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9–28–04 Tuesday
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Presidential Documents

Title 3—

The President

Presidential Determination No. 2004–47 of September 15, 2004

Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for FY05

Memorandum for the Secretary of State

Pursuant to section 706(1) of the Foreign Relations Authorization Act, Fiscal Year 2003 (Public Law 107–228) (FRAA), I hereby identify the following countries as major drug-transit or major illicit drug producing countries: Afghanistan, The Bahamas, Bolivia, Brazil, Burma, China, Colombia, Dominican Republic, Ecuador, Guatemala, Haiti, India, Jamaica, Laos, Mexico, Nigeria, Pakistan, Panama, Paraguay, Peru, Venezuela, and Vietnam.

The Majors List applies by its terms to "countries." The United States Government interprets the term broadly to include entities that exercise autonomy over actions or omissions that could lead to a decision to place them on the list and, subsequently, to determine their eligibility for certification. A country's presence on the Majors List is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. Consistent with the statutory definition of a major drug-transit or drug-producing country set forth in section 481(e)(5) of the Foreign Assistance Act of 1961, as amended (FAA), one of the reasons that major drug-transit or illicit drug producing countries are placed on the list is the combination of geographical, commercial, and economic factors that allow drugs to transit or be produced despite the concerned government's most assiduous enforcement measures.

Pursuant to section 706(2)(A) of the FRAA, I hereby designate Burma as a country that has failed demonstrably during the previous 12 months to adhere to its obligations under international counternarcotics agreements and take the measures set forth in section 489(a)(1) of the FAA. Attached to this report is a justification (statement of explanation) for the determination on Burma, as required by section 706(2)(B).

I have removed Thailand from the list of major drug-transit or major illicit drug producing countries. Thailand's opium poppy cultivation is well below the levels specified in the FRAA; no heroin processing laboratories have been found in Thailand for several years, and Thailand is no longer a significant direct source of illicit narcotic or psychotropic drugs or other controlled substances significantly affecting the United States; nor is it a country through which such drugs or substances are transported.

In contrast to the Government of Haiti's dismal performance last year under the Aristide regime, the new Interim Government of Haiti (IGOH), headed by Prime Minister Latortue, has taken substantive—if limited—counternarcotics actions in the few months it has been in office. Nevertheless, we remain deeply concerned about the ability of Haitian law enforcement to reorganize and restructure sufficiently to carry out sustained counternarcotics efforts.

The decreased use of MDMA (Ecstasy) among young people in the United States is a hopeful sign, but we continue to place priority on stopping the threat of club drugs, including MDMA, of which The Netherlands continues to be the dominant source country. The Government of The Netherlands is an enthusiastic and capable partner, and we commend its efforts. We continue to be concerned, however, by obstacles to mutual legal assistance and extradition from The Netherlands. There is a need to work more

deliberately to disrupt the criminal organizations responsible for the production and trafficking of synthetic drugs. Specifically, we urge enhanced use of financial investigation, including full exploitation of anti-money laundering statutes and financial investigators to identify and dismantle trafficking organizations, and to seize and forfeit the assets acquired from the drug trade.

While the vast majority of illicit drugs entering the United States continue to come from South America and Mexico, we remain concerned about the substantial flow of illicit drugs from Canada. I commend Canada for its successful efforts to curb the diversion of precursor chemicals used in methamphetamine production. We are now working intensively with Canadian authorities to address the increase in the smuggling of Canadian-produced marijuana into the United States; however we are concerned the lack of significant judicial sanctions against marijuana producers is resulting in greater involvement in the burgeoning marijuana industry by organized criminal groups. Canada has expressed concern to us about the flow of cocaine and other illicit substances through the United States into Canada. United States and Canadian law enforcement personnel have collaborated on a number of investigations that have led to the dismantling of several criminal organizations. The two governments will continue to work closely in the year ahead to confront these shared threats.

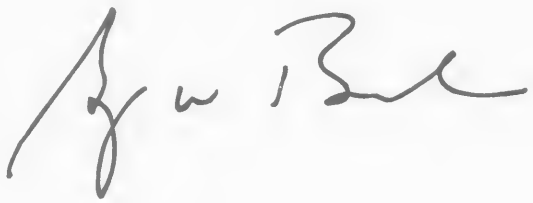
Nigeria put measures in place to increase the effectiveness of the National Drug Law Enforcement Agency, and also arrested a trafficker wanted by the United States, which met the agreed-upon interdiction targets. However, Nigeria must take significant and decisive action to investigate and prosecute political corruption, which continues to undermine the transparency of its government. President Obasanjo took steps to address corruption at the G–8 meetings in Sea Island, Georgia, by entering into a Compact to Promote Transparency and Combat Corruption. Positive transparent measures will in turn benefit Nigeria's anti-narcotics efforts, the rule of law, and all democratic institutions.

Despite good faith efforts on the part of the central Afghanistan government, we are concerned about increased opium crop production in the provinces.

We are deeply concerned about heroin and methamphetamine linked to North Korea being trafficked to East Asian countries. We consider it highly likely that state agents and enterprises in North Korea are involved in the narcotics trade. While we know that some opium poppy is cultivated in North Korea, reliable information confirming the extent of opium production is currently lacking. There are also clear indications that North Koreans traffic in, and probably manufacture, methamphetamine. In recent years, authorities in the region have routinely seized shipments of methamphetamine and/or heroin that had been transferred to traffickers' ships from North Korean vessels. The April 2003 seizure of 125 kilograms of heroin smuggled to Australia aboard the North Korean-owned vessel "Pong Su" is the latest and largest seizure of heroin pointing to North Korean complicity in the drug trade. Although there is no evidence that narcotics originating in or transiting North Korea reach the United States, we are working closely with our partners in the region to stop North Korean involvement in illicit narcotics production and trafficking.

We appreciate the efforts of China, Hong Kong, Taiwan, and others in the region to stop the diversion of pseudoephedrine and ephedrine used to manufacture methamphetamine. However, considering the growing methamphetamine problem in North America and Asia, additional collaborative efforts to control these precursor chemicals are necessary.

You are hereby authorized and directed to submit this report under section 706 of the FRAA, transmit it to the Congress, and publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, September 15, 2004.

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Docket No. FV04–927–2 FR]

Winter Pears Grown in Oregon and Washington; Decrease of a Continuing Supplemental Assessment Rate for the Beurre d'Anjou Variety of Pears Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule decreases the continuing supplemental assessment rate established for the Winter Pear Control Committee (Committee) for the 2004–2005 and subsequent fiscal periods from $0.03 to $0.01 per 44-pound standard box or container equivalent of the Beurre d'Anjou variety of pears (d'Anjou pears) handled, excluding organically produced d'Anjou pears. The Committee locally administers the marketing order which regulates the handling of winter pears grown in Oregon and Washington. Authorization for a supplemental assessment rate on individual varieties or subvarieties of winter pears enables the Committee to fund authorized projects for these varieties. The fiscal period began July 1 and ends June 30. The supplemental assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Susan M. Hiller, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW. Third Avenue, suite 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 89 and Order No. 927, both as amended (7 CFR part 927), regulating the handling of winter pears grown in Oregon and Washington, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Oregon and Washington winter pear handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the supplemental assessment rate will be applicable to all assessable d'Anjou pears, excluding organically produced d'Anjou pears, beginning on July 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the supplemental assessment rate established for the Committee for the 2004–2005 and subsequent fiscal periods from $0.03 to $0.01 per 44-pound standard box or container equivalent of d'Anjou pears, excluding organically produced d'Anjou pears. The $0.01 supplemental assessment rate on conventionally produced (pears that are not organically produced) and handled d'Anjou pears is in addition to the continuing base assessment rate of $0.49 per 44-pound standard box or container equivalent established for the 1998–1999 and subsequent fiscal periods, which pertains to all winter pears handled under the order (63 FR 46633; September 2, 1998). The supplemental rate of $0.03 per 44-pound standard box or container equivalent was established at 67 FR 5438; February 6, 2002.

The order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The order also provides authority to fix supplemental rates of assessment on individual varieties or subvarieties to secure sufficient funds to provide for projects authorized under § 927.47. Section 927.47 provides authority for the establishment of production research, or marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of pears. The members of the Committee are growers and handlers of Oregon and Washington winter pears. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rates. The assessment rates are formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The Committee met on June 4, 2004, and unanimously recommended 2004–2005 expenditures of $7,302,905 and reconfirmed the continuing base

assessment rate of $0.49 per 44-pound standard box or container equivalent of winter pears established for the 1998–1999 and subsequent fiscal periods. The Committee also recommended a supplemental assessment rate of $0.01 per 44-pound standard box or container equivalent of d'Anjou pears, excluding organically produced d'Anjou pears. In comparison, last year's budgeted expenditures were $8,320,989.

The Committee shares management and other expenses with the Pear Bureau Northwest and the Northwest Fresh Bartlett Pear Marketing Committee (7 CFR part 931) under a management agreement. The major expenditures recommended by the Committee for the 2004–2005 fiscal period include $339,905 for shared expenses (salaries and benefits, insurance, office rent, equipment rental and maintenance, office supplies, telephone, postage, and similar expenses); $290,000 for production research, and market research and development; $110,000 for Ethoxyquin data research; $183,000 for program expenses (compliance and education, committee meetings, office equipment purchases, industry development, and computer programs); and $6,380,000 for paid advertising. Budgeted expenses for these items in 2003–2004 were $329,989, $324,000, $360,000, $179,000, and $7,128,000, respectively.

Under this final rule, conventionally produced and handled d'Anjou pears will be assessed at a total rate of $0.50 per 44-pound standard box or container equivalent, while all other varieties of winter pears, including organically produced d'Anjou pears, will be assessed at the currently established rate of $0.49 per 44-pound standard box or container equivalent. The Committee estimates that of the 14,500,000 44-pound standard boxes or container equivalents of winter pears projected for utilization during the 2004–2005 fiscal period, 11,000,000 44-pound standard boxes or container equivalents will be conventionally produced pears of the d'Anjou variety. While the income derived from the base assessment rate will continue to fund the Committee's administrative and promotional activities, income derived from the supplemental assessment rate will be used exclusively to fund the collection of data on Ethoxyquin residue on stored d'Anjou pears. Ethoxyquin is an antioxidant that is registered for use on pears for controlling superficial scald, a physiological disease affecting the appearance of certain varieties of stored pears. The supplemental assessment rate will not be applicable to d'Anjou pears that are organically produced, because Ethoxyquin is not used in their handling and storage.

Assessment income for the 2004–2005 fiscal period is expected to total $7,215,000. Income from the $0.49 base assessment rate is estimated at $7,105,000, calculated on estimated shipments of 14,500,000 44-pound standard boxes or container equivalents. In addition, income from the $0.01 supplemental assessment rate is estimated at $110,000, calculated on estimated shipments of 11,000,000 44-pound standard boxes or container equivalents. The supplemental assessment rate of $0.01 is $0.02 lower than the rate currently in effect. The Committee recommended a decreased supplemental assessment rate due to the projected reduced cost for the final stage of the Ethoxyquin data research. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently $440,550) will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

The continuing base assessment rate and the decreased supplemental assessment rate of $0.01 will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although the supplemental assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of either the base assessment rate or the supplemental assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2004–2005 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,753 growers of winter pears in Oregon and Washington and approximately 50 handlers subject to regulation under the marketing order. Small agricultural growers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the *Noncitrus Fruits and Nuts, 2003 Preliminary Summary* issued in January 2004 by the National Agricultural Statistics Service, the total farm gate value of winter pears in the regulated production area for 2003 was $135,492,000. Therefore, the 2003 average gross revenue for a winter pear grower in the regulated production area was $77,292. Further, based on Committee records and recent f.o.b. prices for winter pears, over 76 percent of the regulated handlers ship less than $5,000,000 worth of winter pears on an annual basis. Based on this information it can be concluded that the majority of growers and handlers of winter pears in the States of Oregon and Washington may be classified as small entities.

This rule decreases the supplemental assessment rate established for the Committee and collected from handlers for the 2004–2005 and subsequent fiscal periods from $0.03 to $0.01 per 44-pound standard box or container equivalent of d'Anjou pears, excluding organically produced d'Anjou pears. The Committee unanimously recommended the supplemental assessment rate decrease and 2004–2005 expenditures of $7,302,905, and reconfirmed the continuing base assessment rate of $0.49 per 44-pound standard box or container equivalent of winter pears established for the 1998–1999 and subsequent fiscal periods.

The Committee shares management and other expenses with the Pear Bureau Northwest and the Northwest Fresh Bartlett Pear Marketing Committee (7 CFR part 931) under a management agreement. The major expenditures recommended by the

Committee for the 2004–2005 fiscal period include $339,905 for shared expenses (salaries and benefits, insurance, office rent, equipment rental and maintenance, office supplies, telephone, postage, and similar expenses); $290,000 for production research, and market research and development; $110,000 for Ethoxyquin data research; $183,000 for program expenses (compliance and education, committee meetings, office equipment purchases, industry development, and computer programs); and $6,380,000 for paid advertising. Budgeted expenses for these items in 2003–2004 were $329,989, $324,000, $360,000, $179,000, and $7,128,000, respectively.

Assessment income for the 2004–2005 fiscal period is expected to total $7,215,000. Income from the $0.49 base assessment rate is estimated at $7,105,000, calculated on estimated shipments of 14,500,000 44-pound standard boxes or container equivalents. In addition, income from the $0.01 supplemental assessment rate is estimated at $110,000, calculated on estimated shipments of 11,000,000 44-pound standard boxes or container equivalents. The supplemental assessment rate of $0.01 is $0.02 lower than the rate in effect prior to this action. The Committee recommended a decreased supplemental assessment rate due to the projected reduced cost for the final stage of the Ethoxyquin data research. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve will be adequate to cover budgeted expenses. Funds in the reserve (currently $440,550) will be kept within the maximum permitted by the order of approximately one fiscal period's expenses (§ 927.42).

The Committee reviewed and unanimously recommended 2004–2005 expenditures of $7,302,905 which includes increases in shared expenses and program expenses, and decreases in production research, and market research and development, Ethoxyquin data research, and paid advertising expenses. Prior to arriving at this budget, alternative expenditure and assessment levels were discussed by the Committee. Based upon the projected reduced cost for the final stage of the Ethoxyquin data research, the Committee recommended a reduction in the supplemental assessment rate. Ethoxyquin is not used in the handling and storage of organically produced d'Anjou pears, thus they were excluded from the Committee's supplemental assessment rate recommendation.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2004–2005 fiscal period could range between $5.80 and $7.35 per standard box of winter pears. Therefore, the estimated assessment revenue for the 2004–2005 fiscal period, inclusive of revenue from both the base assessment rate and the supplemental assessment rate, as a percentage of total grower revenue could range between 6.8 and 8.6 percent.

This action will decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to growers. However, the decreased supplemental assessment rate should reduce the burden on handlers, and may reduce the burden on growers. In addition, the Committee's meeting was widely publicized throughout the Oregon and Washington winter pear industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 4, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule will impose no additional reporting or recordkeeping requirements on either small or large Oregon and Washington winter pear handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2004 (69 FR 50334). Copies of the proposed rule were also mailed or sent via facsimile to all winter pear handlers. Finally, the proposal was made available through the Internet by the Office of Federal Register and USDA. A 20-day comment period ending September 7, 2004, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2004–2005 fiscal period began on July 1, 2004, and the marketing order requires that the rates of assessment for each fiscal period apply to all assessable winter pears handled during such fiscal period; (2) this rule decreases the supplemental assessment rate for assessable d'Anjou pears beginning with the 2004–2005 fiscal period; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 20-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 927 is amended as follows:

PART 927—WINTER PEARS GROWN IN OREGON AND WASHINGTON

■ 1. The authority citation for 7 CFR part 927 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 927.236 is revised to read as follows:

§ 927.236 Assessment rate.

On and after July 1, 2004, an assessment rate of $0.49 per 44-pound standard box or container equivalent of conventionally and organically produced pears and, in addition, a supplemental assessment rate of $0.01 per 44-pound standard box or container equivalent of Beurre d'Anjou variety pears, excluding organically produced Beurre d'Anjou pears, is established for the Winter Pear Control Committee.

Dated: September 22, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–21630 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. FV03–930–5 FIR]

Tart Cherries Grown in the States of Michigan, *et al.*; Revision of Procedures for Handlers To Receive Exempt Use/Diversion Credit for New Product and New Market Development Activities

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, an interim final rule that provides more specific criteria to help handlers take better advantage of exempt use/diversion credit activities in meeting volume regulation requirements, and to help the Cherry Industry Administrative Board (Board) better assess the validity of handler requests for such diversion credit.

DATES: Effective: October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Suite 6C02, Unit 155, 4700 River Road, Riverdale, MD 20737, telephone: (301) 734–5243, or fax: (301) 734–5275; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect procedures for handlers to receive exempt use/diversion credit in meeting their volume regulation obligations as follows: (1) It continues to provide more specific criteria to help handlers take better advantage of exempt use/diversion credit activities and to help the Board better assess the validity of handler requests for diversion credit; (2) it continues to clarify the current definitions of "new product development" and "new market development" activities eligible diversion credit, and adds "market expansion" to the definition of "new market development"; (3) it also continues to specify an industry-wide limit for market expansion activities totaling 10 million pounds per crop year. This limitation reflects the Board's concern that these activities should be developed gradually. The limitation will be allocated on a pro rata basis among the handlers who request diversion credit for market expansion activities and are approved by the Board; and (4) handlers requesting diversion credit under these provisions will have to provide evidence to the Board that they have been actively involved in the development of the new product, new market, or market expansion activity, or have financially supported the development efforts. This is to assure that the handlers initiating such efforts are the ones who earn the resulting diversion credits.

Handler diversion is authorized under § 930.59 of the order and, when volume regulation is in effect, handlers may fulfill restricted percentage requirements by diverting cherries or cherry products rather than placing tart cherries in an inventory reserve. Volume regulation is intended to help the tart cherry industry stabilize supplies and prices in years of excess production. The volume regulation provisions of the order provide for a combination of processor owned inventory reserves and grower or handler diversion of excess tart cherries. Reserve cherries may be released for sale into commercial outlets when the current crop is not expected to fill demand. Under certain circumstances, such cherries may also be used for charity, experimental purposes, nonhuman use, and other approved purposes.

Section 930.59(b) of the order provides for the designation of allowable forms of handler diversion. These include: uses exempt under § 930.62; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.58; or other uses, including diversion by destruction of the cherries at the handler's facilities. Section 930.62 provides that the Board, with the approval of the Secretary, may exempt from the provisions of §§ 930.41 (Assessments), 930.44 (Quality control), 930.51 (Issuance of volume regulations), 930.53 (Modification, suspension, or termination of regulations), and 930.55 through 930.57 (Reserve regulations) cherries which are diverted in accordance with § 930.59, which are used for new product and new market development, which are used for experimental purposes, or which are used for any other purpose designated by the Board, including cherries processed into products for markets for which less then 5 percent of the preceding 5-year average production of cherries were utilized.

When applying to the Board to receive exemptions for cherries or cherry products used for exempt purposes, the handler must detail the nature of the product or market, how it differs from the current, existing products and/or markets, and the estimated short and long term sales volume for the exemption. In addition, in order to obtain diversion credit for cherries used for exempt purposes, the application

must also contain an agreement that the proposed exempt use diversion is to be carried out under the supervision of the Board, and that the cost of any such supervision that is needed is paid by the applicant. The fees for such USDA or Board supervision as previously stated, will be the current hourly rate of $41.00, which is subject to change, under USDA's inspection fee schedule (7 CFR 54.42).

The information that is provided allows the Board to assess the request for exemption and render a determination concerning its approval or disapproval. Any information received by the Board, which is of a confidential, and/or proprietary nature is protected from disclosure pursuant to § 930.73 of the order.

Each handler that is granted an exemption must submit to the Board an annual progress report, due May 1 of each year. The progress report shall include the results of the exemption activity (comparison of intended activity with actual activity) for the year in its entirety, the volume of exempted fruit, an analysis of the success of the exemption program, and such other information the Board may request.

For the purposes of regulation concerning exempt uses and diversion credit, assisting handlers in obtaining exempt use/diversion credit under § 930.162, and assisting the Board in properly administering these provisions, the terms "new product development", "new market development", "development of export markets", and "experimental purposes" are defined. Previously, "new product development" was defined as the production or processing of new tart cherry products or foods or other products in which tart cherries or tart cherry products are incorporated which are not presently being produced on a commercial basis. New product development could also include the production or processing of a tart cherry product using a technique not presently being utilized commercially in the tart cherry industry. For example, a handler might ask for an exemption for a product such as ground meat in combination with raw tart cherries to form a leaner meat product. When a new product is commercially viable, which is defined as the time when total industry utilization for the product exceeds 2 percent of the 5-year average production of tart cherries, the product is no longer eligible for a new product development exemption and diversion credit.

"New market development" previously meant the development of markets for cherry products which are not commercially established markets and which are not competitive with commercial outlets presently utilized by the tart cherry industry (including the development of new export markets). For example, a handler might seek to establish sales of cherry preserves to India or China, currently undeveloped markets. New markets become commercially established when the total industry utilization in the market exceeds 2 percent of the 5-year average production of tart cherries. When the new markets become commercially viable they are no longer eligible as an exempt use outlet and diversion credit.

"Development of export markets" is defined as the sale of cherries or cherry products, including the development of sales for new or different tart cherry products or the expansion of sales for existing tart cherry products, to countries other than Canada and Mexico. An example of development of sales for new or different tart cherry products could be a handler seeking to establish sales of dried cherries in Germany, which is primarily a hot pack market (canned tart cherries). No quantity limitations are specified for the development of export markets. The Board did not want to put any constraints on handlers seeking to establish export markets. Moreover, the optimum supply formula, which is used by the Board to calculate the desirable volume of tart cherries that should be available for sale, does not apply to product that can be diverted or used in exempt outlets. Thus, the Board felt that handlers in meeting their restricted percentage obligations during volume regulation seasons, should be free to move exempted/diverted cherries to export markets without constraints.

"Experimental purposes" is defined as the use of cherries or cherry products in preliminary and/or developmental activities intended to result in new products, new applications and/or new markets for tart cherry products, such as a handler working with cereal companies to develop a cereal using dried cherries. Any exemption for experimental work must be limited in scope, duration, and volume based on information supplied by the applicant at the time a request for exemption is made. In no case, shall an individual exemption for experimental purposes last longer than 5 years or exceed 100,000 pounds raw product equivalent of tart cherries.

To improve the administration of the exempt use/diversion credit procedures, the Board recommended that the previous definitions of what constitutes new product development and new market development be clarified, and that a definition for market expansion should be included in the definition of "new market development" in § 930.162(b). It also recommended that an industry-wide limit for market expansion activities be established totaling 10 million pounds per crop year to be allocated pro rata among the approved handler applicants.

Under the recommended procedures, handlers applying for exempt use/diversion credit would have to provide the Board evidence that they have been actively involved in the development of the new product, new market, or market expansion activities, or have financially supported the development efforts. A definition of the term "involvement" has been added to the provisions specifying these conditions in § 930.162(c)(5).

The Board believes that these changes will provide handlers better guidance in making marketing decisions and in earning exempt use/diversion credits, and help the Board in assessing handler applications and in determining when handlers have satisfactorily accomplished diversion and rightfully earned credits against their restricted percentage obligations during a crop year with volume regulation percentages. No changes were recommended in the definitions of the terms "development of export markets" or "experimental purposes".

These issues were discussed at the Board's January 2003 meeting, they were then reconsidered at an April 2003 meeting, and a final recommendation was reached at the Board's June 26, 2003, meeting.

There have been differences of opinion between industry members and the Board concerning the existing provisions. The Board developed the recommended changes to provide handlers with clearer and more detailed guidelines to help them better understand the procedures when applying for such credits, and to provide the Board members on the New Product/New Market (NPNM) subcommittee with more specific guidance on granting and denying applications for such diversion credits.

The Board believes that it is important to expand the demand for tart cherries to better keep supplies in line with market needs. To accomplish this, the Board thinks that the development of new markets and products and that the expansion of current markets for tart cherries and tart cherry products should be encouraged to the fullest extent possible. The changes to the exempt use/diversion credit procedures continued in effect by this rule are expected to help the tart cherry industry

further the Board's objectives and help producers and handlers accordingly.

This rule continues to specify revised definitions for "new product development," and "new market development," continues to add the concept of "market expansion" to the definition of "new market development," and continues to add a new condition of participation in obtaining exempt use/diversion credit for new product development, new market development, and market expansion referred to as "involvement".

As previously stated, "new product development" was previously defined as the production or processing of new tart cherry products or foods or other products in which tart cherries or tart cherry products are incorporated which are not presently being produced on a commercial basis. New product development can also include the production or processing of a tart cherry product using a technique not presently being utilized commercially in the tart cherry industry. Once total industry utilization for the product exceeds 2 percent of the 5-year average production of tart cherries, the product will no longer be eligible for a new product development exemption.

This action continues to add to the definition of "new product development" the following clarification: (1) New product development can also include an end product of the processing of raw tart cherries created by handlers at pack time either for resale or for re-manufacturing which has not previously been manufactured by handlers in the industry (for example, dried tart cherries (dehydrated) were marketed as a new product after first undergoing processing as a five plus one product (25 pounds of cherries topped with 5 pounds of sugar)); or (2) a processed, value-added, item that includes tart cherry products as an ingredient which has never been marketed to consumers either by a handler within the industry or by a food manufacturer. For example, during the 2002–03 crop year, a new cookie with a tart cherry filling was sold in retail markets for the first time.

As previously mentioned, language within § 930.162(b)(1) provides a volume limit of 2 percent of the five year average of production of tart cherries. Once this total industry utilization for a new product exceeds this amount, the product is no longer considered under development and is not eligible for a new product development exemption and diversion credit. This limitation remains the same. However, an additional limitation recommended by the Board for new product and new market development continues to limit the duration of any diversion credit to three years from the first date of shipment of the new product. The Board believes that limiting the eligibility of the exemption for 3 years from the first date of shipment of the new product provides a handler time to adequately develop the market for the product. After 3 years, regardless whether markets have been developed for the new product or not, the product will no longer qualify for an exemption and diversion credit.

Continuing to add such references and volume limitations to the current definition of "new product development" clarifies what new product activities can qualify for exempt use/diversion credit and how long such credit can be obtained by the handler once the Board approves the handler's application and sales and shipments of the product are made.

Under the order, "new market development" was previously defined as the development of markets for tart cherry products which are not commercially established markets and which are not competitive with commercial outlets presently utilized by the tart cherry industry (including the development of new export markets). For instance, a handler who developed a new market for tart cherries that is also an export market would get credit for either the new market development or development of the export market but could not get credit for both. A new market becomes commercially established, when total industry utilization in the market exceeds 2 percent of the five year average production of tart cherries, and is not eligible for exempt use/diversion credit.

This action also continues to clarify the definition of "new market development" by adding to that definition a proviso that "new market development" should be a geographic area into which tart cherries or products derived from them have not previously been sold. Included within the revised "new market development" definition are "market expansion activities", which are defined as activities that incrementally expand the sale of either tart cherries or the products in which tart cherries are an ingredient. Such activities include, but are not limited to: (1) Expansions of the geographic areas in which products are marketed; (2) product line extensions; (3) significant improvements to or revisions of existing products; (4) packaging innovations; (5) segmentation of markets along geographic, demographic, or other definable characteristics; and (6) product repositionings.

Examples of these activities follow: (1) Expansions of the geographic areas in which products are marketed would include shipping tart cherries to the Ukraine and then on to Uzbekis‡an; (2) product line extensions would include taking tart cherry pie and making it an apple-cherry-berry pie; (3) significant improvements to or revisions of existing products would include using non-sugar sweeteners or reduced sugar content in processed tart cherry products; (4) packaging innovations would include using square containers instead of round 2.5 pound poly bags; (5) an example of segmentation of markets along geographic, demographic, or other definable characteristics would include tart cherry juice concentrate marketed specifically to consumers who suffer with arthritis or gout; and (6) product repositionings would mean that retailers would move pie-fill out of the dessert category to be used as a topping. These examples are intended to provide guidance of potential marketing opportunities and not to limit the marketing creativity of the handlers in the tart cherry industry.

To earn new market development or new product development exempt use/diversion credits for cherries or cherry products a handler must demonstrate involvement in the activity for which credits are sought. To demonstrate involvement for the purpose of earning market development or new product development diversion credits, the requesting handler must either (1) be or have been involved in development of the product or the market for which the credits are sought or (2) have had financial involvement in these processes. This involvement must be demonstrated and established to the satisfaction of the NPNM subcommittee by the handler requesting the diversion credits.

This action also continues a conforming change to § 930.162(a) to be consistent with a formal rulemaking order amendment completed in 2002. Language within § 930.162(a) previously stated, in summary, that tart cherry juice and juice concentrate products are not eligible for exempt use/diversion credit in domestic markets but such products for export can receive exempt use/diversion credit. This language was no longer correct because juice and juice concentrate shipped into domestic markets can now receive exempt use/diversion credit as provided by the 2002 order amendment.

The Regulatory Flexibility Act and Effects on Small Businesses

The Agricultural Marketing Service (AMS) has considered the economic

impact of this action on small entities and has prepared this final regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) allows AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opts for such certification, but rather performs regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 40 handlers of tart cherries who are subject to regulation under the order and approximately 900 producers of tart cherries in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $5,000,000, and small agricultural producers are those whose annual receipts are less than $750,000. A majority of the tart cherry handlers and producers may be classified as small entities.

Pursuant to a unanimous recommendation of the Board, this rule continues to specify revised definitions for "new product development" and "new market development," the addition of the concept of "market expansion" to the definition of "new market development," the addition of a condition of handler participation in obtaining exempt use/diversion credit for new product development, new market development, and market expansion referred to as "involvement", and to specify an industry-wide limit on market expansion activities for exempt use/diversion credit.

The rule continues to provide more specific criteria to help handlers take better advantage of exempt use/diversion credit activities and to help the Board better assess the validity of handler requests for diversion credit. It continues to clarify the definitions of "new product development" and "new market development" activities eligible for exempt use/diversion credit, and adds "market expansion" to the definition of "new market development". It also continues an industry-wide limit for market expansion activities totaling 10 million pounds per crop year. This limitation reflects the Board's concern that these activities should be developed gradually. The limitation would be allocated on a pro rata basis among the handlers who requested diversion credit for market expansion activities and were approved by the Board. Handlers requesting exempt use/diversion credit under these provisions would have to provide evidence to the Board that they have been actively involved in the development of the new product, new market, or market expansion activity, or have financially supported the development efforts. This is to assure that the handlers initiating such efforts are the ones earning the diversion credits.

With regard to alternatives, the Board discussed leaving the exempt use/diversion credit procedures unchanged. However, the Board determined that this course of action would not be satisfactory and recommended adding specific guidelines for consideration when reviewing handler applications for exempt use/diversion credit activities.

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned, juiced, and pureed. During the period 1998/99 through 2002/03, approximately 91 percent of the U.S. tart cherry crop, or 240.6 million pounds, was processed annually. Of the 240.6 million pounds of tart cherries processed, 55 percent was frozen, 30 percent was canned, and 15 percent was utilized for juice and other products.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. Bearing acreage has declined from a high of 50,050 acres in 1987/88 to 36,900 acres in 2002/03. This represents a 26 percent decrease in total bearing acres. Michigan leads the nation in tart cherry acreage with 70 percent of the total and produces about 75 percent of the U.S. tart cherry crop each year.

The 2003/04 crop is moderate in size at 222.1 million pounds. The largest crop occurred in 1995 with production in the regulated districts reaching a record 395.6 million pounds. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991.

This action will not impose additional costs on handlers, regardless of size, because the changes are intended to clarify and improve the Board's current procedures on approving exempt use/diversion credit requests. The recommended changes are intended to assure that all exempt use/diversion credit requests are handled in a more consistent and equitable manner.

The Board's meetings were widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the January 23, April 24, and June 26, 2003, meetings were public meetings and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action will impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on June 22, 2004. The Board's staff mailed copies of the rule to all Board members and tart cherry handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided a 60-day comment period that ended August 23, 2004. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Board's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (69 FR 34549) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

■ Accordingly, the interim final rule amending 7 CFR part 930 which was published at 69 FR 34549 on June 22, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–21631 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[Docket No. FV04–981–4 FIR]

Almonds Grown in California; Revision of Quality Control Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim final rule that revised the quality control provisions under the California almond marketing order (order). The order regulates the handling of almonds grown in California and is administered locally by the Almond Board of California (Board). Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule continues in effect changes in the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices.

DATES: Effective October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Martin Engeler, Assistant Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 981, as amended (7 CFR part 981), regulating the handling of almonds grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect revisions to the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule continues to change the varietal classifications of almonds for which inedible obligations are calculated. This will allow the Board to determine handlers' inedible disposition obligations by varietal classifications consistent with handler reporting requirements and current industry harvesting and marketing practices. This action was unanimously recommended by the Board at a meeting on May 20, 2004.

Section 981.42 of the almond marketing order provides authority for quality control regulations, including a requirement that almonds must be inspected prior to processing (incoming inspection) to determine, by variety, the percentage of inedible kernels in each lot received. The percentage of inedible kernels are reported to individual handlers and the Board, by variety, as determined by the incoming inspection. The Board then calculates each handler's inedible disposition obligation by variety, and handlers are required to dispose of a quantity of almonds equal to their inedible weight obligation.

Section 981.442(a)(2) of the order's rules and regulations defines "variety" for the purpose of calculating handlers' inedible disposition obligations. Prior to implementation of the interim final rule (69 FR 40534; July 6, 2004), "variety" was defined as that variety of almonds which constituted at least 90 percent of the almonds in a lot. Further, if no variety constituted at least 90 percent of the almonds in a lot, the lot was classified as "mixed."

One such mixture is the combination of the Butte and Padre varieties of almonds, which have very similar characteristics. It has become common practice within the industry to harvest the two varieties together and sell them under the marketing classification known as "California". In addition to harvesting and marketing these varieties together, handlers also present them for inspection and report them as "Butte-Padre", rather than "mixed", regardless

of the percentages of each variety that comprise the lot. Previously, mixtures of the Butte and Padre varieties were classified by the Board as "mixed" for purposes of calculating inedible disposition obligations if neither variety constituted at least 90 percent of the lot. To be consistent with the harvesting, reporting, and marketing of the Butte and Padre varieties, mixtures of these varieties are now classified as "Butte-Padre" for the purpose of determining handlers' inedible disposition obligations.

Prior to implementation of the interim final rule, § 981.442(a)(2) also specified that in cases where it was not known which variety constituted at least 90 percent of a mixed lot, the lot should be classified as "unknown." In the past, very small "door lot" deliveries were accumulated by gathering almonds from isolated trees of unknown varieties. This practice is no longer common in the industry, and virtually all almond deliveries consist of known varieties of almonds. Thus, the use of "unknown" is no longer necessary or appropriate.

Harvesting, marketing, and reporting mixtures of Butte and Padre varieties of almonds together as one varietal type and reporting lots of unknown varieties of almonds as "mixed" are now common practices in the industry. In order for the Board to calculate handlers' inedible disposition obligations by variety and to be consistent with current industry practices, it was necessary to implement changes to the administrative rules and regulations. Thus, the Board recommended that the rules and regulations be revised.

Section 981.442(a)(2) of the quality control regulations regarding the classification of varietal types for the purpose of determining handlers' inedible disposition obligations was therefore revised to add "Butte-Padre" as the varietal classification for mixed lots of the Butte and Padre varieties of almonds, regardless of the percentage of each variety in the lot. Other mixed variety lots that do not contain at least 90 percent of one variety will continue to be classified as "mixed." Lots of almonds for which the variety or varieties are not specified will also be classified as "mixed." Accordingly, the "unknown" varietal classification was eliminated.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 6,000 producers of almonds in the production area and approximately 119 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Data for the most recently completed crop year indicate that about 38 percent of the handlers shipped over $5,000,000 worth of almonds and about 62 percent of the handlers shipped under $5,000,000 worth of almonds. In addition, based on production and grower price data reported by the California Agricultural Statistics Service, and the total number of almond growers, the average annual grower revenue is estimated to be approximately $199,000. Based on the foregoing, the majority of handlers and producers of almonds may be classified as small entities.

This rule continues to revise the quality control provisions under the order. Under the order, handlers receiving almonds from growers must have them inspected to determine the percentage of inedible almonds in each lot. Based on these inspections, handlers incur an inedible disposition obligation. This obligation is calculated by the Board for each variety of almonds, and handlers must satisfy the obligation by disposing of inedible almonds or almond material in outlets such as oil and animal feed. This rule continues to change the varietal types of almonds for which inedible obligations are calculated.

Specifically, this rule continues to revise § 981.442(a)(2) of the regulations by adding "Butte-Padre" as the varietal classification for mixed lots of Butte and Padre almonds, regardless of the percentage of each variety in the lot. This rule also continues to designate "mixed" as the varietal classification for lots of unidentified varieties of almonds. Finally, the "unknown" classification continues to be removed. These revisions will permit the Board to calculate handlers' inedible disposition obligations consistent with current industry harvesting and marketing practices, and handler reporting requirements. This action was reviewed and unanimously recommended by the Food Quality and Safety Committee (FQSC) at its April 27, 2004, meeting, and by the Board at its meeting held on May 20, 2004.

