the Notes.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Notes. Specifically, the Amex will rely on its existing surveillance procedures governing equities, which have 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[17] in general and furthers the objectives of Section 6(b)(5)[18] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to and perfect the mechanism 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an E-mail to *rule-comments@sec.gov*. Please include SR–Amex–2004–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to SR–Amex–2004–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site *http://www.sec.gov/rules/sro.shtml*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to SR–Amex–2004–64 and should be submitted on or before September 23, 2004.

[13] *See* Securities Exchange Act Release Nos. 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500); 31591 (December 18, 1992), 57 FR 60253 (December 18, 1992) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 30394 (February 21, 1992), 57 FR 7409 (March 2, 1992) (approving the listing and trading of a unit investment trust linked to the S&P 500 Index) (SPDR); 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (approving the listing and trading of Exchange Stock Portfolios based on the value of the S&P 500 Index); and 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index).

[14] *See* supra note 5. S&P Press Release dated March 1, 2004 available at *http://www.standardandpoors.com*.

[15] 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.

[16] *See* Amex Rule 462 and Section 107B of the Company Guide.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

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.[19] The Commission has approved the listing of securities with a structure similar to that of the Notes.[20] Accordingly, the Commission finds that the listing and trading of the Notes based on the Index 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 securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.[21]

The Notes will provide investors who are willing to forego market interest payments during the term of the Notes with a means to participate or gain exposure to the Index, subject to the Capped Value. The Notes are non-convertible debt securities whose price will be derived and based upon the Initial Level. The Commission notes that the Notes will not have a minimum principal investment amount that will be repaid, and payment on the Notes prior to or at maturity may be less than the original issue price of the Notes. At maturity, if the Final Value of the S&P 500 is greater than the Initial Value, the performance of the Note is leveraged on the "upside." In other words, the investor will receive, for each $10 principal amount, a payment equal to $10 plus 300% of the percent increase in the value of the S&P 500, subject to the Capped Value of approximately $1.65 or 5.5% of the issue price. However, if the S&P 500 declines from the Initial Value, then the investors will receive proportionately less than the original issue price of the Notes. The return on the notes, however, is not leveraged on the downside.

Thus, the Notes are non-principal protected instruments, but are not leveraged on the downside. The level of risk involved in the purchase or sale of the Notes is similar to the risk involved in the purchase or sale of traditional common stock. Because the final level of return of the Notes is derivatively priced and based upon the performance of an index of securities; because the Notes are debt instruments that do not guarantee a return of principal; and because investors' potential return is limited by the Capped Value, if the value of the Index has increased over the term of such Note, there are several issues regarding the trading of this type of product. However, for the reasons discussed below, the Commission believes the Exchange's proposal adequately addresses the concerns raised by this type of product.

The Commission notes that the protections of Amex Rule 107A were designed to address the concerns attendant on the trading of hybrid securities like the Notes. In particular, by imposing the hybrid listing standards, suitability, disclosure and compliance requirements noted above, the Commission believes that Amex has addressed adequately the potential problems that could arise from the hybrid nature of the Notes. The Commission notes that Amex will distribute a circular to its membership calling attention to the specific risks associated with the Notes. The Commission also notes that Citigroup will deliver a prospectus in connection with the initial sales of the notes. In addition, the Commission notes that Amex will incorporate and rely upon its existing surveillance procedures governing equities which have been deemed adequate under the Act.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index[22] of 500 companies listed on Nasdaq, the NYSE, and the Amex. The Exchange represents that the Index will be determined, calculated, and maintained by S&P. As of August 2, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of $347.9 billion to a low of $613.9 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of 26.020 million shares to a low of 119,000 shares.

Given the large trading volume and capitalization of the compositions of the stocks underlying the Index, the Commission believes that the listing and trading of the Notes that are linked to the Index should not unduly impact the market for the underlying securities comprising the Index or raise manipulative concerns.[23] As discussed more fully above, the underlying stocks comprising the Index are well-capitalized, highly liquid stocks. Moreover, the issuers of the underlying securities comprising the Index are subject to reporting requirements under the Act, and all of the component stocks are either listed or traded on, or traded through the facilities of, U.S. securities markets. Additionally, the Amex's surveillance procedures will serve to deter as well as detect any potential manipulation.

Furthermore, the Commission notes that the Notes are depending upon the individual credit of the Issuer, Citigroup. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide which provide the only issuers satisfying substantial asset and equity requirements may issue securities such as the Notes. In addition, the Exchange's "Other Securities" listing standards further require that the Notes have a market value of at least $4 million.[24] In any event, financial information regarding Citigroup in addition to the information on the 500 common stocks comprising the Index will be publicly available.[25]

The Commission also has a systemic concern, however, that a broker-dealer such as Citigroup, or a subsidiary providing a hedge for the issuer will incur position exposure. However, as the Commission has concluded in previous approval orders for other hybrid instruments issued by broker-dealers,[26] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Citigroup.

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[19] 15 U.S.C. 78f(b)(5).

[20] *See supra* note 11.

[21] 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).

[22] *See supra* note 5.

[23] The issuer Citigroup disclosed in the prospectus that the original issue price of the notes includes commissions (and the secondary market prices are likely to exclude commissions) and Citigroup's costs of hedging its obligations under the notes. These costs could increase the initial value of the Notes, thus affecting the payment investors receive at maturity. The commission expects such hedging activity to be conducted in accordance with applicable regulatory requirements.

[24] *See* Company Guide Section 107A.

[25] The Commission notes that the 500 component stocks that comprise the Index are reporting companies under the Act, and the Notes will be registered under Section 12 of the Act.

[26] *See* Securities Exchange Act Release Nos. 44913 (October 9, 2001), 66 FR 52469 (October 15, 2001) (order approving the listing and trading of notes whose return is based on the performance of the Nasdaq-100 Index) (File No. SR–NASD–2001–73); 44483 (June 27, 2001), 66 FR 35677 (July 6, 2001) (order approving the listing and trading of notes whose return is based on a portfolio of 20 securities selected from the Amex Institutional Index) (File No. SR–Amex–2001–40); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (order approving the listing and trading of notes whose return is based on a weighted portfolio of healthcare/biotechnology industry securities) (File No. SR–Amex–96–27).

Finally, the Commission notes that the value of the Index will be disseminated at least once every fifteen seconds throughout the trading day. The Commission believes that providing access to the value of the Index at least once every fifteen seconds throughout the trading day is extremely important and will provide benefits to investors in the product.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register**. The Exchange has requested accelerated approval because this product is similar to several other instruments currently listed and traded on the Amex.[27] The Commission believes that the Notes will provide investors with an additional investment choice and that accelerated approval of the proposal will allow investors to begin trading the Notes promptly. Additionally, the Notes will be listed pursuant to Amex's existing hybrid security listing standards as described above. Therefore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[28] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed rule change (SR–Amex–2004–64) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2039 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

[27] *See* Securities Exchange Act Release Nos. 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes on the S&P 500); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of a UBS Partial Protection Note linked to the S&P 500); 47983 (June 4, 2003), 68 FR 35032 (June 11, 2003) (approving the listing and trading of a CSFB Accelerated Return Notes linked to S&P 500); 47911 (May 22, 2003), 68 FR 32558 (May 30, 2003) (approving the listing and trading of notes (Wachovia TEES) linked to the S&P 500).

[28] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[29] 15 U.S.C. 78*o*–3(b)(6) and 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50269; File No. SR–CBOE–2004–42]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Calculation of Securities Indexes Underlying Options

August 26, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 12, 2004, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The CBOE submitted the proposed rule change under section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits this rule change to amend its rules in order to clarify the determination of the source of securities price information used to calculate values of certain securities indexes underlying options traded on the Exchange. The text of the proposed rule change is below. Proposed new language is *italicized*.

* * * * *

CHAPTER XXIV

Index Options

(Rules 24.1–24.21)

Rule 24.1–Rule 24.8 No Change.

* * * * *

Rule 24.9—Terms of Index Option Contracts

Rule 24.9. (a)–(c) No Change.

* * * * *

** * * Interpretations and Policies:*

.01–.11 No Change.

.12 With respect to any securities index on which options are traded on the Exchange, the source of the prices of component securities used to calculate the current index level at expiration is determined by the Reporting Authority for that index.

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to clarify CBOE rules related to Index Options as they pertain to the source of pricing information for securities that comprise any particular securities index on which options are traded on the Exchange. Certain CBOE rules may be interpreted in a manner that suggests that the current index value at expiration of any particular securities index is determined by the opening (or closing) prices of the underlying components as reported by each respective underlying component's "primary market." To illustrate, Rule 24.9(a)(4) (*A.M.-Settled Index Options*) provides:

> The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that in the event that the *primary market for an underlying security does not open for trading*, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in *Rule 24.7(e)*. (Emphasis added).

Rule 24.7(e) provides:

(e) When the *primary market for a security underlying the current index value of an index option* does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day, or if a particular security underlying the current index value of an index option does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day in its primary market, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, in accordance with the Rules and By-Laws of The Options Clearing Corporation.

This rule could be interpreted to mean that the primary market for each security that comprises an index will always be the source of opening and closing prices used in the calculation of the particular index's value at expiration. This may not always be the case. To illustrate, on May 12, 2004, Dow Jones & Company ("Dow Jones") published a plan to implement a pilot program in which Dow Jones will use the opening and closing prices of Nasdaq-listed stocks reported from the American Stock Exchange to calculate certain Dow Jones Averages.[5] CBOE currently lists and trades options on several Dow Jones indexes, including the Dow Jones Transportation Average and the Dow Jones Industrial Average. The Exchange currently trades an options contract under the ticker symbol DJX that is based on one-one hundredth of the value of the DJIA. As the designated Reporting Authority[6] for the DJIA, Dow Jones is responsible for determining the source for the prices used to calculate the opening settlement value for expiring DJX series. Under this pilot program, which Dow Jones subsequently terminated,[7] Dow Jones intended to calculate the opening settlement value for DJX using the opening prices of two Nasdaq-listed components, Microsoft Corporation and Intel Corporation, as reported from the American Stock Exchange, rather than the primary-market opening prices reported from the Nasdaq National Market System ("NMS").[8]

In order to avoid investor confusion, CBOE proposes to amend its rules to clarify that the Reporting Authority for any securities index on which options are traded on CBOE may determine to use the reported sale prices for one or more underlying securities from a market that may not necessarily be the primary market for that security in calculating the appropriate index value.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5)[10] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization, it qualifies for effectiveness on filing pursuant to section 19(b)(3)(A)(i) of the Act[11] and subparagraph (f)(1) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–42. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2004–42 and should

[5] On May 12, 2004, Dow Jones issued a press release providing the details of its Pilot Program. The press release provides, in part that: ≥The program will include two stocks (Intel and Microsoft) in the Dow Jones Industrial Average and seven stocks (Alexander & Baldwin, C.H. Robinson Worldwide, Expeditors International of Washington, J.B. Hunt Transport Services, Northwest Airlines, USF Corp. and Yellow Roadway) in the Dow Jones Transportation Average.

[6] As defined under Rule 24.1(h), a Reporting Authority, "in respect of a particular index means the institution or reporting service designated by the Exchange as the official source for calculating the level of the index from the reported prices of the underlying securities that are the basis of the index and reporting such level."

[7] Telephone discussion between James M. Flynn, Attorney, CBOE and Florence Harmon, Senior Special Counsel, Division, Commission (August 25, 2004).

[8] Dow Jones intended to continue using NYSE-reported prices for the remaining 28 DJIA components listed on the New York Stock Exchange. However, as stated Down Jones terminated this pilot program since Nasdaq instituted a "closing-cross" process in its all-electronic system. Telephone discussion between James M. Flynn, Attorney, CBOE and Florence Harmon, Senior Special Counsel, Division, Commission (August 25, 2004).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(1).

[12] 17 CFR 240.19b–4(f)(1).

be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2016 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50274; File No. SR–NASD–2004–129]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend, and Provide an Interpretation to, Section 3 of Schedule A to NASD By-Laws and Amend NASD's Permanent Self-Reporting Form

August 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 2004, the National Association of Securities Dealers, Inc. ("NASD" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a "non-controversial" rule change pursuant to Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Section 3 of Schedule A to NASD By-Laws to remove references to the "SEC." In addition, NASD filed portions of a *Notice to Members* relating to interpretations of Section 3 of Schedule A to NASD By-Laws. NASD also filed two self-reporting forms that are to be used by members to report trade data that is not captured by NASD's trade reporting systems. The text of the proposed rule change and the self-reporting forms and the relevant portions of the *Notice* are available at NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Section 31 of the Act[4] requires that NASD, as a national securities association, and the national securities exchanges pay transaction fees and assessments to the Commission that are designed to recover the costs related to the government's supervision and regulation of the securities markets and securities professionals. On June 28, 2004, the Commission established new procedures governing the calculation, payment, and collection of fees and assessments on securities transactions owed by national securities exchanges and associations to the Commission pursuant to Section 31 of the Act.[5] The new procedures became effective on August 6, 2004. In accordance with the new procedures, NASD must now provide the Commission with trade data, which the Commission will use to calculate the amount of fees and assessments due by NASD. Accordingly, the calculation of fees and assessments owed by NASD pursuant to Section 31 of the Act will now be performed exclusively by the Commission. To recover the costs of NASD's Section 31 obligation, NASD assesses a transaction fee on its member firms under Section 3 of Schedule A to NASD By-Laws.

In response to the new procedures adopted by the Commission and interpretive guidance provided in the Adopting Release, NASD has filed with the Commission: (1) A proposed rule change to amend Section 3 of Schedule A to NASD By-Laws to remove references to the "SEC"; (2) portions of a forthcoming Notice to Members relating to interpretations of Section 3 of Schedule A; and (3) two self-reporting forms that are to be used by members to report trade data that is not captured by NASD's trade reporting systems.

Pursuant to Section 3 of Schedule A, NASD assesses a transaction fee on its member firms, the amount of which is determined periodically in accordance with Section 31 of the Act, to recover the costs of NASD's Section 31 obligation. The current title of Section 3 of Schedule A is "SEC Transaction Fee," and the text of Section 3 of Schedule A states: "[e]ach member shall be assessed a SEC transaction fee. The amount shall be determined by the SEC in accordance with Section 31 of the Act." The current title and text of Section 3 of Schedule A were filed with the Commission for notice and review in 2002.[6]

NASD is proposing to amend Section 3 of Schedule A in response to statements made by the SEC in its Adopting Release that "it is misleading to suggest that a customer or [a self-regulatory organization] member incurs an obligation to the Commission under Section 31."[7] While NASD notes that the Commission has previously reviewed Section 3, formerly Section 8, of Schedule A to NASD By-Laws and deemed it to be consistent with the Act,[8] to avoid any possible confusion as discussed in the Adopting Release, NASD is now amending Section 3 of Schedule A to delete any references to the "SEC". In addition, in conformity with the Adopting Release, NASD is proposing to refer to the transaction fee as a "Regulatory Transaction Fee" in the title and text of Section 3 of Schedule A. The transaction fee assessed by NASD will continue to be set, as it is today, in accordance with Section 31 of the Act.[9] Therefore, NASD is not

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] 15 U.S.C. 78ee.

[5] *See* Final Rule Regarding Collection Practices Under Section 31, Securities Exchange Act Release No. 49928 (June 28, 2004), 69 FR 41059 (July 7, 2004) ("Adopting Release").

[6] *See* Securities Exchange Act Release No. 46168 (July 8, 2002), 67 FR 46558 (July 15, 2002) (notice of filing and immediate effectiveness of SR–NASD–2002–65); Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (order approving SR–NASD–2002–148).

[7] *See supra* note 5 at 41072.

[8] *See* Securities Exchange Act Release No. 38133 (January 7, 1997), 62 FR 1940 (January 14, 1997) (notice of filing and immediate effectiveness of SR–NASD–96–57); Securities Exchange Act Release No. 46168 (July 8, 2002), 67 FR 46558 (July 15, 2002) (notice of filing and immediate effectiveness of SR–NASD–2002–65); Securities Exchange Act Release No. 46416 (August 23, 2002), 67 FR 55901 (August 30, 2002) (notice of filing and immediate effectiveness of SR–NASD–2002–98); Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (order approving SR–NASD–2002–148).

[9] NASD also is amending Section 3 of Schedule A to NASD By-Laws to reflect that the applicable

Continued

amending the reference to Section 31 in Section 3 of Schedule A to NASD By-Laws.

Though the requirements of Section 31, including the new procedures established by the Commission, apply directly to NASD and the national securities exchanges, and not their membership, the requirements will affect the obligations of member firms under Section 3 of Schedule A to NASD By-Laws. Therefore, NASD is issuing a *Notice to Members* to inform member firms of the new procedures relating to Section 31 and to remind member firms of their continuing obligation to pay the transaction fees assessed by NASD so that it can recover the costs of its Section 31 obligation. NASD believes that certain provisions in the forthcoming *Notice* may constitute interpretations of Section 3 of Schedule A to NASD By-Laws that, due to their nature, should be filed as a proposed rule change. The provisions in question relate to: (1) Members' obligation to self report securities sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security and where consideration is given for the securities; (2) members' obligation to submit certain self-reporting forms and applicable payments to NASD by certain deadlines; (3) the manner in which members should use rounding to calculate the transaction fees on self-reported trades; and (4) guidance regarding the appropriate terminology when referring to the transaction fees assessed by NASD under Section 3 of Schedule A to NASD By-Laws. The relevant portions of the *Notice to Members* are available at NASD and at the Commission.

Finally, NASD has revised its Permanent Self-Reporting Form so that going forward members can report covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security, with the exception of securities transactions where no consideration is given for the securities. NASD previously had not assessed a transaction fee on such sales because the Commission had stated that transactions where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security were not subject to Section 31 fees.[10] As stated in the Adopting Release, however, the Commission now believes that such securities sales are subject to Section 31 fees where consideration is given for the securities, and, therefore, such covered sales must be reported to the Commission.[11] Accordingly, NASD is making conforming changes to the Permanent Self-Reporting Form, and filed the form with the Commission. The Permanent Self-Reporting Form will become effective on October 1, 2004, and members must use this form to report covered sales for the month of September 2004 and for each month thereafter. As discussed below, NASD is using a different self-reporting form for the collection of certain other trade data.

NASD has created an Interim Self-Reporting Form to facilitate the collection of trade data and payments for covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security for the months of July and August 2004. The Interim Self-Reporting Form will be used once only in September 2004. Members must use the Interim Self-Reporting Form to report, for the month of August 2004, covered sales in odd-lot transactions, covered sales resulting from the exercise of over-the-counter options that settle by physical delivery, and covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security. Members also must use the Interim Self-Reporting Form to report covered sales where the buyer and seller have agreed to trade at a price substantially unrelated to the current market for the security for the month of July 2004. NASD must receive the Interim Self-Reporting Form, including any applicable payment, by September 7, 2004. NASD also filed the Interim Self-Reporting Form with the Commission.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that the proposed changes to Section 3 of Schedule A to the NASD By-Laws and to the manner by which member firms refer to the fee assessed by NASD when passing it on to their customers is consistent with the protection of investors and the public interest in that it will avoid any confusion by members and their customers. In addition, the proposed rule change, including the portions of the *Notice* that are intended to assist members in complying with Section 3 of Schedule A to the NASD By-Laws, is consistent with Section 15A(b)(5) of the Act,[13] which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a "non-controversial" rule change pursuant to Section 19(b)(3)(A)(i) of the Act[14] and Rule 19b–4(f)(6) thereunder[15] because it does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory

fee rate assessed by NASD is periodically adjusted in accordance with Section 31. In the past, NASD has notified members, through Member Alerts or other means, of any periodic adjustments to the fee rate made by the Commission. NASD will continue to notify members of any such adjustments in the future since NASD seeks to recover the costs of its Section 31 obligation from its members.

[10] *See* Final Rule Regarding Securities Transactions Exempt From Transaction Fees, Securities Exchange Act Release No. 38073 (December 23, 1996), 61 FR 68590, 68592 n.27 (December 30, 1996).

[11] Pursuant to SEC Rule 31T, as written, NASD is obligated to submit trade data on such covered sales for each of the months in the September 2003 to June 2004 period, but NASD has sought an exemption from the SEC with respect to NASD's retroactive reporting obligation. NASD has requested an exemption so that it would not be obligated to report such covered sales on a retroactive basis for the September 2003 to June 2004 period, and it would not be obligated to report to the SEC such covered sales for the month of July 2004 until the September 15, 2004 reporting date.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78o–3(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(6).

organization has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the filing date of the proposed rule change.

NASD has requested that the Commission waive the five-day pre-filing notice requirement and the 30-day pre-operative period, which would make the proposed rule operative immediately.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and the 30-day pre-operative period in this case. Allowing the rule change to become operative immediately will permit NASD to satisfy its obligation under Section 31 of the Act on a timely basis and will avoid any confusion on the part of NASD members and their customers.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2004–129 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NASD–2004–129. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2004–129 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2021 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

[16] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50277; File No. SR–NYSE–2004–05]

Self-Regulatory Organizations; Notice of Extension of the Comment Period for the Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Enhancements to the Exchange's Existing Automatic Execution Facility (NYSE Direct+)

August 26, 2004.

On February 9, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] to enhance the Exchange's existing automatic execution facility, NYSE Direct+. On August 2, 2004, the Exchange filed an amendment to the proposed rule change.[3] A complete description of the proposed rule change, as amended, is in the notice of filing, which was published in the **Federal Register** on August 16, 2004.[4]

To give the public additional time to consider the proposal, the Commission has decided to extend the comment period pursuant to section 19(b)(2) of the Act.[5] Further, the Commission notes that the Exchange has consented to the extension of the comment period.[6] Accordingly, the comment period shall be extended until September 22, 2004.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–05 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. All submissions should refer to File Number SR–NYSE–2004–05. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, and accompanying Form 19b–4, which replaced the original filing in its entirety (July 30, 2004) ("Amendment No. 1").

[4] *See* Exchange Act Release No. 50173 (August 10, 2004), 69 FR 50407.

[5] 15 U.S.C. 78s(b)(2).

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division, Commission (August 25, 2004).

the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–05 and should be submitted on or before September 22, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2019 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50275; File No. SR–NYSE–2004–43]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of a Proposed Rule Change Establishing Fees for Receiving NYSE OpenBook® on a Real-Time Basis

August 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to establish fees for providing NYSE OpenBook on a real-time basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange believes that NYSE OpenBook responds to the demands of some market participants for depth-of-market data, a demand that has resulted, in part, from decimalization's six-fold increase in the number of price points. The NYSE OpenBook service is a compilation of limit order data that the Exchange provides to market data vendors, broker-dealers, private network providers and other entities through a data feed. The Exchange represents that for every limit price, NYSE OpenBook includes the aggregate order volume.

Currently, the Exchange updates NYSE OpenBook every five seconds. The Exchange proposes to make available a second enhanced NYSE OpenBook service that would update NYSE OpenBook limit order information in real-time. The Exchange believes that the real-time service responds to the desire of some market participants for more frequently updated depth-of-market data. According to the Exchange, the proposed real-time service will allow subscribers to choose to either continue to receive their current NYSE OpenBook service unchanged, or upgrade to the new real-time service.

The fees for the present NYSE OpenBook service are two-fold: (1) $5,000 per month for the receipt of, and the right to redistribute, the data feed and (2) $50.00 per month for each terminal through which the end user is able to display the service. The Commission approved the current fees for NYSE OpenBook in December 2001.[3]

The Exchange proposes to establish a fee of $60.00 per month for each terminal through which the end user is able to display the real-time NYSE OpenBook service. According to the Exchange, the current monthly $5,000 data feed fee will entitle an entity to receive the five-second NYSE OpenBook data feed, the real-time NYSE OpenBook data feed, or both. The Exchange states that the current data feed fee will also entitle an entity to receive the NYSE LiquidityQuote R® data feed.

The Exchange believes that the fee for the real-time NYSE OpenBook service reflects an equitable allocation of its overall costs associated with using its facilities. The Exchange states that it reviewed and discussed the fee with the Exchange's Board of Executives ("BoE") at its June 3, 2004 meeting following a presentation by NYSE senior management. (The BoE, which is a constituent panel that advises the Exchange's independent Board of Directors and senior management, is comprised of representatives of individual and institutional investors, listed companies, members and member organizations.) The Exchange also states that all members of the Exchange's Board of Directors attended the BoE meeting, listened to the presentation and discussion, and later that day approved the new service and proposed fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not received solicited or unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 44962 (December 7, 2001), 66 FR 54562 (December 14, 2001) (SR–NYSE–2001–42).

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

(ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, as amended, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609.

All submissions should refer to File Number SR–NYSE–2004–43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSYE–2004–43 and should be submitted on or before September 23, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2038 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50276; File No. SR–PHLX–2004–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to NASDAQ–100 Index Tracking Stock℠ Equity Transaction Charges

August 26, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and at the same time is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to retroactively apply its amended schedule of fees and charges to replace the tiered equity transaction charges with a single per share charge for equity transactions from July 1, 2004 through July 30, 2004[3] in NASDAQ–100 Index Tracking Stock℠ (known as QQQ℠).[4] Below is the text of the proposed rule change. Proposed new language is in *italics*; deletions are in brackets.

* * * * *

NASDAQ–100 Index Tracking Stock℠ Fee Schedule

Phlx Fee Schedule	
Customer	
PACE	none[5]
Non-PACE.	
Transaction [Charge] *Fee.*	*$.0035 per share*
	[Rate per Share]
[First 500 shares	$0.00
Next 2,000 shares	0.0075
Remaining shares	0.005]
$50 maximum fee per trade side.	

[5] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound ITS commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment.

* * * * *

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 Phlx included statements concerning the purpose of and basis for its proposal and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to remain competitive and

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange filed a proposed rule change, Securities Exchange Act Release No. 50106 (July 28, 2004), 69 FR 47197 (August 4, 2004) (SR–PHLX–2004–40), which amended the Summary of Equity Charges portion of the fee schedule by replacing the total shares per transaction charge with a single per share charge. The NASDAQ–100 Index Tracking Stock℠ fee schedule, which contains a duplicate tiered fee schedule as contained in the Summary of Equity Charges, was inadvertently omitted from that filing. This filing seeks to amend the replicated tiered fee schedule which is displayed in the NASDAQ–100 Index Tracking Stock℠ in the same fashion as it was amended in the Summary of Equity Charges portion of the fee schedule for the period July 1 through July 30, 2004. The Exchange has filed a proposed rule change, SR–PHLX–2004–52, designated as effective upon filing, to cover QQQ℠ transactions on or after August 2, 2004. *See* Securities Exchange Act Release No. 50174 (August 10, 2004), 69 FR 51137 (August 17, 2004).