These revisions are not expected to have a financial impact on handlers, including small businesses. The regulations are applied uniformly on all handlers, regardless of size. This action imposes no additional reporting or recordkeeping requirements on either small or large California almond handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The meetings of the FQSC and the Board were both widely publicized throughout the California almond industry and all interested persons were invited to attend the meetings and participate in deliberations on all issues. Like all committee and Board meetings, those held on April 27 and May 20, 2004, were public meetings and all entities, both large and small, were able to express views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on July 6, 2004. Copies of the rule were mailed by the Board's staff to all Board members and almond handlers. In addition the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 7, 2004. One comment was received during that period, but that comment concerned forest fires and was not relevant to this rulemaking action.

Accordingly, no changes were made to the rule, based on the comment received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the

information and recommendation submitted by the Board and other available information, it is hereby found that finalizing the interim final rule, without change, as published in the **Federal Register**, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

PART 981—ALMONDS GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 981, which was published at 69 FR 40534 on July 6, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

Kenneth C. Clayton,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 04–21628 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV04–989–3 FIR]

Raisins Produced From Grapes Grown in California; Change to Reporting Requirements Regarding Other Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule changing the reporting requirements regarding Other Seedless (OS) raisins under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). The order provides authority for volume and quality regulations and reporting requirements by varietal type of raisin. The OS varietal type includes raisins produced from Flame Seedless (Flames) and other red grapes. This rule requires handlers to report to the RAC information on acquisitions, shipments, inventories, and inter-handler transfers of the different types of OS raisins, including Flames. The RAC will evaluate this data to determine whether segregating Flames into a separate varietal type is warranted.

DATES: Effective October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect revisions to the reporting requirements regarding OS raisins under the order. The order provides authority for volume and quality regulations and reporting requirements by varietal type of raisin. The OS varietal type includes raisins produced from Flames and other red grapes. This rule continues to require handlers to report to the RAC information on acquisitions, shipments, inventories, and inter-handler transfers of the different types of OS raisins, including Flames. The RAC will evaluate this data to determine whether segregating Flames into a separate varietal type is warranted. This action was unanimously recommended by the RAC at a meeting on April 13, 2004.

Section 989.73 of the order provides authority for the RAC to collect reports from handlers. Paragraph (d) of that section provides that, upon request of the RAC, with approval by the Secretary, handlers shall furnish to the RAC other information as may be necessary to enable it to exercise its powers and perform its duties. The RAC meets routinely to make decisions on various programs authorized under the order such as volume regulation and quality control. The RAC utilizes information collected under the order in its decisionmaking. Section 989.173 of the order's administrative rules and regulations specifies certain reports that handlers are currently required to submit to the RAC.

Many of the reports submitted by handlers under the order require information to be segregated by varietal type of raisin. Section 989.10 defines varietal type to mean raisins generally recognized as possessing characteristics differing from other raisins in a degree sufficient enough to warrant separate identification and classification. Section 989.110 of the order's administrative rules and regulations contains a list and description of the nine varietal types currently segregated under the order.

One of these varietal types, OS raisins, includes raisins produced from Flames and other similar seedless red grapes. There has been some discussion in recent years regarding whether Flames should be segregated into a separate varietal type. Between the 1995–96 and 2000–01 crop years, volume regulation had not been implemented for OS raisins, and handlers were able to market all of the OS raisins they acquired. During this

period, some handlers had expanded their market for Flames. When volume regulation was in effect for OS raisins for the 2001–02 crop year, some Flame handlers had difficulty meeting their market needs.

Thus, the RAC recommended revising the order's regulations to require handlers to report data on acquisitions, shipments (dispositions), inventories, and inter-handler transfers of Flames and other OS raisins to the RAC beginning with the 2004–05 crop year, which started on August 1, 2004. The RAC will review this information and determine whether segregating Flames into a separate varietal type is warranted. A separate varietal type would allow the RAC to consider the application of the order's volume regulation provisions for Flames separate from the other types of OS raisins. Accordingly, paragraphs (a) (inventory), (b) (acquisitions), (c) dispositions, and (d) inter-handler transfers in § 989.173 continue to be revised. Paragraph (g) in § 989.173 regarding similar reports for organic raisins also continues to be revised.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise § 989.173 to require handlers to report acquisitions, shipments, inventories, and inter-handler transfers of the different types of raisins within the OS varietal type. This action is needed so that the RAC can collect accurate data on Flames, a particular type of OS raisin, and evaluate this information to determine whether Flames should be segregated into a separate varietal type under the order. This would permit the RAC to consider application of the order's volume regulation provisions to Flames separate from the other types of OS raisins. Authority for this action is provided in § 989.73 of the order.

Regarding the impact of this action on affected entities, this action imposes no measurable burden on OS raisin handlers. OS handlers will be required to separate out different types of OS raisins on reports that they are already submitting to the RAC. Most handlers have been doing this voluntarily in recent years. This action has no impact on raisin producers.

The RAC considered alternatives to the recommended action. The RAC formed a work group to review the concerns raised by Flame handlers. One alternative considered was to proceed with informal rulemaking to establish a separate varietal type for Flames. Another alternative considered was to try to have all handlers voluntarily separate Flames from the other OS raisins on certain reports. After much discussion, the work group determined that the best course of action would be to collect data on Flames, evaluate the data, and then determine whether segregating Flames into a separate varietal type was warranted.

This rule continues to slightly modify the reporting requirements on small and large raisin handlers. All raisin handlers are required to submit various reports to the RAC where the data collected are segregated by varietal type of raisin. These reports include:

Form Nos.	Form
RAC–1	Weekly Report of Standard Raisin Acquisitions.
RAC–3	Weekly Report of Standard Raisins Received for Memorandum Receipt or Warehousing.
RAC–20	Monthly Report of Free Tonnage Raisin Disposition.
RAC–30	Weekly Off-Grade Summary.
RAC–50	Inventory of Free Tonnage Standard Quality Raisins on Hand.
RAC–51	Inventory of Off-Grade Raisins on Hand.
RAC–1 CO	Weekly Report of Organic Raisin Acquisitions.
RAC–20 CO	Monthly Report of Free Tonnage Organic Raisin Disposition.
RAC–50 CO	Inventory of Free Tonnage Standard Quality Organic Raisins on Hand.
RAC–51 CO	Inventory of Off-Grade Raisins on Hand.

This rule continues to require that an extra line item be added to these 10 forms so that handlers can separate out Flames from the other types of OS raisins. Handlers will also continue to be required to indicate the type of OS raisin on the Inter-Handler Transfers of Free Tonnage Raisins (RAC–6), the Monthly Free Tonnage Exports by Country of Destination (RAC–21), and the Monthly Free Organic Tonnage Exports by Country of Destination (RAC–21 CO); no change to these forms is needed. The current total annual burden for all 13 of these forms is 873.48 hours. This rule will not add to this burden on handlers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements referenced above have been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178, Vegetable and Specialty Crops. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the RAC's work group meetings on February 12 and March 4, 2004, the Administrative Issues Subcommittee and RAC meetings on April 13, 2004, and the RAC's Executive Committee meeting on May 4, 2004, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All

interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on July 9, 2004. Copies of the rule were mailed by RAC staff to all RAC members and raisin handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period which ended September 7, 2004. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that finalizing the interim rule, without change, as published in the **Federal Register** (69 FR 41385, July 9, 2004) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 989 which was published at 69 FR 41385 on July 9, 2004, is adopted as a final rule without change.

Dated: September 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–21629 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV04–993–2 FR]

Dried Prunes Produced in California; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Prune Marketing Committee (committee) under Marketing Order No. 993 for the 2004–05 and subsequent crop years from $2.00 to $4.00 per ton of salable dried prunes. The committee locally administers the marketing order which regulates the handling of dried prunes grown in California. Authorization to assess dried prune handlers enables the committee to incur expenses that are reasonable and necessary to administer the program. The committee recommended a higher assessment rate because the 2004–05 crop is expected to be very small and a higher assessment rate is needed to generate sufficient funds to meet program expenses. The crop year begins August 1 and ends July 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Toni Sasselli, Program Analyst, or Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901; Fax (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California dried prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable dried prunes beginning on August 1, 2004, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the committee for the 2004–05 and subsequent crop years from $2.00 to $4.00 per ton of salable dried prunes.

The California dried prune marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the committee are producers and handlers of California dried prunes. They are familiar with the committee's needs and with the costs for goods and services in their local area and, thus, are in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Therefore, all directly affected persons have an opportunity to participate and provide input.

For the 2003–04 and subsequent crop years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from crop year to crop year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on June 23, 2004, and unanimously recommended 2004–05 expenditures of $275,800 and an increased assessment rate of $4.00 per ton of salable dried prunes. In comparison, last year's budgeted expenditures were $322,022 and the assessment rate was $2.00 per ton of salable dried prunes. The recommended assessment rate of $4.00 per ton is $2.00 higher than the rate currently in effect. The committee recommended a higher assessment rate because a very small crop is expected this year. The salable prune production this year is expected to be 68,950 tons, the smallest crop since the early 1900's. The assessment rate of $4.00 per ton is expected to provide sufficient funds for committee operations this year. The following table compares major budget expenditures recommended by the committee on June 23, 2004, and major budget expenditures in the 2003–04 budget.

Budget expense categories	2003–04	2004–05
Total personnel salaries	$179,726	$181,335
Total operating expenses	96,876	85,080
Reserve for contingencies	45,420	9,385

The assessment rate recommended by the committee was derived by dividing anticipated expenses by the estimated salable tons of California dried prunes. Production of dried prunes for the year is estimated at 68,950 salable tons, which should provide $275,800 in assessment income. Income derived from handler assessments will be adequate to cover budgeted expenses. Interest income also will be available if assessment income is reduced for some reason. The committee is authorized to use excess assessment funds from the 2003–04 crop year (currently estimated at $105,000) for up to 5 months beyond the end of the crop year to meet 2004–05 crop year expenses. At the end of the 5 months, the committee either refunds or credits the excess funds to handlers (§ 993.81(c)).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2004–05 budget and those for subsequent crop years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,100 producers of dried prunes in the production area and approximately 22 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Eight of the 22 handlers (36.4 percent) shipped over $5,000,000 of dried prunes and could be considered large handlers by the Small Business Administration. Fourteen of the 22 handlers (63.6 percent) shipped under $5,000,000 of dried prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,100 total producers, would be considered large growers with annual income over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule increases the assessment rate established for the committee and collected from handlers for the 2004–05 and subsequent crop years from $2.00 to $4.00 per ton of salable dried prunes. The committee unanimously recommended 2004–05 expenditures of $275,800 and an assessment rate of $4.00 per ton of salable dried prunes. The assessment rate of $4.00 per ton is $2.00 higher than the current rate. The quantity of assessable dried prunes for the 2004–05 crop year is now estimated at 68,950 salable tons. Thus, the $4.00 rate should provide $275,800 in assessment income and be adequate to meet this year's expenses. Interest income also will be available to cover budgeted expenses if the 2004–05 expected assessment income falls short.

The following table compares major budget expenditures recommended by the committee on June 23, 2004, and major budget expenditures in the 2003–04 budget.

Budget expense categories	2003–04	2004–05
Total personnel salaries	$179,726	$181,335
Total operating expenses	96,876	85,080
Reserve for contingencies	45,420	9,385

Prior to arriving at its budget of $275,800, the committee considered information from various sources, such as the committee's Executive Subcommittee. An alternative to this action would be to continue with the $2.00 per ton assessment rate. However, an assessment rate of $2.00 per ton in combination with the estimated crop of 68,950 salable tons would not generate sufficient monies needed to fund all the budget items for 2004–05. The assessment rate of $4.00 per ton of salable dried prunes was determined by dividing the total recommended budget by the estimated salable dried prunes. The committee is authorized to use excess assessment funds from the 2003–04 crop year (currently estimated at $105,000) for up to 5 months beyond the end of the crop year to fund 2003–04 crop year expenses. At the end of the 5 months, the committee either refunds or credits the excess funds to handlers (§ 993.81(c)). Anticipated assessment income and interest income during 2004–05 would be adequate to cover authorized expenses.

The grower price for the 2004–05 season is expected to average above the estimated 2003–04 average grower price of about $750 per salable ton of dried prunes. Based on an estimated 68,950 salable tons of dried prunes, assessment revenue during the 2004–05 crop year is

expected to be less than 1 percent of the total expected grower revenue.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the committee's meeting was widely publicized throughout the California dried prune industry and all interested persons were invited to attend the meeting and encouraged to participate in committee deliberations on all issues. Like all committee meetings, the June 23, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on August 16, 2004 (69 FR 50337). Copies of the proposed rule were also mailed or sent via facsimile to all prune handlers. Finally, the proposal was made available through the Internet by USDA and the Office of the Federal Register. A 20-day comment period ending September 7, 2004, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab/html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2004–05 crop year began August 1, 2004, and the marketing order requires that the rate of assessment for each crop year apply to all assessable prunes handled during such period. Further, handlers are aware of this rule which was unanimously recommended at a public meeting. Also, a 20-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 993.347 is revised to read as follows:

§ 993.347 Assessment rate.

On and after August 1, 2004, an assessment rate of $4.00 per ton is established for California dried prunes.

Dated: September 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–21627 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 1003, 1212, and 1240

[EOIR No. 130F; AG Order No. 2734–2004]

Executive Office for Immigration Review; Section 212(c) Relief for Aliens With Certain Criminal Convictions Before April 1, 1997

AGENCY: Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts without substantial change the proposed rule to establish procedures for lawful permanent residents with certain criminal convictions arising from plea agreements reached prior to a verdict at trial to apply for relief from deportation or removal pursuant to former section 212(c) of the Immigration and Nationality Act. The final rule also sets forth procedures and deadlines for filing motions to seek such relief before an immigration judge or the Board of Immigration Appeals for eligible aliens currently in proceedings or under final orders of deportation or removal.

DATES: This rule is effective on October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Mary Beth Keller, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Introduction
Response to Comments Received
A. Ineligibility of Aliens Outside the United States
B. Ineligibility of Aliens Convicted After a Trial
C. Stay of Deportation or Removal
D. The 180-Day Deadline To File a Special Motion To Seek Section 212(c) Relief
E. Date of the Plea Agreement
F. Retroactivity of IIRIRA's Definition of "Aggravated felony"
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Introduction

On August 13, 2002, the Department of Justice (Department) published a proposed rule to permit certain lawful permanent residents (LPRs) to apply for relief under former section 212(c) of the Immigration and Nationality Act, 8 U.S.C. 1182(c) (1994 Supp. II 1996), from deportation or removal based on certain criminal convictions before April 1, 1997 ("section 212(c) relief"). 67 FR 52627. The proposed rule described procedures implementing the Supreme Court's decision in *INS* v. *St. Cyr*, 533 U.S. 289 (2001).

This final rule adopts the proposed rule without substantial change. Certain LPRs who pleaded guilty or *nolo contendere* to crimes before April 1, 1997, may seek section 212(c) relief from being deported or removed from the United States on account of those pleas. Under this rule, eligible LPRs currently in immigration proceedings (and former LPRs under a final order of deportation or removal) who have not departed from the United States may file a request to apply for relief under former section 212(c) of the Act, as in effect on the date of their plea, regardless of the date the plea agreement was entered by the court. This rule is applicable only to certain eligible aliens who were convicted pursuant to plea agreements made prior to April 1, 1997.

The Department reiterates and adopts the Supplementary Information in the proposed rule, and the subsequent correction to the proposed rule published on August 22, 2002, as explaining the final rule. 67 FR 52627; 67 FR 54360. The following sections respond to the public comments, and provide additional discussion explaining the final rule and some clarifying amendments.

In addition, this final rule reflects several technical and structural changes as a result of the establishment of the Department of Homeland Security (DHS), the transfer of the functions of the Immigration and Naturalization Service (INS) to DHS, and the abolition of the INS. On March 1, 2003, the functions of the former INS were transferred from the Department of Justice to DHS pursuant to the Homeland Security Act of 2002 (HSA), Pub. L. 107–296, 116 Stat, 2135, 2178 (Nov. 25, 2002). The HSA also provided that the functions of the immigration judges and the Board of Immigration Appeals within the Executive Office for Immigration Review (EOIR) remain in the Department of Justice under the authority of the Attorney General. The technical changes in this final rule comport with the structural reorganization of the regulations accomplished by the Department of Justice in previous rulemakings establishing a new 8 CFR chapter V containing the regulations relating to immigration adjudications before the immigration judges and the Board of Immigration Appeals, and the administrative functions of EOIR.[1] The final rule also eliminates from 8 CFR 1212.3 the current provisions in paragraphs (a)(1) and (c), which relate to the authority of a district director to grant section 212(c) relief. To the extent that those provisions are still relevant at this time, they are already codified in DHS regulations at 8 CFR 212.3(a)(1) and (c). Consistent with the process for reducing the overlapping regulations between the Department and DHS, the Department is eliminating unnecessary regulations in § 1212.3 that relate solely to the authority of DHS.

The final rule also makes some stylistic changes to simplify the language of the existing regulations—for example, revising the language of 8 CFR 1212.3(e)(2) from "grant or deny an application for advance permission to return to an unrelinquished domicile under section 212(c)" to read "grant or deny an application for section 212(c) relief". Lastly, as explained in the proposed rule, if the Board has jurisdiction and grants a special motion to seek section 212(c) relief, it will remand the case to an immigration judge solely for a determination of the section 212(c) application. The Department recognizes that an alien who files a special motion to seek section 212(c) relief under this rule may have a petition for review pending before a Federal court of appeals. If the Board grants the alien's special motion to seek section 212(c) relief while the case is pending before a Federal court of appeals, the Department anticipates that the government will request that the court hold the case in abeyance pending the resolution of the alien's section 212(c) application before EOIR.

Response to Comments Received

The Department received 60 comments on the proposed rule and will respond to them by subject matter. The Department appreciates the analytical detail of these comments, which were received from aliens and their family members, community organizations and special interest groups, immigration attorneys, professors, and other members of the public. The issues raised in the submissions were largely devoted to eligibility concerns, with a majority of the commenters recommending that eligibility for section 212(c) relief be broadened to encompass several categories of aliens who were not eligible for relief under the proposed rule. Other recurring issues raised by the commenters dealt with procedural concerns, such as the need for an automatic stay provision, in addition to concerns about the 180-day deadline applicable to aliens subject to a final order of deportation or removal.

A. Ineligibility of Aliens Outside the United States

Approximately 80 percent of the commenters stated that aliens who have already been deported and are currently outside the United States should be eligible to apply for section 212(c) relief. Of these comments, virtually all argued that many aliens were deported without being given a hearing with respect to their eligibility for a waiver under section 212(c). These comments state that because these individuals did not have a "sufficient opportunity" to challenge their deportation order, and since the Supreme Court mandated such a hearing for section 212(c) eligibility in the *St. Cyr* decision, their deportation cannot be conceived as lawful. Accordingly, these commenters recommended that the Department rectify this situation by allowing such aliens who are abroad as a result of deportation to apply for section 212(c) relief, in order to avoid what they see as a continuing impermissible retroactive effect. Other commenters asserted that because such aliens were improperly removed, they should be paroled or admitted into the United States in order to reinitiate their application process for section 212(c) relief. One commenter also argued that the Equal Protection Clause requires that both aliens who are currently in the United States and those abroad be allowed to apply for section 212(c) relief.

Under the proposed rule, aliens would have been ineligible for section 212(c) relief if they: (1) Departed the United States and are currently outside the United States; (2) returned illegally to the United States after being issued a final order of deportation or removal; or (3) are present in the United States without having been admitted or paroled. As previously stated in the proposed rule, the Department finds that as a general rule, aliens who have been deported or departed, and for whom the period of time for filing a petition for review of their removal orders closed may not challenge their prior immigration proceedings. *See* 8 U.S.C. 1231(a)(5); 8 CFR 1003.2(d); 67 FR at 52629.

After considering the public comments, the Department adheres to the position stated in the proposed rule. Under 8 CFR 1003.2(d), a motion to reopen or to reconsider "shall not be made by or on behalf of a person who is the subject of deportation or removal proceedings subsequent to his or her departure from the United States." The existing regulations thus treat an executed deportation or removal order as administratively complete, thereby eliminating any possibility of challenging a proceeding that resulted in the departure of an alien.

Similarly, the Department believes that this distinction is reasonable and fair because aliens who have been deported had a sufficient opportunity to challenge the denial of their applications for section 212(c) relief in

[1] On February 28, 2003, the Attorney General published a technical rule that reorganized title 8 of the Code of Federal Regulations to reflect the transfer of these functions. *See* Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824 (February 28, 2003); *see also* 68 FR 10349 (March 5, 2003). This technical rule created a new chapter V in 8 CFR as part of the Department of Justice regulations, beginning with 8 CFR 1001; the existing regulations in chapter I of 8 CFR now pertain to DHS. Among other changes, the February 28 rule transferred part 3 and most of part 240 to part 1003 and part 1240, respectively, and duplicated part 212 (in the current DHS regulations) as part 1212 in the Department of Justice regulations. Thus, while the proposed rule and the comments received cited the regulations prior to the reorganization of the regulations, this final rule will reflect the revised section numbers in the regulations.

administrative and judicial proceedings. *See* 67 FR at 52629. Generally, aliens who were deported prior to the Supreme Court's decision in *St. Cyr* had an opportunity to challenge the denial of their section 212(c) application before the Board or a Federal court. These aliens also had the opportunity to apply for stays of deportation in anticipation of the Supreme Court's ruling in *St. Cyr.* Therefore, aliens who were deported had the opportunity to continue to exhaust administrative and judicial remedies that could have enabled them to remain in the United States. Accordingly, the Department finds the distinction precluding section 212(c) eligibility for aliens abroad as a result of a deportation or removal order to be fair and reasonable.

The Department also believes that the decision to distinguish between those aliens who are in the United States and those aliens who have been deported is reasonable and consistent with the plenary authority of the political branches of the government in the immigration area. *See Fiallo* v. *Bell*, 430 U.S. 787, 792 (1977); *Mathews* v. *Diaz*, 426 U.S. 67, 80–82 (1976). As previously noted in the proposed rule, this distinction is reasonable because the aliens who never departed from the United States are not "similarly situated" to those who have had their deportation or removal orders executed, since the administrative deportation process with the latter group has been completed (and aliens in this category are further subject to at least a five-year bar against reentry).

The Department believes that declining to allow aliens who have been deported from the United States to obtain relief under the regulation is consistent with Congress's intent as demonstrated by the language in former section 212(c). *See* 67 FR at 52629. Former section 212(c) of the Act explicitly made aliens under a deportation order ineligible for relief: "[a]liens * * * *not under an order of deportation* * * * may be admitted in the discretion of the Attorney General * * *" 8 U.S.C. 1182(c) (1994) (emphasis added). Thus, Congress stated unequivocally whom it sought to benefit in legislating the section 212(c) waiver. Accordingly, the decision to preclude aliens under a deportation or removal order from obtaining section 212(c) relief is grounded in Congress's intent to limit its availability to those not under deportation orders.

Moreover, the United States Court of Appeals for the Ninth Circuit has upheld this distinction against constitutional challenge in the context of addressing the identical distinction under 8 CFR 1003.44(i). *Alvarenga-Villalobos* v. *Ashcroft*, 271 F.3d 1169 (9th Cir. 2001). In upholding the distinction from an equal protection challenge, the court reasoned that "the government has a legitimate interest in discouraging aliens who have already been deported from illegally reentering," and concluded that "this distinction is rationally related to that purpose." *Id.* at 1174. *See also Robledo-Gonzales* v. *Ashcroft*, 342 F.3d 667, 676–683 (7th Cir. 2003) (equal protection challenge to 8 CFR 1003.44 fails because distinction between illegal reentrants from those eligible under regulation was rational). Thus, the Department declines to grant eligibility to those who have departed the United States and are currently outside the United States, returned illegally to the United States after being issued a final order of deportation or removal, or are present in the United States without having been admitted or paroled. Other LPRs who are currently in the country, however, are allowed to apply for such relief.

B. Ineligibility of Aliens Convicted After a Trial

Approximately 25 percent of commenters recommended that the rule should provide eligibility for those aliens who were convicted as a result of a trial, in addition to those who made plea agreements. Of these commenters, most argued that the reliance interests of those who went to trial rather than accept plea bargains should be similarly respected. Specifically, these commenters suggested that, because the Supreme Court in *St. Cyr* recognized the reliance interests of those aliens who made plea agreements with prosecutors while relying on the availability of the existing waiver of deportation under the former section 212(c), a similar analysis for those who decided to go to trial with the expectation that they would be eligible to apply for section 212(c) relief should result in preserving their interests. For example, one commenter suggested that because "an immigrant who chose not to enter a plea * * * may have relied upon the availability of section 212(c) when deciding how to proceed," the Supreme Court's reasoning in *St. Cyr* "applies in both [the trial and plea agreement] cases." Other commenters under this category argued that a fundamental unfairness would result to aliens who were unrepresented or detained because they were not aware of the possible consequences of a conviction from a plea agreement, as opposed to that from a trial.

The Supreme Court in *St. Cyr* specifically focused on plea agreements in deciding that section 212(c) relief remained available for aliens "who, notwithstanding those convictions, would have been eligible for section 212(c) relief at the time of their plea under the law then in effect." 533 U.S. at 326. The Court recognized that plea agreements involve a *quid pro quo* between the defendant and the government, and that defendants who waive several of their constitutional rights (including the right to a trial) and consequently grant the government numerous tangible benefits are likely doing so in reliance on the availability of section 212(c) relief. *Id.* at 325. As a result of the benefit to the prosecutor bestowed by a plea agreement, and the reliance interest in seeking section 212(c) relief that an alien develops at the time of the guilty plea, it would be contrary to "'familiar considerations of fair notice, reasonable reliance, and settled expectations'" to deprive him or her of the benefit due from the quasi-contractual exchange of benefits entered into with the government. *Id.* at 323–24 (*quoting Landgraf* v. *USI Film Products*, 511 U.S. 244 (1994)). Thus, according to *St. Cyr*, only the reliance interests of those aliens pleading guilty to crimes when section 212(c) was available were sufficiently strong to warrant continued eligibility for such relief.

This issue has been heavily litigated in the federal courts, and every circuit that has addressed the question has held that an alien who is convicted after trial is not eligible for section 212(c) relief under *St. Cyr. Rankine* v. *Reno*, 319 F.3d 93, 100 (2d Cir. 2003); *Theodoropoulos* v. *INS*, 313 F.3d 732, 739–40 (2d Cir. 2002); *Dias* v. *INS*, 311 F.3d 456, 458 (1st Cir. 2002); *Chambers* v. *Reno*, 307 F.3d 284, 293 (4th Cir. 2002), *reh'g denied* (April 1, 2003); *Armendariz-Montoya* v. *Sonchik*, 291 F.3d 1116, 1121–22 (9th Cir. 2002), *cert. denied*, 539 U.S. 902 (2003); *see also Lara-Ruiz* v. *INS*, 241 F.3d 934, 945 (7th Cir. 2001) (pre-*St. Cyr* decision distinguishing between aliens who pleaded guilty and those who are convicted after trial). These courts have recognized that aliens who exercise their constitutional right to go to trial do not have the kind of reliance interests that the Supreme Court focused on in *St. Cyr.*

Accordingly, the Department has determined to retain the distinction between ineligible aliens who were convicted after criminal trials, and those convicted through plea agreements.

C. Stay of Deportation or Removal

Approximately 15 percent of commenters recommended that an automatic stay provision should be inserted into the final rule. One commenter stated that a motion to reopen to file for section 212(c) relief should automatically stay the deportation or removal of the alien, while others said that any alien who is eligible for section 212(c) relief should have his or her removal stayed. Further, another commenter proposed that filing a special motion to seek section 212(c) relief should "also serve as an application for a stay" of removal, while another contended that it should be treated "in the same way that a motion to reopen *in absentia* proceedings is currently treated," thereby automatically staying the execution of a final order of deportation or removal upon filing. The general rationale of these commenters was that the consequence of the lack of an automatic stay provision in the final rule would lead to the deportation of eligible aliens before they had the opportunity to apply for section 212(c) relief.

The proposed rule laid out procedures for applying for a stay of deportation or removal for aliens seeking to apply for section 212(c) relief. Requests for a stay of the execution of a final order must be made in accordance with the prevailing regulatory requirements in 8 CFR 241.6, if made with DHS, or 8 CFR 1003.2(f) or 1003.23(b)(1)(v), if made with EOIR. The Department does not find the application of prevailing regulatory requirements to section 212(c) applicants to be unreasonably burdensome. Accordingly, the Department does not find it necessary to include an automatic stay provision under this rule.

D. The 180-Day Deadline To File a Special Motion To Seek Section 212(c) Relief

Approximately 15 percent of the commenters recommended that the 180-day period to file a special motion to seek section 212(c) relief for aliens under a final order of deportation or removal be extended or eliminated. One commenter stated that this time period allotted to file a special motion is "unreasonably short," given that many LPRs will likely not be aware of this time constraint. Another commenter stated that this time period is inadequate and the Department should "provide additional time to apply," particularly if the Department does not "individually notify affected people." Similarly, another commenter stated simply that the time period is "insufficient," and should be extended to one year.

The Department finds the 180-day requirement in which to file a special motion to seek section 212(c) relief for those aliens subject to a final administrative order of deportation or removal to be a reasonable time constraint. Publication in the **Federal Register** unequivocally constitutes sufficient notice for due process purposes. Congress has specified this form of notice and made that notice binding on all who are within the jurisdiction of the United States. 44 U.S.C. 1507 (publication in **Federal Register** "is sufficient to give notice of the contents of the document to a person subject to or affected by it"). The courts have clearly relied upon the adequacy of notice by publication in the **Federal Register** since the **Federal Register**'s inception. *See, e.g., Lyng* v. *Payne,* 476 U.S. 926, 942–943 (1986); *Dixson* v. *United States,* 465 U.S. 482, 489 n.6 (1984); *Federal Crop Ins. Corp.* v. *Merrill,* 332 U.S. 380, 385 (1947). The Department rejects the notion that more notice is required as a matter of law. The Department does not accept the premise of the commenters' arguments that it, or any other agency, is required to provide individual notice of the content of the law. Like citizens, aliens have a duty to know the law and abide by the law. The Department does note, moreover, that the immigrant community and immigrant advocacy organizations possess a well-established network for providing information to the immigrant community. Additionally, the Department notes that the 180-day deadline is double the normal amount of time within which an immigration judge or the Board has jurisdiction over motions to reopen. 8 CFR 1003.2, 1003.23. This is in addition to the 30-day effective date delay period mandated by the Administrative Procedure Act. 5 U.S.C. 553. Accordingly, the Department is not persuaded that more time is appropriate and will retain the 180-day deadline as stated in the proposed rule.

E. Date of the Plea Agreement

One commenter argued that proposed § 1003.44(b) would create "proof problems" for the immigration judges and the Board with respect to the date on which an alien made a plea agreement. Proposed § 1003.44(b) lists the eligibility requirements that an alien must establish in seeking section 212(c) relief. Paragraph (b)(4) of this section states that an alien must be "otherwise eligible to apply for section 212(c) relief under the standards that were in effect at the time the alien's plea was made, regardless of when the plea was entered by the court." The commenter suggested that it would be difficult for the immigration judges or the Board to determine when the alien made his or her plea, as the record of criminal proceedings "often does not include [this] information." Instead, the commenter suggested that the date the court accepted the plea should be the operative date. The commenter contended that a defendant in criminal proceedings, both at the State and Federal level, has an absolute right to withdraw a plea until it is accepted, and accordingly, he or she has no legitimate expectations of entitlement to section 212(c) relief until the court accepts it.

The Department declines to accept the commenter's recommendation. The operative language for section 212(c) eligibility—throughout the rule, not just for filing special motions to seek section 212(c) relief—focuses on the "date the plea was agreed to by the parties." 67 FR at 52633. The Department finds that, consistent with the Supreme Court's decision in *St. Cyr,* the key in deciding the extent to which an alien is eligible for section 212(c) relief rests on the available relief at the time the alien and the prosecutor made the plea agreement. The Court stressed the importance of respecting the quasi-contractual agreement between the alien and prosecutor in deciding that the alien's reliance interests in making a plea agreement for a "perceived [immigration] benefit" must be preserved. *St. Cyr,* 533 U.S. at 322. In doing so, the Court did not conclude that the date the criminal court accepts the plea agreement is the time to determine whether the alien is eligible for section 212(c) relief. Thus, the commenter's proposal is not supported by the Supreme Court's ruling in *St. Cyr.* The Department intends to continue to rely on this judicial interpretation.

Further, in any plea agreement in which the government receives "numerous 'tangible benefits * * * without the expenditure of prosecutorial resources,'" the benefits acquired by the prosecutor occur at the moment that the agreement is made given that he or she is relieved of the burdens of preparing the case for trial. *St. Cyr,* 533 U.S. at 322 (quoting *Newton* v. *Rumery,* 480 U.S. 386, 393 n.3 (1987)). Similarly, the moment when the alien enters into an agreement for the exchange of benefits with the prosecutor in reliance on section 212(c) relief eligibility should be the time at which the alien can begin accruing the benefit of the agreement. Accordingly, the Department disagrees with the commenter and will retain the language in the proposed rule specifying

that the date the plea was agreed to by the parties will be the time to determine whether an alien is eligible for section 212(c) relief.

The alien seeking section 212(c) relief has the burden of establishing his or her eligibility. This burden of proof includes establishing the date on which the alien entered into a plea agreement with the prosecution that resulted in the conviction from which section 212(c) relief is sought. The nature of the comment concerning "proof problems," however, underscores the need to make clear that the alien seeking section 212(c) relief has the burden of establishing the plea agreement date, and the alien is in the best position to do so because the alien was present (not DHS or the immigration judge) and is most likely to possess the documents reflecting the plea agreement. Accordingly, the Department has inserted a specific statement of that burden in section 1003.44(b) to make this clear. The Department does not believe that the requirement will impose a burden on the immigration judges or the Board.

F. Retroactivity of IIRIRA's Definition of "Aggravated Felony"

One commenter suggested that the Department's implementation of the *St. Cyr* decision should preclude a retroactive application of the definition of an aggravated felony as expanded by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, Div. C, 110 Stat. 3009–546. The commenter suggested that the Department allow a section 212(c) applicant to "invoke the law as it was at the time" when the applicant made his or her plea, thereby using the then-existing definitions of aggravated felonies rather than applying retroactively the expanded definitions enacted in IIRIRA. In support of this suggestion, the commenter asserted that "Congress has never had and could not have had the intent to subject [section] 212(c) to the retroactive application of the expanded version of the definition of aggravated felony under IIRIRA." The commenter also asserted that "if the retroactive application of the new definition of aggravated felony would be extended to relief under the pre-IIRIRA regime then the [DHS] could reopen cases to remove aliens who had been granted relief pre-IIRIRA."

The Department disagrees with this analysis. *St. Cyr* makes clear that the Court accepted the retroactive application of the definition of aggravated felony in connection with the availability of section 212(c) relief. In contrast to its finding that there was no unmistakable congressional intent to apply the repeal of section 212(c) retroactively, the Supreme Court in *St. Cyr* clearly reiterated that Congress indicated unambiguously its intention to apply the definition of "aggravated felony" retroactively under IIRIRA section 321(b). 533 U.S. at 319. Thus, IIRIRA's amended definition of "aggravated felony" applies to all convictions, regardless of when they occurred, in determining whether the alien is deportable on account of committing an aggravated felony. Further, as noted in the proposed rule, this amended definition "also applies to determine the eligibility for section 212(c) relief in those cases where an alien is deportable as an aggravated felon. *See Matter of Fortiz*, 21 I&N Dec. 1199 (BIA 1998)." 67 FR at 52630. Accordingly, the Department disagrees with the commenter's contention that the IIRIRA's expanded definition of aggravated felony should not apply to pre-IIRIRA convictions or for purposes of section 212(c) eligibility.

This rule, however, retains the position of the proposed rule that aliens who have not been charged and found deportable as aggravated felons would not be affected by the retroactivity of the aggravated felony definition under IIRIRA section 321. The Department agrees with the Board's finding in *Fortiz* that "in order for an alien to qualify as one who is 'deportable' under [AEDPA's] amendment to section 212(c), he or she must be charged with, and found deportable, on the requisite ground of deportability." *Fortiz*, 21 I&N Dec. at 1212 n.3. Therefore, the expanded definition of aggravated felony enacted in IIRIRA renders ineligible for section 212(c) relief only those aliens who were charged with an aggravated felony as the basis for their deportability. For clarity, this rule revises § 1212.3(f)(4) to reflect the Department's interpretation of the aggravated felony definition, in addition to retaining the language of the proposed rule in amending § 1003.44.

With respect to the commenter's further assertion that the DHS could reopen cases to remove aliens who were granted relief before IIRIRA's effective date if IIRIRA's amended definition of aggravated felony is retroactively applied, the regulations are clear in prohibiting such a result. 8 CFR 1212.3(d) states that "[o]nce an application [for section 212(c) relief] is approved, that approval is valid indefinitely." Thus, unless an exception relating to omissions in the application for section 212(c) applies (as described in 8 CFR 1212.3(d)), an approved section 212(c) application cannot be subsequently revoked. Accordingly, the Department will not incorporate the suggestions from this commenter.

It is also worth noting here that the effect of section 212(c) relief is very limited. For example, a single criminal conviction for a crime involving moral turpitude waived under section 212(c) may still be relied upon at a later date as one of two crimes to establish excludability under section 212(a)(2)(A)(II) of the Act (8 U.S.C. 1182(a)(2)(A)(II)). *Matter of Balderas*, 20 I&N Dec. 389 (BIA 1991). Thus, section 212(c) relief should not be considered a "pardon" and does not eliminate the conviction for any other purpose, such as later applications for discretionary relief. *Balderas*, at 391.