[4] Nasdaq–100®, Nasdaq–100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq–100 Shares℠, Nasdaq–100 Trust℠, Nasdaq–100 Index Tracking Stock℠ and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. ("Nasdaq") and have been licensed for use for certain purposes by the Philadelphia Stock Exchange pursuant to a License Agreement with Nasdaq. The Nasdaq–100 Index® ("Index") is determined, composed and calculated by Nasdaq without regard to the Licensee, the Nasdaq–100 Trust℠, or the beneficial owners of Nasdaq–100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising or calculating the Index or in modifying in any way its method for determining, comprising or calculating the Index in the future.

foster growth of the equity floor brokerage business by seeking to increase volume. This proposal seeks to retroactively replace the current tiered fee schedule for non-PACE NASDAQ–100 Index Tracking Stock℠ trades with a single per share charge of $.0035, subject to a cap of $50 per trade side for equity transactions traded from July 1, 2004 through July 30, 2004.[5] Previously, the tiered fee schedule was based on total shares per transaction. Recently, the Exchange's other equity transaction charges, with the exception of the NASDAQ–100 Index Tracking Stock℠, were replaced with a single per share charge of $.0035.[6]

For trades prior to August 2, 2004, the NASDAQ–100 Index Tracking Stock℠ used the same tiered fee schedule as was previously present in the Summary of Equity Charges fee schedule.[7] For example, for the first 500 shares the transaction fee is $0, for the next 2,000 shares the transaction fee is $.0075 on a per share basis, and thereafter, for any remaining shares the transaction fee is $.005 on a per share basis. This proposal would amend the fee schedule to a single per share charge of $.0035 for such transactions traded from July 1, 2004 through July 30, 2004, thereby conforming the fees to the Summary of Equity Charges, which were likewise amended to reflect this change.[8]

In addition, the term "charge" is being replaced with the term "fee" for the purpose of clarity.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of dues, fees and charges is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members and would allow the equity floor to remain competitive and encourage growth.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Phlx states that no written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PHLX–2004–55 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PHLX–2004–55. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PHLX–2004–55 and should be submitted on or before September 23, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change as a Pilot Program

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.[11] Specifically, the Commission believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] which requires that the rules of the Exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

The Commission notes that this proposal, which permits the retroactive application of non-PACE NASDAQ–100 Index Tracking Stock℠ equity transaction charges to the period from July 1, 2004 through July 30, 2004, reflects a change to the Phlx fee schedule which was inadvertently omitted from the filing exhibit of SR–PHLX–2004–40.[13] Further, the Commission notes that the Phlx states that the Exchange membership was provided with adequate notification of this fee amendment.

The Commission finds good cause for approving the proposed rule change prior to the 30th day of the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that the proposed charges are substantially similar to those in SR–PHLX–2004–40, relating to equity transaction charges generally, and SR–PHLX–2004–52, relating to non-PACE NASDAQ–100 Index Tracking Stock℠ equity transaction charges specifically, both filings of which were immediately

[5] However, this charge applies where an order, after being delivered to the Exchange by the PACE system is executed by the specialist by way of an outbound ITS commitment, when such outbound ITS commitment reflects the PACE order's clearing information, but does not apply where a PACE trade was executed against an inbound ITS commitment. *See* footnote 5 of the NASDAQ–100 Index Tracking Stock℠ Fee Schedule.

[6] The exclusion of the NASDAQ–100 Index Tracking Stock℠ was inadvertent. *See supra* footnote 3.

[7] The fee is charged only to members of the Phlx. Telephone conversation between Angela Saccomandi Dunn, Counsel, Phlx, and David Liu, Attorney, Division of Market Regulation ("Division"), Commission, on August 20, 2004. *See* Securities Exchange Act Release Nos. 50106 (July 28, 2004), 69 FR 47197 (August 4, 2004) (SR–PHLX–2004–40); and 50174 (August 10, 2004), 69 FR 51137 (August 17, 2004) (SR–PHLX–2004–52).

[8] Telephone conversation between Angela Saccomandi Dunn, Counsel, Phlx, and David Liu, Attorney, Division, Commission, on August 20, 2004. *See* Securities Exchange Act Release No. 50106 (July 28, 2004), 69 FR 47197 (August 4, 2004) (SR–Phlx–2004–40).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(4).

[13] *See* Securities Exchange Act Release No. 50106 (July 28, 2004), 69 FR 47197 (August 4, 2004) (SR–PHLX–2004–40).

effective upon filing and which, as of August 24, 2004, have not received any comments regarding the proposed transaction charges.[14] In addition, except for the first 500 shares of a transaction, the proposed charges would lower fees charged for non-PACE NASDAQ–100 Index Tracking Stock℠ transactions. Finally, the Commission notes that this change will promote consistency in the Exchange's fee schedule by conforming the non-PACE NASDAQ–100 Index Tracking Stock℠ equity transaction charge to the Phlx's equity transaction charges generally for the period from July 1, 2004 through July 30, 2004. Therefore, the Commission finds that there is good cause, consistent with Section 19(b)(2) of the Act,[15] to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–PHLX–2004–55) be approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2020 Filed 9–1–04; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3617]

State of California

Shasta County and the contiguous counties Lassen, Modoc, Plumas, Siskiyou, Tehama, and Trinity in the State of California constitute a disaster area as a result of two wildland fires known as the Bear Fire and the French Fire. The fires began on August 11, 2004 and continue to burn. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 25, 2004 and for economic injury until the close of business on May 25, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, PO Box 419004, Sacramento, CA 95841–9004.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.187
Businesses with credit available elsewhere	5.800
Businesses and non-profit organizations without credit available elsewhere	2.900
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.900

The number assigned to this disaster for physical damage is 361705 and for economic damage is 9ZQ200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 25, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–20019 Filed 9–1–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4811]

Culturally Significant Objects imported for Exhibition Determinations: "Dukes and Angels: Art From the Court of Burgundy (1364–1419)"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Dukes and Angels: Art from the Court of Burgundy (1364–1419)" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Cleveland Museum of Art, Cleveland, Ohio, from on or about October 24, 2004 to on or about January 9, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Wolodymyr R. Sulzynsky, the Office of the Legal Adviser, Department of State, (telephone: 202/619–5078). The address is: Department of State, SA–44, and 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–20041 Filed 9–1–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4810]

Culturally Significant Objects imported for Exhibition Determinations: "Tiwanaku: Ancestors of the Inca"

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Tiwanaku: Ancestors of the Inca," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Denver Art Museum, Denver, CO, from on or about October 16, 2004, to on or about January 23, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: (202) 619–6529). The

[14] *See* Securities Exchange Act Release Nos. 50106 (July 28, 2004), 69 FR 47197 (August 4, 2004) (SR–PHLX–2004–40); and 50174 (August 10, 2004), 69 FR 51137 (August 17, 2004) (SR–PHLX–2004–52).

[15] 15 U.S.C. 78s(b)(2).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 23, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 04–20042 Filed 9–1–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–02–C–00–AGS To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Augusta Regional Airport, Augusta, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Augusta Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 4, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Willis Boshears, Executive Director of the Augusta Regional Airport at the following address: 1501 Aviation Way, Augusta, GA 30906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Augusta Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Paul Lo, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337, (404) 305–7145. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Augusta Regional Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 25, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Augusta Regional Airport was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 24, 2004.

The following is a brief overview of the application.

Proposed charge effective date: December 1, 2004.

Proposed charge expiration date: August 1, 2031.

Level of the proposed PFC: $4.50.

Total estimated PFC revenue: $2,007,000.

Brief description of proposed project(s): Fencing Improvements, Terminal Security Improvements, Runway Safety Area Improvements, Communication Equipment, Runway 8–26 Rehabilitation, General Aviation Apron Rehabilitation, Taxiway E Rehabilitation, ALP Update, Runway 17–35 Rehabilitation, PFC Administrative Costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers filing FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Augusta Regional Airport.

Issued in College Park, Georgia, on August 25, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 04–20063 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: I–15 Corridor, Utah and Salt Lake Counties, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Highway Administration (FHWA) and the Utah Department of Transportation (UDOT) are issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed transportation improvement project in Utah and Salt Lake Counties, Utah. To date, five alternatives have been identified in previous studies, to be addressed in the EIS. These alternatives include a no-action alternative, transportation systems management alternative, highway only alternative, transit only alternative, and a combined transit and highway or multimodal alternative. In addition, alternatives that are identified from the scoping process will be evaluated in the EIS. Scoping will be accomplished through correspondence and discussions with interested persons; organizations; federal, state and local agencies; and through public and agency meetings.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered in the EIS must be received no later than October 11, 2004, and must be sent to UDOT at the address indicated below. *Scoping Meetings:* UDOT will conduct three public scoping meetings and one agency meeting. The agency meeting will be held on September 8, 2004 from 10 a.m. to 12 p.m. at the UDOT Complex, located at 4501 South 2700 West in Salt Lake City. The public scoping meetings will be held on September 8, 2004 from 5 p.m. to 8 p.m. at the Murray High School Spartan Conference Room, located at 5440 S. State Street in Murray; on September 9, 2004 from 5 p.m. to 8 p.m. at Larsen Elementary School located at 1175 E. Flonette Drive in Spanish Fork; and on September 11, 2004 from 2 p.m. to 5 p.m. at the McKay Events Center, North Presidential Level, Utah Valley State College located on 800 W. University Parkway in Orem.

FOR FURTHER INFORMATION CONTACT: Jeffrey Berna, Environmental Specialist, Federal Highway Administration, 2520 West 4700 South, Suite 9A, Salt Lake City, UT 84118. Telephone: (801) 963–0182. Written comments should be sent to Mr. Merrell Jolley, Project Manager, Utah Department of Transportation, 658 North 1500 West Orem, UT 84057. Telephone: (801) 222–3406. To be added to the mailing list, contact Eileen Barron, Public Involvement Manager, Parsons Brinckerhoff, 488 East Winchester Street, Suite 400, Murray, Utah 84107. Telephone (888) 898–2111 or e-mail *i15utahcounty@utah.gov.* Persons with special needs should contact Eileen Barron at the above address and phone number.

SUPPLEMENTARY INFORMATION:

1. Description of Study Area and Scope

The Federal Highway Administration (FHWA), in cooperation with the Federal Transit Administration (FTA), the Utah Department of Transportation (UDOT) and Utah Transit Authority (UTA) is preparing an Environmental Impact Statement (EIS) for a proposed action approximately 66 miles in length to address capacity, operational, infrastructure deficiencies along I–15 from Santaquin to the 10600 South Interchange (southern point of previous I–15 reconstruction). The proposed action will also examine transit alternatives that address the purpose and need for the corridor including, but not limited to, commuter rail from Payson to the Salt Lake City Intermodal Center, light rail from 1000 South in Sandy to Orem, and bus rapid transit.

II. Purpose and Need

Growth within Utah County over the last ten years has been significant. Population in Utah and Salt Lake counties is expected to grow 84 and 63 percent respectively by the year 2030, at an annual growth rate of approximately 2.0 percent. I–15 is the only continuous north-south route in Utah County, and the primary north-south facility in the State. Sections of I–15 are currently demonstrating unacceptable levels of service in the peak hours resulting in significant driver delay and frustration.

Two recent planning studies have identified possible transit and highway transportation solutions for the Utah County and southern Salt Lake County. These two studies are the Inter-Regional Corridor Alternatives Analysis (January 2002) and the Utah County I–15 Corridor Management Plan (August 2002). This EIS will build upon these previous studies and will also analyze the environmental impacts for various alternatives.

III. Alternatives

The proposed project intends to consider no-build, transportation system management, highway only, transit only, and multimodal build alternatives to address the transportation need. Build alternatives for I–15 will consider widening the facility, improvements to or new interchanges, and correction of existing deficiencies.

Alternatives 1: No-Action. This alternative consists of highway and transit systems existing as of year 2004, plus improvements programmed in the approved long range transportation plan.

Alternative 2: Transportation Systems Management. This alternative consists of low cost, reasonable and cost-effective highway and transit system improvements within the I–15 Corridor that address the purpose and need.

Alternative 3: Highway-Only Improvements: Based on previous studies, this alternative consists of reconstructing existing interchanges; constructing 3–5 new interchanges; possibly including collector-distributor lanes from University Parkway to 920 South Provo; and widening I–15 from 6 to 8 general purpose lanes from the Salt Lake County line to the US–6 interchange in Spanish Fork.

Alternative 4: Transit-Only Improvements. This alternative consists of transit improvements paralleling I–15, including examining commuter rail, light rail, bus rapid transit, and managed lanes.

Alternative 5: Multimodal Improvements: This alternative consists of Alternative 3 (with possible modifications) plus transit improvements, including examining commuter rail, light rail, bus rapid transit, and managed lanes. This alternative could become multiple alternatives depending on alignment and mode.

IV. Probable Effects

Environmental issues to be examined in the Alternatives Analysis and in the EIS include: potential changes to the physical environment (natural resources, air quality, noise, water quality, geology, visual); changes in the social environment (land use, development, business and neighborhood disruptions); changes in traffic and pedestrian circulation; changes in transit service and patronage; associated changes in traffic congestion; and impacts on parklands and historic sites. Impacts will be identified both for the construction period and for the long-term operation of the alternatives. The proposed evaluation criteria include transportation, social, economic, and financial measures, as required by current federal (NEPA) environmental laws and current Council on Environmental Quality; FHWA and FTA guidelines.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to UDOT as noted above.

V. FHWA Procedures

The EIS for the I–15 Corridor Utah and Salt Lake counties will be prepared simultaneously with conceptual engineering. The EIS/conceptual engineering process will address the potential use of federal funds for the proposed action, as well as assess the social, economic and environmental impacts of the alternatives.

After publication the Draft EIS will be available for public and agency review and comment, and public hearings will be held. Based on the Draft EIS comments received, UDOT will select a locally preferred alternative for further assessment in the Final EIS.

(Catalog of Federal and Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program)

Issued on: August 27, 2004.

Jeffrey Berna,

Environmental Specialist, Salt Lake City, Utah

[FR Doc. 04–20018 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than November 1, 2004.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must

include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–NEW." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or e-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. §§ 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. § 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. § 3506(c)(2)(A)(i)–(iv); 5 CFR § 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. § 3501.

Below is a brief summary of proposed new information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Safety Appliance Concern Recommendation Report; Guidance Checklist Forms.

OMB Control Number: 2130–NEW.

Abstract: In an ongoing effort to conduct more thorough and more effective inspections of railroad freight equipment and to further enhance safe rail operations, FRA has developed a safety concern recommendation report form, and a group of guidance checklist forms that will facilitate railroad, rail car owner, and rail equipment manufacturer compliance with agency Railroad Safety Appliance Standards regulations. In lieu of completing an official inspection report (Form FRA F 6180.96), which takes subject railroad equipment out of service and disrupts rail operations, proposed new Form FRA F 6180.4a will enable Federal and State safety inspectors to report to agency headquarters systemic or other safety concerns. FRA headquarters safety specialists can then contact railroads, car owners, and equipment manufacturers to address the reported issue(s) and institute necessary corrective action(s) in a timely fashion without unnecessarily having to take affected rail equipment out of service, unless deemed defective. Proposed forms FRA F 6180.4(b)–(m) will be used in conjunction with the Special Inspection of Safety Appliance Equipment form (Form FRA F 6180.4) to assist Federal Motive, Power, and Equipment (MP&E) field inspectors in ensuring that critical sections of 49 CFR Part 231 (Railroad Safety Appliance Standards), pertaining to various types of freight equipment, are complied with through use of a check-off list. By simplifying their demanding work, check-off lists for 12 essential sections of Part 231 will ensure that FRA MP&E field personnel completely and thoroughly inspect each type of freight car for compliance with its corresponding section in Part 231. The proposed Guidance Checklist forms may later be used by state field inspectors as well. FRA believes that the proposed collection of information will result in improved construction of newly designed freight cars and improved field inspections of all freight cars currently in use. This, in turn, will serve to reduce the number of accidents/incidents and corresponding injuries and fatalities that occur every year due to unsafe or defective equipment that was not promptly repaired/replaced.

Form Number(s): FRA F 6180.4(a)–(m).

Affected Public: Businesses.

Reporting Burden:

Form number	Respondent universe	Total annual responses (forms)	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
FRA F 6180.4a—MP&E Safety Concern and Recommendation Report.	100 Fed'l & State Inspectors	50	60	50	$2,450
FRA F 6180.4b—Check List Sec. 231.1.	100 Fed'l & State Inspectors	20	60	20	980
FRA F 100 6180.4c—Check List Sec. 231.2.	100 Fed'l & State Inspectors	20	60	20	980
FRA F 6180.4d—Check List Sec. 231.3.	100 Fed'l & State Inspectors	10	60	10	490
FRA F 6180.4e—Check List Sec. 231.4.	100 Fed'l & State Inspectors	5	60	5	245
FRA F 6180.4f—Check List Sec. 231.5.	100 Fed'l & State Inspectors	5	60	5	245

Form number	Respondent universe	Total annual responses (forms)	Average time per response (minutes)	Total annual burden hours	Total annual burden cost
FRA F 6180.4g—Check List Sec. 231.6.	100 Fed'l & State Inspectors	30	60	30	1,470
FRA F 6180.4h—Check List 231.7	100 Fed'l & State Inspectors	5	60	5	245
FRA F 6180.4i—Check List Sec. 231.8.	100 Fed'l & State Inspectors	5	60	5	245
FRA F 6180.4j—Check List Sec. 231.9.	100 Fed'l & State Inspectors	5	60	5	245
FRA F 6180.4k—Check List Sec. 231.21.	100 Fed'l & State Inspectors	50	60	50	2,450
FRA F 6180.4l—Check List Sec. 231.27.	100 Fed'l & State Inspectors	25	60	25	1,225
FRA F 6180.4m—Check List Sec. 231.28.	100 Fed'l & State Inspectors	10	60	10	490

Respondent Universe: Federal and State Safety Inspectors.

Frequency of Submission: On occasion.

Total Responses: 240 Forms.

Estimated Total Annual Burden: 240 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR §§ 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. §§ 3501–3520.

Issued in Washington, DC on August 27, 2004.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–20069 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety regulations. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Red River Valley & Western Railroad Company, and Red River Grain

[Waiver Petition Docket Number FRA–2004–17993]

The Red River Valley & Western Railroad Company (RRVW) and Red River Grain (RRG) petitioners propose to operate a diesel electric locomotive, number RRVW 1213, with laminated safety glass glazing, which is non-compliant with current Federal Safety Regulations. The locomotive, Model SW1200, built by General Motors' Electro Motive Division (EMD) at LaGrange, Illinois in 1959, is proposed to operate in switching and industrial operations. The above mentioned locomotive is owned by RRG of Breckenridge, Minnesota and is also named as the co-petitioner for this waiver. RRVW operates 456 miles of mainline track primarily in North Dakota, with a switching/interchange yard located in Breckenridge, Minnesota. The towns that RRVW operates in and through are sparsely populated rural areas that are primarily utilized for agricultural or ranching purposes. Presently, the maximum track speed is 25 MPH.

The RRVW began operations in 1987 by acquiring branch lines from the Burlington Northern Railroad Company. Since that time, petitioners have reported that there have been no acts of vandalism inflicted on any of their locomotives. This includes rock throwing and gunfire directed at locomotive while moving or stationary.

The petitioners request relief from the requirements of Title 49 Code of Federal Regulations (CFR) 223.11 *Requirement for existing locomotives* because the locomotive operates in rural areas and is primarily utilized in switching or industrial service. Both petitioners report that their records indicate that no acts of vandalism have occurred to any of their locomotives. The petitioners also report that replacement of the glazing at this time would create an unnecessary financial burden.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2004–17993) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on August 27, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–20064 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2004–18894]

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Wellton, Arizona, milepost 770.8 and Arlington, Arizona, milepost 861.3, on the Gila and Phoenix Subdivisions, in the El Paso area, a distance of approximately 91 miles. The proposed changes include removal of signals and switch point and fouling protection in the area; conversion of westward signals 40RA and 38RB at Wellton, and eastward signal 8617 at Arlington, to red-green aspects; and conversion of eastward approach signal 7719 at Wellton, and westward approach signal 8608 at Arlington, to red-yellow aspects. This is a request to reopen docket number BS–AP–No. 3440, which was denied on July 7, 1998.

The reason given for the proposed changes is that the semaphore signals on the line are obsolete and repair parts are difficult to obtain. There are only two trains a day in each direction, which does not justify upgrading the signal system to modern equipment.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 27, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–20065 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2004–18740

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed modification of the interlocked, single main track moveable bridge, at milepost 89.0 on the Peoria Subdivision, Chicago Area, at South Pekin, Illinois. The proposed changes consist of the removal of the bridge locks from the top of the span bridge structure; installation of new bridge locks on the bridge track deck; and removal of the existing switch machine activated rail locks. The rail lock machines will be reused to activate the new bridge locks.

The reason given for the proposed changes is to allow safer conditions for personnel adjusting and inspecting the bridge locks, and also provides better assurance of proper bridge alignment with the bridge locks mounted on the track deck itself rather than on the girder structure above the bridge. In addition, the switch machine activated rail locks are no longer required since self-aligning Conley frogs and circuit controllers are used to assure rail ends are properly aligned and within 3/8 inch of correct surface.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, D.C. 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to

search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 27, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–20066 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2004–18742

Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signals, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on the two main tracks at Kirkwood, Missouri, milepost 13.2, on the Jefferson City Subdivision, St. Louis Area. The proposed changes consist of the following:

1. Removal of the power-operated crossover switches and crossover track;

2. Conversion of the power-operated switch on the storage track to hand operation, equipped with a switch circuit controller, with "Do not clear" Rule assigned to switch;

3. Removal of existing controlled signals' 132L, 132R, 131, and 131L; and

4. Installation of back to back remote controlled holding signals, on both main tracks at the existing 131R signal location.

The reason given for the proposed changes is that due to changes in operation and traffic, the crossover is no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (volume 65, number 70; pages 19477–78), or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 27, 2004.

Grady C. Cothen, Jr.,

Acting Associate Administrator for Safety.

[FR Doc. 04–20068 Filed 9–1–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Indexing the Annual Operating Revenues of Railroads

This Notice sets forth the annual inflation adjusting index numbers which are used to adjust gross annual operating revenues of railroads for classification purposes. This indexing methodology will insure that regulated carriers are classified based on real business expansion and not from the effects of inflation. Classification is important because it determines the extent of reporting for each carrier.

The railroad's inflation factors are based on the annual average Railroad's Freight Price Index. This index is developed by the Bureau of Labor Statistics (BLS). This index will be used to deflate revenues for comparison with established revenue thresholds.

The base year for railroads is 1991. The inflation index factors are presented as follows:

RAILROAD FREIGHT INDEX

Year	Index	Deflator percent
1991	409.50	[1] 100.00
1992	411.80	99.45
1993	415.50	98.55
1994	418.80	97.70
1995	418.17	97.85
1996	417.46	98.02
1997	419.67	97.50
1998	424.54	96.38
1999	423.01	96.72
2000	428.64	95.45
2001	436.48	93.73
2002	445.03	91.92
2003	454.33	90.03

[1] Ex Parte No. 492, *Montana Rail Link, Inc., and Wisconsin Central Ltd., Joint Petition For Rulemaking With Respect To 49 CFR 1201,* 8 I.C.C. 2d 625 (1992), raised the revenue classification level for Class I railroads from $50 million to $250 million (1991 dollars), effective for the reporting year beginning January 1, 1992. The Class II threshold was also revised to reflect a rebasing from $10 million (1978 dollars) to $20 million (1991 dollars).

EFFECTIVE DATE: January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Decker at (202)–565–1531. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

By the Board, Leland L. Gardner, Director, Office of Economics, Environmental Analysis, and Administration.

Vernon A. Williams,

Secretary.

[FR Doc. 04–20035 Filed 9–1–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34525]

K. Earl Durden, Rail Management Corporation, and Rail Partners, L.P.—Continuance in Control Exemption—Riceboro Southern Railway, L.L.C.

K. Earl Durden (Durden), Rail Management Corporation (RMC),[1] and Rail Partners, L.P. (Partners) (collectively, applicants), have filed a verified notice of exemption to continue in control of Riceboro Southern Railway, L.L.C. (RSOR), upon RSOR's becoming a rail carrier.

The transaction was expected to be consummated on or after August 25, 2004.

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34524, *Riceboro Southern Railway, L.L.C.—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.*, wherein: (1) RSOR seeks to acquire by purchase from CSX Transportation, Inc., (CSXT), and operate approximately 18.8 route miles of rail line between milepost S512.2 at Ogeechee, GA (near Richmond Hill), in Bryan County, GA, and milepost S531.0 at Riceboro, GA, in Liberty County, GA; and (2) RSOR will obtain incidental trackage rights from CSXT over approximately 14 miles of CSXT's line from milepost S512.2 at Ogeechee to milepost S498.0 at CSXT's Southover Yard at Savannah, GA. Through these trackage rights, RSOR will access the Southover Yard for the purpose of interchanging with CSXT from the south.

At the time applicants filed this notice, Durden, RMC, and Partners controlled 14 Class III rail carriers located in Alabama, Arizona, Arkansas, Florida, Georgia, Kentucky, Mississippi, North Carolina, Tennessee, Texas, and Wisconsin. They are: AN Railway, L.L.C.; Atlantic & Western Railway, L.P.; The Bay Line Railroad, L.L.C.; Copper Basin Railway, Inc.; East Tennessee Railway, L.P.; Galveston Railroad, L.P.; Georgia Central Railway, L.P. (GC);[2] KWT Railway, Inc.; Little Rock & Western Railway, L.P.; M&B Railroad, L.L.C.; Tomahawk Railway, L.P.; Valdosta Railway, L.P.; Western Kentucky Railway, L.L.C., and Wilmington Terminal Railroad, L.P. (referred to as the RMC Rail Group).

Applicants state that: (1) The railroads do not connect with any other rail lines in applicants' corporate family; (2) the continuance in control of RSOR is not part of a series of anticipated transactions that would connect applicants' rail lines; and (3) the transaction does not involve a Class I rail carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Accordingly, the Board may not impose labor protective conditions here, because all of the carriers involved are Class III carriers.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34525, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Andrew B. Kolesar III, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 25, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19927 Filed 9–1–04; 8:45 am]

BILLING CODE 4915–01–P

[1] RMC's former corporate name was Rail Management & Consulting Corporation.

[2] Applicants note that GC connects with CSXT's Southover Yard from the north. Applicants state that there will be no connection between the lines of RSOR and GC. The point at which RSOR will access the Southover Yard and the point at which GC accesses the Southover Yard are entirely separated by CSXT yard track, thus precluding a direct interchange between RSOR and GC. Moreover, there are no plans to interchange traffic even indirectly among the RSOR, CSXT, and GC.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34523]

KWT Railway, Inc.—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.

KWT Railway, Inc. (KWT), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire by purchase from CSX Transportation, Inc. (CSXT), and operate approximately 12.8 miles of rail line extending from milepost OND 116.8 at McKenzie, TN (Valuation Station 6166+68), to milepost OND 129.6 at Dresden, TN (Valuation Station 6848+78.8), in Weakley and Carroll Counties, TN. The transaction also includes incidental trackage rights granted by CSXT to KWT over approximately 23 miles of CSXT's main line from milepost OND 116.8 at McKenzie to milepost OND 93.8 at CSXT's Bruceton, TN yard limit. The transaction will extend KWT's existing rail line and will facilitate interchange at CSXT's Bruceton Yard from the west.

KWT certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier, and that they will not exceed $5 million annually.

The transaction is scheduled to be consummated within 30 days after the effective date of the exemption (7 days after the exemption was filed).

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34523, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Andrew B. Kolesar III, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 25, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19928 Filed 9–1–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34524]

Riceboro Southern Railway, L.L.C.—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.

The Riceboro Southern Railway, L.L.C. (RSOR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire by purchase from CSX Transportation, Inc. (CSXT), and operate approximately 18.8 route miles of rail line between milepost S512.2 at Ogeechee, GA (near Richmond Hill), in Bryan County, GA, and milepost S531.0 at Riceboro, GA, in Liberty County, GA. The transaction also includes incidental trackage rights granted by CSXT to RSOR over approximately 14 miles of CSXT's line from milepost S512.2 at Ogeechee to milepost S498.0 at CSXT's Southover Yard at Savannah, GA.

RSOR certifies that its projected revenues do not exceed those that would qualify it as a Class III rail carrier, and that they will not exceed $5 million.

The transaction was expected to be consummated on or about August 25, 2004.

This transaction is related to a simultaneously filed verified notice of exemption in STB Finance Docket No. 34525, *K. Earl Durden, Rail Management Corporation, and Rail Partners, L.P.—Continuance in Control Exemption—Riceboro Southern Railway, L.L.C.*, wherein K. Earl Durden, Rail Management Corporation, and Rail Partners, L.P., are seeking an exemption to continue in control of RSOR upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34524, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Andrew B. Kolesar III, Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 25, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–19929 Filed 9–1–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 26, 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 October 4, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0020.