However, the Department has made a change in the final rule in response to the Ninth Circuit's recent decision in *Toia* v. *Fasano*, 334 F.3d 917 (9th Cir. 2003). In *Toia*, the court of appeals concluded that the amendment made by the Immigration Act of 1990, Pub. L. 101–649, section 511(a), 104 Stat. 4978, 5052 (1990)—which rendered aliens ineligible for section 212(c) relief if they had been convicted of an aggravated felony and had served a term of imprisonment of at least five years—did not apply to an alien who had pleaded guilty to a criminal offense prior to the enactment of that amendment. The court of appeals, in reliance on *St. Cyr*, overruled its own prior precedent, *Samaniego-Meraz* v. *INS*, 53 F.3d 254 (9th Cir. 1995), which had previously held that the 1990 limitation on the availability of section 212(c) relief properly applied to convictions entered prior to its enactment.

Although the Department does not concede that *Toia* is the better interpretation of the 1990 amendment, and the issue has been the subject of conflicting interpretations as the court acknowledged (*see Toia*, 334 F.3d at 919–920), the Department recognizes that, because the issue is one of only limited practical significance, it is unlikely that this issue will reach the Supreme Court in the future. In *Toia* the plea agreement and the entry of the plea agreement occurred prior to the 1990 Act, and the only issue was the applicability of the 1990 Act. Accordingly, in order to apply a uniform rule in the implementation of section 212(c), the Department will acquiesce in the result of *Toia*. The final rule is amended to provide that the 1990 amendment barring the availability of section 212(c) relief for aggravated felons who have served a term of at least five years for one or more aggravated felonies will not be applied to bar the eligibility of aliens with respect to any

aggravated felony conviction pursuant to a plea agreement that was made prior to November 29, 1990, the date that amendment was enacted. However, the immigration judges and the Board retain the authority to consider the nature and circumstances of any such aggravated felony or felonies as a substantial negative factor weighing against granting relief under former section 212(c) as a matter of discretion. *See e.g., Matter of Marin,* 16 I&N Dec. 581 (BIA 1978); *Matter of Arrequin,* 21 I&N Dec. 38 (BIA 1995); Matter of Burbano, 20 I&N Dec. 872 (BIA 1994); *see also Matter of Jean,* 23 I&N Dec. 373 (AG 2002); *cf., Matter of Y–L, A–G–, R–S–R–,* 23 I&N Dec. 270 (AG 2002).

In making this change, the Department is limiting its effect to those cases in which the alien was convicted pursuant to a plea agreement. Aliens who were convicted of one or more aggravated felonies after trial, whether before or after the enactment of the Immigration Act of 1990, will continue to be subject to the limitations on eligibility for section 212(c) relief. As discussed above, the Supreme Court in *St. Cyr* was careful to limit the impact of its decision only to aliens who had entered into a plea agreement, since only those individuals had sufficient reliance interests to be able to insist on the benefit of their bargain. The Ninth Circuit's decision in *Toia* was based exclusively on the same retroactivity analysis as in *St. Cyr,* and limited its holding to the availability of section 212(c) relief for "aliens who pleaded guilty with the expectation that they would be eligible for such relief." 334 F.3d at 920.

This change is reflected in § 1212.3(f)(4)(ii). This rule also revises the language of § 1212.3(f)(4)(i) to conform to the language of section 212(c) of the Act, regarding aliens who have served a term of imprisonment of five years or more for one or more aggravated felonies.

Finally, the language of § 1212.3(f)(5) has been clarified. The final rule adjusts the language to specifically cite the relevant statutory provisions to make clear that there must be a statutory counterpart in proceedings under section 237 or former section 241 of the Act for section 212(c) relief to reach those convictions.

G. Applicability of AEDPA

Several commenters suggested that the proposed rule should be modified so that the date the alien committed the crime rather than the date of conviction is used to determine the applicability of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, 110 Stat. 1214. One commenter asserted that "LPRs * * * had a right to know that they were endangering their entire future with their family in the United States by breaking the law, but the gravity of their acts was impossible to predict before the passage of the 1996 laws." The commenter continued, "[t]hose whose crimes occurred before the enactment of AEDPA face the exact same situation as those who were convicted before that date: they could not have been aware of the immigration consequences of their crimes."

The Department disagrees with the commenters. The effect of section 440(d) of AEDPA rendered aliens ineligible for section 212(c) relief if they became deportable for certain criminal convictions. The Department adheres to the interpretation set forth in the proposed rule: "This narrower version of section 212(c) relief is available to aliens who made pleas on or after April 24, 1996, and before April 1, 1997, regardless of when the plea was entered by the court." 67 FR at 52629. It should be noted that the date of the plea agreement, not the conviction date, is the operative date to determine the availability of section 212(c), as well as the applicability of AEDPA. Thus, if an alien makes a plea agreement on or after April 24, 1996 (the effective date of AEDPA), and before April 1, 1997 (the effective date of IIRIRA), he or she may be eligible for section 212(c) relief, as the plea agreement was made before IIRIRA eliminated this form of relief, but he or she is subject to the narrower version of section 212(c) relief as implemented by AEDPA.

To hold the date the crime was committed as the operational date would be contrary to the *St. Cyr* decision, as the Court was explicit in preserving the reliance interests of those aliens that made guilty pleas when section 212(c) was still available. *See St. Cyr,* 533 U.S. at 326 ("We therefore hold that § 212(c) relief remains available for aliens * * * who * * * would have been eligible for § 212(c) relief at the time of their plea under the law then in effect."). The phrase "under the law then in effect" clearly conditions the scope of section 212(c) relief that remains available, thereby giving effect to AEDPA and consequently its narrowed availability of section 212(c) relief. *Id.* Accordingly, the Department will retain the date of the plea agreement as the operational date in determining both the availability and scope of section 212(c) relief for an alien.

H. The Accrual of Seven Consecutive Years of Lawful Unrelinquished Domicile

Several commenters criticized § 1003.44(b), relating to how the requisite seven years of lawful unrelinquished domicile should be calculated in order to determine eligibility for section 212(c) relief. They asserted that § 1003.44(b)(3) should be amended to provide that an alien must have seven consecutive years of lawful unrelinquished domicile in the United States as determined "at the time the plea was entered," rather than as of "the date of the final administrative order of deportation or removal." They argued that an alien who did not have the requisite seven years of lawful unrelinquished domicile at the time of making the plea could not have relied upon the availability of section 212(c) relief because he or she would not have been eligible for such relief at that time.

The Department disagrees with these comments. The Board has long held that an alien's lawful domicile terminates upon the entry of the final administrative order of deportation. *See Matter of Cerna,* 20 I&N Dec. 399 (BIA 1991). Although Congress has altered a number of provisions of the Act to limit eligibility for relief by the occurrence of specific events, the Department declines the commenters' suggestion to alter the rule in this limited class of cases.

I. Eligibility for Aliens Who Are Deportable on Grounds for Which There Do Not Exist Corresponding Grounds of Exclusion or Inadmissibility

One commenter stated that the proposed rule should clarify that an alien charged and found deportable as an aggravated felon is not eligible for section 212(c) relief "if there is no comparable ground of inadmissibility for the specific *category* of aggravated felony charged." The commenter continues, "[f]or example, the rule should not apply to aggravated felons charged with deportability under specific types or categories of aggravated felonies such as '*Murder, Rape, or Sexual Abuse of a Minor*' or '*Crime of Violence*' aggravated felonies." Thus, the commenter states that § 1212.3(f)(4) should include those aliens who have been charged with aggravated felonies for which there is no corresponding ground of inadmissibility as being ineligible for section 212(c) relief.

The commenter is correct in stating this limitation on the scope of relief available under section 212(c). *Matter of Granados,* 16 I&N Dec. 726, 728 (BIA 1979) ("[I]f a ground of deportation is also a ground of inadmissibility, section

212(c) can be invoked in a deportation hearing."); *Cabasug* v. *INS*, 847 F.2d 1321 (9th Cir. 1988); *Matter of Hernandez-Casillas*, 20 I&N Dec. 262 (BIA 1990; A.G. 1991). In describing the eligibility requirements, the supplementary information of the proposed rule noted that "[a]n applicant must, at a minimum, meet the following criteria to be considered for a waiver under section 212(c): * * * [t]he alien is deportable or removable on a ground that has a corresponding ground of exclusion or inadmissibility * * *" 67 FR at 52628–52629. However, this requirement was not included in the regulatory language of the proposed rule. As a result, the Department will effectuate the commenter's suggestion by adding this requirement for section 212(c) eligibility. Accordingly, the final rule provides that an alien who is deportable or removable on a ground that does not have a corresponding ground of exclusion or inadmissibility is ineligible for section 212(c) relief.

J. Notification to Affected Individuals

Several commenters suggested that the proposed rule is flawed because it does not provide a mechanism for identifying and notifying LPRs who are eligible to apply for section 212(c) relief. For example, one commenter proposed that the Department "identify individuals who were denied an opportunity to apply for relief on the basis of *St. Cyr* and notify them of this change [because otherwise] many affected individuals will not learn of these rules and will miss the opportunity to resolve their cases."

The Department disagrees with these recommendations. As noted above in relation to other comments, the Department finds that publishing the current rule in the **Federal Register** is the well-established and accepted method of informing the entire public of a change in the law. *See Federal Crop Ins. Corporation*, 332 U.S. at 384–85 ("Just as everyone is charged with knowledge of the United States Statutes at Large, Congress has provided that the appearance of rules and regulations in the **Federal Register** gives legal notice of their contents.") (*citing* 44 U.S.C. 307). The Department does not accept the premise of these arguments that it, or any other agency, is required to provide individual notice of the content of the law. Like citizens, aliens have a duty to know the law and abide by the law.

Immigration judges routinely inform aliens who appear before them of the types of relief for which they may be eligible. 8 CFR 1240.11(a)(2); *cf.* 8 CFR 1240.49(a) (narrower provision applicable to deportation proceedings). Thus, the Department finds that there exist ample opportunities for aliens affected by this final rule to become aware of its contents. Therefore, the Department declines to accept these recommendations.

K. Proof of Permanent Residence

One commenter stated that the Department should eliminate the "burdensome paperwork requirements" of compelling potentially eligible aliens to submit proof of permanent residence. The commenter suggested that "[i]t is inappropriate and impractical to require an individual to provide proof of permanent residence or a copy of the Form I–90 when the EOIR and/or the [DHS] have that information and control access to it."

The Department disagrees with the commenter. Similar to other avenues of petitioning for relief, the alien has the burden of proving that he or she is eligible for, and merits, a form of relief. In the context of section 212(c) in particular, the alien bears the burden of proof to demonstrate LPR status as an essential element of establishing eligibility for such relief. The language of the rule merely reflects the fact that the alien bears this burden of proof.

L. Applicability of the Soriano Rule

One commenter expressed concern that the proposed rule would delete a previous rule issued by the Department that created a procedure for eligible aliens to apply for section 212(c) relief. The previous rule, sometimes referred to as the "*Soriano* rule," was published on January 22, 2001, at 66 FR 6436, and is presently codified at 8 CFR 1212.3(g) (and the related motion to reopen rule, which is being replaced by this final rule, is presently codified at 8 CFR 1003.44). The Department adopted the *Soriano* rule in response to the substantial judicial precedent rejecting the interpretation of section 212(c) set forth in *Matter of Soriano*, 21 I&N Dec. 516 (BIA 1996, A.G. 1997).

Briefly, the *Soriano* rule provided that the limitations of section 440(d) of AEDPA are not applicable to section 212(c) applicants whose deportation proceedings commenced prior to April 24, 1996, the effective date of AEDPA. Under the *Soriano* rule, such section 212(c) applicants may apply for relief, if eligible, under the pre-AEDPA version of section 212(c), irrespective of whether their convictions resulted from plea agreements or criminal trials. The commenter suggested that the "provision set forth in 8 CFR [1]212.3(g) should be retained in its entirety" because of pending cases before the immigration judges and the Board that were commenced based on the *Soriano* rule.

In this rule, the Department is implementing the Supreme Court's ruling in *St. Cyr* by providing eligibility and procedural requirements for section 212(c) relief for aliens whose convictions were entered after a plea agreement. This rule both amends 8 CFR 1212.3 and replaces the special motion to reopen provisions adopted at the time of the *Soriano* rule, 8 CFR 1003.44 (which is no longer relevant since the time to submit a motion to reopen under that rule has long since expired).

The commenter is correct in observing that the issue addressed in current § 1212.3(g) continues to be relevant to aliens whose deportation proceedings were commenced prior to the enactment of AEDPA. The Department will therefore leave intact the existing provision of 8 CFR 1212.3(g), which will continue to govern cases falling within its parameters.

Any motions that were filed pursuant to the *Soriano* rule that are still pending before the immigration judges or the Board will be adjudicated under the requirements of either the *Soriano* rule or this final rule. However, if a motion under *Soriano* was denied, and the alien desires to seek section 212(c) relief under this rule, he or she will need to file a new special motion, as described in 8 CFR 1003.44, as revised. Even if the motion was denied because the alien did not satisfy the requirements of 8 CFR 1212.3(g) (for deportation proceedings commenced prior to April 24, 1996), that ineligibility will not bar him or her from timely applying for section 212(c) relief under this rule if he or she is eligible under 8 CFR 1003.44 and 1212.3, as revised.

Aliens who were eligible to file for section 212(c) relief under the *Soriano* rule but failed to do so will be able to file for section 212(c) relief under this rule, but only if they meet the eligibility requirements contained in this final rule—that is, with respect to convictions entered pursuant to a plea agreement made prior to April 1, 1997. This rule does not provide any additional relief to aliens whose convictions were entered after a trial. Accordingly, this rule does not extend the deadline of July 23, 2001, for aliens to submit a motion to reopen to apply for section 212(c) relief pursuant to the pre-existing provisions of § 1003.44, with respect to convictions entered after a trial.

M. Filing New Motions To Reopen After Previously Filing Motions To Reopen

One commenter inquired whether attorneys representing aliens should file new special motions to seek section

212(c) relief under this rule if they previously filed a motion to reopen under 8 CFR 1003.2 or 1003.23 in order to seek relief based on the *St. Cyr* decision.

The Department does not require an alien to file a new special motion to seek section 212(c) relief if he or she previously filed a motion to reopen under 8 CFR 1003.2 or 1003.23 based on the *St. Cyr* decision and the previous motion is still pending. An eligible alien who has already filed a motion with an immigration judge or the Board based on the *St. Cyr* decision may supplement that motion if it is still pending.

If the alien's previous motion to reopen based on the *St. Cyr* decision was found to be barred solely because of time or number limits on motions to reopen, this rule makes clear that an eligible alien will be able to file a special motion under this rule to address the merits of the alien's *St. Cyr* claims. However, if the previous motion to reopen under *St. Cyr* was denied for any reason other than because of the time or number limitations for motions to reopen, § 1003.44(g)(3) precludes the filing of a new special motion under this rule. In that instance, the alien has already had the opportunity to raise the *St. Cyr* issues on the merits through a motion to reopen, and there is no reason to give the respondent a second opportunity to raise issues related to *St. Cyr* through another motion to reopen. *See also* 8 CFR 1003.44(d).

Moreover, as stated in the proposed rule, if the alien under a final order of deportation or removal previously filed a motion to reopen or a motion to reconsider with EOIR on "other grounds," he or she is still required to file a separate special motion to seek section 212(c) relief to receive the benefits under this rule as provided in § 1003.44(g)(1).

In view of the fact-specific nature of the determination whether or not to grant section 212(c) relief, this final rule provides that, if the Board grants a special motion to seek section 212(c) relief in a case in which it last had jurisdiction, the Board will remand the case to an immigration judge for adjudication of those issues. 8 CFR 1003.44(j); *see also* 8 CFR 1003.1(d)(3).

Regulatory Flexibility Act

The Attorney General, in accordance with 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it affects only Departmental employees and aliens or their representatives who appear in proceedings before the immigration judges or the Board. Therefore, this rule does not have a significant economic impact on a substantial number of small 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 one 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.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. 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 United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review.

Executive Order 13132

This rule 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, the Department has determined that this rule does not have sufficient federalism implications to warrant a federalism summary impact statement.

Executive Order 12988

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

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, all Departments are required to submit to OMB for review and approval any reporting requirements inherent in a final rule. This rule does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal services, Organization and functions (Government agencies).

8 CFR Part 1212

Administrative practice and procedure, Aliens, Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR-Part 1240

Administrative practice and procedure, Aliens, Immigration.

■ Accordingly, chapter V of title 8 of the Code of Federal Regulations is amended as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1252 note, 1252b, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 2. Revise 8 CFR 1003.44 to read as follows:

§ 1003.44 Special motion to seek section 212(c) relief for aliens who pleaded guilty or *nolo contendere* to certain crimes before April 1, 1997.

(a) *Standard for adjudication.* This section applies to certain aliens who formerly were lawful permanent residents, who are subject to an administratively final order of deportation or removal, and who are eligible to apply for relief under former section 212(c) of the Act and 8 CFR 1212.3 with respect to convictions obtained by plea agreements reached prior to a verdict at trial prior to April 1, 1997. A special motion to seek relief under section 212(c) of the Act will be adjudicated under the standards of this section and 8 CFR 1212.3. This section is not applicable with respect to any conviction entered after trial.

(b) *General eligibility.* The alien has the burden of establishing eligibility for relief, including the date on which the alien and the prosecution agreed on the

plea of guilt or *nolo contendere*. Generally, a special motion under this section to seek section 212(c) relief must establish that the alien:

(1) Was a lawful permanent resident and is now subject to a final order of deportation or removal;

(2) Agreed to plead guilty or *nolo contendere* to an offense rendering the alien deportable or removable, pursuant to a plea agreement made before April 1, 1997;

(3) Had seven consecutive years of lawful unrelinquished domicile in the United States prior to the date of the final administrative order of deportation or removal; and

(4) Is otherwise eligible to apply for section 212(c) relief under the standards that were in effect at the time the alien's plea was made, regardless of when the plea was entered by the court.

(c) *Aggravated felony definition.* For purposes of eligibility to apply for section 212(c) relief under this section and 8 CFR 1212.3, the definition of aggravated felony in section 101(a)(43) of the Act is that in effect at the time the special motion or the application for section 212(c) relief is adjudicated under this section. An alien shall be deemed to be ineligible for section 212(c) relief if he or she has been charged and found deportable or removable on the basis of a crime that is an aggravated felony, except as provided in 8 CFR 1212.3(f)(4).

(d) *Effect of prior denial of section 212(c) relief.* A motion under this section will not be granted with respect to any conviction where an alien has previously been denied section 212(c) relief by an immigration judge or by the Board on discretionary grounds.

(e) *Scope of proceedings.* Proceedings shall be reopened under this section solely for the purpose of adjudicating the application for section 212(c) relief, but if the immigration judge or the Board grants a motion by the alien to reopen the proceedings on other applicable grounds under 8 CFR 1003.2 or 1003.23 of this chapter, all issues encompassed within the reopened proceedings may be considered together, as appropriate.

(f) *Procedure for filing a special motion to seek section 212(c) relief.* An eligible alien shall file a special motion to seek section 212(c) relief with the immigration judge or the Board, whichever last held jurisdiction over the case. An eligible alien must submit a copy of the Form I–191 application, and supporting documents, with the special motion. The motion must contain the notation "special motion to seek section 212(c) relief." The Department of Homeland Security (DHS) shall have 45 days from the date of filing of the special motion to respond. In the event the DHS does not respond to the motion, the DHS retains the right in the proceedings to contest any and all issues raised.

(g) *Relationship to motions to reopen or reconsider on other grounds.* (1) *Other pending motions to reopen or reconsider.* An alien who has previously filed a motion to reopen or reconsider that is still pending before an immigration judge or the Board, other than a motion for section 212(c) relief, must file a separate special motion to seek section 212(c) relief pursuant to this section. The new motion shall specify any other motions currently pending before an immigration judge or the Board. An alien who has previously filed a motion to reopen under 8 CFR 1003.2 or 1003.23 based on *INS* v. *St. Cyr* is not required to file a new special motion under this section, but he or she may supplement the previous motion if it is still pending. Any motion for section 212(c) relief described in this section pending before the Board or an immigration judge on the effective date of this rule that would be barred by the time or number limitations on motions shall be deemed to be a motion filed pursuant to this section, and shall not count against the number restrictions for other motions to reopen.

(2) *Motions previously filed pursuant to prior provision.* If an alien previously filed a motion to apply for section 212(c) relief with an immigration judge or the Board pursuant to the prior provisions of this section, as in effect before October 28, 2004, and the motion is still pending, the motion will be adjudicated pursuant to the standards of this section, both as revised and as previously in effect, and the alien does not need to file a new special motion pursuant to paragraph (g)(1) of this section. However, if a motion filed under the prior provisions of this section was denied because the alien did not satisfy the requirements contained therein, the alien must file a new special motion pursuant to this section, if eligible, in order to apply for section 212(c) relief based on the requirements established in this section.

(3) *Effect of a prior denial of a motion to reopen or motion to reconsider filed after the St. Cyr decision.* A motion under this section will not be granted where an alien has previously submitted a motion to reopen or motion to reconsider based on the *St. Cyr* decision and that motion was denied by an immigration judge or the Board (except on account of time or number limitations for such motions).

(4) *Limitations for motions.* The filing of a special motion under this section has no effect on the time and number limitations for motions to reopen or reconsider that may be filed on grounds unrelated to section 212(c).

(h) *Deadline to file a special motion to seek section 212(c) relief under this section.* An alien subject to a final administrative order of deportation or removal must file a special motion to seek section 212(c) relief on or before April 26, 2005. An eligible alien may file one special motion to seek section 212(c) relief under this section.

(i) *Fees.* No filing fee is required at the time the alien files a special motion to seek section 212(c) relief under this section. However, if the special motion is granted, and the alien has not previously filed an application for section 212(c) relief, the alien will be required to submit the appropriate fee receipt at the time the alien files the Form I–191 with the immigration court.

(j) *Remands of appeals.* If the Board has jurisdiction and grants the motion to apply for section 212(c) relief pursuant to this section, it shall remand the case to the immigration judge solely for adjudication of the section 212(c) application.

(k) *Limitations on eligibility under this section.* This section does not apply to:

(1) Aliens who have departed the United States and are currently outside the United States;

(2) Aliens issued a final order of deportation or removal who then illegally returned to the United States; or

(3) Aliens who have not been admitted or paroled.

PART 1212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

■ 3. The authority citation for part 1212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227.

■ 4. Amend § 1212.3 by:

■ A. Revising the section heading, paragraph (a), the second to last sentence of paragraph (b);

■ B. Removing and reserving paragraph (c);

■ C. Revising paragraph (d), paragraph (e), paragraph (f) introductory text, and paragraphs (f)(3), (f)(4), and (f)(5); and

■ D. Adding a new paragraph (h).

The revisions and addition read as follows:

§ 1212.3 Application for the exercise of discretion under former section 212(c).

(a) *Jurisdiction.* An application by an eligible alien for the exercise of discretion under former section 212(c) of the Act (as in effect prior to April 1, 1997), if made in the course of proceedings under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as in effect prior to April 1, 1997), shall be submitted to the immigration judge by filing Form I–191, Application for Advance Permission to Return to Unrelinquished Domicile.

(b) * * * All material facts or circumstances that the applicant knows or believes apply to the grounds of excludability, deportability, or removability must be described in the application. * * *

(c) [Reserved]

(d) *Validity.* Once an application is approved, that approval is valid indefinitely. However, the approval covers only those specific grounds of excludability, deportability, or removability that were described in the application. An applicant who failed to describe any other grounds of excludability, deportability, or removability, or failed to disclose material facts existing at the time of the approval of the application, remains excludable, deportable, or removable under the previously unidentified grounds. If the applicant is excludable, deportable, or removable based upon any previously unidentified grounds a new application must be filed.

(e) *Filing or renewal of applications before an immigration judge.* (1) An eligible alien may renew or submit an application for the exercise of discretion under former section 212(c) of the Act in proceedings before an immigration judge under section 240 of the Act, or under former sections 235, 236, or 242 of the Act (as it existed prior to April 1, 1997), and under this chapter. Such application shall be adjudicated by the immigration judge, without regard to whether the applicant previously has made application to the district director.

(2) The immigration judge may grant or deny an application for relief under section 212(c), in the exercise of discretion, unless such relief is prohibited by paragraph (f) of this section or as otherwise provided by law.

(3) An alien otherwise entitled to appeal to the Board of Immigration Appeals may appeal the denial by the immigration judge of this application in accordance with the provisions of § 1003.38 of this chapter.

(f) *Limitations on discretion to grant an application under section 212(c) of the Act.* An application for relief under former section 212(c) of the Act shall be denied if:

* * * * *

(3) The alien is subject to inadmissibility or exclusion from the United States under paragraphs (3)(A), (3)(B), (3)(C), (3)(E), or (10)(C) of section 212(a) of the Act;

(4) The alien has been charged and found to be deportable or removable on the basis of a crime that is an aggravated felony, as defined in section 101(a)(43) of the Act (as in effect at the time the application for section 212(c) relief is adjudicated), except as follows:

(i) An alien whose convictions for one or more aggravated felonies were entered pursuant to plea agreements made on or after November 29, 1990, but prior to April 24, 1996, is ineligible for section 212(c) relief only if he or she has served a term of imprisonment of five years or more for such aggravated felony or felonies, and

(ii) An alien is not ineligible for section 212(c) relief on account of an aggravated felony conviction entered pursuant to a plea agreement that was made before November 29, 1990; or

(5) The alien is deportable under former section 241 of the Act or removable under section 237 of the Act on a ground which does not have a statutory counterpart in section 212 of the Act.

* * * * *

(h) *Availability of section 212(c) relief for aliens who pleaded guilty or nolo contendere to certain crimes.* For purposes of this section, the date of the plea agreement will be considered the date the plea agreement was agreed to by the parties. Aliens are not eligible to apply for section 212(c) relief under the provisions of this paragraph with respect to convictions entered after trial.

(1) *Pleas before April 24, 1996.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien may apply for relief under former section 212(c) of the Act, without regard to the amendment made by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996, with respect to a conviction if the alien pleaded guilty or nolo contendere and the alien's plea agreement was made before April 24, 1996.

(2) *Pleas between April 24, 1996 and April 1, 1997.* Regardless of whether an alien is in exclusion, deportation, or removal proceedings, an eligible alien may apply for relief under former section 212(c) of the Act, as amended by section 440(d) of the Antiterrorism and Effective Death Penalty Act of 1996, with respect to a conviction if the alien pleaded guilty or nolo contendere and the alien's plea agreement was made on or after April 24, 1996, and before April 1, 1997.

(3) *Please on or after April 1, 1997.* Section 212(c) relief is not available with respect to convictions arising from plea agreements made on or after April 1, 1997.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

■ 5. The authority citation for part 1240 is revised to read as follows:

Authority: 8 U.S.C. 1103; 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681).

§ 1240.1 [Amended]

■ 6. In § 1240.1, amend paragraph (a)(1)(ii) by removing the words "and section 902 of Pub. L. 105–277" and replacing them with the words "section 902 of Pub. L. 105–277, and former section 212(c) of the Act (as it existed prior to April 1, 1997)".

Dated: September 20, 2004.

John Ashcroft,

Attorney General.

[FR Doc. 04–21605 Filed 9–27–04; 8:45 am]

BILLING CODE 4410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) has adopted final amendments to its Regulation A to reflect the Board's approval of an increase in the primary credit rate at each Federal Reserve Bank. The secondary credit rate at each Reserve Bank automatically increased by formula as a result of the Board's primary credit rate action.

DATES: The amendments to part 201 (Regulation A) are effective September 28, 2004. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of

Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Federal Reserve Banks make primary and secondary credit available to depository institutions as a backup source of funding on a short-term basis, usually overnight. The primary and secondary credit rates are the interest rates that the twelve Federal Reserve Banks charge for extensions of credit under these programs. In accordance with the Federal Reserve Act, the primary and secondary credit rates are established by the boards of directors of the Federal Reserve Banks, subject to the review and determination of the Board.

The Board approved requests by the Reserve Banks to increase by 25 basis points the primary credit rate in effect at each of the twelve Federal Reserve Banks, thereby increasing from 2.50 percent to 2.75 percent the rate that each Reserve Bank charges for extensions of primary credit. As a result of the Board's action on the primary credit rate, the rate that each Reserve Bank charges for extensions of secondary credit automatically increased from 3.00 percent to 3.25 percent under the secondary credit rate formula. The final amendments to Regulation A reflect these rate changes.

The 25-basis-point increase in the primary credit rate was associated with a similar increase in the target for the federal funds rate (from 1.50 percent to 1.75 percent) approved by the Federal Open Market Committee (Committee) and announced at the same time. A press release announcing these actions indicated that:

> The Committee believes that, even after this action, the stance of monetary policy remains accommodative and, coupled with robust underlying growth in productivity, is providing ongoing support to economic activity. After moderating earlier this year partly in response to the substantial rise in energy prices, output growth appears to have regained some traction, and labor market conditions have improved modestly. Despite the rise in energy prices, inflation and inflation expectations have eased in recent months.
>
> The Committee perceives the upside and downside risks to the attainment of both sustainable growth and price stability for the next few quarters to be roughly equal. With underlying inflation expected to be relatively low, the Committee believes that policy accommodation can be removed at a pace that is likely to be measured. Nonetheless, the Committee will respond to changes in economic prospects as needed to fulfill its obligation to maintain price stability.

Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the new primary and secondary credit rates will not have a significantly adverse economic impact on a substantial number of small entities because the final rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The Board did not follow the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of these amendments because the Board for good cause determined that delaying implementation of the new primary and secondary credit rates in order to allow notice and public comment would be unnecessary and contrary to the public interest in fostering price stability and sustainable economic growth. For these same reasons, the Board also has not provided 30 days prior notice of the effective date of the rule under section 553(d).

12 CFR Chapter II

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51, paragraphs (a) and (b) are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

(a) *Primary credit.* The interest rates for primary credit provided to depository institutions under § 201.4(a) are:

Federal Reserve Bank	Rate	Effective
Boston	2.75	September 21, 2004.
New York	2.75	September 21, 2004.
Philadelphia	2.75	September 21, 2004.
Cleveland	2.75	September 21, 2004.
Richmond	2.75	September 21, 2004.
Atlanta	2.75	September 21, 2004.
Chicago	2.75	September 21, 2004.
St. Louis	2.75	September 22, 2004.
Minneapolis	2.75	September 21, 2004.
Kansas City	2.75	September 21, 2004.
Dallas	2.75	September 21, 2004.
San Francisco	2.75	September 21, 2004.

(b) *Secondary credit.* The interest rates for secondary credit provided to depository institutions under 201.4(b) are:

Federal Reserve Bank	Rate	Effective
Boston	3.25	September 21, 2004.
New York	3.25	September 21, 2004.
Philadelphia	3.25	September 21, 2004.
Cleveland	3.25	September 21, 2004.
Richmond	3.25	September 21, 2004.
Atlanta	3.25	September 21, 2004.
Chicago	3.25	September 21, 2004.
St. Louis	3.25	September 22, 2004.
Minneapolis	3.25	September 21, 2004.
Kansas City	3.25	September 21, 2004.
Dallas	3.25	September 21, 2004.
San Francisco	3.25	September 21, 2004.

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21668 Filed 9–27–04; 8:45 am]

BILLING CODE 6210–02–P

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1212]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Indianapolis check processing office of the Federal Reserve Bank of Chicago and reassign the Federal Reserve routing symbols currently listed under that office to the Cincinnati branch of the Federal Reserve Bank of Cleveland. This amendment is the last in a series of amendments to the appendix associated with the restructuring of check processing operations that the Reserve Banks announced in February 2003. The Board also is providing advance notice about a series of future amendments to appendix A in connection with the next phase of the Reserve Banks' restructuring of the check processing operations within the Federal Reserve System. This future restructuring and the associated amendments to appendix A will take effect on a staggered basis beginning in 2005 and ending in early 2006.

DATES: The final rule will become effective on October 30, 2004.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director (202/452–2660), or Joseph P. Baressi, Senior Financial Services Analyst (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel (202/452–3554), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Checks that do not meet the requirements for "local" checks are considered "nonlocal."

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

Final Amendment to Appendix A

As explained in detail in the Board's final rule published in the **Federal Register** on May 28, 2003, the Federal Reserve Banks decided in early 2003 to reduce the number of locations at which they process checks.[2] As part of this restructuring process, effective October 30, 2004, the Indianapolis office of the Federal Reserve Bank of Chicago will cease processing checks and banks with routing symbols currently assigned to that office for check processing purposes will be reassigned to the Cincinnati branch of the Federal Reserve Bank of Cleveland. This is the last stage of the restructuring process announced in 2003. Some checks that are drawn on and deposited at banks located in the affected check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. Because the Cincinnati check processing region serves banks located in multiple Federal Reserve districts, banks located in the expanded Cincinnati check processing region cannot determine that a check is nonlocal solely because the paying bank for that check is located in another Federal Reserve district.

To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the lists of routing symbols associated with the Federal Reserve Banks of Cleveland and Chicago to reflect the transfer of operations from the Chicago Reserve Bank's Indianapolis office to the Cleveland Reserve Bank's Cincinnati branch. To coincide with the effective date of the underlying check processing changes, the amendments are effective October 30, 2004. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time.

Information About Future Changes to Appendix A

As the Federal Reserve Banks announced on August 2, 2004,[4] in response to the continued nationwide decline in check usage and to position themselves more effectively to meet the cost recovery requirements of the Monetary Control Act of 1980, the Reserve Banks have decided to reduce further the number of locations at which they process checks. The Reserve Banks plan to stop processing checks at nine offices, and the checks currently processed at those offices will be processed at other nearby offices, as follows:

Branches and offices that no longer will process checks:	Branches and offices to which check processing will be transferred:
Boston, MA	Windsor Locks, CT.
Columbus, OH	Cleveland, OH.
Birmingham, AL	Atlanta, GA.
Nashville, TN	Atlanta, GA.
Detroit, MI	Cleveland, OH.
Oklahoma City, OK	Dallas, TX.
Houston, TX	Dallas, TX.
Portland, OR	Seattle, WA.
Salt Lake City, UT	Denver, CO.

The restructuring of Reserve Bank check processing operations will take place in several stages over the course of 2005 and early 2006 and collectively will reduce the number of check

[1] For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] See 68 FR 31592, May 28, 2003. In addition to the general advance notice of future amendments previously provided by the Board, as well as the Board's notices of each of the final amendments, the Reserve Banks generally inform affected depository institutions of the exact date of each office transition at least 120 days in advance. The Reserve Banks' communications to affected depository institutions are available at *www.frbservices.org.*

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

[4] The Reserve Banks' press release concerning the upcoming restructuring process is available at *http://www.frbservices.org/Retail/pdf/CheckAnnouncePressRelease8–2–04.pdf.*

processing regions from 32 to 23. The Board will amend appendix A in connection with each stage of the restructuring to delete the name of the office(s) that will no longer process checks and transfer the affected Federal Reserve routing symbols to another check processing office. The Board intends to announce each stage of the restructuring and the associated amendments to appendix A at least 60 days prior to the effective date of the amendment in order to give affected banks ample time to make processing changes and, if necessary, amend their availability schedules and related disclosures and provide their customers with notice of any changes to their availability schedules.

Some affected banks might prefer to make or to plan for some or all of their processing and availability changes prior to the effective dates of the relevant amendments. For the information and planning needs of affected banks, the Board today is describing below the Federal Reserve routing symbol changes to appendix A that will be made between January 1, 2005, and early 2006.

1. Windsor Locks

The operations of the Boston head office will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Windsor Locks office:

0110	2110
0111	2111
0112	2112
0113	2113
0114	2114
0115	2115
0116	2116
0117	2117
0118	2118
0119	2119
0211	2211

2. Cleveland

The operations of the Columbus office and the Detroit branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Cleveland head office:

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434
0440	2440
0441	2441
0442	2442
0720	2720
0724	2724

3. Atlanta

The operations of the Birmingham and Nashville branches will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Atlanta head office:

0610	2610
0611	2611
0612	2612
0613	2613
0620	2620
0621	2621
0622	2622
0640	2640
0641	2641
0642	2642

4. Denver

The operations of the Salt Lake City branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Denver branch:

1020	3020
1021	3021
1022	3022
1023	3023
1070	3070
1240	3240
1241	3241
1242	3242
1243	3243

5. Dallas

The operations of the Oklahoma City and Houston branches will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Dallas head office:

1030	3030
1031	3031
1039	3039
1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122
1123	3123
1130	3130
1131	3131
1140	3140
1149	3149
1163	3163

6. Seattle

The operations of the Portland branch will be transferred such that banks with the following Federal Reserve routing symbols will be local to the Seattle branch:

1230	3230
1231	3231
1232	3232
1233	3233
1250	3250
1251	3251
1252	3252

The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same.

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of the final rule. The revisions to the appendix are technical in nature and are required by the statutory and regulatory definitions of "check-processing region." Thus, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the final rule will not have a significantly adverse economic impact on a substantial number of small entities. These amendments are technical, and the routing number changes are required by law. Moreover, these amendments apply to all banks regardless of their size. Many small banks generally provide next-day availability for all checks and will not be affected by this amendment. For the subset of small banks that does distinguish between checks subject to next-day availability and those subject to longer holds, the final rule should necessitate only minimal programming changes. Some of these affected banks might also have to modify their funds availability disclosures and notify both new and existing customers of the modified funds availability schedules.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the Indianapolis office of the Federal Reserve Bank of Chicago and reassign the routing symbols listed under that office to the Cincinnati office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, all paperwork collection procedures associated with

Regulation CC already are in place, and the Board accordingly anticipates that no additional burden will be imposed as a result of this rulemaking.