Form Number: IRS Form 709.

Type of Review: Extension.

Title: United States Gift (and Generation-Skipping Transfer) Tax Return.

Description: Form 709 is used by individuals to report transfers subject to the gift and generation-skipping transfer taxes and to compute these taxes. IRS uses the information to enforce these taxes and to compute the estate tax.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 278,500.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—52 min.

Learning about the law or the form—1 hr., 53 min.

Preparing the form—1 hr., 58 min.

Copying, assembling, and sending the form to the IRS—1 hr., 3 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 1,609,730 hours.

OMB Number: 1545–0051.

Form Number: IRS Form 990–C.

Type of Review: Revision.

Title: Farmers' Cooperative Association Income Tax Return.

Description: Form 990–C is used by farmers' cooperatives to report the tax imposed by Internal Revenue code section 1381. The IRS uses the information on the form to determine whether the cooperative has correctly computed and reported its income tax liability.

Respondents: Business or other for-profit, farms.

Estimated Number of Respondents/Recordkeepers: 5,600.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—75 hr., 34 min.

Learning about the law or the form—27 hr., 19 min.

Preparing the form—45 hr., 34 min.

Copying, assembling, and sending the form to the IRS—4 hr., 33 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 856,640 hours.

OMB Number: 1545–0086.

Form Number: IRS Form 1040–C.

Type of Review: Revision.

Title: U.S. Departing Alien Income Tax Return.

Description: Form 1040–C is used by aliens departing the U.S. to report income received or expected to be received for the entire year. The data collected are used to insure that the departing alien has no outstanding U.S. tax liability.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 2,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—2 hr., 4 min.

Learning about the law or the form—45 min.

Preparing the form—2 hr., 20 min.

Copying, assembling, and sending the form to the IRS—59 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 11,632 hours.

OMB Number: 1545–0128.

Form Number: IRS Form 1120–L.

Type of Review: Revision.

Title: U.S. Life Insurance Company Income Tax Return.

Description: Life insurance companies are required to file an annual return of income and compute and pay the tax due. The data is used to insure that companies have correctly reported taxable income and paid the correct tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 2,440.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—83 hr., 41 min.

Learning about the law or the form—40 hr., 6 min.

Preparing the form—62 hr., 47 min.

Copying, assembling, and sending the form to the IRS—5 hr., 37 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 448,007 hours.

OMB Number: 1545–0245.

Form Number: IRS Form 6627.

Type of Review: Extension.

Title: Environmental Taxes.

Description: Form 6627 is attached to Form 720 to complete and collect tax on chemicals, imported chemical substances, and ozone-depleting chemicals.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/ Recordkeepers: 2,894.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—6 hr., 54 min.

Learning about the law or the form—6 min.

Preparing and sending the form to the IRS—12 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 6,971 hours.

OMB Number: 1545–0531.

Form Number: IRS Form 706–NA.

Type of Review: Revision.

Title: United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of Nonresident Not a Citizen of the United States.

Description: Under section 6018, executors must file estate tax returns for nonresident noncitizens who had property in the U.S. Executors use Form 706–NA for this purpose. IRS uses the information to determine correct tax and credits.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 800.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—1 hr., 38 min.

Learning about the law or the form—40 min.

Preparing the form—1 hr., 42 min.

Copying, assembling, and sending the form to the IRS—34 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 3,680 hours.

OMB Number: 1545–0803.

Form Number: IRS Form 5074.

Type of Review: Extension.

Title: Allocation of Individual Income Tax on Guam or the Commonwealth of the Northern Mariana Islands (CNMI).

Description: Form 5074 is used by U.S. citizens or residents as an attachment to Form 1040 when they have $50,000 or more in adjusted gross income from U.S. sources and $5,000 or more in gross income from Guam or the Commonwealth of the Northern Mariana Islands (CNMI). The data is used by IRS to allocate income tax due to Guam or CNMI as required by 26 U.S.C. 7654.

Respondents: Individuals or households, not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 50.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—3 hr., 16 min.

Learning about the law or the form—10 min.

Preparing the form—53 min.

Copying, assembling, and sending the form to the IRS—16 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 232 hours.

OMB Number: 1545–0895.

Form Number: IRS Form 3800.

Type of Review: Revision.

Title: General Business Credit.

Description: Internal Revenue Code (IRC) section 38 permits taxpayers to reduce their income tax liability by the amount of their general business credit, which is an aggregation of their investment credit, jobs credit, alcohol fuel credit, research credit, low-income housing credit, disabled access credit, enhanced oil recovery credit, etc. Form 3800 is used to figure the correct credit.

Respondents: Business or other for-profit, individuals or households, farms.

Estimated Number of Respondents/ Recordkeepers: 272,197.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—15 hr., 46 min.

Learning about the law or the form—1 hr., 23 min.

Preparing and sending the form to the IRS—1 hr., 42 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 5,139,080 hours.

OMB Number: 1545–0904.

Regulation Project Number: INTL–45–86 Final (TD 8125).

Type of Review: Extension.

Title: Foreign Management and Foreign Economic Processes Requirements of a Foreign Sales Corporation.

Description: The regulations provide rules for complying with foreign management and foreign economic process requirements to enable Foreign Sales Corporations to produce foreign training gross receipts and qualify for reduced tax rates. Rules are included for maintaining records to substantiate compliance. Affected public is limited to large corporations that export goods or services.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 11,001.

Estimated Burden Hours Recordkeeper: 2 hours.

Frequency of response: Other (one-time only).

Estimated Total Recordkeeping Burden: 22,001 hours.

OMB Number: 1545–1135.

Form Number: IRS Form 8817.

Type of Review: Extension.

Title: Allocation of Patronage and Nonpatronage Income and Deductions.

Description: Form 8817 is filed by taxable farmers' cooperatives to report their income and deductions by patronage and nonpartronage sources. The IRS uses the information on the form to ascertain the amounts of patronage and nonpatronage income or loss were properly computed.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 1,650.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping—16 hrs., 44 min.

Learning about the law or the form—36 min.

Preparing and sending the form to the IRS—52 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 22,006 hours.

OMB Number: 1545–1142.

Regulation Project Number: INTL–939–86 NPRM.

Type of Review: Extension.

Title: Insurance Income of a Controlled Foreign Corporation for Taxable Years Beginning after December 31, 1986.

Description: The information is required to determine the location of moveable property; allocate income and deductions to the proper category of insurance income, determine those amounts for computing taxable income that are derived from an insurance company annual statement, and permit a CFC to elect to treat related person insurance income as income effectively connected with the conduct of a U.S. trade or business. The respondents will be business or other for-profit institutions.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 500.

Estimated Burden Hours Respondent/ Recordkeeper: 28 hr., 12 min.

Frequency of response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 14,100 hours.

OMB Number: 1545–1355.

Regulation Project Number: REG–208985–89 (formerly INTL–848–890 NPRM.

Type of Review: Extension.

Title: Taxable Year of Certain Foreign Corporations Beginning after July 10, 1989.

Description: Proposed regulations set forth the "required year" for "specified foreign corporations" for taxable years beginning after July 10, 1989, and give guidance on which foreign corporations must change their taxable year and how to effect the change in taxable year. Specified foreign corporations must conform to the required year and must state so on Form 5471.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 700.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 700 hours.

OMB Number: 1545–1615.

Regulation Project Number: REG–118926–97 Final.

Type of Review: Extension.

Title: Notice of Certain Transfers to Foreign Partnerships and Foreign Corporations.

Description: Section 6038B requires U.S. persons to provide certain information when they transfer certain property to a foreign partnership or foreign corporation. This regulation provides reporting rules to identify United States persons who contribute property to foreign partnerships and to ensure the correct reporting of items with respect to those partnerships.

Respondents: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Paul H. Finger, (202) 622–4078, Internal Revenue Service, Room 6516, 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. 04–20026 Filed 9–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2004–59

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2004–59, Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

DATES: Written comments should be received on or before November 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Plan Amendments Following Election of Alternative Deficit Reduction Contribution.

OMB Number: 1545–1889.

Notice Number: Notice 2004–59.

Abstract: Notice 2004–59 sets forth answers to certain questions raised by the public when there is an amendment to an election to take advantage of the alternative deficit reduction contribution described in Public Law 108–218. This notice requires what are designated as restricted amendments.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 100.

Estimated Average Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–20057 Filed 9–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209619–93]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209619–93, Escrow Funds and Other Similar Funds.

DATES: Written comments should be received on or before November 1, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul H. Finger, Internal Revenue Service, Room 6512, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulation the form and instructions should be directed to Carol Savage at Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Escrow Funds and Other Similar Funds.

OMB Number: 1545–1631.

Regulation Project Number: REG–209619–93.

Abstract: These regulations would amend the final regulations for qualified settlement funds (QFSs) and would provide new rules for qualified escrows and qualified trusts used in deferred section 1031 exchanges; pre-closing escrows; contingent at-closing escrows; and disputed ownership funds.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions and Federal, state, local or tribal governments.

Estimated Number of Respondents: 9,300.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 4,650.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 26, 2004.

Paul H. Finger,

IRS Reports Clearance Officer.

[FR Doc. 04–20058 Filed 9–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Members of Senior Executive Service Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of those IRS employees who will be serving as members on IRS' FY2004 SES Performance Review Board(s).

DATES: This notice is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ann Pope, 1111 Constitution Avenue, NW., OS:HC:S, Room 3511, Washington, DC 20224, (202) 622–0601.

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Internal Revenue Service's Senior Executive Service Performance Review Board. The names and titles of the executives serving on this board follow:

John M. Dalrymple, Deputy Commissioner for Operations Support, and Chairperson, Service-wide Performance Review Board
Mark Matthews, Deputy Commissioner for Services and Enforcement
Evelyn A. Petschek, Chief of Staff
Tyrone B. Ayers, Director, Customer Assistance, Relationships and Education (W&I)
Beverly O. Babers, Chief Human Capitol Officer
Carol A. Barnett, Director, Human Resources (W&I)
Gary D. Bell, National Director, Refund Crimes (CI)
Brady R. Bennett, Director, Strategy and Finance (SBSE)
John E. Binnion, Associate CIO for Management & Finance (MITS)
Kevin M. Brown, Commissioner, Small Business & Self-Employed
C. John Crawford III, Director, Customer Account Services (SBSE)
Mary E. Davis, Director, Strategy and Finance (W&I)
James P. Falcone, Acting Director, Agency-wide Shared Services
Sherrill A. Fields, Deputy Director, Taxpayer Education & Communication (SBSE)
Fred L. Forman, Associate Commissioner for Business Systems Modernization (MITS)
Daniel Galik, Chief, Mission Assurance
W. Todd Grams, Chief Information Officer
Thelma Harris, Director, EEO and Diversity Field Services (AWSS)
Thomas R. Hull, Deputy Director, Compliance Field Operations (SBSE)
Nancy J. Jardini, Chief, Criminal Investigation
Frank Keith, Chief, Communications and Liaison
Henry O. Lamar, Jr., Commissioner, Wage and Investment
Terrence H. Lutes, Associate CIO for Information Technology Services (MITS)
Mark J. Mazur, Director, Research, Analysis & Statistics
Deborah M. Nolan, Commissioner, Large and Mid-Size Business
Steven T. Miller, Commissioner, Tax Exempt and Government Entities
Richard J. Morgante, Deputy Commissioner, Wage & Investment
Nina E. Olson, National Taxpayer Advocate
Eileen T. Powell, Chief Financial Officer
Ronald S. Rhodes, Director, Customer Account Services (W&I)
John M. Robinson, Chief, EEO and Diversity
David B. Robison, Chief, Appeals
Dwight J. Sparlin, Director, Operations Policy & Support (CI)
Richard Speier, Jr., Deputy Chief, Criminal Investigation (CI)
Richard Spires, Associate CIO for Modernization Management (MITS)
Linda E. Stiff, Deputy Commissioner, Small Business & Self-Employed
Chris Wagner, Deputy National Taxpayer Advocate

This document does not meet the Department of Treasury's criteria for significant regulations.

Dated: August 20, 2004.

John M. Dalrymple,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. 04–20059 Filed 9–1–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Savings Associations Holding Company Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 1, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Savings Associations Holding Company Application.

OMB Number: 1550–0015.

Form Number: OTS Forms H–(e)1, H–(e)2, H–(e)3, and H–(e)4.

Regulation requirement: 12 CFR Part 574.

Description: This information is collected to determine if a savings and loan holding company has adhered to the statutes, regulations, and condition of approval to acquire an insured institution and whether any of the holding company's activities would be injurious to the operation of the subsidiary savings institution.

Type of Review: Renewal.

Affected Public: Business or for profit.

Estimated Number of Respondents: 96.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 500 hours.

Estimated Total Burden: 48,000 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

By the Office of Thrift Supervision.

Dated: August 27, 2004.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–20071 Filed 9–1–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request— Minimum Security Devices and Procedures

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 1, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Tim Leary, Consumer Protection and Specialized Programs, (202) 906–7170, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Minimum Security Devices and Procedures.

OMB Number: 1550–0062.

Form Number: N/A.

Regulation requirement: 12 CFR part 568.

Description: The Bank Protection Act and OTS implementing regulations require thrifts to establish security devices and procedures. Written security programs allow OTS to evaluate whether thrifts have adopted policies and procedures to ensure compliance with the law and regulations. The Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, and Federal Reserve Board have substantially similar regulations.

Type of Review: Renewal.

Affected Public: Savings associations.

Estimated Number of Respondents: 902.

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 2 hours.

Estimated Total Burden: 1,804 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik., (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: August 27, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–20072 Filed 9–1–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Financial Management Policies—Interest Rate Risk

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 1, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from David Malmquist, Director, Economic Analysis, (202) 906–5639, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS'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;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Financial Management Policies—Interest Rate Risk.

OMB Number: 1550–0094.

Form Number: N/A.

Regulation requirement: 12 CFR 563.176.

Description: This information collection requires that savings associations' management establish policies and procedures for managing interest rate risk. These requirements provide OTS with the information necessary for determining the safety and soundness of the savings association.

Type of Review: Renewal.

Affected Public: Savings associations.

Estimated Number of Respondents: 902.

Estimated Burden Hours per Response: 55 hours.

Estimated Frequency of Response: Quarterly and annually.

Estimated Total Burden: 49,610 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: August 30, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–20073 Filed 9–1–04; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Date/Time: Tuesday, September 7, 2004, 2 p.m.–4 p.m.

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: Building Project, Plans for the September 17 Board Meeting; Other General Issues.

Contact: Tessie Higgs, Executive Office, Telephone (202) 429–3836

Dated: August 30, 2004.

Harriet Hentges,

Executive Vice President, United States Institute of Peace.

[FR Doc. 04–20098 Filed 8–31–04; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Chiropractic Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Chiropractic Advisory Committee will meet Tuesday, October 19, 2004, from 8:15 a.m. until 5 p.m. at 810 Vermont Avenue, NW., Room 830, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide direct assistance and advice to the Secretary of Veterans Affairs in the development and implementation of the chiropractic health program. Matters on which the Committee shall assist and advise the Secretary include protocols governing referrals to chiropractors and direct access to chiropractic care, scope of practice of chiropractic practitioners, definitions of services to be provided and such other matters as the Secretary determines to be appropriate.

At its October 19 meeting, the Committee will receive an update on the status of implementing VA's chiropractic care program and a briefing on VA's research programs. The Committee will also complete its final report.

Any member of the public wishing to attend the meeting is requested to contact Ms. Sara McVicker, RN, MN, Designated Federal Officer, at (202) 273–8558 no later than 5 p.m. eastern time on Thursday, October 14, 2004, in order to facilitate entry to the building. Oral comments from the public will not be accepted at the meeting. It is preferred that any comments be transmitted electronically to *sara.mcvicker@mail.va.gov* or mailed to: Chiropractic Advisory Committee, Medical Surgical Services SHG (111), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: August 26, 2004.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–20054 Filed 9–1–04; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Geriatrics and Gerontology Advisory Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Geriatrics and Gerontology Advisory Committee (GGAC) will be held on September 28, 2004, at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC. The meeting will convene in Room 530 at 8:30 a.m. and conclude at 5 p.m. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs and the Under Secretary for Health on all matters pertaining to geriatrics and gerontology by assessing the capability of VA health care facilities to meet the medical, psychological, and social needs of older veterans and by evaluating VA facilities designated as Geriatric Research, Education and Clinical Centers (GRECCs).

Presentations will include VA's Long-Term Care Strategic Plan and Long-Term Care Planning Model; Office of Academic Affiliations—VA Geriatric Education (size, scope and outcomes of individual programs); review of GRECC contributions to VA and methods of rating individual GRECC's performance; review of progress on projects in Assisted Living and All-Inclusive Care authorized by the Millennium Act; changes to research funding methodology and research tracking data base.

No time will be allocated at this meeting for receiving oral presentations from the public. Interested parties can provide written comments for review by the Committee in advance of the meeting to Mr. Daniel Converse, Designated Federal Officer, Geriatrics and Extended Care Strategic Healthcare Group (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Individuals who wish to attend the meeting should contact Ms. Jacqueline Holmes, Staff Assistant, at (202) 273–8539.

Dated: August 23, 2004.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–20048 Filed 9–2–04; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 69, No. 170
Thursday, September 2, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA159–5083a: FRL–7805–7]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revision of Flow Control Date in Nitrogen Oxides Budget Trading Program

Correction

In rule document 04–19432 beginning on page 52174 in the issue of Wednesday, August 25, 2004 make the following correction:

§52.2420 [Corrected]

On page 52176, §52.2420(c), the table should read as set forth:

§ 52.2420 Identification of plan.

* * * * *

(c) *EPA approved regulations.*

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
* * *	*	*	*	*
Chapter 140	NO_X Budget Trading Program [Part I]			
Part I Emission Standards				
* * *	*	*	*	*
Article 6	NO_X Allowance Tracking System			
* * *	*	*	*	*
5–140–550	Banking	March 24, 2004	August 25, 2004 [Insert Federal Register page citation].	
* * *	*	*	*	*

[FR Doc. C4–19432 Filed 9–1–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
September 2, 2004

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 19 and 52
Federal Acquisition Regulation; Applicability of SDB and HUBZone Price Evaluation Factor; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAR Case 2003–015]

RIN 9000–AK02

Federal Acquisition Regulation; Applicability of SDB and HUBZone Price Evaluation Factor

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR), at the request of the Small Business Administration, in order to remove some of the exceptions to the applicability of the Small Disadvantaged Business (SDB) and HUBZone price evaluation factor.

DATES: Interested parties should submit comments in writing on or before November 1, 2004, to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2003–015 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2003–015@gsa.gov*. Include FAR case 2003–015 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (V), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2003–015 in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Cecelia Davis, Procurement Analyst, at (202) 219–0202. Please cite FAR case 2003–015.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes to amend FAR 19.1103(a) and FAR 19.1307(b) in order to remove the exceptions to the Small Disadvantaged Business (SDB) and HUBZone preference programs that direct the contracting officer not to apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act (19 U.S.C. 2501, *et seq.*) or where application of the factor would be inconsistent with a Memorandum of Understanding (MOU) or other international agreement.

The Councils are proposing these changes for the following reasons:

- These exceptions result in more favorable treatment for offers of eligible products or qualifying country products than an offer from a U.S. large business, or, in the case of the SDB preference, even an offer from a U.S. small business. The basic goal of the trade agreements and other international agreements is to provide nondiscriminatory treatment for certain foreign products, not preferential treatment.
- The Trade Agreements Act (19 U.S.C. 2511(f)) specifically restricts the authority of the President to authorize the waiver of any small business or minority preferences.
- With regard to the exception relating to MOUs or other international agreements, DoD MOUs do not override small business preferences. The Councils were unable to identify any other MOU or international agreement that is inconsistent with the application of a preference for small business. If any international agreement supercedes a small business preference, it should be specifically identified, either in the FAR if it is Governmentwide, or in an agency supplement. The contracting officer is not in a position to know when application of the factor would be inconsistent with an MOU or international agreement.

Conforming amendments are required in the associated clauses at 52.219–4, Notice of Price Evaluation Preference for HUBZone Small Business Concerns, and 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns. Conforming date changes are also required for the clause at 52.212–5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because it would reduce the exceptions to the preference for small disadvantaged businesses and HUBZone small businesses. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. The Analysis is summarized as follows:

This proposed rule was initiated at the request of the Small Business Administration in order to remove preferential treatment for certain offers of foreign products in acquisitions intending to provide a preference for small disadvantaged business concerns or HUBZone small business concerns. The objective of this proposed rule is to remove exceptions to the Small Disadvantaged Business (SDB) and HUBZone preference programs that direct the contracting officer not to apply a price evaluation adjustment to offers of eligible products in acquisitions subject to the Trade Agreements Act or where application of the factor would be inconsistent with a Memorandum of Understanding (MOU) or other international agreement. The legal basis for the proposed rule is 19 U.S.C. 2501, *et seq.* and 15 U.S.C. 631(note). The proposed rule applies to all offerors in acquisitions that provide a preference for small disadvantaged business concerns or HUBZone small business concerns. Because of the reduced exceptions to the preferences, this rule will have a beneficial impact all domestic concerns, especially small entities that are small disadvantaged business concerns or HUBZone small business concerns.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR parts in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C 601, *et seq.* (FAR case 2003–015), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: August 26, 2004.

Laura Auletta,

Director, Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 19 and 52 as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS PROGRAMS

19.1103 [Amended]

2. Amend section 19.1103 by—

a. Adding "or" to the end of paragraph (a)(1);

b. Removing paragraphs (a)(2), (a)(3), and (a)(5); and redesignating paragraph (a)(4) as (a)(2); and

c. Removing "; or" from the end of newly redesignated paragraph (a)(2) and adding a period in its place.

19.1307 [Amended]

3. Amend section 19.1307 by—

a. Adding "or" to the end of paragraph (b)(1);

b. Removing the semicolon from the end of paragraph (b)(2) and adding a period in its place; and

c. Removing paragraphs (b)(3) and (b)(4).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–5 [Amended]

4. Amend section 52.212–5 by—

a. Revising the date of the clause to read "(Date)";

b. Removing "(Jan 1999)" from paragraph (b)(3) of the clause and adding "(Date)" in its place; and

c. Removing "(June 2003)" from paragraph (b)(10)(i) of the clause and adding "(Date)" in its place.

52.219–4 [Amended]

5. Amend section 52.219–4 by—

a. Revising the date of the clause to read "(Date)"; and

b. Adding "and" to the end of paragraph (b)(1)(i) of the clause; removing the semicolon from the end of paragraph (b)(1)(ii) and adding a period in its place; and removing paragraphs (b)(1)(iii) and (b)(1)(iv).

6. Amend section 52.219–23 by revising the date of the clause and paragraph (b)(1) to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (DATE)

* * * * *

(b) *Evaluation adjustment.* (1) The Contracting Officer will evaluate offers by adding a factor of _____ [*Contracting Officer insert the percentage*] percent to the price of all offers, except—

(i) Offers from small disadvantaged business concerns that have not waived the adjustment; and

(ii) For DoD, NASA, and Coast Guard acquisitions, an otherwise successful offer from a historically black college or university or minority institution.

* * * * *

[FR Doc. 04–20003 Filed 9–1–04; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Thursday,
September 2, 2004

Part III

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 59
Livestock Mandatory Reporting; Amendment To Revise Lamb Reporting Definitions; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 59

[Docket No. LS–01–08]

RIN 0581–AB98

Livestock Mandatory Reporting; Amendment To Revise Lamb Reporting Definitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Livestock Mandatory Reporting regulations to modify the requirements for the submission of information on domestic and imported boxed lamb cuts sales. This rule amends the definition of "carlot-based" by inserting language to limit carlot-based sales of boxed lamb cuts to transactions between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items. This rule also amends the definition of "importer" by reducing the volume level of annual lamb imports establishing a person as an importer from 5,000 metric tons of lamb meat products per year to 2,500 metric tons. This amendment will improve the accuracy and reliability of the data being reported by the Agricultural Marketing Service (AMS) on domestic boxed lamb cuts sales by ensuring that the bulk of data being reported is representative of the market, thus enabling producers to evaluate market conditions and make more informed marketing decisions. This amendment will also increase the volume of imported products that will be reported to AMS, which will permit AMS to publish reports on the sales of imported boxed lamb cuts.

DATES: Effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Livestock and Seed Program, Agricultural Marketing Service, USDA, 1400 Independence Avenue, SW., Room 2619—South Building, Stop 0252, Washington, DC 20250–0242; telephone (202) 720–6231, facsimile (202) 690–3732, e-mail *john.vandyke@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Livestock Mandatory Reporting Act of 1999 (Act) [7 U.S.C. 1635h–1636h], regulations implementing a mandatory program of reporting information related to the marketing of cattle, swine, lambs, and products of such livestock, were published in the **Federal Register** on December 1, 2000 (65 FR 75464). This Livestock Mandatory Reporting (LMR) program requires the submission of market information by packers who have annually slaughtered an average of 125,000 cattle or 100,000 swine over the most recent 5 calendar year period, or have annually slaughtered or processed an average of 75,000 lambs over the most recent 5 calendar year period. Importers who have annually imported an average of 5,000 metric tons of lamb meat products over the most recent 5 calendar year period are also subject to mandatory reporting requirements. The LMR program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products that can be readily understood by producers, packers, and other market participants.

Section 241 of the Act gives the Department of Agriculture (USDA) authority to establish a mandatory lamb price reporting program that will, (1) provide timely, accurate, and reliable market information; (2) facilitate more informed marketing decisions; and (3) promote competition in the lamb slaughtering industry. AMS established submission requirements for lamb packers and lamb importers in accordance with this authority based upon its extensive knowledge of the lamb industry gained through a program of voluntary market information reporting of lamb.

Under the mandatory lamb price reporting program, packers are required to report information daily on domestic sales of boxed lamb cuts each reporting day including prices for sales, the type of sale, the branded product characteristics, the quantity of each sale, the USDA grade, trim specification, weight range, delivery period, the quantity of boxes of each cut, the weight range of each cut, and the product state of refrigeration. USDA reports on domestic boxed lamb cut sales to the public once each reporting day.

For any calendar year, a lamb importer who imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years is required to report to USDA weekly the prices received for imported lamb cuts sold on the domestic market. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years is also required to report the above information, if USDA determines that the person should be considered an importer based on their volume of lamb imports.

Because there are not enough daily sales of imported products to meet the confidentiality guidelines and allow USDA to publish daily reports, lamb importers are required to report weekly prices received for sales of imported boxed lamb cuts sold on the domestic market during the prior week including the quantity of each transaction, the type of sale, the branded product characteristics, the product state of refrigeration, the cut of lamb, the trim specification, the cut weight range, and the product delivery period.

Boxed lamb is defined in the LMR regulations to mean those carlot-based portions of a lamb carcass including fresh primals, subprimals, cuts fabricated from subprimals, excluding portion-control cuts such as chops and steaks similar to those portion cut items described in the Institutional Meat Purchase Specifications (IMPS) for Fresh Lamb and Mutton Series 200, and thin meats (*e.g.*, inside and outside skirts, pectoral meat, cap and wedge meat, and blade meat) not older than 14 days from date of manufacture; fresh ground lamb, lamb trimmings, and boneless processing lamb not older than 7 days from date of manufacture; frozen primals, subprimals, cuts fabricated from subprimals, and thin meats not older than 180 days from date of manufacture; and frozen ground lamb, lamb trimmings, and boneless processing lamb not older than 90 days from date of manufacture.

In the period since the implementation of the LMR program on April 2, 2001, the current collection of boxed lamb cuts market information has prevented AMS from publishing meaningful market information on sales of imported and domestic boxed lamb cuts. Because of this, the current definitions of the terms "carlot-based" and "importer" under the LMR regulations need to be amended.