12 CFR Chapter II

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229 AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. The Fourth and Seventh Federal Reserve District routing symbol lists in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423
0515	2515
0519	2519
0740	2740
0749	2749
0813	2813
0830	2830
0839	2837
0863	2863

Columbus Office

0440	2440
0441	2441
0442	2442

* * * * *

Seventh Federal Reserve District

[Federal Reserve Bank of Chicago]

Head Office

0710	2710
0711	2711
0712	2712
0719	2719
0750	2750
0759	2759

Detroit Branch

0720	2720
0724	2724

Des Moines Office

0730	2730
0739	2739
1040	3040
1041	3041
1049	3049

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, September 22, 2004.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 04–21632 Filed 9–27–04; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18820; Airspace Docket No. 04–ACE–46]

Modification of Class E Airspace; Kennett, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies Class E airspace at Kennett, MO. A review of controlled airspace for Kennett Memorial Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Kennett, MO Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before October 28, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–18820/ Airspace Docket No. 04–ACE–46, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Kennett, MO. An examination of controlled airspace for Kennett Memorial Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. Additionally, the examination revealed the dimensions of the extension to the airspace areas were not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace, and the bearing from the Kennett NDB used to define the extension to the airspace area was incorrect. The examination also identified discrepancies in the Kennett Memorial Airport ARP and the location of the Kennett nondirectional radio beacon (NDB) used in the Class E airspace legal description. This amendment expands the airspace area from a 6-mile radius to a 6.4-mile radius of Kennett Memorial Airport, redefines the extension to the Class E airspace area in terms of the 000° bearing from the Kennett NDB vs. the current 360° bearing, decreases the length of the extension from 7.4 miles to 7 miles, decreases the width of the extension from 2.6 miles each side of the centerline to 2.5 miles, corrects the ARP and location of the NDB in the legal description and brings the legal description of the Kennett, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are

published in paragraph 6005 of FAA Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2004–18820/Airspace Docket No. 04–ACE–46." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant role" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

Authority: 49 U.S.C. 106(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 7400.9M, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

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

* * * * *

ACE MO E5 Kennett, MO

Kennett Memorial Airport, MO
(Lat. 36°13′49″ N., long. 90°02′04″ W.)
Kennett NDB
(Lat. 36°13′43″ N., long. 90°02′21″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Kennett Memorial Airport and within 2.5 miles each side of the 003° bearing from the Kennett NDB extending from the 6.4-mile radius of the airport to 7 miles north of the NDB.

* * * * *

Dated: Issued in Kansas City, MO, on September 14, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–21736 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17608; Airspace Docket No. 04–AAL–07]

Establishment of Class E Airspace; Teller, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Teller, AK to provide adequate controlled airspace to contain aircraft executing two new Standard Instrument Approach Procedures (SIAP). This Rule results in new Class E airspace upward from 700 feet (ft.) and 1,200 feet above the surface at Teller, AK.

DATES: *Effective Date:* 0901 UTC, November 25, 2004.

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; email: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 9, 2004, the FAA proposed to revise part 71 of the Federal Aviation Regulations (14 CFR part 71) to create new Class E airspace upward from 700 ft. and 1,200 ft. above the surface at Teller, AK (69 FR 32291). An error in the coordinates describing the airspace upward from 1,200 above the surface was detected and corrected on Friday, September 2, 2004 (69 FR 53661). The action was proposed in order to add Class E airspace sufficient in size to contain aircraft while executing two new Standard Instrument Approach Procedures for the Teller Airport. The new approaches are Area Navigation-Global Positioning System (RNAV GPS) Runway (RWY) 7, original

and (2) RNAV (GPS) Runway 25, original. New Class E controlled airspace extending upward from 700 feet and 1,200 feet above the surface in the Teller Airport area is established by this action. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No public comments have been received; thus the rule is adopted as proposed.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated September 2, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace at Teller, Alaska. This additional Class E airspace was created to accommodate aircraft executing two new SIAPs and will be depicted on aeronautical charts for pilot reference. The intended effect of this rule is to provide adequate controlled airspace for IFR operations at Teller Airport, Teller, Alaska.

The FAA has determined that this 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 a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Teller, AK [New]

Teller Airport, AK
(Lat. 65°14′25″ N., long. 166°20′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Teller Airport and that airspace extending upward from 1,200 feet above the surface within a 30-mile radius of 65°14′35″ N, 165°53′16″ W, excluding the Nome Class E airspace and that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on September 20, 2004.

Anthony M. Wylie,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–21742 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–13850; Airspace Docket No. 02–AEA–19]

RIN 2120–AA66

Establishment of Restricted Areas 5802C, D, and E; Fort Indiantown Gap, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published in the **Federal Register** on August 5, 2004. In that rule, the legal descriptions for Restricted Area 5802C, 5802D, and 5802E (R–5802C, R–5802D, and R–5802E) contained an inadvertent error in the time of designation. This action corrects that error.

DATES: *Effective Date:* 0901 UTC, September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules, Office of System Operations and Safety, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION: On August 5, 2004, Airspace Docket No. 02–AEA–19 (69 FR 47358) was published in the **Federal Register** establishing R–5802C, R–5802D, and R–5802E, at Fort Indiantown Gap, PA (69 FR 47358). The descriptions for R–5802C, D, and E contained an inadvertent error in the time of designation. The time of designation for the period "February 15 through May 10 and September 1 through December 15" was incorrectly listed in the rule as "0800–2400 local time." The correct time for that period should have read "0800–2300 local time." All other time periods listed in the rule are correct.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the legal descriptions for R–5802C, R–5802D, and R–5802E as published in the **Federal Register** on August 5, 2004 (69 FR 47358), are corrected as follows:

§ 73.58 [Corrected]

■ On page 47360, correct the time of designation in the legal descriptions for R–5802C, R–5802D, and R–5802E as follows:

* * * * *

R–5802C Fort Indiantown Gap, PA [Corrected]

By removing the published time of designation and substituting the following: Time of designation. February 15 through May 10 and September 1 through December 15, 0800–2300 local time on Saturdays and 0800–1200 local time on Sundays; May 11 through August 31, 0800–2400 local time on Saturdays and 0800–2000 local time on all other days; other times by NOTAM issued at least 48 hours in advance.

R–5802D Fort Indiantown Gap, PA [Corrected]

By removing the published time of designation and substituting the following: Time of designation. February 15 through May 10 and September 1 through December 15, 0800–2300 local time on Saturdays and 0800–1200 local time on Sundays; May 11 through August 31, 0800–2400 local time on Saturdays and 0800–2000 local time on all other days; other times by NOTAM issued at least 48 hours in advance.

R–5802E Fort Indiantown Gap, PA [Corrected]

By removing the published time of designation and substituting the following: Time of designation. February 15 through May 10 and September 1 through December 15, 0800–2300 local time on Saturdays and 0800–1200 local time on Sundays; May 11 through August 31, 0800–2400 local time on Saturdays and 0800–2000 local time on all other days; other times by NOTAM issued at least 48 hours in advance.

* * * * *

Issued in Washington, DC, on September 22, 2004.

Reginald C. Matthews,

Manager, Airspace and Rules.

[FR Doc. 04–21739 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7817–9]

Connecticut: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's action finalizes EPA's decision to grant authorization to the State of Connecticut for certain revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revisions consist of State regulations which update the State's program to meet Federal requirements through January 1, 2001. The revisions cover the EPA RCRA Clusters Non-HSWA VI, HSWA I, HSWA II, and RCRA I through XI, and include such important rules as Corrective Action, land disposal restrictions, toxicity characteristic amendments, burning hazardous waste in boilers and industrial furnaces, recycled used oil, universal wastes, and the expanded RCRA public participation rule. EPA is granting final authorization to Connecticut for these revisions to its hazardous waste program. EPA has determined that these State regulations meet the requirements for authorization as set forth in the RCRA statute and EPA's regulations.

DATES: The approval of Connecticut's program revisions are effective without further notice as of September 28, 2004.

ADDRESSES: Dockets which relate to today's final rule that contain copies of the State of Connecticut's revision application and the materials which support the basis for EPA's authorization decision are available at the following two locations: (i) Connecticut Department of Environmental Protection, Bureau of Waste Management, Waste Engineering and Enforcement Division, 79 Elm Street—4th floor, Hartford, CT 06106–5127, business hours Monday through Friday 9 a.m. to 4 p.m., tel: (860) 424–3023; and (ii) EPA Region I Library, One Congress Street—11th Floor, Boston, MA 02114–2023, business hours Monday through Thursday 10 a.m.–3 p.m., tel: (617) 918–1990. Records in these dockets are available for inspection and copying during normal business hours.

FOR FURTHER INFORMATION CONTACT: Robin Biscaia, Hazardous Waste Unit, EPA Region I, One Congress St., Suite 1100 (CHW), Boston, MA 02114–2023, tel: (617) 918–1642, e-mail: *biscaia.robin@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Has Connecticut Previously Been Authorized for Under RCRA?

The State of Connecticut received Final Authorization on December 17, 1990, effective December 31, 1990 (55 FR 51707), to implement its base hazardous waste management program. This previously authorized program generally tracks Federal hazardous waste requirements through July 1, 1989.

C. What Were the Comments and Responses to EPA's Proposal?

EPA proposed to authorize the revisions to the Connecticut program at 69 FR 40568 (July 6, 2004). EPA received written comments from two commenters during the public comment period on EPA's proposed rule. Today's action responds to those comments and publishes EPA's final determination granting Connecticut final authorization for its program revisions. EPA would like to thank the commenters for their interest in this action. The issues raised by the commenters are summarized and responded to below. For the reasons explained below, EPA was not persuaded by the comments to reconsider the authorization of this Connecticut RCRA program update.

1. Comments From Klancko & Klancko of Woodbridge, Connecticut

This commenter submitted comments opposing EPA's proposed action. The commenter has concerns relating to the way the Connecticut Department of Environmental Protection (CTDEP) implements its hazardous waste program, as summarized below:

Comment #1: The commenter opposes the State spending resources to create its own regulations, but, rather, suggests the money would be better spent by the State adopting and enforcing the existing Federal hazardous waste regulations. The commenter suggests that having State requirements that differ from Federal ones may cause confusion among the regulated community.

EPA's Response: The Resource and Recovery Act (RCRA) mandates that in order for State hazardous waste programs to be authorized, they must be equivalent, consistent and no less stringent than the Federal program. There is nothing under this authority than prohibits a State from enacting laws or adopting regulations that are more stringent than the Federal hazardous waste program. Under State and Federal law, it is a State's prerogative to do so. This flexibility allows States to adapt programs to address specific needs or concerns in a given State which may result in more stringent requirements. The rules relating to this authorization have been subject to Connecticut's public notice and rulemaking procedures which gave fair notice regarding what the State regulations require. Raising State issues to EPA only after a State has adopted its rules at the State level is unfair to the State. This Federal authorization action is not the appropriate forum for this comment.

Comment #2: Relating to CTDEP's approach to compliance, the commenter believes there is more emphasis on using enforcement to achieve compliance rather than outreach and education which would foster improved, longer lasting compliance,

particularly with small businesses. According to the commenter, this kind of approach promotes a polarized, disharmonious enforcement environment which adds to financial and operational burdens, and, thus, contributes to a declining manufacturing base in the State. Also, the commenter suggests the CTDEP is more concerned with the issuance of enforcement actions and levying fines than improvements in the environment, especially as it relates to those who are resource challenged, and that improvements in Connecticut's environment, according to data provided by the Connecticut Council on Environmental Quality, have been marginal at best.

EPA Response: Pursuant to the requirements for State authorized programs, *i.e.*, 40 CFR 271.15 and 40 CFR 271.16, the CTDEP has the necessary compliance monitoring and enforcement components for an authorized State hazardous waste regulatory program. Also, as described in CTDEP's Program Description, its hazardous waste compliance program includes education and outreach regarding safe waste management and new and existing regulations as well as pollution prevention activities. As agreed to in the Memorandum of Agreement between EPA and the CTDEP, Connecticut must ensure that compliance monitoring activities and priorities shall be consistent with all applicable Federal requirements and with the State's Program Description and will be negotiated in the PPA (Performance Partnership Agreement) with EPA. The EPA disagrees with the commenter's criticisms of the Connecticut program. In addition, the current rulemaking involves authorizing an update to the Connecticut program. Not authorizing the update would in no way address the commenter's concerns, but would simply mean that for purposes of Federal enforcement, the Connecticut program would remain out of date.

Comment #3: In conclusion, the commenter urges EPA to reconsider the authorization of Connecticut's hazardous waste program at this time and suggests EPA meet with various stakeholders to determine a better approach to meet the "global" needs of Connecticut and EPA's mandate and responsibility, emphasizing that consistency with Federal regulation would be a major step in this direction.

EPA Response: See "EPA response" to comment #1 and #2 above. Also, Connecticut has established a Commissioner's Advisory Subcommittee, which includes consultants, attorneys, environmental interest groups, and members of the regulated community, to provide input during the development of the proposed revisions. In addition, as referenced in EPA's proposed rule for the Connecticut authorization, EPA and the CTDEP conducted an informational meeting on July 21, 2004, in order to address questions the public may have had relating to this action.

2. Comments From Safe Food and Fertilizer of Quincy, Washington

This organization filed a comment letter objecting to the proposed authorization of the updated Connecticut RCRA regulations for the following reasons.

Comment #1: The commenter states that there has not been an adequate review of the State regulations because the "Express RCRA Authorization Process" has been used by the State and EPA. The commenter states that 40 CFR 271.7 requires that there be a review by the State Attorney General's Office of each State regulation to determine if it is consistent with State statutes and that this was not done in this case.

EPA Response: Actually, each State regulation has been carefully reviewed in accordance with § 271.7. The Attorney General's Statement (page 1) submitted as part of the State's application for authorization certifies that the State has the statutory authority to "carry out the hazardous waste program set forth in the application." This Statement was submitted following a review by that Office of all of the State regulations which determined (as reflected in the certification) that they all are consistent with the State statutes. In addition, the Attorney General's Statement is accompanied by a Statutory Checklist which lists the statutory authority on which the different kinds of State regulations are based. For example, under section XVII, item 1. the Checklist explains that the State Department of Environmental Protection (DEP) has the statutory authority pursuant to C.G.S. sections 22a–6(a) and 22a–449(c) to grant variances and exemptions that are no less stringent than allowed by the EPA in the Federal RCRA program. Finally, under C.G.S. section 4–169, no regulation can take effect in Connecticut until the regulation has been reviewed and approved by the Attorney General's Office. This State-law mandated review of the regulations also occurred in this case.

The only way in which this process has been "expedited" is that the EPA has not required that the State statutory authority be separately listed for each of the State regulations, but rather has accepted the determinations by the Attorney General that certain groups of regulations all are supported by the same statutory authority. For example, the EPA has not required the State to list C.G.S. sections 22a–6(a) and 22a–449(c) next to each exemption that is being adopted, but rather has allowed the Attorney General to certify that those provisions support all of the exemptions that are being adopted. This in no way has reduced the thoroughness with which the regulations have been reviewed by the State Attorney General (or by EPA), but rather has simply avoided duplication and saved paper.

Comment #2: The commenter also states that the updated State regulations (22a–449(c)–106) incorporate by reference Federal regulations (40 CFR 266.20) which allow "the use of hazardous waste as fertilizer," and that this violates a State statute (22a–209f) which specifies that the DEP Commissioner may issue general permits covering the beneficial use of solid wastes but that such permits shall not apply to the reuse of hazardous wastes.

EPA Response: First, the EPA does not have regulations which allow "the use of hazardous waste as fertilizer." Rather, the EPA regulations allow (subject to strict standards) the use of certain fertilizers which have been produced as a result of the recycling of hazardous wastes.

Second, the updated State regulations do not incorporate by reference the EPA regulation (40 CFR 266.20(d)(1)) allowing for the use of zinc fertilizers produced from hazardous wastes. This exemption was adopted by the EPA on July 24, 2002. The updated State regulations incorporate EPA requirements through January 1, 2001, and thus do not incorporate this exemption. Thus, there is no need for the EPA to address in this rulemaking whether the 40 CFR 266.20(d)(1) exemption would be consistent with Connecticut statutory requirements. The EPA suggests that the commenter raise any concerns it has about Connecticut adopting this rule only if and when Connecticut proposes in a State rulemaking to adopt the rule. Raising the issue now is premature, and raising State law issues to EPA only after a State has adopted the exemption at the State level would be unfair to the State.

The updated State regulations do continue to incorporate by reference the EPA regulations (in 40 CFR 266.20) which allow "use constituting disposal" of products made from hazardous wastes, if the hazardous wastes first have been treated to the point of

meeting all applicable treatment standards in 40 CFR part 268. This includes allowing use of fertilizers made from hazardous wastes, if they have first been treated to the point of meeting those standards. However, this exemption was first adopted by the State in 1989 and authorized by the EPA in 1990. While the updated State regulations incorporate updated clarifying language, they make no substantive change. Thus whether or not Connecticut may allow products made from hazardous wastes to be utilized as fertilizers is not a part of the current rulemaking. It is far too late for the commenter to challenge the State's decision in 1989 to adopt the EPA regulations regarding "use constituting disposal."

Although the issue is not part of this rulemaking, the EPA notes that it seems clear that the State does have the statutory authority to allow the use of recycled materials as fertilizer. In particular, C.G.S. section 22a–449(c) specifies that the DEP Commissioner may adopt "such regulations as he deems necessary to carry out the intent of * * * Subtitle C of the Resource Conservation and Recovery Act * * *" The regulations regarding "use constituting disposal" are a part of the Federal RCRA program, which the statute gives the DEP the power to implement. Moreover, C.G.S. 22a–209f does not prohibit the use of recycled materials. It simply specifies that general permits issued under the State's solid waste program may not be used to cover hazardous wastes. When adopting the "use constituting disposal" regulations, the DEP did not violate this provision since it did not issue any general permits. Indeed, it should be noted that under the use constituting disposal regulations, all applicable individual permit requirements continue to apply to the companies which recycle the hazardous wastes.

Comment 3: The commenter also objects to the State adopting the "Bevill exemption" and asserts that this exemption is not authorized by any State statute.

EPA Response: The "Bevill exemption" in 40 CFR 261.4(b)(7) was adopted by Connecticut in 1989 and the State regulations were authorized by the EPA in 1990. It is again too late for these decisions to be challenged. The EPA notes, however, that it seems clear that the State has the statutory authority to adopt this exemption under C.G.S. section 22a–449(c). The commenter notes that there are specific State statutes creating exemptions and approved disposal methods for wood wastes and waste sands from casting metals, but that no such similar statutes exist for Bevill wastes or for hazardous wastes recycled to make fertilizers. However, the absence of a statute that creates a specific exemption for Bevill wastes or for fertilizers does not mean that the DEP lacks the authority to adopt these Federal RCRA program provisions, since the DEP has been granted the general statutory authority to implement the Federal RCRA program.

In this program update, the State has adopted the provisions in 40 CFR 266.112 which restrict the use of the Bevill exemption. The commenter has not shown any reason why the EPA should not authorize this more environmentally protective provision. If the EPA was to deny authorization of this revision, this would simply mean that for purposes of Federal enforcement, the older less protective requirements would remain in place. The EPA is approving this revision because it tracks the current more protective Federal requirements relating to the Bevill exemption.

D. What Decisions Does the EPA Make in This Rule?

We believe that the State of Connecticut's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Connecticut Final authorization to operate its hazardous waste program with the changes described in the authorization application.

E. What Changes Is the EPA Authorizing With Today's Action?

The EPA authorizes Connecticut regulations which update the State's hazardous waste program to meet Federal requirements through January 1, 2001. The revisions track the following Federal rules in RCRA Clusters Non-HSWA VI, HSWA I, HSWA II, and RCRA I through XI:

Non-HSWA VI

64 Delay of Closure Period for Hazardous Waste Management Facilities (54 FR 33376, 8/14/89)
65 Mining Waste Exclusion I (54 FR 36592, 9/1/89)
67 Testing and Monitoring Activities (54 FR 40260, 9/29/89)
70 Changes to Part 124 Not Accounted for by Present Checklists
(70) Environmental Permit Regulations; RCRA Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration (48 FR 14146, 4/1/83)
(70) Hazardous Waste Management System; Permit Program; Requirements for Authorization of State Programs; Procedures for Decisionmaking; Identification and Listing of Hazardous Waste; Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities; Interim Status Standards for Owners and Operators of Hazardous Waste Storage, Treatment, and Disposal Facilities; Correction (48 FR 30113, 6/30/83)
(70) Underground Injection Control Program; Hazardous Waste Disposal Injection Restrictions; Amendments to Technical Requirements for Class I Hazardous Waste Injection Wells; and Additional Monitoring Requirements Applicable to All Class I Wells (53 FR 28118, 7/26/88)
(70) Safe Drinking Water Act; National Drinking Water Regulations; Underground Injection Control Regulations; Indian Lands (53 FR 37396, 9/26/88)
(70) National Pollutant Discharge Elimination System Permit Regulations (54 FR 246, 1/4/89)
71 Mining Waste Exclusion II (55 FR 2322, 1/23/90)
72 Modifications of F019 Listing (55 FR 5340, 2/14/90)
73 Testing and Monitoring Activities; Technical Corrections (55 FR 8948, 3/9/90)
76 Criteria for Listing Toxic Wastes; Technical Amendment (55 FR 18726, 5/4/90)
78N Land Disposal Restrictions for Third Third Scheduled Wastes (55 FR 22520, 6/1/90)

HSWA I

CP Hazardous and Used Oil Fuel Criminal Penalties, (HSWA section 3006(h), section 3008(d) § 3014)
HSWA Date of Enactment Provisions, 11/8/84; (50 FR 28702, 7/15/85)
14 Dioxin Waste Listing and Management Standards (50 FR 1978, 1/14/85)
16 Paint Filter Test (See Revision Checklist 25 in HSWA Cluster I) (50 FR 18370, 4/30/85)
SI Sharing of Information With the Agency for Toxic Substances and Disease Registry (HSWA § 3019(b), 7/15/85)
17 HSWA Codification Rule (50 FR 28702, 7/15/85)
17E Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves (50 FR 28702, 7/15/85)
17G Dust Suppression (50 FR 28702, 7/15/85)
17L Corrective Action (50 FR 28702, 7/15/85)
17N Permit Life (50 FR 28702, 7/15/85)
17O Omnibus Provision (50 FR 28702, 7/15/85)
18 Listing of TDI, TDA, DNT (50 FR 42936, 10/23/85)
20 Listing of Spent Solvents (50 FR 53315, 12/31/85)
21 Listing of EDB Waste (51 FR 5327, 2/13/86)
22 Listing of Four Spent Solvents (51 FR 6537, 2/25/86)
25 Codification Rule; Technical Correction (Paint Filter Test, 51 FR 19176, 5/28/86)

30 Biennial Report; Correction (51 FR 28556, 8/8/86)
31 Exports of Hazardous Waste (51 FR 28664, 8/8/86)
32 Standards for Generators; Waste Minimization Certifications (51 FR 35190, 10/1/86)
33 Listing of EBDC (51 FR 37725,10/24/86)

HSWA II

44 HSWA Codification Rule 2 (52 FR 45788, 12/1/87)
44A Permit Application Requirements Regarding Corrective Action
44B Corrective Action Beyond Facility Boundary
44C Corrective Action for Injection Wells
44D Permit Modification
44E Permit as a Shield Provision
44F Permit Conditions To Protect Human Health and the Environment
48 Farmer Exemptions; Technical Corrections (53 FR 27164, 7/19/88)
66 Land Disposal Restrictions; Correction to First Third Wastes (includes revision checklist 66.1 correction) (54 FR 36967, 9/6/89 as amended by 54 FR 9596, 3/7/89)
68 Reportable Quantity Adjustment Methyl Bromide Production Waste (54 FR 41402, 10/6/89)
69 Reportable Quantity Adjustment (F024 and F025) (54 FR 50968, 12/11/89)
74 Toxicity Characteristics Revision (includes revision checklist 74.1 correction) (55 FR 11798, 3/29/90 as amended by 55 FR 26986, 6/29/90)
75 Listing of 1,1-Dimethylhydrazine Production Wastes (55 FR 18496, 5/2/90)
78H Land Disposal Restrictions for Third Third Wastes (55 FR 22520, 6/1/90)
79 Organic Air Emission Standards for Process Vents and Equipment Leaks (55 FR 25454, 6/21/90)

RCRA I

80 Toxicity Characteristic; Hydrocarbon Recovery Operations (55 FR 40834, 10/5/90 as amended by 56 FR 3978, 2/01/91 and 56 FR 13406, 4/2/91)
81 Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) (55 FR 46354, 11/2/90 as amended by 55 FR 51707, 12/17/90)
82 Wood Preserving Listings (55 FR 50450, 12/6/90)
83 Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment (56 FR 3864, 1/31/91)
84 Toxicity Characteristic; Chlorofluorocarbon Refrigerants (56 FR 5910, 2/13/91)
85 Burning of Hazardous Waste in Boilers and Industrial Furnaces (56 FR 7134, 2/21/91)
86 Removal of Strontium Sulfide From the List of Hazardous Waste; Technical Amendment (56 FR 7567, 2/25/91)
87 Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment (56 FR 19290, 4/26/91)
88 Administrative Stay for K069 Listing (56 FR 19951, 5/1/91)
89 Revision to F037 and F038 Listings (56 FR 21955, 5/13/91)
90 Mining Exclusion III (56 FR 27300, 6/13/91)
91 Administrative Stay for F032, F034, and F035 Listings (Superseded by 57 FR 5859 and 57 FR 61492, see revision checklists 101 and 120 in RCRA Clusters II and III, respectively) (56 FR 27332, 6/13/91)

RCRA II

92 Wood Preserving Listings; Technical Corrections (56 FR 30192, 7/1/91)
94 Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (56 FR 32688, 7/17/91)
95 Land Disposal Restrictions for Electric Arc Furnace Dust (K061) (56 FR 41164, 8/19/91)
96 Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (56 FR 42504, 8/27/91)
97 Exports of Hazardous Waste; Technical Correction (56 FR 43704, 9/4/91)
98 Coke Ovens Administrative Stay (56 FR 43874, 9/5/91)
99 Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations (56 FR 66365, 12/23/91)
100 Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units (57 FR 3462, 1/29/92)
101 Administrative Stay for the Requirement That Existing Drip Pads be Impermeable (Superseded by 57 FR 61492, see Revision Checklist 120 in RCRA Cluster III) (57 FR 5859, 2/18/92)
102 Second Correction to the Third Land Disposal Restrictions (57 FR 8086, 3/6/92)
103 Hazardous Debris Case-by-Case Capacity Variance (57 FR 20766, 5/15/92)
104 Oil Filter Exclusion (57 FR 21524, 5/20/92)
105 Recycled Coke By-Product Exclusion (57 FR 27880, 6/22/92)
106 Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance (57 FR 28628, 6/26/92)

RCRA III

107 Used Oil Filter Exclusion Corrections (57 FR 29220, 7/1/92)
108 Toxicity Characteristic Revisions (57 FR 30657, 7/10/92)
109 Land Disposal Restrictions for Newly Listed Waste and Hazardous Debris (57 FR 37194, 8/18/92)
110 Coke-By-Products Listings (57 FR 37284, 8/18/92)
111 Boilers and Industrial Furnaces; Technical Amendment III (57 FR 38558, 8/25/92)
112 Recycled Used Oil Management Standards (57 FR 41566, 9/10/92)
113 Consolidated Liability Requirements: Financial Responsibility for Third-Party Liability, Closure, and Post-Closure (includes revision checklists 113.1 and 113.2) [(57 FR 42832, 9/16/92 which amends 53 FR 33938, 9/1/88 (formerly revision checklist 51) and 56 FR 30200, 7/1/91 (formerly revision checklist 93)]
114 Boilers and Industrial Furnaces; Technical Amendment IV (57 FR 44999, 9/30/92)
115 Chlorinated Toluenes Production Waste Listing (57 FR 47376, 10/15/92)
116 Hazardous Soil Case-by-Case Capacity Variance (57 FR 47772, 10/20/92)
117A Reissuance of the "Mixture" and "Derived From" Rules (includes revision checklists 117A.1 and 117A.2) (57 FR 7628, 3/3/92 as amended by 57 FR 23062, 6/1/92 and 57 FR 49278, 10/30/92)
117B Toxicity Characteristic Amendment (57 FR 23062, 6/1/92)
118 Liquids in Landfills II (57 FR 54452, 11/18/92)
119 Toxicity Characteristic Revision; TCLP Correction (includes checklist 119.1 revision) (57 FR 55114, 11/24/92 as amended by 58 FR 6854, 2/2/93)
120 Wood Preserving; Amendments to Listings and Technical Requirements (57 FR 61492, 12/24/92)
121 Corrective Action Management Units and Temporary Units (58 FR 8658, 2/16/93)
122 Recycled Used Oil Management Standards; Technical Amendments and Corrections (includes checklist 122.1 revisions) (58 FR 26420, 5/3/93 and 58 FR 33341 6/17/93)
123 Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance (58 FR 28506, 5/14/93)
124 Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated (58 FR 29860, 5/24/93)

RCRA IV

125 Boilers and Industrial Furnaces; Changes for Consistency with New Air Regulations (58 FR 38816, 7/20/93)
126 Testing and Monitoring Activities (includes checklists 126.1 revisions) (58 FR 46040, 8/31/93 as amended by 59 FR 47980, 9/19/94)
127 Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues (58 FR 59598, 11/9/93)
128 Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection (59 FR 458, 1/4/94)
129 Revision of Conditional Exemption for Small Scale Treatability Studies (59 FR 8362, 2/18/94)
130 Recycled Used Oil Management Standards; Technical Amendments and Corrections II (59 FR 10550, 3/4/94)
131 Recordkeeping Instructions; Technical Amendment (59 FR 13891, 3/24/94)
132 Wood Surface Protection; Correction (59 FR 28484, 6/2/94)
133 Letter of Credit Revision (59 FR 29958, 6/10/94)
134 Correction of Beryllium Powder (P015) Listing (59 FR 31551, 6/20/94)

RCRA V

135 Recovered Oil Exclusion (59 FR 38536, 7/28/94)
136 Removal of the Conditional Exemption for Certain Slag Residues (59 FR 43496, 8/24/94)
137 Universal Treatment Standards and Treatment Standards for Organic

Characteristic Wastes and Newly Listed Waste (includes checklist 137.1 revisions) (59 FR 47982, 9/19/94 as amended by 60 FR 242, 1/3/95)
139 Testing and Monitoring Activities Amendment I (60 FR 3089, 1/13/95)
140 Carbamate Production Identification and Listing of Hazardous Waste (includes revision checklists 140.1 and 140.2) (60 FR 7824, 2/9/95 as amended by 60 FR 19165, 4/17/95 and 60 FR 25619, 5/12/95)
141 Testing and Monitoring Activities Amendment II (includes checklist 140.1 revisions) (60 FR 17001, 4/4/95 and 60 FR 19165, 4/17/95)
142 Universal Waste Rule (60 FR 25492, 5/11/95)
142A Gengeral Provisions
142B Specific Provisions for Batteries
142C Specific Provisions for Pesticides
142D Specific Provisions for Thermostats
142E Petition Provisions to Add a New Universal Waste
144 Removal of Legally Obsolete Rules (60 FR 33912, 6/29/95)

RCRA VI

148 RCRA Expanded Public Participation (60 FR 63417, 12/11/95)
150 Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste (61 FR 13103, 3/26/96)
151 Land Disposal Restrictions Phase III (61 FR 15566, 4/8/96)
(151.1) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Partial Withdrawal and Amendment (61 FR 15660, 4/8/96)
(151.2) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Correction (61 FR 19117, 4/30/96)
(151.3) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Technical Correction (61 FR 33680, 6/28/96)
(151.4) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Correction (61 FR 36419, 7/10/96)
(151.5) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Emergency Revision (61 FR 43924, 8/26/96)
(151.6) Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners; Correction (62 FR 7502, 2/19/97)

RCRA VII

153 Conditionally Exempt Small Quantity Generator Disposal Options Under Subtitle D (61 FR 34252, 7/1/96)
154 Consolidated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers 154 (includes revisions checklists 154.1–154.6) (59 FR 62896, 12/6/94 as amended by 60 FR 26828, 5/19/95; 60 FR 50426, 9/29/95; 60 FR 56952, 11/13/95; 61 FR 4903, 2/9/96; 61 FR 28508, 6/5/96; and 61 FR 59932, 11/25/96)
155 Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance (62 FR 1992, 1/14/97)
156 Military Munitions Rule (62 FR 6622, 2/12/97)
157 Land Disposal Restrictions—Phase IV (62 FR 25998, 5/12/97)
158 Testing and Monitoring Activities Amendment III (62 FR 32452, 6/13/97)
159 Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions (Conformance With the Carbamate Vacatur) (62 FR 32974, 6/17/97)

RCRA VIII

160 Land Disposal Restrictions Phase III: Emergency Extension of K088 National Capacity Variance (62 FR 37694, 7/14/97)
161 Second Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Wastes from Carbamate Production (62 FR 45568, 8/28/97)
162 Clarification of Standards for Hazardous Waste LDR Treatment Variances (62 FR 64504, 12/5/97)
163 Organic Air Emissions Standards for Tanks, Surface Impoundments and Containers; Classification and Technical Amendment (62 FR 64636, 12/8/97)
164 Kraft Mill Steam Stripper and Condensate Exclusion (63 FR 18504, 4/15/98)
166 Recycled Used Oil Management Standards' Technical Correction and Clarification (including revision checklist 166.1) (63 FR 24963, 5/6/98 and 63 FR 37780, 7/14/98)
167A–F Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Metals and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters (includes revision checklist 167C.1) (63 FR 28556, 5/26/98)

RCRA IX

169 Petroleum Refining Process (including revision checklist 169.1) (63 FR 42110, 8/6/98 as amended by 63 FR 54356, 10/9/98)
170 Land Disposal Restriction—Phase IV (63 FR 46332, 8/31/98)
171 Emergency Revision of LDR Treatment Standards (63 FR 47410, 9/4/98)
172 Emergency Revision of LDR Treatment Standards (63 FR 48124, 9/9/98)
173 Land Disposal Restrictions Treatment Standards (Spent Potliners) (63 FR 51254, 9/24/98)
176 Universal Waste Rule: Technical Amendment (63 FR 71225, 12/24/98)
177 Organic Air Emission Standards (64 FR 3382, 1/21/99)
178 Petroleum Refining Process Wastes (64 FR 6806, 2/11/99)
179 Land Disposal Treatment Standards: Technical Corrections and Clarifications (64 FR 25408, 5/11/99)
180 Test Procedures for the Analysis of Oil and Grease and Non-Polar Material (64 FR 26315, 5/14/99)

RCRA X

181 Universal Waste Rule (64 FR 36466, 7/6/99)
182 NESHAPS: Final Standards for Hazardous Air Pollutants for Hazardous Waste Combustors (MACT Rule) (including revision checklist 182.1) (64 FR 52828, 9/30/99 as amended by 64 FR 63209, 11/19/99)
183 Land Disposal Restrictions; Wood Preserving Wastes, Metal Wastes, Zinc Micronutrients Fertilizer, etc. (correction) (64 FR 56469, 10/20/99)
184 Wastewater Treatment Sludges from Metal Finishing Industry; 180-day Accumulation Time (65 FR 12378, 3/8/00)
185 Organobromine Production Wastes (65 FR 14472, 3/17/00)
187 Organobromine Production Waste and Petroleum Refining Process Waste: Technical Correction (65 FR 36365, 6/8/00)

RCRA XI

189 Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities (65 FR 67068, 11/8/00)
190 Deferral of Phase IV Standards for PCBs as a Constituent Subject to Treatment in Soil (65 FR 81373, 12/26/00)

The revisions also include other State regulations which address Federal requirements, including the State provisions identified in Table 3 in the Program Description and including changes that the State has made to its base program regulations that were authorized in 1990.

The specific State regulations that the EPA is proposing to authorize are listed in the table below. State provisions listed as "analogous" may be equivalent or may be more stringent/go beyond the Federal regulations. The Federal requirements in the table are identified by reference to the Code of Federal Regulations (CFR). The following abbreviation is used in defining corresponding state authority: R.C.S.A. (Regulations of Connecticut State Agencies). Note that the table below has been slightly revised from the table in the proposed rulemaking due to ongoing State and Federal legal review.

Description of federal requirements	Analogous state authority
40 CFR part 260:	
None	22a–449(c)–100(a)(1) (partially broader in scope).
None	22a–449(c)–100(a)(2) (partially broader in scope).
Various record keeping provisions and 262.40(d), 263.22(e), 264.74(b), 265.74(b) and 268.7(a)(8).	22a–449(c)–100(a)(5).
None	22a–449(c)–100(c)(28).
None	22a–449(c)–100(a)(7) (partially broader in scope).
None	22a–449(c)–100(c) Intro.
260.10—definition of small quantity generator	22a–449(c)–100(c)(28).
260.2	22a–449(c)–100(b)(1)(B).
260.3	22a–449(c)–100(b)(2)(A).
260.10 Intro	22a–449(c)–100(b)(2)(B).
260.11(b)	22a–449(c)–100(b)(2)(C).
261.1(c)(8)	22a–449(c)–101(a)(2)(B), 22a–449(c)–101(a)(2)(D) and (F), and 22a–449(c)–106(b)(1)(A).
None, other than definition of Administrator and Regional Administrator in 260.10, 270.2 and State director in 270.2.	22a–449(c)–100(c)(1).
None, other than definition of EPA region in 260.10 and EPA and Environmental Protection Agency in 270.2.	22a–449(c)–100(c)(2).
None	22a–449(c)–100(c)(3).
260.10—definition of battery	22a–449(c)–100(c)(4).
None	22a–449(c)–100(c)(5).
260.10, 270.2—definition of corrective action management unit, CAMU.	22a–449(c)–100(c)(7).
None	22a–449(c)–100(c)(10).
260.10—definition of designated facility	22a–449(c)–100(c)(11).
260.10—definition of destination facility and 273.80	22a–449(c)–100(c)(12).
270.2—definition of Director	22a–449(c)–100(c)(13).
None	22a–449(c)–100(c)(14).
260.10—definition of Facility	22a–449(c)–100(c)(15).
None	22a–449(c)–100(c)(16).
None	22a–449(c)–100(c)(17).
260.10, 273.9—definition of Lamp, Universal waste lamp	22a–449(c)–100(c)(18).
260.10—definition of Miscellaneous Unit	22a–449(c)–100(c)(21).
None	22a–449(c)–119(a)(2)(J) and (FFF).
None	22a–449(c)–100(c)(24).
260.10—definition of Remediation waste	22a–449(c)–100(c)(26).
260.10—definition of Small quantity generator	22a–449(c)–100(c)(28).
None other than definition of State in 260.10, 270.2 and Approved program and Approved state in 270.2.	22a–449(c)–100(c)(29).
None	22a–449(c)–100(c)(30).
None	22a–449(c)–100(c)(31).
None	22a–449(c)–100(c)(32).
260.10, 273.9—definition of Universal Waste and 273.80	22a–449(c)–100(c)(33).
273.80	22a–449(c)–100(c)(34).
260.10 and 279.1—definition of Used oil	22a–449(c)–100(c)(35) (partially broader in scope).
40 CFR part 261:	
261.1(c)(8)	22a–449(c)–101(a)(2)(B), 22a–449(c)–101(a)(2)(D) and (F) and 22a–449(c)–106(b)(1)(A).
261.2(a)(2)(iv)	22a–449(c)–101(a)(1)(A).
261.4(a)(16)	22a–449(c)–101(a)(1)(B).
261.4(b)(6)	22a–449(c)–101(a)(1)(C).
261.4(b)(11)	22a–449(c)–101(a)(1)(D).
261.4(g)	22a–449(c)–101(a)(1)(E).
261.38	22a–449(c)–101(a)(1)(F).
261.2(c)(3)	22a–449(c)–101(a)(2)(D).
261.2(e)	22a–449(c)–101(a)(2)(F).
261.3(a)(2)(v)	22a–449(c)–101(a)(2)(G).
261.3(c)(2)(i)	22a–449(c)–101(a)(2)(H).
261.4(a)(1)(ii)	22a–449(c)–101(a)(2)(I).
261.4(a)(15)	22a–449(c)–101(a)(2)(J).
261.4(a)(17)(iii)	22a–449(c)–101(a)(2)(K).
261.4(a)(17)(v)	22a–449(c)–101(a)(2)(N).
261.5(c)(6)/273.80	22a–449(c)–101(a)(2)(Q).
261.5(f)(3)(iv)–261.5(f)(3)(vii)	22a–449(c)–101(a)(2)(S).
261.5(g)(2)	22a–449(c)–101(a)(2)(T).
261.5(g)(3)(iv)–(vii)	22a–449(c)–101(a)(2)(U).
261.5(j)	22a–449(c)–101(a)(2)(W).
261.6(a)(4)	22a–449(c)–101(a)(2)(Y) (partially broader in scope).
261.6(c)(1)	22a–449(c)–101(a)(2)(Z) (partially broader in scope).
261.9/273.80	22a–449(c)–101(a)(2)(AA).
261.9(d)/273.80	22a–449(c)–101(a)(2)(CC).
261.31(a)	22a–449(c)–101(a)(2)(DD).
261.32	22a–449(c)–101(a)(2)(EE).

Description of federal requirements	Analogous state authority
Part 261 Appendix VII	22a–449(c)–101(a)(2)(GG).
Part 261 Appendix VIII	22a–449(c)–101(a)(2)(HH).
None	22a–449(c)–101(b) intro.
None	22a–449(c)–101(b)(1).
None	22a–449(c)–101(b)(2).
None	22a–449(c)–101(a)(1), 22a–449(c)–101(a)(2)(D) and (F), and 22a–449(c)–106(b)(1)(A).
None	22a–449(c)–101(c)(2).
None	22a–449(c)–101(c)(3).
260.40 and 260.41	22a–449(c)–101(c)(4).
40 CFR part 262:	
262.34(g)(4)(ii)	22a–449(c)–102(a)(1)(B).
262.10(g) formerly 262.10(e)	22a–449(c)–100(a)(7).
262.11	22a–449(c)–102(a)(2)(A).
262.11(d)/273.80	22a–449(c)–102(a)(2)(B).
262.20(f)	22a–449(c)–102(a)(2)(C).
262.34(a)	22a–449(c)–102(a)(2)(D).
262.34(a)(1)(i) formerly 262.34(a)(1)	22a–449(c)–102(a)(2)(E).
262.34(a)(1)(ii) formerly 262.34(a)(1)	22a–449(c)–102(a)(2)(F).
262.34(a)(1)(iii)	22a–449(c)–102(a)(2)(G).
262.34(a)(1)(iv) intro	22a–449(c)–102(a)(2)(H).
262.34(a)(1)(iv)(A)	22a–449(c)–102(a)(2)(I).
262.34(a)(3)	22a–449(c)–102(a)(2)(J).
262.34(a)(4)	22a–449(c)–102(a)(2)(K) (Also see 22a–449(c)–102(a)(2)(D), 2nd bullet).
262.34(b)	22a–449(c)–102(a)(2)(L).
262.34(c)(1)(i)	22a–449(c)–102(a)(2)(M).
262.34(c)(1)(ii)	22a–449(c)–102(a)(2)(N).
262.34(d)(5)(iv)(C)	22a–449(c)–102(a)(2)(P).
262.34(g)(1)	22a–449(c)–102(a)(2)(R).
262.34(g)(2)	22a–449(c)–102(a)(2)(S).
262.34(g)(4)(i)(A)	22a–449(c)–102(a)(2)(T).
262.34(g)(4)(i)(C)	22a–449(c)–102(a)(2)(U).
262.34(g)(4)(iv)	22a–449(c)–102(a)(2)(W).
262.34(g)(4)(v)	22a–449(c)–102(a)(2)(X).
262.41(a)	22a–449(c)–102(a)(2)(AA).
262.43	22a–449(c)–102(a)(2)(DD).
262.44	22a–449(c)–102(a)(2)(EE).
262 Appendix	22a–449(c)–102(a)(2)(II).
None	22a–449(c)–102(b)(2) and (3).
None	22a–449(c)–102(b)(4).
None	22a–449(c)–100(c)(28).
None	22a–449(c)–102(c)(2).
40 CFR part 263:	
263.10(f)	22a–449(c)–103(a)(1)(A).
263.10(a)	22a–449(c)–103(a)(2)(A).
263.30(c)(1)	22a–449(c)–103(a)(2)(D).
40 CFR part 264:	
264.1(i)	22a–449(c)–104(a)(1)(D).
264.1(j)	22a–449(c)–104(a)(1)(E).
264.90(e)	22a–449(c)–104(a)(1)(G).
264.90(f)	22a–449(c)–104(a)(1)(H).
264.101(d)	22a–449(c)–104(a)(1)(I).
264.110(c)	22a–449(c)–104(a)(1)(J).
264.112(b)(8)	22a–449(c)–104(a)(1)(K).
264.112(c)(2)(iv)	22a–449(c)–104(a)(1)(L).
264.118(b)(4)	22a–449(c)–104(a)(1)(M).
264.118(d)(2)(iv)	22a–449(c)–104(a)(1)(N).
264.140(d)	22a–449(c)–104(a)(1)(O).
264.314(e)	22a–449(c)–104(a)(1)(S).
264.340(b)	22a–449(c)–104(a)(1)(T).
264.554	22a–449(c)–104(a)(1)(U).
264, subpart EE	22a–449(c)–104(a)(1)(W).
264.13(a)(4)	None (Former state requirement was deleted).
264.1(g)(2)	22a–449(c)–104(a)(2)(A).
264.1(g)(11) intro and 273.80	22a–449(c)–104(a)(2)(B).
264.1(g)(11)(iv)/273.80	22a–449(c)–104(a)(2)(D).
264.13(c)(3)	22a–449(c)–104(a)(2)(F), see also 22a–449(c)–104(a)(2)(GG).
264.70	22a–449(c)–104(a)(2)(G).
264.73(b)(17)	22a–449(c)–104(a)(2)(L).
264.75	22a–449(c)–104(a)(2)(M).
264.90(a)(1)	22a–449(c)–104(a)(2)(N) (**Note:** 40 CFR 264.90(b) is not incorporated into the state's regulations. See 22a–449(c)–104(a)(1)(F).)
264.101(a)	22a–449(c)–104(a)(2)(O).

Description of federal requirements	Analogous state authority
264.143(h)	22a–449(c)–104(a)(2)(P).
264.145(h)	22a–449(c)–104(a)(2)(R).
264.151	22a–449(c)–104(a)(2)(U).
264.192(d)	22a–449(c)–104(a)(2)(W).
264.196(d)(1)	22a–449(c)–104(a)(2)(Z).
264.222(a)	22a–449(c)–104(a)(2)(AA).
264.252(a)	22a–449(c)–104(a)(2)(BB).
264.302(a)	22a–449(c)–104(a)(2)(FF).
264.316(b)	22a–449(c)–104(a)(2)(GG).
264.340(c) intro	22a–449(c)–104(a)(2)(HH).
264.552(a)	22a–449(c)–104(a)(2)(JJ).
264.552(a)(1)	22a–449(c)–104(a)(2)(KK).
264.552(a)(2)	22a–449(c)–104(a)(2)(LL).
264.552(b)(2)	22a–449(c)–104(a)(2)(MM).
264.552(c) intro	22a–449(c)–104(a)(2)(NN).
264.552(c)(4)	22a–449(c)–104(a)(2)(OO).
264.552(c)(5)	22a–449(c)–104(a)(2)(PP).
264.552(e)	22a–449(c)–104(a)(2)(QQ).
264.552(e)(4)(i)(B)	22a–449(c)–104(a)(2)(RR).
264.552(e)(4)(iii)(F)	22a–449(c)–104(a)(2)(SS).
264.552(e)(4)(iv)	22a–449(c)–104(a)(2)(TT).
264.552(g)	22a–449(c)–104(a)(2)(UU).
264.552(h)	22a–449(c)–104(a)(2)(VV).
264.553(a)	22a–449(c)–104(a)(2)(WW).
264.553(c)(7)	22a–449(c)–104(a)(2)(XX).
264.553(d)	22a–449(c)–104(a)(2)(YY).
264.553(e)	22a–449(c)–104(a)(2)(ZZ).
264.553(f)	22a–449(c)–104(a)(2)(AAA).
264.570(a)	22a–449(c)–104(a)(2)(BBB).
264.570(c)(1)(iv)	22a–449(c)–104(a)(2)(CCC).
264.601 intro	22a–449(c)–104(a)(2)(FFF).
264.1030(c)	22a–449(c)–104(a)(2)(GGG).
264.1033(l) intro	22a–449(c)–104(a)(2)(HHH).
264.1033(l)(1)	22a–449(c)–104(a)(2)(III).
264.1033(l)(2)	22a–449(c)–104(a)(2)(KKK).
264.1034(f)	22a–449(c)–104(a)(2)(LLL).
264.1050(c)	22a–449(c)–104(a)(2)(MMM).
264.1063(f)	22a–449(c)–104(a)(2)(NNN).
264.1080(b)(3)	22a–449(c)–104(a)(2)(OOO).
264.1080(b)(4)	22a–449(c)–104(a)(2)(PPP).
264.1080(b)(7)	22a–449(c)–104(a)(2)(QQQ).
284.1080(c)	22a–449(c)–104(a)(2)(RRR).
264.1080(d) intro	22a–449(c)–104(a)(2)(SSS).
264.1080(d)(1)	22a–449(c)–104(a)(2)(TTT).
264.1080(d)(3)	22a–449(c)–104(a)(2)(UUU).
264.1081	22a–449(c)–104(a)(2)(VVV).
264.1082(b)	22a–449(c)–104(a)(2)(WWW).
264.1082(c)(2)	22a–449(c)–104(a)(2)(XXX).
264.1082(c)(2)(vii)(A)	22a–449(c)–104(a)(2)(ZZZ).
264.1082(c)(2)(viii)(A)	22a–449(c)–104(a)(2)(BBBB).
264.1082(c)(5)(i)	22a–449(c)–104(a)(2)(CCCC) (partially broader in scope).
264.1082(c)(5)(iii)	22a–449(c)–104(a)(2)(DDDD) (partially broader in scope).
264.1082(d)(2)(ii)	22a–449(c)–104(a)(2)(EEEE).
264.1083(a)(1)(i)	22a–449(c)–104(a)(2)(FFFF).
264.1083(a)(1)(ii)	22a–449(c)–104(a)(2)(GGGG).
264.1083(b)(1)(i)	22a–449(c)–104(a)(2)(HHHH).
264.1083(b)(1)(ii)	22a–449(c)–104(a)(2)(IIII).
264.1084(c)(1)	22a–449(c)–104(a)(2)(KKKK).
264.1084(c)(2)	22a–449(c)–104(a)(2)(LLLL).
264.1084(c)(2)(i)	22a–449(c)–104(a)(2)(MMMM).
264.1084(c)(2)(ii)	22a–449(c)–104(a)(2)(NNNN).
264.1084(f)(1)	22a–449(c)–104(a)(2)(QQQQ).
264.1084(f)(1)(i)	22a–449(c)–104(a)(2)(RRRR).
264.1084(f)(1)(ii)(A)	22a–449(c)–104(a)(2)(SSSS).
264.1084(h)(1)	22a–449(c)–104(a)(2)(WWWW).
264.1084(i)(1)	22a–449(c)–104(a)(2)(ZZZZ) (partially broader in scope).
264.1084(l)(1)(ii)	22a–449(c)–104(a)(2)(BBBBB).
264.1085(b)	22a–449(c)–104(a)(2)(CCCCC).
264.1085(c)(1)	22a–449(c)–104(a)(2)(EEEEE).
264.1085(c)(1)(i)	22a–449(c)–104(a)(2)(FFFFF).
264.1085(d)(1)(i)	22a–449(c)–104(a)(2)(IIIII).
264.1085(d)(1)(ii)	22a–449(c)–104(a)(2)(JJJJJ).
264.1085(g)(2)	22a–449(c)–104(a)(2)(MMMMM).
264.1086(c)(4)(iii)	22a–449(c)–104(a)(2)(NNNNN).

Description of federal requirements	Analogous state authority
264.1086(d)(4)(iii)	22a–449(c)–104(a)(2)(OOOOO).
264.1086(e)(2)(i)	22a–449(c)–104(a)(2)(QQQQQ) (partially broader in scope).
264.1086(g)(1)	22a–449(c)–104(a)(2)(SSSSS).
264.1086(g)(2)	22a–449(c)–104(a)(2)(TTTTT).
264.1086(h)	22a–449(c)–104(a)(2)(UUUUU).
264.1087(b)	22a–449(c)–104(a)(2)(VVVVV).
264.1087(c)	22a–449(c)–104(a)(2)(XXXXX).
264.1087(c)(2)(vi)	22a–449(c)–104(a)(2)(YYYYY).
264.1087(c)(3)(ii)	22a–449(c)–104(a)(2)(ZZZZZ).
264.1087(c)(6)	22a–449(c)–104(a)(2)(AAAAAA).
264.1088(b)	22a–449(c)–104(a)(2)(BBBBBB).
264.1089(a)	22a–449(c)–104(a)(2)(CCCCCC).
264.1089(b)(1)(ii)(A)	22a–449(c)–104(a)(2)(DDDDDD).
264.1089(b)(2)(i)	22a–449(c)–104(a)(2)(EEEEEE).
264.1089(b)(2)(iii)(B)	22a–449(c)–104(a)(2)(FFFFFF).
264.1089(c)(3)(i)	22a–449(c)–104(a)(2)(GGGGGG).
264.1089(i)	22a–449(c)–104(a)(2)(HHHHHH).
264.1090(a)	22a–449(c)–104(a)(2)(IIIIII).
264.1090(b)	22a–449(c)–104(a)(2)(JJJJJJ).
264.1090(c)	22a–449(c)–104(a)(2)(KKKKKK).
None	22a–449(c)–104(c).
None	22a–449(c)–104(e).
40 CFR Part 265:	
265.90(c)	22a–449(c)–105(a)(1)(N).
265.1(f)	22a–449(c)–105(a)(1)(C).
265.90(f)	22a–449(c)–105(a)(1)(E).
265.110(c)	22a–449(c)–105(a)(1)(F).
265.110(d)	22a–449(c)–105(a)(1)(G).
265.112(b)(8)	22a–449(c)–105(a)(1)(H).
265.112(c)(1)(iv)	22a–449(c)–105(a)(1)(I).
265.118(c)(4)&(5)	22a–449(c)–105(a)(1)(J).
265.118(d)(1)(iii)	22a–449(c)–105(a)(1)(K).
265.121	22a–449(c)–105(a)(1)(L).
265.140(d)	22a–449(c)–105(a)(1)(M).
265.314(f)	22a–449(c)–105(a)(1)(R).
265.340(b)	22a–449(c)–105(a)(1)(S).
265.1082(a)	22a–449(c)–105(a)(1)(V).
265, subpart EE	22a–449(c)–105(a)(1)(W).
265.13(a)(4)	None.
265.1(b)	22a–449(c)–105(a)(2)(A).
265.1(c)(14)	22a–449(c)–105(a)(2)(B).
265.1(c)(14)(iv)	22a–449(c)–105(a)(2)(D).
265.13(c)(3)	22a–449(c)–105(a)(2)(F) (See 22a–449(c)–104(a)(2)(MM)).
265.15(b)(4)	22a–449(c)–105(a)(2)(G).
265.70	22a–449(c)–105(a)(2)(H).
265.73(b)(13) & (14)	22a–449(c)–105(a)(2)(K) and (L).
265.75	22a–449(c)–105(a)(2)(M).
265.90(c)	22a–449(c)–105(a)(2)(N).
265.143(g)	22a–449(c)–105(a)(2)(O).
265.145(e)(11)	22a–449(c)–105(a)(2)(P).
265.145(g)	22a–449(c)–105(a)(2)(Q).
265.147(b)(1)	22a–449(c)–105(a)(2)(R).
265.192(d)	22a–449(c)–105(a)(2)(S).
265.196(d)(1)	22a–449(c)–105(a)(2)(V).
265.222(b)/265.221(g)	22a–449(c)–105(a)(2)(X) (**Note:** Federal citation 265.222(b) was redesignated 265.221(g)).
265.222(a)	22a–449(c)–105(a)(2)(Y).
265.222(b)	22a–449(c)–105(a)(2)(Z).
265.223/265.224	22a–449(c)–105(a)(2)(AA) & (BB).
265.229(b)(2)	22a–449(c)–105(a)(2)(DD) (**Note:** This section corrects a publication error in the code of federal regulations. Language identical to that in 40 CFR 265.229(b)(2) appears, as it should, in 40 CFR 265.228(b)(2). However, as a result of publication error, the language in 40 CFR 265.229(b)(2) is misplaced and unnecessarily duplicates that in 40 CFR 265.228(b)(2). As such, section 22a–449(c)–105(a)(2)(DD) deletes 40 CFR 265.229(b)(2)).
265.229(b)(4)	22a–449(c)–105(a)(2)(FF) (**Note:** 40 CFR 265.229(b)(3) was redesignated 40 CFR 265.229(b)(4)).
26a5.255(a)	22a–449(c)–105(a)(2)(GG), 1st–3rd bullets.
265.255(b)	22a–449(c)–105(a)(2)(HH).
265.272(a)	22a–449(c)–105(a)(2)(II).
265.301(a)	22a–449(c)–105(a)(2)(JJ).
265.302(a)	22a–449(c)–105(a)(2)(KK).
265.302(b)	22a–449(c)–105(a)(2)(LL).

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265.316(b)	22a–449(c)–105(a)(2)(MM).
265.340(c)	22a–449(c)–105(a)(2)(NN).
265.440(a)	22a–449(c)–105(a)(2)(PP).
265.440(c)(1)(iv)	22a–449(c)–105(a)(2)(QQ).
265.1033(k) intro	22a–449(c)–105(a)(2)(TT).
265.1033(k)(1)	22a–449(c)–105(a)(2)(UU).
265.1033(k)(2)	22a–449(c)–105(a)(2)(WW).
265.1034(f)	22a–449(c)–105(a)(2)(XX).
265.1063(f)	22a–449(c)–105(a)(2)(YY).
265.1080(b)(3)	22a–449(c)–105(a)(2)(ZZ).
265.1080(b)(4)	22a–449(c)–105(a)(2)(AAA).
265.1080(c) intro	22a–449(c)–105(a)(2)(CCC).
265.1080(d)(1)	22a–449(c)–105(a)(2)(EEE).
265.1080(d)(3)	22a–449(c)–105(a)(2)(FFF).
265.1081	22a–449(c)–105(a)(2)(GGG).
265.1082(b)(2)(i)	22a–449(c)–105(a)(2)(HHH).
265.1082(c)	22a–449(c)–105(a)(2)(III).
265.1082	22a–449(c)–105(a)(2)(JJJ).
265.1083(b)	22a–449(c)–105(a)(2)(KKK).
265.1083(c)(2)(vii)(A)	22a–449(c)–105(a)(2)(NNN).
265.1083(c)(2)(viii)(A)	22a–449(c)–105(a)(2)(PPP).
265.1083(c)(5)(i)	22a–449(c)–105(a)(2)(QQQ).
265.1083(c)(5)(iii)	22a–449(c)–105(a)(2)(RRR), 2nd bullet.
265.1083(d)(2)(ii)	22a–449(c)–105(a)(2)(SSS).
265.1084(a)(1)(i)	22a–449(c)–105(a)(2)(TTT).
265.1084(b)(1)(i)	22a–449(c)–105(a)(2)(VVV).
265.1085(c)(2)	22a–449(c)–105(a)(2)(ZZZ).
265.1085(c)(2)(i)	22a–449(c)–105(a)(2)(AAAA).
265.1085(c)(2)(ii)	22a–449(c)–105(a)(2)(BBBB).
265.1085(f)(1)	22a–449(c)–105(a)(2)(EEEE).
265.1085(f)(1)(i)	22a–449(c)–105(a)(2)(FFFF).
265.1085(f)(1)(ii)(A)	22a–449(c)–105(a)(2)(GGGG).
265.1085(h)(1)	22a–449(c)–105(a)(2)(KKKK).
265.1085(l)(1)(ii)	22a–449(c)–105(a)(2)(PPPP).
265.1086(b)	22a–449(c)–105(a)(2)(QQQQ).
265.1086(c)(1)	22a–449(c)–105(a)(2)(SSSS).
265.1086(c)(1)(i)	22a–449(c)–105(a)(2)(TTTT).
265.1086(d)(1)(i)	22a–449(c)–105(a)(2)(WWWW).
265.1086(d)(1)(ii)	22a–449(c)–105(a)(2)(XXXX).
265.1086(g)(2)	22a–449(c)–105(a)(2)(AAAAA).
265.1087(c)(4)(iii)	22a–449(c)–105(a)(2)(BBBBB).
265.1087(d)(4)(iii)	22a–449(c)–105(a)(2)(CCCCC).
265.1087(e)(2)(i)	22a–449(c)–105(a)(2)(EEEEE) (partially broader in scope).
265.1087(g)(1)	22a–449(c)–105(a)(2)(GGGGG).
265.1087(g)(2)	22a–449(c)–105(a)(2)(HHHHH).
265.1087(b)	22a–449(c)–105(a)(2)(IIIII).
265.1088(c)	22a–449(c)–105(a)(2)(LLLLL).
265.1088(c)(2)(vi)	22a–449(c)–105(a)(2)(MMMMM).
265.1088(c)(3)(ii)	22a–449(c)–105(a)(2)(NNNNN).
265.1088(c)(6)	22a–449(c)–105(a)(2)(OOOOO).
265.1089(b)	22a–449(c)–105(a)(2)(PPPPP).
265.1090(a)	22a–449(c)–105(a)(2)(QQQQQ).
265.1090(b)(1)(ii)(A)	22a–449(c)–105(a)(2)(RRRRR).
265.1090(b)(2)(i)	22a–449(c)–105(a)(2)(SSSSS).
265.1090(b)(2)(iii)(B)	22a–449(c)–105(a)(2)(TTTTT).
265.1090(c)(3)(i)	22a–449(c)–105(a)(2)(UUUUU).
265.1090(i) intro	22a–449(c)–105(a)(2)(VVVVV).
265.1091	22a–449(c)–105(a)(2)(WWWWW).
None	22a–449(c)–105(c)(1)(A).
None	22a–449(c)–105(c)(1)(B).
None	22a–449(c)–105(c)(2)(A).
None	22a–449(c)–105(c)(2)(B).
None	22a–449(c)–105(c)(3)(A).
None	22a–449(c)–105(c)(3)(A)(ii).
None	22a–449(c)–105(c)(3)(A)(iii).
None	22a–449(c)–105(c)(3)(B).
None	22a–449(c)–105(c)(3)(B)(ii).
None	22a–449(c)–105(c)(3)(B)(iii).
None	22a–449(c)–105(c)(3)(B)(iv)/(v).
None	22a–449(c)–105(c)(3)(B)(xi).
None	22a–449(c)–105(c)(4)(B).
None	22a–449(c)–105(c)(4)(C).
None	22a–449(c)–105(e).
265.201(b)(3)	22a–449(c)–102(c)(2) (Also see 22a–449(c)–105(a)(1)(O)).

Description of federal requirements	Analogous state authority
None	22a–449(c)–105(g).
264.101 interim status land disposal facilities	22a–449(c)–105(h)(1)–(11) and 22a–449(c)–110(a)(2)(RR).
40 CFR part 266:	
266.80	22a–449(c)–106(a)(1)(A).
266.100(b)	22a–449(c)–106(a)(1)(B).
266.100(d)(3)(i)(D)	22a–449(c)–106(a)(1)(C).
266, subpart M	22a–449(c)–106(a)(1)(D).
None	22a–449(c)–106(a)(2).
266.100(a)	22a–449(c)–106(a)(2)(A).
266.100(d) intro	22a–449(c)–106(a)(2)(B).
266.100(d)(1) intro	22a–449(c)–106(a)(2)(C).
266.100(d)(1)(ii)	22a–449(c)–106(a)(2)(E).
266.100(d)(1)(iii)	22a–449(c)–106(a)(2)(F).
None	22a–449(c)–106(a)(2)(G).
266.100(d)(3) intro	22a–449(c)–106(a)(2)(J).
266.100(d)(3)(ii)	22a–449(c)–106(a)(2)(N).
266.100(g)(2)	22a–449(c)–106(a)(2)(O).
266.100(g)(3)	22a–449(c)–106(a)(2)(P).
None	22a–449(c)–106(a)(2)(Q).
266.100(h)	22a–449(c)–106(a)(2)(R).
266.100(e)(3)(i)(E)	22a–449(c)–106(a)(2)(T).
266.112(b)(2)(i)	22a–449(c)–106(a)(2)(V).
279.12/279.71	22a–449(c)–119(a)(2)(J) and (a)(2)(TTT).
None	22a–449(c)–106(b)(1)(A).
None	22a–449(c)–106(b)(1)(B).
None	22a–449(c)–106(c)(1).
None	22a–449(c)–106(c)(1)(A).
None	22a–449(c)–106(c)(1)(B).
None	22a–449(c)–106(c)(1)(C).
None	22a–449(c)–106(c)(1)(D).
266.80(a)	22a–449(c)–106(c)(2).
266.80(b)(1)	22a–449(c)–106(c)(3).
266.80(b)(2)	22a–449(c)–106(c)(4).
None	22a–449(c)–106(c)(5).
None	22a–449(c)–106(c)(6).
261.32, see entry for K174 and K175	22a–449(c)–106(d)(1).
261.32 (K174 listing)	22a–449(c)–106(d)(2) (partially broader in scope).
261.32 (K174 listing)	22a–449(c)–106(d)(3).
261.32 (K174 listing)	22a–449(c)–106(d)(4).
261.32 (K174 listing)	22a–449(c)–106(d)(5).
266.202(d)	22a–449(c)–106(e).
40 CFR Part 268:	
268.6	None.
268.1(c)(3)	22a–449(c)–108(a)(1)(A).
268.37(b)	22a–449(c)–108(a)(1)(C).
268.50(g)	22a–449(c)–108(a)(1)(D).
None	22a–449(c)–108(a)(2).
268.1(f) and 273.80	22a–449(c)–108(a)(2)(A).
268.1(f)(4)/273.80	22a–449(c)–108(a)(2)(C).
268.2(c)	22a–449(c)–108(a)(2)(D).
268.7(a)(2)	22a–449(c)–108(a)(2)(E).
268.7(a)(3)(i)	22a–449(c)–108(a)(2)(F).
268.7(a)(3)(ii)	22a–449(c)–108(a)(2)(G).
268.7(a)(3)(iii)	22a–449(c)–108(a)(2)(H).
268.7(a)(4)	22a–449(c)–108(a)(2)(I).
268.7(a)(7)	22a–449(c)–108(a)(2)(J).
268.7(a)(9)(i)	22a–449(c)–108(a)(2)(K).
268.7(a)(9)(ii)	22a–449(c)–108(a)(2)(L).
268.7(b)(3)(i)	22a–449(c)–108(a)(2)(N).
268.7(b)(3)	22a–449(c)–108(a)(2)(M).
268.7(b)(4)(i)	22a–449(c)–108(a)(2)(O).
268.7(d)(1)	22a–449(c)–108(a)(2)(R).
268.7(e)(2)	22a–449(c)–108(a)(2)(U).
268.32–268.33	22a–449(c)–108(a)(2)(V).
268.37(a)	22a–449(c)–108(a)(2)(W).
268.38(a)	22a–449(c)–108(a)(2)(X).
268.38(b)	22a–449(c)–108(a)(2)(Y).
268.39(b)	22a–449(c)–108(a)(2)(Z).
268.40(e)	22a–449(c)–108(a)(2)(AA).
268.40 Table	22a–449(c)–108(a)(2)(BB).
268.44(h)(5)	22a–449(c)–108(a)(2)(CC).
268.48 Table	22a–449(c)–108(a)(2)(DD).
268.49(d)	22a–449(c)–108(a)(2)(EE).
268 Appendix I–III	22a–449(c)–108(a)(2)(FF).

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268.48 Appendix VII	22a–449(c)–108(a)(2)(GG).
None	22a–449(c)–108(a)(3) (partially broader in scope).
None	22a–449(c)–108(b).
40 CFR parts 270 and 124:	
None	22a–449(c)–110(a)(1).
270.1(c)(1)(i)	22a–449(c)–110(a)(1)(B).
270.1(c)(7)	22a–449(c)–110(a)(1)(D).
270.10(e)(2)	22a–449(c)–110(a)(1)(E).
270.11(d)(2)	22a–449(c)–110(a)(1)(G).
270.12	22a–449(c)–110(a)(1)(H).
270.19(e)	22a–449(c)–110(a)(1)(I).
270.22 intro	22a–449(c)–110(a)(1)(J).
270.28	22a–449(c)–110(a)(1)(K).
270.42(h)	22a–449(c)–110(a)(1)(M).
270.42(i)	22a–449(c)–110(a)(1)(N).
270.42(j)	22a–449(c)–110(a)(1)(O).
270.42, App I, Item L(9)	22a–449(c)–110(a)(1)(P).
270.62 intro	22a–449(c)–110(a)(1)(S).
270.64	22a–449(c)–110(a)(1)(T).
270.66 intro	22a–449(c)–110(a)(1)(U).
270.68	22a–449(c)–110(a)(1)(V).
270.72(b)(8)	22a–449(c)–110(a)(1)(W).
270, subpart H	22a–449(c)–110(a)(1)(X).
124.10(c)(1)(viii)	22a–449(c)–110(a)(1)(Z).
None	22a–449(c)–110(a)(1)(G).
None	22a–449(c)–110(a)(2).
270.1(c) intro	22a–449(c)–110(a)(2)(A).
270.1(c)(2)(viii) intro	22a–449(c)–110(a)(2)(C).
270.1(c)(2)(viii)(D)	22a–449(c)–110(a)(2)(E).
270.2	22a–449(c)–110(a)(2)(F).
270.4(a)	22a–449(c)–110(a)(2)(G).
270.10(e)(4)	22a–449(c)–110(a)(2)(I).
270.10(f)(2)	22a–449(c)–110(a)(2)(J).
270.10(g)(1)(ii)	22a–449(c)–110(a)(2)(K).
270.10(g)(1)(iii)	22a–449(c)–110(a)(2)(L).
270.14(a)	22a–449(c)–110(a)(2)(N).
270.14(b)(18)	22a–449(c)–110(a)(2)(O).
270.14(b)(22)	22a–449(c)–110(a)(2)(P).
270.19(d) intro	22a–449(c)–110(a)(2)(R).
270.27(a)(3)	22a–449(c)–110(a)(2)(S).
270.29	22a–449(c)–110(a)(2)(T).
270.30(k)(3)	22a–449(c)–110(a)(2)(U).
270.32(a)	22a–449(c)–110(a)(2)(V).
270.32(b)(2)	22a–449(c)–110(a)(2)(W).
270.32(c)	22a–449(c)–110(a)(2)(X).
270.40(a)	22a–449(c)–110(a)(2)(Y).
270.41	22a–449(c)–110(a)(2)(Z).
270.42(b)(2)	22a–449(c)–110(a)(2)(BB), 1st bullet.
270.42(b)(5)	22a–449(c)–110(a)(2)(CC).
270.42(b)(7)	22a–449(c)–110(a)(2)(DD).
270.42(c)(2)	22a–449(c)–110(a)(2)(EE).
270.42(d)(1)	22a–449(c)–110(a)(2)(FF).
270.42(f)(1)	22a–449(c)–110(a)(2)(GG).
270.42 App I	22a–449(c)–110(a)(2)(HH).
270.43	22a–449(c)–110(a)(2)(II).
270.62(b)(5)	22a–449(c)–110(a)(2)(KK).
270.62(b)(6)	22a–449(c)–110(a)(2)(LL).
270.62(b)(6)(i)	22a–449(c)–110(a)(2)(MM).
270.62(d)	22a–449(c)–110(a)(2)(NN).
270.66(d)(3)	22a–449(c)–110(a)(2)(OO).
270.66(d)(3)(i)	22a–449(c)–110(a)(2)(PP).
270.66(g)	22a–449(c)–110(a)(2)(QQ), 2nd, 3rd, and 4th bullets.
270.73(a)	22a–449(c)–110(a)(2)(RR), 1st and 2nd bullets.
270.73	22a–449(c)–110(a)(2)(SS).
124.3(a)	22a–449(c)–110(a)(2)(TT).
124.5(a)	22a–449(c)–110(a)(2)(UU).
124.5(c)(3)	22a–449(c)–110(a)(2)(VV).
124.6(a)	22a–449(c)–110(a)(2)(XX).
124.6(e)	22a–449(c)–110(a)(2)(YY).
124.8(a)	22a–449(c)–110(a)(2)(ZZ).
124.8(b)(4)	22a–449(c)–110(a)(2)(AAA).
124.10(a)(1)(iii)	22a–449(c)–110(a)(2)(BBB).
124.10(b)(2)	22a–449(c)–110(a)(2)(DDD).
124.10(d)(1)(v)	22a–449(c)–110(a)(2)(EEE), 2nd bullet.