In the LMR regulations, the term "carlot-based" is defined as, "any transaction between a buyer and a seller destined for three or less delivery stops consisting of one or more individual boxed lamb items or any combination of carcass weights." However, in practice, the definition of carlot-based has resulted in having virtually all sales of boxed lamb cuts reported, including distributive-based transactions, as frequently packers of boxed lamb cuts do not know the exact number of stops a truck will make at the time that the prices are established and the sales are made.

Distributive-based sales are largely comprised of unique, value-added

products in which prices often reflect added customer services. Because of the uniqueness of the distributive trade and the potential effect that the inclusion of such information might have on the aggregated reports AMS would publish, it was not intended to include the information in the LMR program. Such information may create a perception of wide price ranges in market reports for boxed lamb cuts and could send misleading signals to producers and packers as to the true direction of the market direction.

AMS has discussed and reviewed the issue of carlot-based and distributive-based transactions with lamb industry packers and processors. Based upon its review of this matter, including actual reporting on a 1,000 pounds or more basis, AMS believes that the 1,000 pound threshold is a more accurate dividing line between carlot-based sales and distributive-based sales and is consistent with the original intent of the regulation.

In order to conform to the original intent of not including these types of transaction, AMS is amending the boxed lamb cuts portion of the definition of "carlot-based" (7 CFR 59.300) by limiting reportable sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items. The 1,000 pound threshold is intended to separate out distributive-based transactions. This final rule amends the definition of "carlot-based" to read, "The term 'carlot-based', when used in reference to lamb carcass sales, means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights, provided, however, that when used in reference to boxed lamb cuts sales, the term 'carlot-based' means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items."

AMS is establishing the 1,000 pound threshold as the level dividing the majority of carlot-based sales from distributive-based sales. AMS believes that the 1,000 pound threshold will limit the submission of information on boxed lamb cut sales to more significant sales allowing AMS to publish more accurate and timely information on the boxed lamb cuts market while reducing the submission of information by covered lamb packers.

In the LMR regulations, the term "importer" (7 CFR 59.300) is defined as, "any person engaged in the business of importing lamb meat products that takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports."

Because imported products comprise over one-third of the U.S. market (based on U.S. Census Bureau data, 66,882 metric tons in 2002) and can affect prices for domestic lamb, lamb importers were included for more complete information on lamb meat products being imported into the U.S., including the types, quantities, and prices of these products.

In the comment period prior to the publication of the final rule for the LMR program, AMS received five comments expressing concern that the lamb import threshold of 5,000 metric tons and the domestic lamb packer threshold of an average 75,000 head per year for each of the preceding 5 years were not comparable. These commenters believed that the threshold for lamb importers was set too high in relation to the domestic packer threshold and should be lowered to ensure adequate coverage of the imported lamb market. At that time, AMS expressed concern that lowering the threshold would increase the number of smaller importers that would be required to report. AMS believed that the products imported by many of these operations were so unique that AMS would be unable to report them without disclosing proprietary information. AMS expected that the 5,000 metric ton lamb importer threshold would cover a comparable percentage of the lamb imports as slaughter and processing are being covered by the cattle, swine and lamb packer definitions, or approximately 80% of lamb imported into the U.S.

During the period since the implementation of the LMR program on April 2, 2001, AMS has determined that the 5,000 metric ton provision limits the number of covered importers to a level below that which is necessary to ensure confidentiality of published information. As a result, AMS has been unable to publish market information on sales of imported boxed lamb cuts.

When AMS formulated its initial estimates on the number of importers that would be required to report under LMR, it was anticipated that six companies would meet the 5,000 metric ton threshold. However, after implementation of the LMR program, it was determined that the 5,000 metric ton threshold did not cover a sufficient number of lamb importers necessary to publish market information on imported lamb in accordance with the confidentiality provisions of the Act. After analyzing U.S. Customs Service data for total lamb imported for each of the 5 years between 1998 and 2002, AMS believes that a 2,500 metric ton threshold will cover eight lamb importers which will allow AMS to collect and publish market reports on the imported boxed lamb cuts market in accordance with the confidentiality provisions of the Act.

AMS is amending the definition of "importer" to lower the existing 5,000 metric ton provision to 2,500 metric tons. This final rule amends the definition of "importer" to read, "The term "importer" means any person engaged in the business of importing lamb meat products who takes ownership of such lamb meat products with the intent to sell or ship in U.S. commerce. For any calendar year, the term includes only those that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years, if USDA determines that the person should be considered an importer based on their volume of lamb imports.

The establishment of the 2,500 metric tons provision will be more consistent with the 75,000 head provision defining a lamb packer for purposes of livestock mandatory reporting. The 2,500 metric ton provision is equal to approximately 5.5 million pounds of lamb meat product ($2,500 \times 2204.6 = 5,511,500$ pounds). The 75,000 head provision is equal to approximately 5.1 million pounds of lamb meat product based upon an average lamb carcass weight of 68 pounds (National Agricultural Statistics Service data for 2002) ($75,000 \times 68 = 5,100,000$ pounds).

Summary of Comments

On October 27, 2003, AMS published a proposed rule for comment in the **Federal Register**. The comment period ended on December 26, 2003. USDA received seven comments. The majority of which were submitted by industry associations representing sheep producers and feeders, with a marketing information center, a representative of a foreign government, and another interested person commenting.

Three of the commenters expressed general support for the amendments as proposed. One of the commenters expressed general opposition to the LMR program and thus also to the amendments as proposed.

Two of commenters urged AMS to set the threshold for defining an importer such that the portion of the market covered by the LMR regulations is equal for imported and domestic boxed lamb and contended that it should be set at 2,000 metric tons rather than the proposed 2,500 metric tons. The respondents also recommended that AMS should, (1) Design a system to capture and report prices on distributive sales, and (2) evaluate the parts of the definition of "boxed lamb" using the manufacture date as part of the criteria and make adjustments to the "older than" requirement so that product that was manufactured prior to the dates described in the definition does not disqualify these products from reporting under LMR.

Another commenter also encouraged AMS to continue to review the threshold level for defining an importer and to continue to review the economic impacts associated with all reporting requirements to determine the overall efficacy of the program.

Agency Response

AMS will continue to review the threshold for defining an importer to ensure that the portion of the market covered by the LMR regulations is equal for imported and domestic boxed lamb. AMS believes that a 2,500 metric ton level is more consistent with the 75,000 head threshold used to define a lamb packer. In 2002, the average lamb carcass weighed 68 pounds, which places the 75,000 threshold at 5.1 million pounds. The pound equivalent of 2,500 metric tons is 5.5 million pounds.

AMS continually strives to improve all of our market reports and the overall efficacy of our reporting services. The Act contains a sunset provision and will expire in October 2004, unless further action is taken by Congress. Upon renewal of the Act, AMS would examine program costs and benefits as part of future rulemakings.

With the respect to the other recommendations made by the commenters concerning reporting information on distributive based sales and the definition of boxed lamb, these recommendations are not within the scope of this rulemaking. However, these recommendations may be reconsidered as part of any future rulemaking, if deemed appropriate.

Executive Orders 12866 and 12988

Although not economically significant, this rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget (OMB). Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the action, an examination of alternative approaches, and an analysis of the benefits and costs.

Need for Action. As stated in the background section, the current definition of carlot-based in the LMR regulations has resulted in requiring nearly all sales of boxed lamb cuts to be reported, including distributive-based transactions. It was not the Agency's intent to include this type of information in the LMR program as is it may have created a perception of wide price ranges in market reports for boxed lamb cuts and could send misleading signals to producers and packers as to the true direction of the market.

AMS believes that amending the boxed lamb cuts portion of the definition of "carlot-based" by limiting reportable sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items will limit the submission of information on boxed lamb cut sales to significant sales, thus allowing AMS to publish more accurate and reliable market information and reduce the submission of information by covered lamb packers.

The current definition of "importer" in the LMR regulations has also resulted in difficulties in reporting market information on sales of imported boxed lamb cuts. For any calendar year, the term "importer" includes only those that import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years. AMS expected that the 5,000 metric ton threshold would cover a comparable percentage of lamb imports as slaughter and processing are being covered by the cattle, swine, and lamb packer definitions, or approximately 80% of lamb imported into the U.S. However, this has not been the case. When this program was initially implemented, only two importers would have been covered under the LMR program which hindered AMS' ability to collect and publish market information on imported boxed lamb cuts.

AMS believes that amending the definition of importer to lower the existing 5,000 metric ton threshold to 2,500 metric tons will now cover eight lamb importers and will allow AMS to collect and publish market reports on the imported boxed lamb cuts market.

Alternatives. Various methods were considered by which the objectives of the rule could be accomplished. The Agency looked at other ways of defining carlot-based such that distributive-sales would not be covered, including using 500 pounds as the threshold. However, after discussions with lamb industry packers and processors, AMS believes that a 500 pound threshold could result in the inclusion of products for which prices could be established on factors other than the market value and that a 1,000 pound threshold would be a more accurate dividing line between carlot-based sales and distributive-based sales.

The Agency also looked at other ways of defining the term importer. AMS received several comments in the comment period prior to the publication of the final LMR regulations which supported a threshold of 2,500 metric tons in defining an importer. At that time, AMS believed that this level would preclude AMS from reporting a significant number of transactions due to confidentiality guidelines. However, AMS now believes that lowering the threshold to 2,500 metric tons will cover eight importers which is a sufficient number of importers to allow AMS to publish market information without disclosing proprietary information.

Summary of Benefits. This action will allow AMS to collect and publish market reports on the imported boxed lamb cuts market. As imports account for over one-third of the U.S. market and can greatly impact the prices for domestic lamb, implementation of this rule will enable participants to better evaluate market conditions and make more informed marketing decisions, thus improving the reporting services of AMS.

Summary of Costs. In the final LMR regulations (65 FR 75464), AMS prepared a complete cost analysis of the LMR program. This amendment is not anticipated to substantially change these prior estimates. AMS estimates that the total annual burden on each small lamb importer will remain at $2,070, including $87 for annual costs associated with electronically submitting data, $150 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimates that the total annual burden on each small lamb packer will remain at $7,860, including

$5,875 for annual costs associated with electronically submitting data, $150 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. The estimate of the number of importers that will be required to report has increased from six to eight.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. States and political divisions of States are specifically preempted by § 259 of the Act from imposing requirements in addition to, or inconsistent with, any requirements of the Act with respect to the submission or publication of information on the prices and quantities of livestock or livestock products. Further, the Act does not restrict or modify the authority of the USDA to administer or enforce the Packers and Stockyards Act, 1921 (7 U.S.C. 181 *et seq.*); administer, enforce, or collect voluntary reports under the Act or any other laws; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

In promulgating the final LMR regulations (65 FR 75464), AMS considered the potential civil rights implications on minorities, women, or persons with disabilities and prepared a Civil Rights Impact Analysis to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or family status.

These amendments to the LMR regulations do not alter any of the findings of the Civil Rights Impact Analysis on the LMR regulations.

Regulatory Flexibility Act

This rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). The purpose of the RFA is to consider the economic impact of a rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The Act (7 U.S.C. 1635–1636) requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the Act and by the LMR regulations and exists nowhere else. Therefore, the LMR regulations do not duplicate market information reasonably accessible to the Agency.

In formulating this rule, particular consideration was given to reducing the burden on entities while still achieving the objectives of the LMR regulations. Accordingly, thresholds were set which would redefine those sales transactions considered to be "carlot-based" and therefore required to be reported under the LMR program, and those entities which would be required to report information on sales of imported boxed lamb cuts including applicable branded product.

This final rule will require packers to report information on carlot-based sales transactions of boxed lamb cuts consisting of 1,000 pounds or more of one or more individual boxed lamb items. The definition of "carlot-based" will be amended to read, "The term 'carlot-based', when used in reference to lamb carcass sales, means any transaction between a buyer and a seller destined for three or less delivery stops consisting of any combination of carcass weights. When used in reference to boxed lamb cuts sales, the term 'carlot-based' means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items."

Additionally, this final rule will also require importers that imported an average of 2,500 metric tons of lamb meat products per year to report information on sales transactions of boxed lamb cuts. The definition of "importer" will be amended to read, "For any calendar year, lamb importers that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report. Additionally, lamb importers that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years if the USDA determines that the person should be considered an importer based on the volume of lamb imports are required to report."

Implementation of the amendment redefining the term "carlot-based" will not change the number of entities required to submit information on sales of boxed lamb cuts under the LMR regulations.

Implementation of the amendment redefining the term "importer" will slightly increase the original estimate of the number of lamb importers required to submit information on sales of imported boxed lamb cuts under the LMR regulations. After analyzing the U.S. Customs Service data for total lamb imported into the U.S. by importer for each of the 5 years between 1998 and 2002, AMS believes that the 2,500 metric ton threshold will now cover eight importers of lamb into the U.S. (one importer is also a packer).

Accordingly, AMS has also prepared a regulatory flexibility analysis. The RFA compares the size of meat packing plants to the Standard Industrial Code (SIC) established by the Small Business Administration (SBA) (13 CFR 121.201) to determine the percentage of small businesses within the meat packing industry and the wholesale meat products trade, including importers. Under these size standards, meat packing companies with 500 or less employees are considered small business entities (SIC 2011) and lamb importers with 100 or less employees are considered small business entities (SIC 5147).

The objective of this rule is to improve the price and supply reporting services of USDA. AMS believes that this objective can be accomplished by amending the definitions of the terms "carlot-based" and "importer" in the LMR regulations.

The LMR regulations provide for the mandatory reporting of market information by livestock packers who for any calendar year have slaughtered a certain number of livestock during the immediately preceding 5 calendar years. Lamb plants required to report include those that for any calendar year slaughter or process the equivalent of 75,000 head per year during the immediately preceding 5 calendar years. Additionally, for any calendar year lamb importers that imported an average of 5,000 metric tons of lamb meat products per calendar year during the immediately preceding 5 calendar years are also required to report details of their purchases. Additionally, lamb packers and lamb meat processors and importers that did not slaughter or process the equivalent of 75,000 head per year or import 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years are required to report if the USDA determines that they should be considered an importer based on their volume of lamb imports. This rule amends the LMR regulations to redefine those entities considered as importers

by changing the 5,000 metric ton provision to 2,500 metric tons.