Description of federal requirements	Analogous state authority
124.10(d)(1)(vi)	22a–449(c)–110(a)(2)(FFF).
124.10(d)(2)	22a–449(c)–110(a)(2)(GGG).
124.10(d)(2)(ii) and (iii)	22a–449(c)–110(a)(2)(HHH).
124.12(a)	22a–449(c)–110(a)(2)(III).
124.13	22a–449(c)–110(a)(2)(JJJ), 2nd bullet.
124.17(a)	22a–449(c)–110(a)(2)(KKK).
124.17(c)	22a–449(c)–110(a)(2)(LLL).
124.31(a)	22a–449(c)–110(a)(2)(MMM).
124.31(b)	22a–449(c)–110(a)(2)(NNN).
124.31(d)	22a–449(c)–110(a)(2)(OOO).
124.31(d)(1)(i)	22a–449(c)–110(a)(2)(PPP), 2nd bullet.
124.31(d)(1)(ii)	22a–449(c)–110(a)(2)(QQQ).
124.31(d)(1)(iii)	22a–449(c)–110(a)(2)(RRR).
124.32(a)	22a–449(c)–110(a)(2)(TTT).
124.32(b)(1)	22a–449(c)–110(a)(2)(UUU), 1st bullet.
124.32(b)(2)	22a–449(c)–110(a)(2)(VVV).
124.32(b)(3)	22a–449(c)–110(a)(2)(WWW).
124.33(a)	22a–449(c)–110(a)(2)(XXX).
124.33(b)	22a–449(c)–110(a)(2)(YYY), 1st and 2nd bullets.
124.33(d)	22a–449(c)–110(a)(2)(ZZZ), 2nd bullet.
124.33(e)	22a–449(c)–110(a)(2)(AAAA), 1st bullet.
124.33(f)	22a–449(c)–110(a)(2)(BBBB).
None	22a–449(c)–110(a)(3).
40 CFR part 273:	
273.32(a)(3)	22a–449(c)–113(a)(1) (**Note:** CT did not adopt 40 CFR 273.32(a)(3) because the alternate notification allowed for large quantity handlers of recalled universal waste pesticides under 40 CFR 165 has been repealed.).
None	22a–449(c)–113(a)(2).
None	22a–449(c)–113(a)(2)(B).
273.1(b)	22a–449(c)–113(a)(2)(C).
273.8(b)	22a–449(c)–113(a)(2)(D).
273.9	22a–449(c)–113(a)(2)(E).
273.13(c)(1)	22a–449(c)–113(a)(2)(F).
273.13(d)(1)	22a–449(c)–113(a)(2)(G).
273.13(d)(2)	22a–449(c)–113(a)(2)(H).
273.14(d)	22a–449(c)–113(a)(2)(I).
273.17(b)	22a–449(c)–113(a)(2)(K).
273.18(h)	22a–449(c)–113(a)(2)(M).
273.32(a)(1)	22a–449(c)–113(a)(2)(N) (Also see 22a–449(c)–113(a)(1)).
273.33(c)(1)	22a–449(c)–113(a)(2)(Q).
273.33(d)(1)	22a–449(c)–113(a)(2)(R).
273.33(d)(2)	22a–449(c)–113(a)(2)(S).
273.34(d)	22a–449(c)–113(a)(2)(T).
273.37(b)	22a–449(c)–113(a)(2)(V).
273.38(h)	22a–449(c)–113(a)(2)(X).
273.60(a)	22a–449(c)–113(a)(2)(AA) (partially broader in scope).
273.61(d)	22a–449(c)–113(a)(2)(BB).
273.80(a)	22a–449(c)–113(a)(2)(DD) (Also see 22a–449(c)–100(b)(1)(C).).
273.80(b)	22a–449(c)–113(a)(2)(EE).
273.32(a)(3)	22a–449(c)–113(a)(2)(FF).
None	22a–449(c)–113(b)–(f) and 22a–449(c)–113(a)(3) (provisions regarding used electronics).
40 CFR part 279:	
None	22a–449(c)–119(a)(1).
279.10(b)(3)	22a–449(c)–119(a)(1)(A).
279.82(b) and (c)	22a–449(c)–119(a)(1)(B). (See 22a–449(c)–119(a)(2)(H) for associated revision to 40 CFR 279.12(b).).
279.1	22a–449(c)–119(a)(2)(A).
279.10(b)(1)(ii)	22a–449(c)–119(a)(2)(B).
279.10(b)(2)	22a–449(c)–119(a)(2)(C).
279.10(b)(2)(ii)	22a–449(c)–119(a)(2)(D).
279.10(c)(1)(ii)	22a–449(c)–119(a)(2)(E).
279.11	22a–449(c)–119(a)(2)(G).
279.12(b)	22a–449(c)–119(a)(2)(H).
279.12	22a–449(c)–119(a)(2)(J).
279.21(b)	22a–449(c)–119(a)(2)(L).
279.22 intro	22a–449(c)–119(a)(2)(M).
279.22(d)	22a–449(c)–119(a)(2)(N).
279.22(d)(3)	22a–449(c)–119(a)(2)(O).
279.23	22a–449(c)–119(a)(2)(P).
279.24(a)(3)	22a–449(c)–119(a)(2)(Q).
279.31(b)(2)	22a–449(c)–119(a)(2)(R).
279.40(c)	22a–449(c)–119(a)(2)(S).

Description of federal requirements	Analogous state authority
279.42(a)	22a–449(c)–119(a)(2)(U).
279.43(c)(2)	22a–449(c)–119(a)(2)(V).
279.43(c)(3)(i)	22a–449(c)–119(a)(2)(W).
279.43(c)(5)	22a–449(c)–119(a)(2)(X).
279.44(a)	22a–449(c)–119(a)(2)(Y).
279.44(b)(1)	22a–449(c)–119(a)(2)(Z).
279.44(b)(2)	22a–449(c)–119(a)(2)(AA).
279.44(c)	22a–449(c)–119(a)(2)(BB).
279.45 intro	22a–449(c)–119(a)(2)(CC).
279.45(a)	22a–449(c)–119(a)(2)(DD), 1st bullet.
279.45(h)	22a–449(c)–119(a)(2)(EE).
279.45(h)(3)	22a–449(c)–119(a)(2)(FF).
279.51(a)	22a–449(c)–119(a)(2)(GG).
279.52(a)(3)	22a–449(c)–119(a)(2)(II).
279.52(b)(6)(iv)(B)	22a–449(c)–119(a)(2)(MM).
279.53(a)	22a–449(c)–119(a)(2)(OO).
279.53(b)(1)	22a–449(c)–119(a)(2)(PP).
279.53(b)(2)	22a–449(c)–119(a)(2)(QQ).
279.53(c)	22a–449(c)–119(a)(2)(RR).
279.53	22a–449(c)–119(a)(2)(SS).
279.54 intro	22a–449(c)–119(a)(2)(TT).
279.54(g)	22a–449(c)–119(a)(2)(UU).
279.54(g)(3)	22a–449(c)–119(a)(2)(VV).
279.54(h)(1)(i)	22a–449(c)–119(a)(2)(WW).
279.54(h)(2)(ii)	22a–449(c)–119(a)(2)(XX).
279.55(b)	22a–449(c)–119(a)(2)(ZZ).
279.57(a)(2)	22a–449(c)–119(a)(2)(AAA).
279.57(b)	22a–449(c)–119(a)(2)(BBB).
279.61	22a–449(c)–119(a)(2)(FFF).
279.63(a)	22a–449(c)–119(a)(2)(GGG).
279.63(b)	22a–449(c)–119(a)(2)(HHH).
279.63(b)(1)	22a–449(c)–119(a)(2)(III).
279.63(b)(2)	22a–449(c)–119(a)(2)(JJJ).
279.63(c)	22a–449(c)–119(a)(2)(KKK).
279.63(c)(2)	22a–449(c)–119(a)(2)(LLL).
279.64 intro	22a–449(c)–119(a)(2)(MMM).
279.64(g)	22a–449(c)–119(a)(2)(OOO).
279.64(g)(3)	22a–449(c)–119(a)(2)(PPP).
279.66(b)	22a–449(c)–119(a)(2)(QQQ).
279.70(a)	22a–449(c)–119(a)(2)(RRR).
279.70(b)(1)	22a–449(c)–119(a)(2)(SSS).
279.71	22a–449(c)–119(a)(2)(TTT).
279.72(a)	22a–449(c)–119(a)(2)(UUU).
279.72(b)	22a–449(c)–119(a)(2)(VVV).
279.74(b)(4)	22a–449(c)–119(a)(2)(WWW).
279.75(b)	22a–449(c)–119(a)(2)(XXX).
279.81	22a–449(c)–119(a)(2)(YYY).
279.82(a)	22a–449(c)–119(a)(2)(ZZZ).
None	22a–449(c)–119(a)(3) (partially broader in scope).
None	22a–449(c)–119(b).
None	22a–449(c)–119(c).
None	22a–449(c)–119(d).
None	22a–449(c)–119(e) (partially broader in scope).

Notes:

1. Various State regulations are being authorized even though they are listed opposite "none" in the description of the corresponding Federal requirements, because the State regulations either are equivalent to the Federal regulations overall (*e.g.*, add clarifying language) or because the State regulations add more stringent requirements which are becoming part of the federally enforceable RCRA program.

2. In addition to authorizing the particular State regulations listed above, the EPA is authorizing the various State regulations which generally incorporate Federal requirements by reference, namely R.C.S.A. 22a–449(c)–100(b)(1), 22a–449(c)–101(a)(1), 22a–449(c)–102(a)(1), 22a–449(c)–103(a)(1), 22a–449(c)–104(a)(1), 22a–449(c)–105(a)(1), 22a–449(c)–106(a)(1), 22a–449(c)–108(a)(1), 22a–449(c)–110(a)(1), 22a–449(c)–113(a)(1), and 22a–449(c)–119(a)(1). Many of these regulations were previously authorized insofar as they incorporated Federal requirements through July 1, 1989. The EPA now is authorizing all of these regulations in order to include in the authorized Connecticut program Federal requirements through January 1, 2001.

3. In addition to the regulations listed in the tables above and in footnotes 2 and 3 above, there are various state regulations to which the State has made minor editorial, error correction or similar changes, or to which the State has changed the regulation number (redesignated), as described in the footnotes to the State Regulatory Checklists (in the docket). The EPA also is authorizing these minor changes.

4. The authorization of new State regulations and regulation changes is in addition to the previous authorization of State regulations, which have not changed and remain part of the authorized program.

Following review of the Connecticut regulations, the EPA has determined that they are equivalent to, no less stringent than and consistent with the Federal program. The reasons for these determinations are set forth in the Administrative Docket, which is available for public review. Many of the State regulations incorporate Federal

requirements by reference and are virtually identical. In some cases, the State regulations add clarifying language, and the EPA considers the clarifications to be equivalent to the Federal regulations. Finally, there are some State regulations which are more stringent than, broader in scope than, or different but equivalent to the Federal regulations, as described in the Program Description and summarized below.

F. How Are the State Rules Different From the Federal Rules?

The most significant differences between the authorized State rules and the Federal rules are summarized below. It should be noted that this summary does not describe every difference, or every detail regarding the differences that are described. Members of the regulated community are advised to read the complete regulations to ensure that they understand all of the requirements with which they will need to comply.

1. More Stringent Provisions

There are aspects of the Connecticut program which are more stringent than the Federal program. All of these more stringent requirements are becoming part of the federally enforceable RCRA program when authorized by the EPA, and must be complied with in addition to the State requirements which track the minimum Federal requirements. These more stringent requirements include the following, which are more fully described in the Program Description:

—Additional registration, reporting and other requirements for hazardous waste recyclers;
—Additional specifications regarding when to make hazardous waste determinations;
—Additional waste handling and other requirements for large quantity generators, small quantity generators and conditionally exempt small quantity generators. Note also that the State more stringently defines who may qualify to be small quantity generators or conditionally exempt small quantity generators (*e.g.*, anyone accumulating more than 1,000 kg of hazardous waste is a large quantity generator in Connecticut vs. the federal accumulation limit is 6,000 kg);
—Additional requirements regarding manifests;
—Additional requirements regarding transporter temporary storage and personnel training;
—Additional requirements regarding management of lead acid batteries;
—Additional requirements regarding Boilers and Industrial Furnaces. Note, also, that Connecticut did not incorporate by reference 40 CFR 266.100(b), which replaced the standards applicable to BIFs in 40 CFR part 266, subpart H with the Maximum Achievable Control Technology requirements of 40 CFR part 63, subpart EEE, and thus Connecticut continues to require following the more stringent part 266, subpart H standards;
—Prohibition of the underground injection of hazardous waste;
—Additional groundwater monitoring requirements for interim status facilities;
—Additional requirements for permitted facilities;
—Additional requirements for used oil.

2. Broader-in-Scope Provisions

There also are aspects of the Connecticut program which are broader in scope than the Federal program. The State requirements which are broader in scope are not considered to be part of the federally enforceable RCRA program. However, they are fully enforceable under State law and must be complied with by sources within Connecticut. These broader-in-scope requirements include the following, which are more fully described in the Program Description:

—While the EPA generally does not regulate the recycling process itself, and exempts some recyclable materials from all RCRA regulation, the CTDEP Commissioner may impose additional requirements on persons engaging in recycling activities, including those recycling activities and recyclable materials that would otherwise be exempt from regulation. Such additional requirements will generally involve matters beyond the scope of EPA's regulations;
—Connecticut regulates certain recyclable materials that are exempt from RCRA regulation under the Federal regulations, including scrap metals meeting the characteristics of ignitability or reactivity, and commercial chemical products when accumulated speculatively;
—Connecticut requires hazardous waste transporters to obtain State permits and prohibits generators from offering hazardous wastes to any transporters who do not have permits;
—In addition to the federally enforceable RCRA permitting requirements, Conn. Gen. Stat. 22a–454 requires persons engaged in certain additional activities to obtain permits (*e.g.*, facilities in the business of collecting, storing, or treating used oil);
—Connecticut law requires approval by the Connecticut Siting Council for hazardous waste facilities;
—Connecticut has established fees for hazardous waste permits and certain status changes;
—Connecticut expanded the definition of "used oil" to include oil that has not been used but is no longer suitable for the services for which it was manufactured due to the presence of impurities or a loss of original properties. This expanded definition results in the regulation under the State's used oil program of some additional oils which would not be regulated in the Federal used oil program. Also, some of these oils are not characteristically hazardous and thus would not be regulated as fully regulated hazardous wastes in the Federal RCRA program. (This expanded definition also allows for the regulation of some additional oils which are characteristically hazardous, under the used oil program rather than under the full RCRA program.)

3. Different but Equivalent Provisions

There also are some Connecticut regulations which differ from, but have been determined to be equivalent to, the Federal regulations. These authorized State regulations are becoming part of the federally enforceable RCRA program. These different but equivalent requirements include some requirements related to Corrective Action described in the next section, and also the following:

—In addition to batteries, pesticides, thermostats and mercury-containing lamps included in the Federal universal waste rule, Connecticut added used electronics (including CRTs) to the State's universal waste rule;
—Under Federal regulations, K174 wastes are not classified as hazardous wastes if certain requirements are met. Connecticut classifies K174 wastes as hazardous wastes but excludes these wastes from certain hazardous waste requirements provided certain requirements are met. While Connecticut's approach is different, the State's requirements for these wastes are equivalent to the Federal requirements;
—Connecticut modified the Federal provisions for rebutting the presumption that used oil has been mixed with F001 or F002 wastes in order to incorporate a long-standing EPA policy interpretation.

G. What Is the Connecticut Corrective Action Program That Is Being Authorized?

As part of this program update, the State is assuming responsibility for operating the Federal Corrective Action program. The authorized program covers all Treatment Storage and Disposal Facilities (TSDFs) subject to 40 CFR 264.101, which includes (i) active facilities which need permits to conduct ongoing treatment, storage or disposal, and (ii) interim status land disposal facilities which have been required to seek post closure permits under the EPA regulations.

The State regulations incorporate 40 CFR 264.101 by reference with certain more stringent changes and thus meet the Federal Corrective Action requirements with respect to all facilities which have been or will be permitted. In addition, the State has adopted regulations (R.C.S.A. 22a–449(c)–105(h) and 22a–449(c)–110(a)(2)(RR)) which will accelerate Corrective Action at the interim status land disposal facilities, prior to permitting. Under these regulations, all of the interim status land disposal facilities have been required to submit Environmental Condition Assessment Forms (ECAFs) to the CTDEP. Following review by the CTDEP of the ECAFs, the regulations require that Corrective Action occur either under the direct supervision of the CTDEP or under the direction of a Licensed Environmental Professional (LEP). Whether sites are remediated under the direction of the CTDEP or under the direction of a LEP, the regulations specify that there will be a review of the remediation by the CTDEP prior to any determination that remediation is complete. Sites will remain in interim status until there is such a completeness determination. The regulations further provide for opportunities for public comment for all sites both at the time of remedy selection and prior to any completeness determination.

The State's regulations also recognize that some sites have or will undertake Corrective Action pursuant to Connecticut General Statutes sections 22a–134 to 22a–134e (the "Transfer Act"). Corrective Action at such sites will be subject to the same requirements for CTDEP review (including review of LEP determinations) and the same public comment procedures as specified above.

The EPA believes that the State program is "equivalent" to the EPA Corrective Action program, for the reasons explained below, and further explained in the January 30, 2002, Memorandum entitled "Connecticut Corrective Action Regulations" by EPA Assistant Regional Counsel Jeffry Fowley (in the docket). The EPA regulations contemplate that Corrective Action will occur at sites subject to 40 CFR 264.101, pursuant to permits (or orders). Under the State program, permits similarly will be issued to active facilities and ultimately to some interim status facilities requiring long-term operation and maintenance (*e.g.*, closed landfills). While other interim status facilities may satisfy their closure obligations at regulated units and achieve full remediation pursuant to the State regulations and the Transfer Act prior to being issued post closure permits, and thus may never need to be issued post closure permits, this involves an acceleration of effort which is environmentally beneficial. The EPA believes that the State's approach—of having the State agency review whether Corrective Action is complete, after Corrective Action has been carried out under the State regulations and the Transfer Act (sometimes under the direction of a LEP)—is equivalent to the EPA approach of carrying out Corrective Action under the direction of the EPA through a permit. Also, the opportunities for public comment required by the State regulations are equivalent to the public comment procedures applicable to EPA permits. Finally, the State has the needed enforcement authority to ensure that Corrective Action is promptly and fully carried out at sites subject to the State regulations and Transfer Act.

In determining whether remediation is complete, the State and EPA will utilize the Connecticut Remediation Standard Regulations (RSRs), R.C.S.A. 22a–133k–1 *et seq.*, as their primary tool. The EPA believes that the State's approach meets the Federal (40 CFR 264.101) requirement for protection of human health and the environment for the reasons explained below, and further explained in the June 2, 2004, Memorandum entitled "CT Remediation Standard Regulations" by David Lim, CT State Coordinator, EPA RCRA Corrective Action Section (in the docket). The RSRs contain numeric standards for the remediation of soil and groundwater which generally are at least as protective as what would be achieved through site-specific assessments in EPA directed cleanups. For those rare situations where the general standards of the RSRs might not be sufficient, the RSRs contain "Omnibus" provisions (sections 22a–133k–2(i) and 22a–133k–3(i)) that allow the State to require additional measures. In the Memorandum of Agreement, the EPA and CTDEP have identified particular situations in which this Omnibus authority will be used at Corrective Action sites.

In addition to the sites subject to 40 CFR 264.101, there are other sites in Connecticut subject to Corrective Action under RCRA section 3008(h). These are former non-land disposal facilities (mostly container storage areas and tanks) which may no longer need permits. However, under the Federal Corrective Action program, as permit applicants initially, these facilities acquired site-wide Corrective Action obligations that must be met. The EPA has not established a mechanism for authorizing States to administer the Corrective Action program for such sites. However, in the Memorandum of Agreement (MOA), the EPA and CTDEP have agreed on a coordinated approach to avoid duplication of effort with respect to such sites. In particular, the EPA and CTDEP expect that many of these sites will undertake Corrective Action under the Transfer Act. The CTDEP has agreed in the MOA to utilize the same governmental review and public comment procedures with respect to these non-land disposal facilities as it follows for the land disposal facilities. As also specified in the MOA, the EPA will retain all of its statutory enforcement authority with respect to the non-land disposal facilities, just as it retains its statutory enforcement authority even with respect to the sites subject to the formal authorization. However, the EPA generally does not anticipate taking enforcement action against non-land disposal facilities which promptly and fully carry out Corrective Action pursuant to the Transfer Act, just as the EPA generally does not anticipate taking enforcement action against land disposal facilities which promptly and fully carry out Corrective Action pursuant to the State regulations described above and the Transfer Act. This agreement entered into by the EPA and CTDEP to avoid duplication of effort is further described in the MOA. While the statements in the MOA (and in this **Federal Register** notice) do not create any legal rights or defenses, the EPA hopes that the agreed upon coordination between the EPA and the CTDEP will foster site cleanups using a One-Cleanup approach.

It is the long-term goal of the EPA and CTDEP that the CTDEP will be the lead overseeing agency for all sites subject to Corrective Action in Connecticut. However, the EPA will continue to be the lead agency for certain sites for a variety of reasons that could include

maximizing the Federal and State resources available to oversee the program, implementing special initiatives such as achieving environmental indicators or enhancing enforcement. Further, the EPA and CTDEP will at times provide technical and/or logistical support to one another.

H. What Is the Effect of This Authorization Decision?

At the Federal level, the effect of this authorization decision is that entities in Connecticut subject to RCRA will be able to comply with the authorized State requirements instead of the Federal requirements, with respect to the matters covered by the authorized State requirements, in order to comply with RCRA. However, there will continue to be a dual Federal RCRA program in Connecticut for the few HSWA rules (adopted since January 1, 2001) for which the state is not presently seeking authorization, and for any self-implementing HSWA statutory requirements for which the State has not adopted regulations (*e.g.*, RCRA section 3005(j), 42 U.S.C. 6925(j)). RCRA was amended by the Hazardous and Solid Waste Amendments ("HSWA") in 1984. Section 3006(g) of RCRA, 42 U.S.C. 6906(g), provides that when the EPA promulgates new regulatory requirements pursuant to HSWA, the EPA shall directly carry out these requirements in states authorized to administer the underlying base hazardous waste program, until the states are authorized to administer these new requirements. The EPA has established a few new regulatory requirements pursuant to HSWA which are not yet proposed to be authorized to be administered by Connecticut. Regulated entities will need to comply with these HSWA requirements as set out in the Federal regulations and statute in addition to authorized State program requirements. A complete list of HSWA requirements is set out in 40 CFR 271.1, Tables 1 and 2.

I. Who Handles Permits After the Authorization Takes Effect?

With respect to TSDF permitting, Connecticut will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits it has issued. The EPA also will continue to issue permits or portions of permits covering HSWA requirements for which Connecticut is not authorized.

J. How Will Today's Action Affect Indian Country in Connecticut?

Connecticut is not authorized to carry out its hazardous waste program in Indian country within the State (lands of the Mohegan Nation and the Mashantucket Pequot Tribal Nation). Today's action will have no effect on Indian country. The EPA will continue to implement and administer the RCRA program in these lands.

K. What Is Codification and Will EPA Codify Connecticut's Hazardous Waste Program as Authorized in This Rule?

The EPA is authorizing but not codifying the enumerated revisions to the Connecticut program. Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart H for the codification of Connecticut's program until a later date.

L. Administrative Requirements

The EPA has examined the effects of the State authorization decision discussed above and reached the conclusions set out below.

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB.

This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, the EPA certifies that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate, or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA also has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings issued under the Executive Order.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA is submitting a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A

major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined in 5 U.S.C. 804(2). This action will be effective immediately upon today's publication in the **Federal Register**.

This rule does not impose any information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: RCRA sections 2002 and 3006, 42 U.S.C. 6912 and 6926.

Dated: September 4, 2004.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 04–21495 Filed 9–27–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 493

Laboratory Requirements

CFR Correction

In Title 42 of the Code of Federal Regulations, Part 430 to End, revised as of October 1, 2003, on page 1027, in § 493.945, in the table in paragraph (b)(3)(ii)(C), the entry in row D, column B is corrected to read −5.

[FR Doc. 04–55517 Filed 9–27–04; 8:45 am]

BILLING CODE 1505–01–D

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15, 76 and 78

[MB Docket No. 03–50; FCC 04–75]

Extend Interference Protection to the Marine and Aeronautical Distress and Safety Frequency 406.025 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission adopts rules that extend interference protection to all of the international digital search and rescue frequencies in the 406 MHz band. These frequencies are used to detect and locate emergency position indicating radio beacons (EPRIBs) and emergency locator transmitters (ELTs) in the event of an emergency. Previously, the Commission extended protection to the analog search and rescue frequencies at 121.5 and 243.0 MHz. Digital beacons are said to be more effective and give off fewer false alerts than analog beacons. As digital beacons become increasingly popular, the need to protect them becomes more important. This Report and Order protects these newer digital beacons from interference from cable systems. At the same time, this Report and Order avoids placing undue burden on the cable operators by providing a new digital measurement technique for systems with digital channels. In addition, this document streamlines and cleans up our rules by removing some outdated rules and correcting others to maintain consistency through the different rule parts.

DATES: Effective October 28, 2004. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Sarah Mahmood, *sarah.mahmood@fcc.gov*, (202) 418–7009 of the Engineering Division, Media Bureau. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet at *Leslie.Smith@fcc.gov.*, or at 202–418–0217.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's Report and Order, FCC 04–75, adopted on March 30, 2004 and released on April 14, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *Brian.Millin@fcc.gov.*

Paperwork Reduction Act

The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

Summary of the Report and Order

1. In the *Report and Order* the Commission is adopting measurement techniques that both protect safety of life and permit the operation of analog and digital cable systems. By further defining the measurement techniques for digital signals to protect EPIRBs and ELTs, cable operators with digital cable systems will be able to deploy new digital services without undue power limitations on cable channel 54. By extending interference protection to all frequencies in the COSPAS–SARSAT 406 MHz Management Plan, the Commission is protecting all current beacon models as well as known future beacon models. These modifications will protect public safety interests while adapting to changes in digital technology.

2. Digital cable systems must limit their average power levels between 405.925 MHz and 406.176 MHz to 10^{-5} watts, measured using an RMS detector, over any 30 kHz bandwidth in any 2.5 millisecond interval. This rule is tailored specifically for the protection of EPIRBs and ELTs only. Should the Commission adopt measurement standards for digital cable signals in the broader context in the future, we will consider the full set of parameters surrounding digital signals. Analog signals, however, are prohibited from delivering peak power levels equal to or greater than 10^{-5} watts from 405.925 MHz to 406.176 MHz.

3. *Paperwork Reduction Act:* The action contained in this *Report and Order* has been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

4. *Final Regulatory Flexibility Analysis:* As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. Pursuant to the RFA, a Final Regulatory Flexibility Analysis is contained herein.

5. *Ordering Clauses:* Accordingly, *it is ordered* that, pursuant to authority

found in Sections 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), the Commission's rules *are hereby amended* as set forth herein, and shall become effective 30 days after publication in the **Federal Register**.

6. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Final Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rulemaking (NPRM) in MB Docket No. 03–50, FCC 03–37. The Commission sought written public comment on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

8. *Need for, and Objectives of, this Report and Order.* We have adopted rules to provide interference protection to the international digital emergency and distress frequencies in the COSPAS–SARSAT 406 MHz Frequency Management Plan. Digital distress beacons are becoming more widely used as the analog beacons are slowly being phased out. In the interest of public safety, our rules will eliminate potential interference from cable systems to the frequencies used by these digital beacons. All frequencies used by the digital beacons, according to the 406 Frequency Management Plan, will be added to those frequencies which are already protected from cable signal leakage. This addition covers all foreseeable digital beacon frequencies and should not pose any greater burden on small businesses. In addition to these rules, this Order updates, streamlines, and revises parts 76 and 78 of the Commission's rules by fixing typographical errors, removing grandfathered dates that have already passed, etc. These changes should have no differential impact on small businesses.

9. *Summary of Significant Issues Raised by Public Comments in Response to IRFA.* No one commented in direct response to the IRFA. We received comments from the NCTA, RCN, NOAA, and RTCM and reply comments from the NTIA and NCTA. None of the parties commented on the IRFA. Many of the comments concerned extending the interference protection as well as differentiating between analog and digital cable systems. No parties commented on small business related issues.

10. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" under Section 3 of the Small Business Act. 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).

11. *Cable and Other Programming Distribution.* The SBA has developed a definition of small entities for cable and other pay television services, which includes such companies generating $12.5 million or less in annual receipts. This definition includes cable system operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. According to the Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. We address below services individually to provide a more precise estimate of small entities.

12. *Open Video System (OVS).* The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of residential Communications Network, Inc. (RCN) received approval to operate OVS systems in New York City, Boston, Washington, DC, and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS service that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

13. *Cable System Operators (Rate Regulation Standard).* The Commission has developed a size standard for small cable system operators for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules define a "small system," for the purposes of rate regulation, as a cable system with 15,000 or fewer subscribers. The Commission does not request nor does the Commission collect information concerning cable systems serving 15,000 or fewer subscribers and thus is unable to estimate, at this time, the number of small cable systems nationwide.

14. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a definition of a small cable system operator, which is "a cable operator that, directly of through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, a cable operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under definition in the Communications Act of 1934.

15. *Private Cable Operators.* Based on our most recent information, we estimate that there are 3400 private cable operators serving multiple dwelling units that qualify as small cable companies as characterized by the standard set forth in the Telecommunications Act. Some of those companies may have grown to serve from 800,000 to 1.6 million subscribers, and others may have been involved in transactions that caused them to be

combined with other cable operators. Consequently, we estimate that there are fewer than 3,400 small entity private cable system operators that may be affected by the decisions and rules we are adopting.

16. *Description of Projected Reporting, Record Keeping and other Compliance Requirements.* This Report and Order creates no additional reporting, record keeping, or other compliance requirements. Rather, makes reporting easier and more efficient by permitting filing by electronic means via the Internet. It also simplifies reporting by standardizing forms and deleting duplicate and unnecessary data collections.

17. *Steps Taken to Minimize the Impact on Small Entities, and Significant Alternatives Considered.* The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."

18. It was considered whether providing interference protection to the digital beacons would differentially affect small businesses. However, examination of the record shows that the restricted power levels would still allow operations to continue without causing any harm or loss to smaller entities. No alternative power levels were considered because on this issue there were no questions raised in the NPRM or comments regarding small businesses, and because there is no evidence that the rules establishing these power levels would affect smaller entities either adversely or differently than larger entities.

19. *Report to Congress.* We will send a copy of this Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Report and Order and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

20. Accordingly, *it is ordered* that, pursuant to authority found in Sections 4(i)–(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i)–(j), 303(c), (f), and (r), and 309(j), the Commission's rules *are hereby amended* as set forth in Appendix A, and shall become effective 30 days after publication in the **Federal Register**.

21. *It is further ordered* that the Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 15, 76 and 78

Administrative practice and procedure, Cable television, Incorporation by reference.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rule

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Parts 15, 76 and 78 as follows:

PART 15—RADIO FREQUENCY DEVICES

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302(a), 303, 304; 307, 336, and 554a.

■ 2. Section 15.38 is amended by revising paragraph (b)(7) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) * * *

(7) CEA–542–B: "CEA Standard: Cable Television Channel Identification Plan," July 2003, IBR approved for § 15.118.

* * * * *

■ 3. Section 15.118 is amended by revising paragraph (b) to read as follows:

§ 15.118 Cable ready consumer electronics equipment.

* * * * *

(b) Cable ready consumer electronics equipment shall be capable of receiving all NTSC or similar video channels on channels 1 through 125 of the channel allocation plan set forth in CEA–542–B: "CEA Standard: Cable Television Channel Identification Plan," (incorporated by reference, *see* § 15.38).

* * * * *

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

■ 4. The authority citation for part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302a, 303, 303a, 307, 308, 309, 312, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, and 573.

■ 5. Section 76.5 is amended by revising paragraph (v) and by removing the Note following paragraph (v) to read as follows:

§ 76.5 Definitions.

* * * * *

(v) *Subscriber terminal.* The cable television system terminal to which a subscriber's equipment is connected. Separate terminals may be provided for delivery of signals of various classes. Terminal devices interconnected to subscriber terminals of a cable system must comply with the provisions of part 15 of this Chapter for TV interface devices.

* * * * *

■ 6. Section 76.602 is amended by revising paragraph (b)(9) to read follows:

§ 76.602 Incorporation by reference.

* * * * *

(b) * * *

(9) CEA–542–B: "CEA Standard: Cable Television Channel Identification Plan," July 2003, IBR approved for § 76.605.

■ 7. Section 76.605 is amended by revising paragraphs (a) introductory text, (a)(1)(ii) and (a)(6) and by removing paragraphs (a)(6)(i) and (a)(6)(ii); by revising paragraph (a)(7) introductory text and by removing paragraphs (a)(7)(i) through (a)(7)(iv) and by redesignating paragraphs (a)(7)(iv)(A) through (a)(7)(iv)(C) as paragraphs (a)(7)(i) through (a)(7)(iii); and in paragraph (b) by revising Note 3 to read as follows:

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched impedance at the termination point or at the output of the modulating or processing equipment (generally the headend) of the cable television system or otherwise as noted. The requirements are applicable to each NTSC or similar video downstream cable television channel in the system:

(1) * * *

(ii) Cable television systems shall transmit signals to subscriber premises equipment on frequencies in accordance with the channel allocation plan set

forth in CEA–542–B: "Standard: Cable Television Channel Identification Plan," (Incorporated by reference, *see* § 76.602).

* * * * *

(6) The amplitude characteristic shall be within a range of ±2 decibels from 0.75 MHz to 5.0 MHz above the lower boundary frequency of the cable television channel, referenced to the average of the highest and lowest amplitudes within these frequency boundaries. The amplitude characteristic shall be measured at the subscriber terminal.

(7) The ratio of RF visual signal level to system noise shall not be less than 43 decibels. For class I cable television channels, the requirements of this section are applicable only to:

* * * * *

Note 3: The requirements of this section shall not apply to devices subject to the TV interface device rules under part 15 of this chapter.

* * * * *

■ 8. Section 76.610 is revised to read as follows:

§ 76.610 Operation in the frequency bands 108–137 and 225–400 MHz—scope of application.

The provisions of §§ 76.605(a)(12), 76.611, 76.612, 76.613, 76.614, 76.616, 76.617, 76.1803 and 76.1804 are applicable to all MVPDs (cable and non-cable) transmitting carriers or other signal components carried at an average power level equal to or greater than 10^{-4} watts across a 25 kHz bandwidth in any 160 microsecond period, at any point in the cable distribution system in the frequency bands 108–137 and 225–400 MHz for any purpose. Exception: Non-cable MVPDs serving less than 1000 subscribers and less than 1000 units do not have to comply with § 76.1803.

■ 9. Section 76.616 is revised to read as follows:

§ 76.616 Operation near certain aeronautical and marine emergency radio frequencies.

(a) The transmission of carriers or other signal components capable of delivering peak power levels equal to or greater than 10^{-5} watts at any point in a cable television system is prohibited within 100 kHz of the frequency 121.5 MHz, and is prohibited within 50 kHz of the two frequencies 156.8 MHz and 243.0 MHz.

(b) At any point on a cable system from 405.925 MHz to 406.176 MHz analog transmissions are prohibited from delivering peak power levels equal to or greater than 10^{-5} watts. The transmission of digital signals in this range is limited to power levels measured using a root-mean-square detector of less than 10^{-5} watts in any 30 kHz bandwidth over any 2.5 millisecond interval.

§ 76.618 [Removed and Reserved]

■ 10. Remove and reserve § 76.618.

§ 76.619 [Removed and Reserved]

■ 11. Remove and reserve § 76.619.

§ 76.620 [Removed and Reserved]

■ 12. Remove and reserve § 76.620.

■ 13. Section 76.1510 is revised to read as follows:

§ 76.1510 Application of certain Title VI provisions.

The following sections within part 76 shall also apply to open video systems: §§ 76.71, 76.73, 76.75, 76.77, 76.79, 76.1702, and 76.1802 (Equal Employment Opportunity Requirements); §§ 76.503 and 76.504 (ownership restrictions); § 76.981 (negative option billing); and §§ 76.1300, 76.1301 and 76.1302 (regulation of carriage agreements); § 76.611 (signal leakage restrictions); § 76.1803 and 76.1804 (signal leakage monitoring and aeronautical frequency notifications); provided, however, that these sections shall apply to open video systems only to the extent that they do not conflict with this subpart S. Section 631 of the Communications Act (subscriber privacy) shall also apply to open video systems.

PART 78—CABLE TELEVISION RELAY SERVICE

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

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085; 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309.

■ 15. Section 78.19 is amended by revising paragraph (f)(2)(ii) to read as follows:

§ 78.19 Interference.

* * * * *

(f) * * *

(2) * * *

(ii) Within the rectangular areas defined as follows (vicinity of Denver, CO):

Rectangle 1:
41°30′00″ N. Lat. on the north
103°10′00″ W. Long. on the east
38°30′00″ N. Lat. on the south
106°30′00″ W. Long. on the west

Rectangle 2:
38°30′00″ N. Lat. on the north
105°00′00″ W. Long. on the east
37°30′00″ N. Lat. on the south
105°50′00″ W. Long. on the west

Rectangle 3:
40°08′00″ N. Lat. on the north
107°00′00″ W. Long. on the east
39°56′00″ N. Lat. on the south
107°15′00″ W. Long. on the west

* * * * *

■ 16. Section 78.27 is amended by revising paragraph (b)(1) to read as follows:

§ 78.27 License conditions.

* * * * *

(b) * * *

(1) The licensee of a CARS station shall notify the Commission in writing when the station commences operation. Such notification shall be submitted on or before the last day of the authorized one year construction period; otherwise, the station license shall be automatically forfeited.

* * * * *

■ 17. Add § 78.30 to read as follows:

§ 78.30 Forfeiture and termination of station authorizations.

(a) A CARS license will be automatically forfeited in whole or in part without further notice to the licensee upon the voluntary removal or alteration of the facilities, so as to render the station not operational for a period of 30 days or more.

(b) If a station licensed under this part discontinues operation on a permanent basis, the licensee must cancel the license. For purposes of this section, any station which has not operated for one year or more is considered to have been permanently discontinued.