These packers and importers are required to report the details of all transactions involving domestic sales of boxed lamb cuts including applicable branded product, and imported boxed lamb cuts including applicable branded product to AMS. Lamb information is reported to AMS according to the schedule mandated by the LMR regulations with sales of boxed lamb cuts reported once each day. Previous week sales of imported boxed lamb cuts including applicable branded boxed lamb cuts are reported once weekly on the first reporting day of the week.

For any calendar year, lamb packers required to report include those that slaughtered or processed the equivalent of 75,000 head per year during each of the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years but are determined to be a packer by USDA based on the capacity of the processing plant. For any calendar year, an importer that imported an average of 2,500 metric tons of lamb meat products per year during the immediately preceding 5 calendar years will be required to report under this rule. Additionally, a lamb importer that did not import an average of 2,500 metric tons of lamb meat products during the immediately preceding 5 calendar years will also be required to report under this proposed rule if USDA determines that the person should be considered an importer based on the volume of lamb imports. Under this proposal, 20 individual plants including importers would be required to report information on boxed lamb sales. Based on the criteria established by the SBA to classify small businesses (SIC 2011 and 5147), all 20 of these lamb plants and importers would be considered small businesses with no lamb packer employing more than 500 people and no lamb importer employing more than 100 people. The figure of 20 lamb packer and importer plants required to report represents approximately 3.0% of the lamb plants and importers in the U.S. Nearly all of the remaining approximately 97.0% of lamb plants and importers would be considered small businesses and would be exempt from mandatory reporting.

The LMR regulations require the reporting of specific market information regarding the buying and selling of livestock and livestock products. The information is reported to AMS by electronic means and the adoption of this rule will not affect this requirement. Electronic reporting involves the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer is required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it is aggregated and processed into various market reports which are released according to the daily and weekly time schedule set forth in the LMR regulations. As an alternative, AMS also developed and made available web-based input forms for submitting data online as AMS found that some of the smaller entities covered under mandatory price reporting would benefit from such a web-based submission system.

In the LMR regulations, AMS estimated the total annual burden on each small lamb packer to be $7,860 including $5,875 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. AMS estimated the total annual burden on each small importer of lamb to be $2,070 including $87 for annual costs associated with electronically submitting data, $150.00 for annual share of initial startup costs of $750, and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

This rule does not substantially change these prior estimates. While adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the number of lamb importers required to report to eight, the estimated annual cost burden per importer of $2,070 remains the same. Amending the definition for the term "carlot-based" by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items is expected to lessen the number of covered sales transactions that are submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

Each packer and importer required to report information to USDA must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required by the LMR regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Reporting packers and importers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers and importers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they are not required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that is imposed on the packers and importers is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, AMS has not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule.

Professional skills required for recordkeeping under the LMR regulations are not different than those already employed by the reporting entities. Reporting is accomplished using computers or similar electronic means. This rule does not affect the professional skills required for recordkeeping.

The LMR regulations require lamb slaughter and processing plants and lamb importers of a certain size to report information to the USDA at prescribed times throughout the day and week. The LMR regulations already exempt many small businesses by the establishment of daily slaughter, processing, and import capacity thresholds. Based on figures published by the National Agricultural Statistics Service, there were 525 lamb federally inspected slaughter plants operating in the U.S. at the end of 2002. The LMR regulations require 20 lamb packers and importers to report information (approximately 2% of all federally inspected lamb plants and approximately 1% of all lamb importers). Therefore, approximately 98% of all lamb packers and approximately 99% of lamb importers

are not required to report. As discussed earlier, this rule does not change this requirement.

With regard to alternatives, if the definitions of importer and carlot-based are not changed, AMS would continue to be hindered in reporting more accurate and reliable information on sales of imported and domestic boxed lamb cuts.

AMS will continue to work actively with those small businesses required to report to minimize the burden on them to the maximum extent practicable.

Paperwork Reduction Act

In accordance with OMB regulation (5 CFR part 1320) that implements the Paperwork Reduction Act (44 U.S.C. chapter 35), the information collection has been previously approved by OMB and assigned OMB control number 0581–0186. A revised information collection package was submitted and approved by OMB for a 15 hour increase in total burden hours.

The purpose of this rule is to amend the LMR regulations (65 FR 75464) to modify the requirement for the submission of information on domestic and imported boxed lamb cuts sales. All other provisions of the LMR regulations will remain the same. Adjusting the 5,000 metric ton provision that establishes those lamb importers covered under the LMR regulations to 2,500 metric tons increases the estimated number of lamb importers required to report from six to eight. This change will not substantially impact the overall total burden hours. The estimated annual cost burden per importer of $2,070 remains the same. Amending the definition for the term "carlot-based" by limiting covered sales of boxed lamb cuts to those consisting of 1,000 pounds or more of one or more individual boxed lamb items is expected to lessen the number of covered sales transactions required to be submitted to AMS. However, AMS's submission burden estimates were based on lamb packers and importers using electronic reporting methods to automatically compile and submit required information. AMS believes the burden savings resulting from electronically compiling and submitting a reduced number of sales transactions to be negligible considering that the speed of electronic systems is measured in milliseconds.

AMS is committed to implementation of the Government Paperwork Elimination Act which provides for the use of information resources to improve the efficiency and effectiveness of governmental operations, including providing the public with the option of submitting information or transacting business electronically to the extent practicable.

List of Subjects in 7 CFR Part 59

Lamb, Livestock, Reporting, Importer.

■ For the reasons set forth in the preamble, Chapter I, of Title 7 of the Code of Federal Regulations is amended as follows:

PART 59—LIVESTOCK MANDATORY REPORTING

■ 1. The authority citation for part 59 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.*

Subpart D—Lamb Reporting

■ 2. The definition of the term *Carlot-based* is revised to read as follows:

§ 59.300 Definitions.

* * * * *

Carlot-based. The term *Carlot-based* when used in reference to lamb carcass sales means any transaction between a buyer and a seller destined for three or more delivery stops consisting of any combination of carcass weights. When used in reference to boxed lamb cuts sales, the term *Carlot-based* means any transaction between a buyer and a seller consisting of 1,000 pounds or more of one or more individual boxed lamb items.

* * * * *

■ 3. In the definition of the term *Importer*, the number "5,000" is revised to read "2,500" each time it appears.

Dated: August 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–19985 Filed 9–1–04; 8:45 am]

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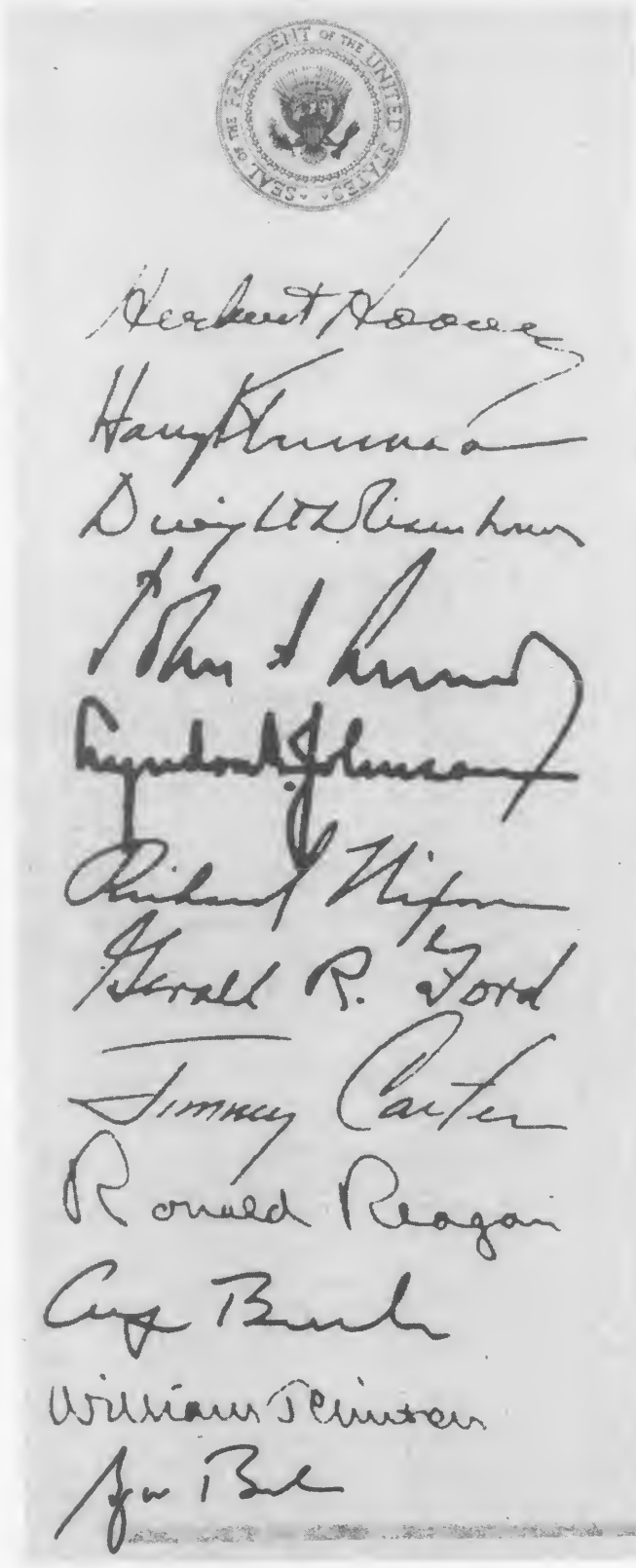

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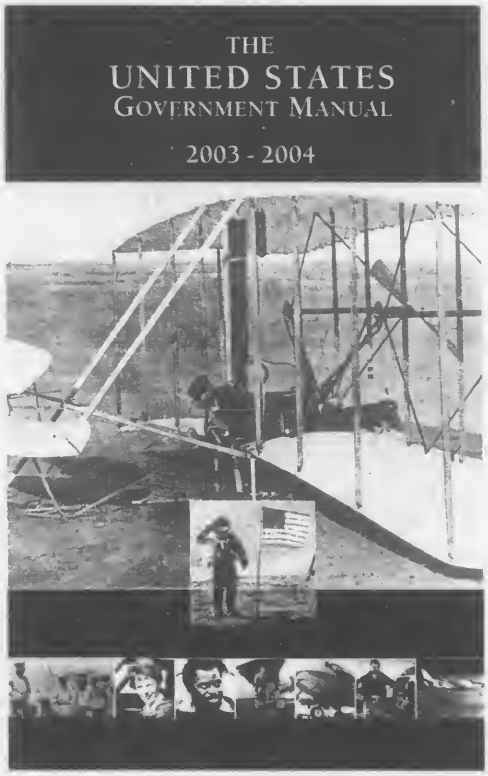

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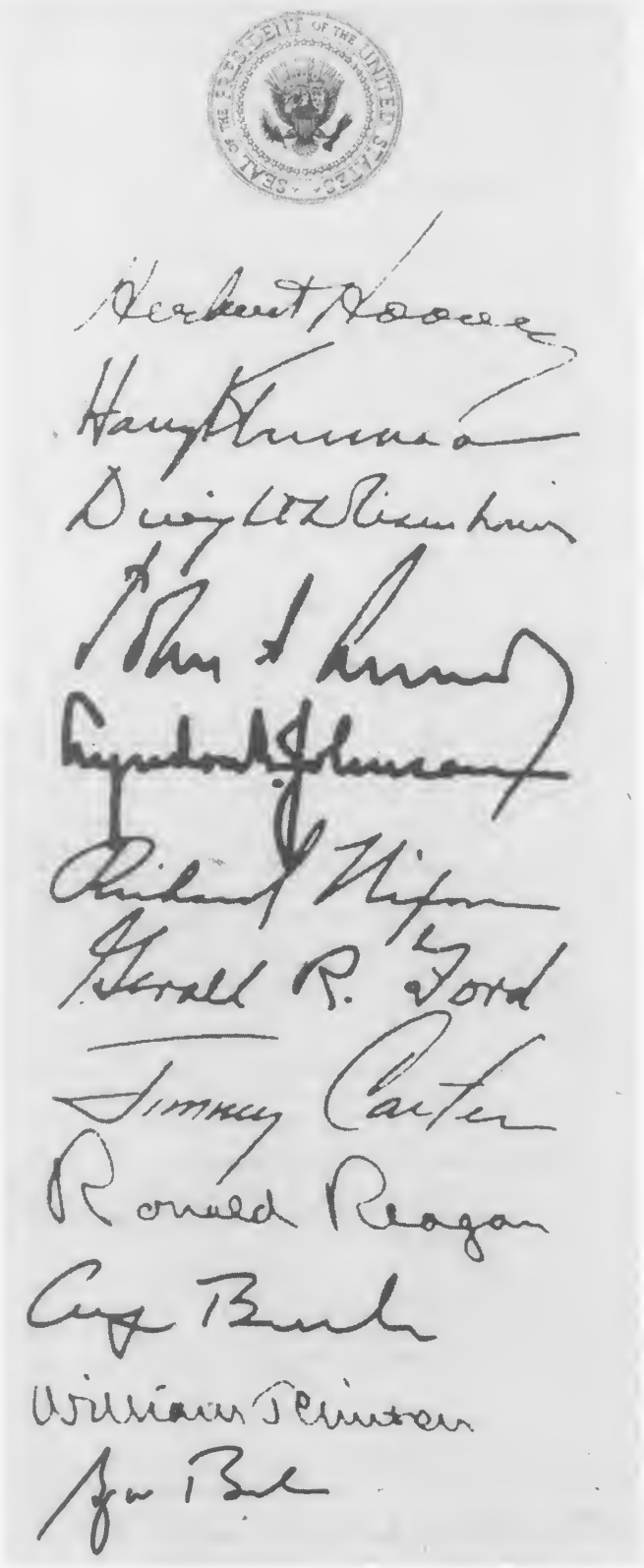

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