[FR Doc. 04–21513 Filed 9–27–04; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2704]

Radio Broadcasting Services; Birmingham, AL

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document editorially amends 47 CFR 73.202(b), the Table of FM Allotments for Birmingham, Alabama, which was published in the **Federal Register** of Friday, September 19, 2003, (68 FR 54855). The Federal Communications Commission published in the **Federal Register**, of

September 19, 2003, a document which removed Channel 295C and added Channel 295C0 at Birmingham, Alabama. *See* 68 FR 54855. This document amends 47 CFR 73.202(b), the Table of FM Allotments under Alabama, by removing Channel 295C0 at Birmingham, Alabama because Channel 295C was reallotted to Homewood, Alabama in an earlier rulemaking proceeding, MM Docket No. 01–104. *See* 68 FR 33654, published June 5, 2003.

DATES: Effective on September 28, 2004.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION:

Background

The Federal Communications Commission published a document in the **Federal Register** of September 19, 2003, (68 FR 54855), which amended § 73.202(b), the FM Table of Allotments under Alabama by removing Channel 295C and adding Channel 295C0 at Birmingham. However, Channel 295C at Birmingham was reallotted to Homewood, Alabama in a prior rulemaking proceeding. *See* 68 FR 33654, published June 5, 2003.

Need for Correction

Part 73 of title 47 of the Code of Federal Regulations currently contains under § 73.202(b), the FM Table of Allotments under Alabama Channel 295C0 at Birmingham, therefore Channel 295C0 at Birmingham needs to be removed from the Code of Federal Regulations.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Accordingly, 47 CFR part 73 is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation of part 73 continues to read as follows:

Authority: 47 U.S.C. 54, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 295C0 at Birmingham.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–21725 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2907]

Radio Broadcasting Services; Various Locations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, on its own motion, editorially amends the Table of FM Allotments to specify the actual classes of channels allotted to various communities. The changes in channel classifications have been authorized in response to applications filed by licensees and permittees operating on these channels. This action is taken pursuant to *Revision of Section 73.3573(a)(1) of the Commission's Rules Concerning the Lower Classification of an FM Allotment,* 4 FCC Rcd 2413 (1989), and *Amendment of the Commission's Rules to permit FM Channel and Class Modifications by Applications,* 8 FCC Rcd 4735 (1993).

DATES: Effective September 28, 2004.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order,* adopted September 15, 2004 and released September 17, 2004. The full text of this Commission decision is available for 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. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will not send a copy of the *Report & Order* in this proceeding pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows;

PART 73—RADIO BROADCASTING SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by removing Channel 240C1 and adding Channel 240C0 at Cottonwood.

■ 3. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by removing Channel 265A and adding Channel 265C3 at Arkadelphia.

■ 4. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 279C1 and adding Channel 279C0 at Garberville.

■ 5. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by removing Channel 288C2 and adding Channel 288C1 at Timnath.

■ 6. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 271C2 and adding Channel 271C1 at Rock Harbor.

■ 7. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 264C1 and adding Channel 264C0 at Brunswick; by removing Channel 297C and adding Channel 297C0 at Columbus; by removing Channel 240C1 and adding Channel 240C0 at Dublin; and by removing Channel 298A and adding Channel 298C3 at Wrightsville.

■ 8. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by removing Channel 286C2 and adding Channel 287C2 at Keaau.

■ 9. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by removing Channel 222A and Channel 282A and by adding Channel 222C2 and 279C1 at Victor.

■ 10. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by removing Channel 227C1 and adding Channel 227C0 at Des Moines.

■ 11. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by removing Channel 229A and adding Channel 230C2 at Newberry.

■ 12. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by removing Channel *258A and adding Channel *258C3 at Roswell.

■ 13. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 285C3 and adding Channel 285C2 at Calabash.

■ 14. Section 73.202(b), the Table of FM Allotments under Utah, is amended by removing Channel 239C and adding Channel 240C1 at Delta.

■ 15. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 285C3 and adding Channel 285C2 at Roanoke.

■ 16. Section 73.202(b), the Table of FM Allotments under Washington, is amended by removing Channel 256C1 and adding Channel 256C2 at Walla Walla.

■ 17. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by removing Channel 292C3 and adding Channel 292A at Cheyenne.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–21727 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–04–17571; Notice 2]

RIN 2127–AJ32

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulation on civil penalties by increasing the maximum aggregate civil penalties for violations of statutes and regulations administered by NHTSA pertaining to motor vehicle safety, bumper standards, and consumer information. This action is taken pursuant to the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, which requires us to review and, as warranted, adjust penalties based on inflation at least every four years.

DATES: This rule is effective on October 28, 2004. If you wish to submit a petition for reconsideration of this rule, your petition must be received by November 12, 2004.

ADDRESSES: Petitions for reconsideration should refer to the docket number and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to the docket.

FOR FURTHER INFORMATION CONTACT: Michael Kido, Office of Chief Counsel, NHTSA, telephone (202) 366–5263, facsimile (202) 366–3820, 400 Seventh Street, SW., Washington, DC 20590.

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, consumer group, 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*.

SUPPLEMENTARY INFORMATION:

Background

In order to preserve the remedial impact of civil penalties and to foster compliance with the law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (28 U.S.C. 2461 Notes, Pub. L. 101–410), as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134 (referred to collectively as the "Adjustment Act" or, in context, the "Act"), requires us and other Federal agencies to regularly adjust civil penalties for inflation. Under the Adjustment Act, following an initial adjustment that was capped by the Act, these agencies must make further adjustments, as warranted, to the amounts of penalties in statutes they administer at least once every four years.

NHTSA's initial adjustment of civil penalties under the Adjustment Act was published on February 4, 1997. 62 FR 5167. At that time, we codified the adjustments in 49 CFR part 578, Civil Penalties. On July 14, 1999, we further adjusted certain penalties involving odometer requirements and disclosure, consumer information, motor vehicle safety, and bumper standards. 64 FR 37876. On August 7, 2001, we also adjusted certain penalty amounts pertaining to odometer requirements and disclosure and vehicle theft prevention. 66 FR 41149. In addition to increases in authorized penalties under the Adjustment Act, the Transportation Recall Enhancement, Accountability, and Documentation ("TREAD") Act increased penalties under the National Traffic and Motor Vehicle Safety Act as amended (sometimes referred to as the "Motor Vehicle Safety Act"). We codified those amendments in a notice published on November 14, 2000. 65 FR 68108.

On June 14, 2004, based on our review of the amounts of civil penalties authorized in part 578, we proposed to adjust those penalties where warranted under the Adjustment Act. 69 FR 32963. Our proposal addressed violations pertaining to motor vehicle safety, bumper standards, and consumer information regarding crashworthiness and damage susceptibility.

Method of Calculation

Under the Adjustment Act, we determine the inflation adjustment for each applicable civil penalty by increasing the maximum civil penalty amount per violation by a cost-of-living adjustment, and then applying a rounding factor. Section 5(b) of the Adjustment Act defines the "cost-of-living" adjustment as:

The percentage (if any) for each civil monetary penalty by which—

(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds

(2) The Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

Since the adjustment will be effective before December 31, 2004, the "Consumer Price Index [CPI] for the month of June of the calendar year preceding the adjustment" is the CPI for June 2003. This figure, based on the Adjustment Act's requirement of using the CPI "for all-urban consumers published by the Department of Labor" is 550.4.[1] The penalty amounts that NHTSA is adjusting based on the Act's requirements were last adjusted in 1999 for violations related to bumper standards and consumer information regarding crashworthiness and damage susceptibility and in 2000 for violations related to motor vehicle safety. The CPI figures for June 1999 and June 2000 were 497.9 and 516.5, respectively. Accordingly, the factors that we used in calculating the increase are 1.10 (550.4/497.9) for adjustments to the bumper standard and consumer information penalties and 1.07 (550.4/516.5) for adjustments to the motor vehicle safety penalties. Using 1.10 and 1.07 as the inflation factors, calculated increases under these adjustments are then subject to a specific rounding formula set forth in section 5(a) of the Adjustment Act. 28 U.S.C. 2461, Notes. Under that formula:

Any increase shall be rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

[1] Individuals interested in deriving the CPI figures used by the agency may visit the Department of Labor's Consumer Price Index home page at *http://www.bls.gov/cpi/home.htm*. Select "US ALL ITEMS 1967=100—CUUR0000AA0", select the appropriate time frame covering the information sought, and select "Retrieve Data" from the menu.

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

Revision of Civil Penalties Prescribed by Section 578.6

In the Notice of Proposed Rulemaking, we reviewed penalties in section 578.6, calculated updated penalties using the appropriate CPI figures, considered the nearest higher multiple specified in the rounding provisions, and proposed that the penalties discussed below may be increased.

We received one comment on our proposal from a private individual who recommended that the agency impose no penalty under $500 and that a maximum penalty of $150,000,000 be imposed on violators of the provisions that we proposed to adjust. We are not modifying our proposal based on this comment because it is inconsistent with the penalty provisions in the statutes addressed in this notice and with the Adjustment Act. We are adjusting the penalties as proposed and as addressed below.

Motor Vehicle Safety Act, 49 U.S.C. chapter 301 (49 CFR 578.6(a))

The maximum civil penalty for a related series of violations of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of title 49 of the United States Code or a regulation thereunder is $15,000,000, as specified in 49 CFR 578.6(a)(1). Likewise, the maximum penalty for a related series of daily violations of 49 U.S.C. 30166 or a regulation thereunder is $15,000,000, as specified in 49 CFR 578.6(a)(2). Under the rounding formula set by the Adjustment Act, any increase in a penalty shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. Applying the formula using the appropriate inflation factor (1.07) and the accompanying rounding rules, the increase in the penalty amounts would be $1,050,000. Accordingly, we are amending 49 CFR 578.6(a)(1) and (a)(2) to increase the maximum civil penalty to $16,050,000 for a related series of motor vehicle safety violations. However, the maximum civil penalties for a single violation will remain at $5,000 under 49 CFR 578.6(a) because the inflation-adjusted figures are not yet at a level to be increased under the Adjustment Act.

Bumper Standards, 49 U.S.C. Chapter 325 (49 CFR 578.6(c)(2))

The agency last adjusted its civil penalties for violations of bumper requirements under 49 U.S.C. chapter 325 in 1999. The maximum civil penalty for a related series of violations of 49 U.S.C. 32506(a) is $925,000, as specified in 49 CFR 578.6(c)(2). Applying the appropriate inflation factor (1.10) to the calculation raises this figure to $1,017,500, an increase of $92,500. Under the rounding formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this case, the increase would be $100,000. Accordingly, we are amending section 576.8(c)(2) to increase the maximum civil penalty to $1,025,000 for a related series of violations of the bumper standard provisions. However, the maximum civil penalty for a single violation remains at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Consumer Information, 49 U.S.C. Chapter 323 (Crashworthiness and Damage Susceptibility (Section 578.6(d))

The civil penalties related to consumer information regarding crashworthiness and damage susceptibility were last adjusted in 1999. Under 49 CFR 578.6(d), the maximum civil penalty for a related series of violations of 49 U.S.C. 32308(a) is $450,000. Applying the appropriate inflation factor (1.10) raises this figure to $495,000, which is an increase of $45,000. Under the formula, any increase in a penalty's amount shall be rounded to the nearest multiple of $25,000 in the case of penalties greater than $200,000. In this instance, the rounding rules provide for an increase of $50,000. Accordingly, we are amending section 576.8(d) to increase the maximum civil penalty to $500,000 for a related series of violations that pertain to NHTSA's crashworthiness and damage susceptibility consumer information provisions. However, the maximum penalty for a single violation remains at $1,100 because the inflation-adjusted figure is not yet at a level to be increased.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review," provides for making determinations whether a regulatory action is "significant" and therefore subject to OMB review and to the requirements of the Executive Order. The Order defines a "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.

NHTSA has considered the impact of this final rule under E.O. 12866 and the Department of Transportation's regulatory policies and procedures and has determined that it is not significant. This action is limited to the adoption of statutorily mandated adjustments of civil penalties under statutes that the agency enforces, raises no novel issues, and does not otherwise interfere with other actions. This final rule does not impose any costs that would exceed the $100 million threshold or otherwise materially impact entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. The agency has therefore determined this final rule to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Regulatory Flexibility Act

We have also considered the impacts of this notice under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. The following provides the factual basis for this certification under 5 U.S.C. 605(b). The amendments almost entirely potentially affect manufacturers of motor vehicles and motor vehicle equipment.

The Small Business Administration's regulations define a small business in part as a business entity "which operates primarily within the United States." 13 CFR 121.105(a). SBA's size standards were previously organized according to Standard Industrial Classification Codes ("SIC"), SIC Code 3711 "Motor Vehicles and Passenger Car Bodies," which used a small business size standard of 1,000 employees or fewer. SBA uses size standards based on the North American Industry Classification System ("NAICS"),

Subsector 336—Transportation Equipment Manufacturing, which provides a small business size standard of 1,000 employees or fewer for automobile manufacturing businesses. Other motor vehicle-related industries have lower size requirements that range between 500 and 750 employees.[2]

Many small businesses are subject to the penalty provisions of 49 U.S.C. Chapters 301 (motor vehicle safety), 325 (bumpers) or 323 (consumer information) and therefore may be affected by the adjustments made by this rule. For example, based on comprehensive reporting pursuant to the early warning reporting (EWR) rule under the Motor Vehicle Safety Act, 49 CFR part 579, out of 72 reporting we are aware of approximately 50 light vehicle manufacturers that are small businesses. In addition, there are other, relatively low production light vehicle manufacturers that are not subject to comprehensive EWR reporting. Additionally, many of the more than 70 manufacturers of medium-heavy vehicles and buses, the more than 150 trailer manufacturers, and the 12 motorcycle manufacturers providing comprehensive EWR reports are small businesses and there are numerous others that are below the production threshold for comprehensive reporting. There are over 6 manufacturers of child restraints and 18 tire manufacturers that are reporting pursuant to the EWR rule. Also, there are numerous other low-volume specialty tire manufacturers that do not provide comprehensive EWR reports. Furthermore, there are about 160 registered importers. Equipment manufacturers are also subject to penalties under 49 U.S.C. 30165.

The bumper and consumer information statutes addressed by this rule cover passenger motor vehicles, which are within the compass of the Motor Vehicle Safety Act. As a result, the discussion of the numbers and sizes of light vehicle manufacturers above also covers those statutes. As noted throughout this preamble, this rule increases only the maximum penalty amounts that the agency could obtain for violations of provisions related to motor vehicle safety, bumper standards, and certain consumer information. The rule does not set the amount of penalties for any particular violation or series of violations. Under the motor vehicle safety and consumer information statutes, the penalty provisions require the agency to take into account the size of a business when determining the appropriate penalty in an individual case. *See* 49 U.S.C. 30165(b) (motor vehicle safety) and 49 U.S.C. 32308(b)(3) (consumer information). While the bumper standards penalty provision does not specifically require the agency to consider the size of the business, the agency would consider business size under its civil penalty policy when determining the appropriate civil penalty amount. *See* 62 FR 37115 (July 10, 1997) (NHTSA's civil penalty policy under the Small Business Regulatory Enforcement Fairness Act ("SBREFA")). The penalty adjustments in today's rule will not affect our civil penalty policy under SBREFA. As a matter of policy, we intend to continue to consider the appropriateness of the penalty amount to the size of the business charged.

Since this regulation does not establish penalty amounts, this rule will not have a significant economic impact on small businesses.

Further, small organizations and governmental jurisdictions will not be significantly affected as the price of motor vehicles and equipment ought not to change as the result of this rule. As explained above, this action is limited to the adoption of a statutory directive, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, as amended, we state that there are no requirements for information collection associated with this rulemaking action.

National Environmental Policy Act

We have also analyzed this rulemaking action under the National Environmental Policy Act and determined that it has no significant impact on the human environment.

Executive Order 12612 (Federalism)

We have analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and have determined that it has no significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not have a retroactive or preemptive effect. A petition for reconsideration need not be filed prior to seeking judicial review, when available.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this rule will not have a $100 million effect, no Unfunded Mandates assessment will be prepared.

List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Penalties, Rubber and rubber products, Tires.

■ 1. The authority citation for 49 CFR part 578 continues to read as follows:

Authority: Pub. L. 101–410, Pub. L. 104–134, 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32912, and 33115; delegation of authority at 49 CFR 1.50.

■ 2. Section 578.6 is amended by revising paragraphs (a)(1), (a)(2), (c)(2), and (d) to read as follows:

PART 578—CIVIL AND CRIMINAL PENALTIES

* * * * *

§ 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

(a)(1) *Motor vehicle safety.* A person who violates any of sections 30112, 30115, 30117 through 30122, 30123(d), 30125(c), 30127, or 30141 through 30147 of Title 49 of the United States Code or a regulation prescribed under any of those sections is liable to the United States Government for a civil penalty of not more than $5,000 for each violation. A separate violation occurs for each motor vehicle or item of motor vehicle equipment and for each failure or refusal to allow or perform an act required by any of those sections. The maximum civil penalty under this paragraph for a related series of violations is $16,050,000.

(2) *Section 30166.* A person who violates section 30166 of Title 49 of the United States Code or a regulation prescribed under that section is liable to the United States Government for a civil penalty for failing or refusing to allow or perform an act required under that section or regulation. The maximum

[2] For example, according to the new SBA coding system, businesses that manufacture truck trailers, travel trailers/campers, carburetors, pistons, piston rings, valves, vehicular lighting equipment, motor vehicle seating/interior trim, and motor vehicle stamping qualify as small businesses if they employ 500 or fewer employees. Similarly, businesses that manufacture gasoline engines, engine parts, electrical and electronic equipment (non-vehicle lighting), motor vehicle steering/suspension components (excluding springs), motor vehicle brake systems, transmissions/power train parts, motor vehicle air-conditioning, and all other motor vehicle parts qualify as small businesses if they employ 750 or fewer employees. *See http://www.sba.gov/size/sizetable.pdf* for further details.

penalty under this paragraph is $5,000 per violation per day. The maximum penalty under this paragraph for a related series of violations is $16,050,000.

* * * * *

(c) *Bumper standards.* (1) * * *

(2) The maximum civil penalty under this paragraph (c) for a related series of violations is $1,025,000.

(d) *Consumer information regarding crashworthiness and damage susceptibility.* A person that violates 49 U.S.C. 32308(a) is liable to the United States Government for a civil penalty of not more than $1,100 for each violation. Each failure to provide information or comply with a regulation in violation of 49 U.S.C. 32308(a) is a separate violation. The maximum penalty under this paragraph for a related series of violations is $500,000.

* * * * *

Issued on: September 22, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–21735 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 12]

RIN 2127–AJ41

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the date by which quarterly early warning reports are to be submitted to the agency from 30 days following the end of a calendar quarter to 60 days following the end of a calendar quarter. The final rule also amends the date by which copies of non-dealer field reports are to be submitted from 30 days after the quarterly reports are due to 15 days after those reports are due.

DATES: *Effective Date:* The effective date of this final rule is October 28, 2004. *Petitions for Reconsideration:* Petitions for reconsideration of the final rule must be received not later than November 12, 2004.

ADDRESSES: Petitions for reconsideration of the final rule should refer to the docket and notice number set forth above and be submitted to Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act, 49 U.S.C. 30166(m) 67 FR 45822. The EWR final rule established a schedule for the reporting of information and submission of copies of certain field reports required by the rule. The first calendar quarter for which reports were required was the second calendar quarter of 2003. *See* 49 CFR 579.28(a)(2002). For the quarterly reporting periods in 2003, the reports were due within 60 days after the end of the quarter. Thereafter, starting in 2004, reports were to be due within 30 days after the end of the quarter. *See* 49 CFR 579.28(b) (2002).

In response to a petition for reconsideration of the final rule, on June 11, 2003, NHTSA amended the reporting dates. 68 FR 35145. Under the revised rule, the initial reporting period for all quarterly data [1] other than historical reports and copies of non-dealer field reports was the third quarter of 2003. Reports covering the last two quarters of 2003 and the first quarter of 2004 were due to NHTSA within 60 days after the close of the reporting period. Thereafter, reports currently are due within 30 days after the close of the quarter. NHTSA also amended the requirements for submission of copies of non-dealer field reports. The initial reporting period for the submission of copies of non-dealer field reports was the first calendar quarter of 2004. Under that amendment, the dealer field reports are due within 30 days after the quarterly data are due. 49 CFR 579.28(b), (n) (2003); *see* 68 FR 35145.

[1] In general, quarterly reports include information on production, incidents involving death or injury, numbers of property damage claims, numbers of consumer complaints, numbers of warranty claims or warranty adjustments, and numbers of field reports. *See e.g.*, 49 CFR 579.21 (2003).

II. Notice of Proposed Rulemaking

In response to a petition for rulemaking filed by the Alliance of Automobile Manufacturers (Alliance), on June 29, 2004, NHTSA published a proposal to amend the date by which quarterly early warning reports are to be submitted to the agency from 30 days following the end of a calendar quarter to 60 days following the end of a calendar quarter. In addition, the agency proposed to amend the date by which copies of non-dealer field reports are to be submitted from 30 days after the quarterly reports are due to 15 days after those reports are due. 69 FR 38860. In the NPRM, the agency stated that based upon the experience of the Alliance's members, it appeared that manufacturers need more than 30 days to provide complete and accurate EWR reports to NHTSA. The agency further explained that complete reports best serve its EWR program because its analysts use the quarterly reports to assist in the identification of possible defect trends, and incomplete reports would disrupt the analytical process.

We received comments from industry trade associations and the public. For the industry, the Rubber Manufacturers Association (RMA), the Motor & Equipment Manufacturers Association (MEMA), the Association of International Automobile Manufacturers, Inc. (AIAM), the Alliance, and the Truck Manufacturers Association (TMA) submitted comments. In general, the industry supported the proposal and urged NHTSA to adopt it. Specifically, RMA indicated that its members report that the process of gathering information and completing the reports has been more complex than anticipated. In addition, MEMA commented that some of its members are part of large multi-national organizations that require more time to identify EWR information, translate it to English and prepare the applicable EWR report. Lastly, the Alliance and AIAM stated that the additional time to provide reports would ensure that its members provide complete and accurate reports to NHTSA.

We also received one comment against the proposal from a private citizen. That individual commented that 60 days to report EWR information is unreasonable since computers have the ability to quickly collate information.

III. Discussion

When we issued the EWR final rule, and when we postponed the initial reporting period on reconsideration, we believed that after manufacturers had three opportunities to gain experience

in making EWR submissions, 30 days after the end of each calendar quarter would be a sufficient amount of time for submitting EWR information. However, based upon the comments received from the industry, we are adopting the proposed revision to section 579.28(b) to permit manufacturers to submit EWR quarterly data not later than 60 days after the end of each calendar quarter.

As we stated in the NPRM, the EWR rule requires manufacturers to submit large amounts of data that are stored in a variety of locations. As manufacturers have compiled and reported EWR information, they have gained a better understanding of the amount of time it takes them to collect, collate, and report the information. Based upon the experience of commenters, it appears that, at least for the foreseeable future, manufacturers need more than 30 days to collect, collate, and provide complete and accurate EWR reports to NHTSA.

We do not believe that extending the due date for EWR reports will be a detriment to the interests of motor vehicle safety. Incomplete or inaccurate data would not serve NHTSA well. In fact, incomplete reports could lead the agency to fail to identify potential defects or to examine issues unnecessarily, thereby wasting agency resources.

As we have stated in earlier **Federal Register** notices on the early warning reporting program, we plan to begin reviewing the EWR regulation after two years of reporting experience. During the course of this review, we will assess whether the appropriate time for quarterly reporting should be 30, 60 or some other number of days after the end of the reporting period.

Under the current regulations, copies of non-dealer field reports are due to NHTSA within 30 days after the other quarterly reports are due. 49 CFR 579.28(n) (2003). In essence, beginning with the second quarter of 2004, these reports are now due 60 days after the end of the quarter. Given the structure of the regulation, which bases the due date for non-dealer field reports on the due date for quarterly reports, if we were to change the due date for the quarterly reports and make no other changes, the non-dealer field reports would be due 90 days after the end of the quarter. We do not see any need for a delay of that length. However, to avoid any possibility that the submission of the field reports could interfere with the submission of the quarterly data, we proposed to continue to stagger the two dates. We proposed a 15 day difference between reporting dates for this purpose. We did not receive any comments to the contrary. Therefore, we will adopt the proposal to change the language of subsection 579.28(n) to require non-dealer field reports to be submitted not later than 15 days after the quarterly data is due, which would be 75 days after the end of the calendar quarter.

IV. Rulemaking Analyses

Regulatory Policies and Procedures. Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines as "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.

Today's final rule was not reviewed under E.O. 12866 or the Department of Transportation's regulatory policies and procedures. This rulemaking action is not significant under Department of Transportation policies and procedures. The impacts of today's final rule are expected to be so minimal as not to warrant preparation of a full regulatory evaluation because the final rule only revises the time period for reporting certain EWR data from 30 days to 60 days after the calendar quarter ends and revises the date for submission of certain field reports by 15 days. This document does not otherwise change the substance of the reports.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires agencies to evaluate the potential effects of their proposed and final rules on small businesses, small organizations and small governmental jurisdictions. This was addressed in the EWR final rule and in response to petitions for reconsideration. *See* 67 FR 45870–71 and 69 FR 3292, 3297 respectively. Today's final rule simply extends dates for reporting information under the early warning program and does not impose any new burdens on small businesses. Based on the analyses performed in the EWR final rule (67 FR 45870–71) and the response to petitions for rulemaking (69 FR 3292, 3297), I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism) Executive Order 13132 on "Federalism" requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of "regulatory policies that have federalism implications." The Executive Order defines this phrase to include regulations "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. Today's final rule is a rule that regulates the manufacturers of motor vehicles and motor vehicle equipment, which does not have 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, as specified in Executive Order 13132.

Civil Justice Reform. This final rule will not have a retroactive or preemptive effect, and judicial review of it may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

Paperwork Reduction Act. Today's final rule simply extends the reporting period for the submission of EWR data. It does not create new information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. To the extent that this final rule implicates the Paperwork Reduction Act, we will rely upon our previous clearance from OMB. To obtain a three-year clearance for information collection for the EWR rule, we published a Paperwork Reduction Act notice on June 25, 2002 (67 FR 42843) pursuant to the requirements of that Act (44 U.S.C. 3501 *et seq.*). We received clearance from OMB on December 20, 2002,

which will expire on December 31, 2005. The clearance number is 2127–0616. The amendments adopted by this document do not change the overall paperwork burden. They simply extend the dates for reporting certain information pursuant to the EWR rule.

Data Quality Act. Section 515 of the FY 2001 Treasury and General Government Appropriations Act (Public Law 106–554, § 515, codified at 44 U.S.C. 3516 historical and statutory note), commonly referred to as the Data Quality Act, directed OMB to establish government-wide standards in the form of guidelines designed to maximize the "quality," "objectivity," "utility," and "integrity" of information that Federal agencies disseminate to the public. As noted in the EWR final rule (67 FR 45822), NHTSA has reviewed its data collection, generation, and dissemination processes in order to ensure that agency information meets the standards articulated in the OMB and DOT guidelines. The changes adopted by today's final rule simply extends the reporting period for submission of data pursuant to the EWR rule and do not have any effects on the quality of the date disseminated by the agency.

Unfunded Mandates Reform Act. The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted annually for inflation with base year of 1995). The EWR final rule did not have unfunded mandates implications. 67 FR 49263. Today's final rule simply extends the reporting period for submission of data pursuant to the EWR rule and does not create any unfunded mandates within the meaning of this Act.

List of Subjects in 49 CFR Part 579

Imports, Motor vehicle safety, Motor vehicles, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter V is amended as follows:

PART 579—REPORTING OF INFORMATION AND COMMUNICATIONS ABOUT POTENTIAL DEFECTS

■ 1. The authority citation for part 579 continues to read as follows:

Authority: Sec. 3, Pub. L. 106–414, 114 Stat. 1800 (49 U.S.C. 30102–103, 30112, 30117–121, 30166–167); delegation of authority at 49 CFR 1.50.

Subpart C—Reporting of Early Warning Information

■ 2. In § 579.28, revise paragraphs (b) and (n) to read as follows:

§ 579.28 Due date of reports and other miscellaneous provisions.

* * * * *

(b) *Due date of reports.* Except as provided in paragraph (n) of this section, each manufacturer of motor vehicles and motor vehicle equipment shall submit each report that is required by this subpart not later than 60 days after the last day of the reporting period.

* * * * *

(n) *Submission of copies of field reports.* Copies of field reports required under this subpart shall be submitted not later than 15 days after reports are due pursuant to paragraph (b) of this section.

Issued on: September 22, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–21737 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA 2004–17987; Notice 2]

RIN 2127–AJ34

Schedule of Fees Authorized by 49 U.S.C. 30141

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This document adopts fees for Fiscal Year (FY) 2005 and until further notice, relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS).

DATES: The amendments established by this final rule will become effective on October 1, 2004, the beginning of FY 2005. Petitions for reconsideration must be received by NHTSA not later than November 12, 2004.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice numbers above and be submitted to the Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, with a copy to the docket. You may provide a copy of your petition by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions. Please also note 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.*
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Coleman Sachs, Office of Vehicle Safety Compliance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5291). For legal issues: Michael Goode, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5263).

SUPPLEMENTARY INFORMATION:

A. Introduction

The amendments we are adopting in this rule increase the fees for the registration of a new registered importer (RI) from $655 to $830 and the annual fee for renewing an existing registration from $455 to $745. These fees include the costs of maintaining the RI program. We are also increasing, from $550 to $827, the fee for inspecting a vehicle that is the subject of an import eligibility petition when we are asked to conduct such an inspection by the petitioner. The fee required to reimburse the U.S. Department of Homeland

Security (Customs) for conformance bond processing costs will increase from $6.20 to $9.30 per bond. We are also increasing the fees assessed against the importer of each vehicle covered by the decision to grant import eligibility. For vehicles determined eligible based on their substantial similarity to a U.S. certified vehicle, the fee is increased from $105 to $150. For vehicles determined eligible based on their capability of being modified to comply with all applicable FMVSS, the fee is increased from $125 to $150. The fee that a RI must pay as a processing cost for review of each conformity package that it submits to NHTSA will remain at $18 per certificate. If the vehicle has been entered electronically with Customs through the Automated Broker Interface and the registered importer has an e-mail address, the fee for processing the conformity package will continue to be $6, provided the fee is paid by credit card. However, if NHTSA finds that the information in the entry or the conformity package is incorrect, the processing fee will increase from $18 to $48.

This rule was preceded by a notice of proposed rulemaking (NPRM) that NHTSA published in the **Federal Register** on June 9, 2004 (69 FR 32312). The National Traffic and Motor Vehicle Safety Act, as amended by the Imported Vehicle Safety Compliance Act of 1988, and recodified as 49 U.S.C. 30141–30147 ("the Act"), provides for fees to cover the costs of the importer registration program, the cost of making import eligibility determinations, and the cost of processing the bonds furnished to Customs. Certain fees became effective on January 31, 1990, and have been in effect, with modifications, since then. On June 24, 1996, we published a notice at 61 FR 32411 that discussed the rulemaking history of 49 CFR Part 594 and the fees authorized by the Act. The reader is referred to that notice for background information relating to this rulemaking action.

We last amended the fee schedule in 2002. See final rule published on September 26, 2002, at 67 FR 60596 (corrected on October 9, 2002, at 67 FR 62897). Those fees applied to Fiscal Years 2003 and 2004.

The fees adopted by this final rule are based on actual time and costs associated with the tasks for which the fees are assessed and reflect the slight increase in hourly costs in the past two fiscal years attributable to the approximately 4.27 and 4.42 percent raises (including the locality adjustment for Washington, D.C.) in salaries of employees on the General Schedule that became effective on January 1, 2003, and on January 1, 2004, respectively.

B. Comments

Two comments were submitted in response to the notice of proposed rulemaking. The first of these was from Ms. Barb Sachau. In her comments, Ms. Sachau expressed the opinion that the proposed fees should cover the entire costs of the RI program and that taxpayers should not be burdened with any share of those costs. Ms. Sachau generally recommended that the RI program fees be tripled. She also specifically proposed an increase in the fee for reviewing certificates of conformity to a minimum of $200, and an increase in the fee for a vehicle inspection to $2,127. Ms. Sachau also recommended that an importer who petitions the agency to determine a vehicle eligible for importation should pay all costs associated with processing the petition, rather than sharing those costs with the importers of the vehicle.

Ms. Sachau's concern that taxpayers should not be burdened with the costs of the RI program is consistent with the statute on which the program is based and the manner in which it is conducted by NHTSA. Section 30141(a)(3) of Title 49, U.S. Code requires registered importers to pay "for the costs of carrying out the registration program * * * and any other fees the Secretary of Transportation establishes to pay for the costs of (A) processing bonds * * * and (B) making [import eligibility] decisions * * *" As reflected in the agency's regulations at 49 CFR 594.2, the purpose of these fees is "to ensure that NHTSA is reimbursed for costs incurred in administering the RI program" and carrying out associated functions.

Ms. Sachau did not provide the calculations that served as the basis for her proposal to triple the RI program fees, and the specific amounts that she recommended for reviewing certificates of conformity and performing vehicle inspections. In preparing the NPRM, we calculated the costs incurred in administering the RI program and proposed fees that would reimburse the Federal government for its actual expenses.

To avoid burdening a single RI with all costs associated with making an import eligibility decision, NHTSA decided in 1990 to allocate those costs, on a pro rata basis, among all RIs who import the vehicle to which the decision relates. In that manner, the agency's costs for making an import eligibility decision are borne in part by the petitioner and in part by the importers of vehicles imported under the petition. This approach accomplishes what Ms. Sachau desires in that it provides ample means for the agency to recover the costs incurred for the eligibility decisions that it makes.

The second comment was submitted by Mr. Jeffrey A. Beyer, Vice President, BCB International, Incorporated, a Customs Broker in Buffalo, New York. Mr. Beyer objected to the proposed fee increase for processing a conformity package in situations where an error is committed in submitting information through the Automated Broker Interface (ABI). Mr. Beyer stated that when an RI is charged increased fees for such an error, the RI, in turn, expects to be compensated for the extra fee by the Customs Broker who made the entry. Mr. Beyer expressed the belief that it is unfair to increase the fees in this circumstance because no mechanism is presently available in the Customs ABI system to correct or update an entry.

Mr. Beyer's concerns relate to his business dealings with Customs and the ABI system that Customs controls. While we are sensitive to Mr. Beyer's professed inability to correct or update an entry made into the Customs software, once an error is made, NHTSA must expend a considerable amount of additional effort to correct the entry. These efforts result in significantly greater costs to the agency. Consistent with the statutory requirement for the agency to recover the actual costs it incurs in administering the RI program, it is entirely appropriate for NHTSA to increase its fee for processing submissions in which errors are made.

C. Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program.

Section 30141(a)(3) of Title 49, U.S. Code provides that RIs must pay the annual fee the Secretary of Transportation establishes "* * * to pay for the costs of carrying out the registration program for importers. * * *" This fee is payable both by new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct (49 CFR 592.5(e)).

In compliance with the statutory directive, we reviewed the existing fees and their bases in an attempt to establish fees that would be sufficient to recover the costs of carrying out the registration program for importers for at least the next two fiscal years. The

initial component of the Registration Program Fee is the fee attributable to processing and acting upon registration applications. We will decrease this fee from $395 to $293 for new applications. We have also determined that the fee for the review of the annual statement will be increased from $195 to $208. These fee adjustments reflect our time expenditures in reviewing both new applications and annual statements with accompanying documentation, as well as the inflation factor attributable to Federal salary increases and locality adjustments in the two years since the regulation was last amended.

We must also recover costs attributable to maintenance of the registration program that arise from the need for us to review a registrant's annual statement and to verify the continuing validity of information already submitted. These costs also include anticipated costs attributable to the possible revocation or suspension of registrations and reflect the amount of time that we have devoted to those matters in the past two years.

Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is approximately $537 for each RI, an increase of $277. When this $537 is added to the $293 representing the registration application component, the cost to an applicant comes to $830, which is the fee we are adopting. This represents an increase of $186 over the existing fee. When the $537 is added to the $208 representing the annual statement component, the total cost to the RI comes to $745, which represents an increase of $290.

Section 594.6(h) enumerates indirect costs associated with processing the annual renewal of RI registrations. The provision states that these costs represent a pro rata allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and "a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor." The indirect costs that were previously calculated at $14.85 per man-hour are being increased by $5.22, to $20.07.

Sections 594.7 and 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Determinations

Section 30141(a)(3) also requires registered importers to pay other fees the Secretary of Transportation establishes to cover the costs of "* * * (B) making the decisions under this subchapter." This includes decisions on whether the vehicle sought to be imported is substantially similar to a motor vehicle that was originally manufactured for importation into and sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar U.S. certified motor vehicle, the decision is whether the safety features of the vehicle comply with or are capable of being altered to comply with the FMVSS based on destructive test information or such other evidence NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, or on the Administrator's own initiative.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner and in part by other importers. The fee to be charged for each vehicle is the estimated pro rata share of the costs in making all the eligibility determinations in a fiscal year.

Inflation and General Schedule raises must also be taken into account in the computation of costs. We have reduced processing costs through issuing a single **Federal Register** notice to announce import eligibility decisions made on multiple vehicles and achieved other efficiencies through improved computerization methods. Despite the cost savings that have accrued from these practices, we have had to devote an increasing share of staff time in the past two years to the review and processing of import eligibility petitions owing to a proportionately greater number of comments being submitted in response to these petitions, as well as complications that result when the petitioner or one or more commenters request confidentiality for information they submit to the agency. Additional staff time is also needed to analyze the petitions and any comments received owning to new requirements being adopted in the FMVSS. Despite the additional resources that are needed to review import eligibility petitions, we are not increasing the current fee of $175 that covers the initial processing of a "substantially similar" petition. Instead, as discussed below, we are addressing these additional costs by increasing the pro-rata share of petition costs that are assessed against the importer of each vehicle covered by the decision to grant import eligibility. Likewise, we are also maintaining the existing fee of $800 to cover the initial costs for processing petitions for vehicles that have no substantially similar U.S.-certified counterpart.

In the event that a petitioner requests an inspection of a vehicle, the fee for such an inspection will increase to $827 from $550 for vehicles that are the subject of either type of petition. This $277 increase reflects current per diem and airfare costs.

Importers of vehicles determined to be eligible for importation pay, upon the importation of those vehicles, a pro-rata share of the total cost for making the eligibility decision. The importation fee varies depending upon the basis on which the vehicle is determined to be eligible. For vehicles covered by an eligibility decision on the agency's own initiative (other than vehicles imported from Canada that are covered by VSA Nos. 80–83, for which no eligibility decision fee is assessed), the fee will remain $125. NHTSA determined that the costs associated with previous eligibility determinations on the agency's own initiative were fully recovered by October 1, 2000. We apply the fee of $125 per vehicle only to vehicles covered by determinations made by the agency on its own initiative on or after October 1, 2000.

The agency's costs for making an import eligibility decision pursuant to a petition are borne in part by the petitioner and in part by the importers of vehicles imported under the petition. In 2003, the most recent year for which complete data exists, the agency expended over $99,000 in making import eligibility decisions based on petitions. The petitioners paid nearly $9,000 of that amount in the processing fees that accompanied the filing of their petitions, leaving the remaining $90,000 to be recovered from the importers of the nearly 600 vehicles imported that year pursuant to petition-based import eligibility decisions. Dividing $90,000 by 600 yields a pro-rata fee of $150 for each vehicle imported pursuant to an eligibility decision that resulted from the granting of a petition. The agency is proposing this as the pro-rata fee to be paid by the importer of each such vehicle. The same $150 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a U.S.-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with all applicable FMVSS. This represents an increase of $45 over the $105 that is currently paid by the importers of vehicles determined eligible based on their substantial similarity to a U.S.-certified vehicle, and an increase of $25 over the $125 that is currently paid by the importers of vehicles determined

eligible based on their capability of being modified to comply.

Section 594.9—Fee To Recover the Costs of Processing the Bond

Section 30141(a)(3) also requires a registered importer to pay any other fees the Secretary of Transportation establishes "* * * to pay for the costs of—(A) processing bonds provided to the Secretary of the Treasury * * *" upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

Customs now exercises the functions associated with the processing of these bonds. The statute contemplates that we will make a reasonable determination of the cost that Customs incurs in processing the bonds. In essence, the cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs has judged to be 20 minutes.

Based on General Schedule salary and locality raises that were effective in January 2003 and 2004 and the inclusion of costs for benefits that were previously omitted, we are increasing the processing fee by $3.10, from $6.20 per bond to $9.30. This fee would more closely reflect the direct and indirect costs that are actually associated with processing the bonds.

Section 594.10—Fee for Review and Processing of Conformity Certificate

Each RI is currently required to pay $18 per vehicle to cover the costs the agency incurs in reviewing a certificate of conformity. We have found that these costs continue to average $18 per vehicle for vehicles for which a paper entry and fee payment is made, and we therefore are not changing this fee. However, if a RI enters a vehicle through the Automated Broker Interface (ABI) system, has an e-mail address to receive communications from NHTSA, and pays the fee by credit card, the cost savings that we realize allow us to significantly reduce the fee to $6.00. We are maintaining the fee of $6.00 per vehicle if all the information in the ABI entry is correct. Errors in ABI entries not only eliminate any timesavings, but also require additional staff time to be expended in reconciling the erroneous ABI entry information to the conformity data that is ultimately submitted. Recent experience with these errors has shown that staff members must examine records, make time-consuming long distance telephone calls, and often consult supervisory personnel to resolve the conflicts in the data. We have calculated this staff and supervisory time, as well as the telephone charges, to amount to approximately $42 for each erroneous ABI entry. Adding this to the $6 fee for the review of conformity packages on automated entries yields a total of $48, representing a $30 increase over the fee that is currently charged when there are errors to resolve in the entry or in the statement of conformity. We are adopting this $48 fee to review each conformity package for which there are one or more errors in the ABI entry or in the statement of conformity.

Effective Date

NHTSA is required under 49 U.S.C. 30141(e) to "review and make appropriate adjustments at least every 2 years in the amounts of the fees" relating to the registration of importers, the processing of bonds, and making decisions concerning the importation of nonconforming vehicles. The statute further requires the agency to "establish the fees for each fiscal year before the beginning of that year." Fiscal year 2005 begins on October 1, 2004. In the NPRM, we proposed to make this rule effective October 1, 2004, and did not receive any comments on this issue. In order to meet the statutory deadline, the agency finds under 5 U.S.C. 553(d)(3) that it has good cause to make this final rule effective less than thirty days after its publication in the Federal Register. Accordingly, the effective date of this final rule is October 1, 2004.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking is not significant. Accordingly, the Office of Management and Budget has not reviewed this rulemaking document under Executive Order 12886. Further, NHTSA has determined that the rulemaking is not significant under Department of Transportation's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA currently anticipates that the costs of the final rule will be so minimal as not to warrant preparation of a full regulatory evaluation. The action does not involve any substantial public interest or controversy. There will be no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program. A regulatory evaluation analyzing the economic impact of the final rule establishing the registered importer program, adopted on September 29, 1989, was prepared, and is available for review in the docket.

B. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this action will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The amendments adopted in this final rule will primarily affect entities that currently modify nonconforming vehicles and which are small businesses within the meaning of the Regulatory Flexibility Act; however, the agency has no reason to believe that these companies will face significant problems paying the fees adopted as a result of this action. In most instances, these fees will be only modestly increased (and in some instances decreased) from the fees previously paid by these entities. Moreover, consistent with prevailing industry practices, these fees should be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase (or decrease) to the extent necessary to reimburse the registered importer for the fees payable to the agency for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on "Federalism" requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." Executive Order 13132 defines the term "policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government." Under Executive Order 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

The amendments adopted in this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rulemaking action.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The action will not have a significant effect upon the environment because it is anticipated that the annual volume of motor vehicles imported through registered importers will not vary significantly from that existing before promulgation of the rule.

E. Executive Order 12778 (Civil Justice Reform)

This rule will not have any retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Because this final rule will not require the expenditure of resources beyond $100 million annually, no Unfunded Mandates assessment has been prepared.

G. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the proposed rule clearly stated?
—Does the proposed rule contain technical language or jargon that is unclear?
—Would a different format (grouping and order of sections, use of heading, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

No responses to these questions were included in the comments submitted on the notice of proposed rulemaking. We have endeavored to abide by these principles in the preparation of this final rule.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule requires no information collections.

I. Executive Order 13045

Executive Order 13045 applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned rule is preferable to other potentially effective and reasonably feasible alternatives considered by us. This rulemaking is not economically significant.

List of Subjects in 49 CFR Part 594

Imports, Motor vehicle safety, Motor vehicles.

■ In consideration of the foregoing, Part 594, Schedule of Fees Authorized by 49 U.S.C. 30141, in Title 49 of the Code of Federal Regulations is amended as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 continues to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.50.

■ 2. Section 594.6 is amended by;
■ a. Revising the introductory text of paragraph (a);
■ b. Revising paragraph (b);
■ c. Revising paragraph (d);
■ d. Revising the final sentence of paragraph (h); and
■ e. Revising paragraph (i) to read as follows:

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2004, must pay an annual fee of $830, as calculated below, based upon the direct and indirect costs attributable to: * * *

* * * * * *

(b) That portion of the initial annual fee attributable to the processing of the application for applications filed on and after October 1, 2004, is $537. The sum of $537, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2004, is set forth in paragraph (i) of this section. This portion shall be refundable if the application is denied, or withdrawn before final action upon it.

* * * * *

(h) * * * This cost is $20.07 per man-hour for the period beginning October 1, 2004.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program, covering the period beginning October 1, 2004, is $537. When added to the costs of registration of $293, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $830. The annual renewal registration fee for the period beginning October 1, 2004, is $745.

■ 3. Section 594.7 is amended by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2004, the fee payable for seeking a determination under paragraph (a)(1) of this section is $175.

The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $800. If the petitioner requests an inspection of a vehicle, the sum of $827 shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

■ 4. Section 594.8 is amended by revising paragraph (b) and by revising the first sentence of paragraph (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $150. The direct and indirect costs that determine the fee are those set forth in § 594.7(b), (c), and (d).

(c) If a determination has been made on or after October 1, 2004, pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

■ 5. Section 594.9 is amended by revising paragraph (c) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2004, for which a certificate of conformity is furnished, is $9.30.

■ 6. Section 594.10 is amended by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2004 is $18. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an e-mail address, the fee for the certificate is $6, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $48.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–21723 Filed 9–23–04; 3:56 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 040618188–4265–02; I.D. 061404A]

RIN 0648–AS26

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–3; Corrections

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 16–3 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–3 amended the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish within the FMP. This final rule adds two rebuilding parameters to the Code of Federal Regulations (CFR) for each overfished stock, the target year for rebuilding and the harvest control rule. Amendment 16–3 addressed the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–3 also responded to a Court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. This rule also updates the list of rockfish species defined in the CFR to match those listed in the FMP and contains corrections to 50 CFR part 660, subpart G.

DATES: Effective October 28, 2004.

ADDRESSES: Copies of Amendment 16–3 and the final environmental impact statement/regulatory impact review/initial regulatory flexibility analysis (FEIS/RIR/IRFA) and the Record of Decision (ROD) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council (Council), 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280. These documents are also available online at the Council's website at *http://www.pcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Jamie Goen (Northwest Region, NMFS), phone: 206–526–4646; fax: 206–526–6736 or; e-mail: *jamie.goen@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

The proposed and final rules for this action are accessible via the Internet at the Office of the Federal Register's website at *http://www.gpoaccess.gov/fr/index.html.* Background information and documents are available at the NMFS Northwest Region website at *http://www.nwr.noaa.gov/1sustfsh/gdfsh01.htm* and at the Council's website at *http://www.pcouncil.org.*

Background

Amendment 16–3 revised the FMP to include overfished species rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish. This final rule implements Amendment 16–3 by adding two rebuilding parameters, the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{TARGET}) and the harvest control rule, to the CFR at 50 CFR 660.365 for each overfished stock.

Amendment 16–3 addressed the requirements of the Magnuson-Stevens Act to protect and rebuild overfished species managed under a Federal FMP. Amendment 16–3 also responded to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,), in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

A Notice of Availability for Amendment 16–3 was published on June 18, 2004 (69 FR 34116). NMFS requested comments on the amendment under the Magnuson-Stevens Act FMP amendment review provisions for a 60–day comment period, ending August 17, 2004. A proposed rule was published on July 7, 2004 (69 FR 40851), requesting public comment through August 17, 2004. During the Amendment 16–3 and proposed rule comment period, NMFS received three letters of comment. These letters are addressed later in the preamble to this final rule. The preamble to the proposed rule for this action provides additional background information on the fishery and on this final rule. Further detail on Amendment 16–3 also appears in the FEIS/RIR/IRFA for this action, which was prepared by the Council.

After consideration of the public comments received on the amendment, NMFS approved Amendment 16–3 on September 2004. As required by the standards established by Amendment 16–1, the rebuilding plans adopted under Amendment 16–3 for bocaccio, cowcod, widow rockfish, and yelloweye

rockfish specified the following rebuilding parameters in the FMP: unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied (T_{MAX}), the target year in which the stock would be rebuilt under the adopted rebuilding plan (T_{TARGET}), and the harvest control rule. Other information relevant to rebuilding was also included, including the probability of the stock attaining B_{MSY} by T_{MAX} (P_{MAX}). The estimated rebuilding parameters will serve as management benchmarks in the FMP and the FMP will not be amended if the values for these parameters change after new stock assessments and rebuilding analyses are completed, as is likely to happen.

Amendment 16–1 specified two rebuilding parameters, T_{TARGET} and the harvest control rule for the rebuilding period, that are to be codified in Federal regulations for each individual species rebuilding plan. This final rule adds these rebuilding parameters to the CFR at 50 CFR 660.365 for bocaccio, cowcod, widow rockfish, and yelloweye rockfish. T_{TARGET} is the year in which there is a 50–percent likelihood that the stock will have been rebuilt with a given fishing mortality rate. The harvest control rule expresses a given fishing mortality rate that is to be used over the course of rebuilding. These parameters will be used to establish the optimum yields (OYs) for species with rebuilding plans. Conservation and management goals defined in the FMP require the Council and NMFS to manage to the appropriate OY for each species or species groups, including those OYs established for rebuilding overfished species. The OYs and management measures will be set on a biennial basis, and will address the fisheries as a whole. Regulations implemented through the harvest specifications and management measures are based on the most recently available scientific information and are intended to address all of the fisheries that take groundfish and to keep the total catch of groundfish, including overfished species, within their respective OYs. The FMP addresses how the fisheries as a whole are to be managed, whereas rebuilding plans are species-specific and define the parameters that govern the rebuilding of a particular species.

If, after a new stock assessment, the Council and NMFS conclude that either or both of the parameters defined in regulation should be revised, the revision will be implemented through the Federal notice-and-comment rulemaking process, and the updated values codified in the Federal regulations. NMFS believes that the FMP with the newly added rebuilding plans will be sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish" (16 U.S.C. 1854(e)(3)(A).

Comments and Responses

NMFS received three letters of comment on the proposed rule to implement Amendment 16–3: one letter was received from an environmental advocacy organization, and two letters were received from one member of the public. These comments are addressed here:

Comment 1: The proposed target dates for rebuilding Amendment 16–3 species are inconsistent with the Magnuson-Stevens Act because the rebuilding periods are longer than the statute allows.

Response: The specified rebuilding time periods for the four overfished species are consistent with the legal requirements of the Magnuson-Stevens Act and with the national standard guidelines. The Magnuson-Stevens Act states that rebuilding "shall not exceed 10 years, except in cases where the biology of the stock of fish, or other environmental conditions,...dictate otherwise." The Magnuson-Stevens Act also states that the time for rebuilding shall be as short as possible, taking into account certain factors. The Magnuson-Stevens Act, section 304 (e)(4)(A), and the national standard guidelines at 50 CFR 600.310 (e)(4)(A) recognize the following factors that enter into the specification of a time period for rebuilding: the status and biology of the stock or stock complex; interactions between stocks or stock complexes and the marine ecosystem; the needs of fishing communities; recommendations of international organizations in which the U.S. is a participant, and; management measures under an international agreement in which the U.S. participates.

According to the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(*3*), if the time period for rebuilding is 10 years or greater, then the specified time period for rebuilding (T_{TARGET}) may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the U.S. participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality (T_{MIN}), plus one mean generation time or equivalent period based on the species' life-history characteristics (T_{MAX}). All of the rebuilding periods for bocaccio, cowcod, widow rockfish, and yelloweye rockfish are less than T_{MAX}.

The rebuilding probabilities (P_{MAX}, which are estimated probabilities of rebuilding the stock by T_{MAX}) range between 60 percent and 80 percent. This represents a better than 50 percent likelihood that each of these stocks will be rebuilt (reach the B_{MSY} biomass) by T_{MAX}, while allowing sufficient access to overfished stocks, so that healthy groundfish stocks that co-occur with overfished species can be harvested. The Council chose a T_{TARGET} closer to T_{MAX} for cowcod and widow rockfish (reflected in the relatively lower 60–percent rebuilding probability). For cowcod, this was the most conservative alternative available under the current stock assessment. A new stock assessment is planned for cowcod in 2005. For widow rockfish, the lower probability of rebuilding was chosen to allow some bycatch in all of the various fisheries that take widow rockfish incidentally, particularly fisheries for Pacific whiting. The FEIS for this amendment has further information on the reasons for the adopted rebuilding periods.

Comment 2: The proposed rebuilding periods should be consistent with NMFS's "Technical Guidance On the Use of Precautionary Approaches to Implementing National Standard 1 of the Magnuson-Stevens Fishery Conservation and Management Act" (Technical Guidance), which recommends rebuilding periods not exceed the midpoint (T_{MID}) between the minimum and maximum times to rebuild the species.

Response: As explained above in the response to comment 1, if T_{MIN} is 10 years or greater, the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(*3*), allow T_{TARGET} to be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the U.S. participates, except that no such upward adjustment can exceed T_{MAX}. The Technical Guidance recommends that T_{TARGET} be set no higher than the midpoint between T_{MIN} and T_{MAX}.

Adopting the midpoint as a binding criterion in all cases would not be consistent with the Magnuson-Stevens Act because it would not allow the factors in the Act at section 304(e)(4) and the national standard guidelines at 50 CFR 600.310(e)(4)(ii), which include the needs of fishing communities, to be taken into account. The Technical Guidance is not a binding regulation

that must be followed; the Technical Guidance itself acknowledges that it deals only with biological issues, and not with socioeconomic issues, which fishery management councils must consider, per the Magnuson-Stevens Act.

The Council has not recommended for the Amendment 16–3 species any T_{TARGET} values that exceed T_{MAX}. For bocaccio, the Council recommended a T_{TARGET} of 2023 which is lower than the T_{MID} of 2025. The Council set T_{TARGET} dates to rebuild overfished species within the time allowed, yet recognizes the socio-economic importance of these species to the fishing industry and fishing communities. Each of the Amendment 16–3 species co-occurs with more abundant groundfish stocks. Rebuilding harvest levels allow some targeting of more abundant stocks that co-occur with Amendment 16–3 species. The Council's recommended rebuilding goals comply with the Magnuson-Stevens Act and the national standard guidelines.

Comment 3: NMFS's Technical Guidance recommends that rebuilding plans have at least a 90–percent probability of achieving rebuilding within the maximum allowable time to rebuild (P_{MAX}) under NMFS's national standard guidelines. None of these rebuilding plans result in a 90–percent or greater likelihood of successfully rebuilding by P_{MAX}.

Response: The Technical Guidance has been provided by NMFS "for those aspects of scientific fishery management advice that have biological underpinnings, such as the response of fish to exploitation. The drafting team recognizes that there are many other important aspects to managing fisheries, such as socioeconomic factors, which are key to defining optimum yield, and which Fishery Management Councils must consider." As such, the Technical Guidance does not direct NMFS, but rather makes suggestions on how to use scientific information to implement the policy guidance of the Magnuson-Stevens Act and the national standard guidelines to achieve the biological goals of national standard 1.

The Technical Guidance at page 38 suggests addressing uncertainty with the guideline that "rebuilding plans be designed to possess a 50–percent or higher chance of achieving B_{MSY} within T_{TARGET} years, and a 90–percent or higher chance of achieving BMSY within T_{MAX} years." Harvest levels finalized by this action have been set such that overfished species would have a 50–percent chance of achieving B_{MSY} within T_{TARGET} years. However, none of harvest levels for the overfished species in Amendment 16–3 have been set such that their rebuilding plans would have a greater than 90–percent chance of achieving B_{MSY} within T_{MAX} years. Each species was considered individually in its species-specific rebuilding analysis.

As discussed in the preamble to the proposed rule for this action (69 FR 40851, July 7, 2004), the rebuilding measures for the overfished West Coast groundfish species in Amendment 16–3 have the following probabilities of achieving B_{MSY} within T_{MAX} years: bocaccio, 70 percent; cowcod, 60 percent; widow rockfish, 60 percent; and yelloweye rockfish, 80 percent. These probabilities of rebuilding and the harvest levels associated with them were set to achieve rebuilding, but also to acknowledge that these species are usually taken with other, co-occurring and more abundant species. OY levels for overfished species are set to allow some level of fishing for the more abundant stocks that co-occur with overfished species. At the same time, management measures such as conservation areas and cumulative trip limits are set to minimize opportunities for the vessels targeting more abundant stocks to intercept overfished species. This approach to multi-species management is consistent with the Magnuson-Stevens Act and meets the criteria in the Act at section 304(e)(4) and the national standard guidelines at 600.310(e)(4)(ii).

As discussed in the response to comment 1, according to the national standard guidelines at 50 CFR 600.310(e)(4)(ii)(B)(*3*), if T_{MIN} is 10 years or greater, "then the specified time period for rebuilding [T_{TARGET}] may be adjusted upward to the extent warranted by the needs of fishing communities and recommendations by international organizations in which the United States participates, except that no such upward adjustment can exceed the rebuilding period calculated in the absence of fishing mortality, plus one mean generation time or equivalent period based on the species' life-history characteristics [T_{MAX}]." While the Technical Guidance suggests that rebuilding plans be designed to possess a 90–percent or higher chance of achieving B_{MSY} within T_{MAX} years (P_{MAX}), adopting that as a binding criterion in all cases would not be consistent with the Magnuson-Stevens Act and the national standard guidelines. It would not be consistent with the Magnuson-Stevens Act because it would not allow the criteria in the Act at section 304(e)(4) and the national standard guidelines at 600.310(e)(4)(ii) to be taken into account. For further discussion on this issue, see the preamble to the Amendment 16–1 final rule (69 FR 8861, February 26, 2004.)

Comment 4: The target rebuilding periods proposed in the rebuilding plans all have only a 50–percent chance of actually being achieved under the plans. This low probability of rebuilding success by the rebuilding dates specified in the plans violates the Magnuson-Stevens Act's requirement to rebuild as quickly as possible and conflicts with NMFS's own guidance to adopt a precautionary approach to rebuilding and species protection. NMFS's response to this comment in the FEIS ignores the fact that this is the result of policy choices that are neither scientifically mandated nor protective of the overfished species. A higher probability of rebuilding success, by both target and maximum periods, would be more precautionary and would accord much better with the statute and NMFS's own guidance.

Response: As stated in the response to comments in the FEIS (Chapter 12), in a rebuilding analysis that uses the probability calculations described by the Council's Scientific and Statistical Committee (SSC) Terms of Reference for Rebuilding Analyses, the target year is defined as the median rebuilding year for a given fishing mortality rate. As described in Section 4.5.2 of the groundfish FMP (and in more detail in Section 1.1.1.2 of Appendix A to the FEIS for this action), the rebuilding analysis methodology uses a Monte Carlo simulation technique in which many simulations project the change in biomass over time for a given fishing mortality rate (F), based on the biological characteristics of the species and known recruitment variability. The target year, or median year, is defined as the year in which half of these simulations show that the population has rebuilt to the target biomass. In this sense, the target year (T_{TARGET}) is the statistically most likely year in which the population will achieve the target biomass for a given F. Similarly, P_{MAX}, the probability of rebuilding in the maximum allowable time period (T_{MAX}), represents the proportion of simulations within which the population has rebuilt to the target biomass by T_{MAX}. Even T_{MIN}, the rebuilding period in the absence of fishing, is defined probabilistically as the year in which half of all simulations achieve rebuilding when F is set to zero. These three strategic rebuilding parameters (T_{TARGET}, P_{MAX}, and F) cannot be chosen independently of each other because the choice of one parameter determines the value of the other two parameters. The alternatives in the FEIS are structured around P_{MAX}

values. Therefore, in choosing a P_{MAX} as part of the rebuilding strategy for an overfished stock, the Council also chose the values for T_{TARGET} and F for each stock, with T_{TARGET} being defined by the median probability of achieving rebuilding. Although the Council could have chosen the target year directly (as long as it fell between TMIN and T_{MAX}), within the model it would still be defined as the year with 50–percent probability of stock recovery, and that choice would determine the corresponding values for P_{MAX} and F.

As stated in the response to comment 3, the Technical Guidance at page 38 suggests addressing uncertainty with the guideline that "rebuilding plans be designed to possess a 50–percent or higher chance of achieving B_{MSY} within T_{TARGET} years, ..." Harvest levels finalized by this action have been set such that overfished species would have a 50–percent chance of achieving B_{MSY} within T_{TARGET} years. Therefore, NMFS is following its guidance for setting T_{TARGET} when considering uncertainty in stock dynamics, current stock status and recruitment variability. This approach is consistent with the Magnuson-Stevens Act and national standard guidelines on protecting and rebuilding overfished species while taking into account the socio-economic needs of the fishing industry and fishing communities.

Comment 5: Because the rebuilding plans lack any management requirements designed to achieve a rebuilt fishery, they violate the Magnuson-Stevens Act. To ensure rebuilding goals are met, rebuilding plans need to include management measures to (1) ensure rebuilding targets are met, (2) account for and reduce bycatch, (3) reduce impacts of current fishing on habitats that are important to the overfished stocks and their prey species, and (4) aid in the enforcement of the management measures.

Response: This comment poses two issues: first, the commenter states that rebuilding plans must include management measures to be adequate; second, the commenter provides a list of the types of management measures that the commenter believes are needed within a rebuilding plan. Amendments 16–2 and 16–3 incorporated the overfished species rebuilding plans into the FMP. Rebuilding plans are no longer stand-alone documents. Rebuilding plans are species-specific and list the parameters that govern the rebuilding of a particular species. Most importantly, a rebuilding plan sets the harvest parameters for an overfished species. The primary management measure that is governed by and comes out of a rebuilding plan is the OY, which is implemented through the biennial specifications and management measures process.

In contrast to the species-specific rebuilding plans, the FMP sets policies and principles for the management of the groundfish fisheries as a whole. The FMP must guide the management of over 80 groundfish species, integrating rebuilding policies for overfished species, and harvest policies for species at precautionary harvest levels ($B_{25\%}$-$B_{40\%}$) and more abundant stocks (>$B_{40\%}$.) The FMP provides this guidance in section 4.6.1.5., which states that "OY recommendations will be consistent with established rebuilding plans and achievement of their goals and objectives. . . . (b) In cases where a stock or stock complex is overfished, Council action will specify OY in a manner that complies with rebuilding plans developed in accordance with Section 4.5.2." The FMP further states at 5.1.4 "For any stock the Secretary has declared overfished or approaching the overfished condition, or for any stock the Council determines is in need of rebuilding, the Council will implement such periodic management measures as are necessary to rebuild the stock by controlling harvest mortality, habitat impacts, or other effects of fishing activities that are subject to regulation under the biennial process. These management measures will be consistent with any approved rebuilding plan." Most management measures used in the fishery to rebuild overfished stocks and to allow harvest on more abundant stocks are described in section 6 of the FMP. The FMP, which includes rebuilding plans for the eight overfished groundfish species, is sufficient "to end overfishing in the fishery and to rebuild affected stocks of fish" (16 U.S.C. 1854(e)(3)(A).

The 2004 specifications and management measures, (69 FR 11064, March 9, 2004) implemented the first four rebuilding plans (lingcod, canary rockfish, darkblotched rockfish, and Pacific ocean perch (POP)) with revisions to the harvest control rules for POP and darkblotched rockfish, and the interim rebuilding strategies for the remaining overfished species (bocaccio, cowcod, widow rockfish, and yelloweye rockfish). The proposed rule for groundfish harvest specifications and management measures for 2005–2006, to be published in September 2004, will propose OYs and management measures that implement the remaining rebuilding plans. The Council developed its recommendations for the 2005–2006 fisheries based on and within the constraints of its FMP's policies.

In addition to suggesting that the rebuilding plans are not adequate unless they contain management measures separate from those already provided in the FMP, the commenter listed several types of management measures that the commenter believes are needed within a rebuilding plan. Because the commenter's letter on the Amendment 16–3 proposed rule included more extensive comments on essential fish habitat (EFH) issues, NMFS will respond to those issues below in the responses to Comments 6–8. In addition to requesting that NMFS include measures to protect EFH within the rebuilding plans rather than within the FMP, the commenter suggested that NMFS include within the rebuilding plans measures to: limit fishing effort via capacity reduction, set time/area closures, set a network of no-take marine protected areas, set trip or bag limits, set caps on total mortality, adjust harvest levels in response to the fisheries exceeding OYs, gear modifications to reduce bycatch, implement an observer program, set Federal vessel licensing requirements, and implement enforcement devices and measures such as vessel monitoring systems.

As stated earlier in this response, overfished species rebuilding plans are not stand-alone documents and it is the FMP as a whole that will be used to rebuild overfished species. The FMP and Federal regulations implementing the FMP already include mechanisms to implement, or requirements for, most of the management measures mentioned by the commenter. Chapter 6 of the FMP sets management measures and regulatory programs the Council uses and intends to use to meet its varied fishery management responsibilities, including rebuilding overfished species. Section 6.1 describes a series of management measures that the Council uses to control fishing mortality, including but not limited to: permits, licenses and endorsements; restrictions on trawl mesh size; landing limits and trip frequency limits; quotas, including individual transferable quotas; escape panels or ports for pot gear or trawl or other net gear; size limits; bag limits; time/area closures; other forms of effort control including input controls on fishing gear such as restrictions on trawl size or longline length or number of hooks or pots; allocation of species or species groups between fishing sectors; and a requirement for a Federal observer program. Section 6.2 among other things, authorizes the Council to close fishing seasons or areas, in order to

protect overfished species. Section 6.3 of the FMP deals with bycatch management and measures the Council has taken in recent years to reduce bycatch. EFH is addressed in section 6.6. of the FMP. Federal regulations implementing the FMP provide fishery management requirements as follows: gear restrictions at § 660.310; vessel monitoring system requirements at § 660.312; observer program requirements at § 660.314; allocations at §§ 660.320 through 660.324; vessel licensing/permitting requirements (including capacity reduction measures) at §§ 660.331 through 660.341; overfished species rebuilding parameters at § 660.365; general catch restrictions at § 660.370; and Groundfish Conservation Area regulations at § 660.390. In addition to these regulatory programs, NMFS also implemented a trawl permit/vessel buyback program in 2003 that reduced participation in that fleet by 35 percent. Further discussion of management measures used to implement the FMP in order to provide adequate protection of overfished species is provided in the final rule to implement the 2004 specifications and management measures (69 FR 11064, March 9, 2004) and in the proposed rule to implement the 2005–2006 specifications and management measures which will be published in the **Federal Register** in September 2004.

Comment 6: Scientific evidence confirms that repeated bottom trawling can damage habitat of species such as overfished rockfish. Impacts identified in the few studies conducted on the West Coast and in studies of comparable gears from other areas should inform consideration of habitat protection measures in the rebuilding plans. None of the measures adopted through the biennial specifications and management measures process are designed to address habitat impacts. Management measures, such as gear restrictions and closed areas, are designed and managed for the purpose of reducing bycatch.

Response: As mentioned in the response to comment 5, management measures, including habitat protection measures, are generally not included in rebuilding plans. The groundfish fishery is managed as a whole under the FMP and implementing regulations (50 CFR part 660, subpart G), including the harvest specifications and management measures. [Note: Beginning in 2005, the 2005 through 2006 harvest specification and management measures will be codified as part of 50 CFR part 660, subpart G, after first being published in the **Federal Register**.]

NMFS agrees that the Groundfish Conservation Areas implemented at 50 CFR 660.390 and through the specifications and management measures process are designed and managed for the purpose of reducing the bycatch of overfished species. The boundaries of these closed areas are based on current information about where overfished species commonly occur. Fishing by different gear types is prohibited within the closed areas, thus, groundfish habitat within these closed areas is protected from groundfish fishing gear impacts. The cowcod rebuilding plan provides protection measures specific to adult cowcod habitat by stating that the Cowcod Conservation Areas (CCAs), first implemented in 2001, will be a primary management measure used for protecting cowcod and cowcod habitat.

In addition to closed areas, Federal regulations at § 660.310 and in the 2004 specifications and management measures provide gear restrictions intended to reduce overfished species bycatch, which may provide some habitat protection. Large footrope gear, which is more likely to damage high relief bottom habitat, is prohibited shoreward of closed areas, in areas that tend to have more rocky relief habitat.

NMFS agrees that the agency needs to review available scientific information to determine whether its closed areas should be revised to provide better targeted protection for overfished species and their habitats. NMFS does not agree, however, that this review needs to occur before the agency approves Amendment 16–3 or the rebuilding plans therein. NMFS is developing an environmental impact statement (EIS) on groundfish EFH. On August 16–18, 2004, the agency held a public meeting to draft alternatives for the EFH EIS. The draft alternatives, which will be reviewed at the Council's September 13–17, 2004, meeting in San Diego, CA address groundfish species habitat needs, including overfished species needs, in three categories of alternatives: alternatives for the designation of EFH, alternatives for the designation of habitat areas of particular concern, and alternatives to minimize adverse impacts on habitat. A draft of the EFH EIS is scheduled for release in February 2005. NMFS expects that the Council will use that EIS to amend its FMP to update its EFH provisions, including management measures for overfished species habitat protection. The agency further expects that scientific information on overfished species and their habitats will continue to improve over time. NMFS and the Council will review that information as it becomes available, and through a public process, to ensure that the FMP continues to provide protection for overfished species based on the best available scientific information.

Comment 7: NMFS has not done the analysis needed to determine whether current measures are adequate to rebuild overfished species because the agency has not analyzed the degree to which closed areas protect critical habitat of overfished species. Further, NMFS has not determined what modifications would be needed in the timing and extent of the closures or gear restrictions to address habitat issues for rebuilding species. The fact that the EFH EIS has not been completed is no excuse for omitting habitat protection measures from rebuilding plans.

Response: As NMFS has stated in its response to Comment 6, the agency is developing a draft EIS on West Coast groundfish EFH. That EIS is intended to provide much needed information on species-specific EFH identification. The EIS will also be used to develop the FMP's overall approach to identifying and reducing the effects of fishing gear on groundfish EFH. Some of the EFH EIS draft alternatives address whether overfished species EFH needs particular protection different from that afforded to EFH of other groundfish species.

Since the first three groundfish species were declared overfished in 1999, NMFS has been revising its various West Coast groundfish management policies and measures to provide better protections for overfished species. Protective fishery management measures vary by species and by the gear types and fisheries known to affect particular species. Adult cowcod, the most sedentary and site-specific of the overfished species, is protected in key habitat with large all-gear area closures off southern California. Lingcod, a shelf species vulnerable to hook-and-line gear during its winter spawning/nesting season, is protected through season closures. The universal policy that guides overfished species rebuilding plans is reducing opportunities for direct and incidental take of overfished species. The rebuilding plans themselves provide parameters for harvest levels that will allow rebuilding. The FMP provides guidance on how to constrain harvest to those levels through reduced landings limits, gear restrictions, season closures, area closures, and/or size limits depending on which measures are most appropriate to each overfished species.

Overfished species allowable total catch (directed and incidental) levels are based on scientific stock assessments. OYs for overfished species

are set based on those stock assessments, through the harvest specifications and management measures process. The rebuilding plans dictate each overfished species' rebuilding fishing mortality rate (F), which may only be revised following review via a new stock assessment. NMFS sets management measures intended to constrain the fisheries so that total catch stays within overfished species' OYs. NMFS and the Council review and adjust management measures to ensure that rebuilding harvest goals are met.

The Magnuson-Stevens Act requires the Secretary of Commerce (Secretary) to review the adequacy of rebuilding plans at intervals that may not exceed 2 years. The rebuilding plans for all eight overfished species will be reviewed following their 2005 stock assessments. This fall, the Council's SSC is drafting revisions to its Rebuilding Analyses Terms of Reference to incorporate rebuilding plan adequacy reviews. These reviews will aid NMFS and the Council in determining how and whether harvest targets and management measures need to be revised for the 2007–2008 fishing period. Also during 2005–2006, NMFS will complete its EFH EIS. The completion of that EIS and its implementation through an FMP amendment, if appropriate, and potential Federal regulations will guide how EFH management contributes to overfished species rebuilding measures.

Comment 8: NMFS should evaluate steps like the following to protect vulnerable habitat for overfished species: (1) Close bottom trawling and other damaging bottom gears to all or part of the CCA, Soquel Canyon, and other canyon heads, rocky outcrops, banks and pinnacles that shelter cowcod, (2) close bottom trawling in all or part of sensitive habitats that support or have supported a high abundance of big, old bocaccio, and (3) fine-tune the Rockfish Conservation Area (RCA) and add other areas as needed to take into account sensitive habitat for overfished species.

Response: NMFS will consider steps like those recommended in the EFH EIS process, which will examine habitat for all groundfish species, as described in the response to Comments 6 and 7. Currently bottom trawling for groundfish is prohibited in the CCA and in the trawl RCA, which effectively protects many other rocky relief habitats.

Comment 9: The rebuilding plans contained in Amendment 16–3 lack adequate standards for gauging whether sufficient progress is being made toward rebuilding during the life of the rebuilding plan in compliance with 16 U.S.C. 1854(e)(7). The rebuilding plans also lack requirements for enforcement and data collection. These accountability mechanisms are critical if NMFS is to track accurately its own progress in rebuilding and be able to intervene in order to correct any deficiencies that may develop during the course of rebuilding.

Response: NMFS believes that the rebuilding plans under Amendment 16–3 are consistent with the requirements of the Magnuson-Stevens Act. The Magnuson-Stevens Act requires the Secretary to review rebuilding plans at intervals that may not exceed 2 years. During the Amendment 16–1 process, for the purpose of clarity, NMFS worked with the Council staff to add a sentence to the FMP at the end of section 4.5.3.6 to read, "Regardless of the Council's schedule for reviewing overfished species rebuilding plans, the Secretary, through NMFS, is required to review the progress of overfished species rebuilding plans toward rebuilding goals every 2 years, per the Magnuson-Stevens Act at 16 U.S.C. 304(e)(7)." NMFS's review of the adequacy of progress on rebuilding plans will primarily be done through stock assessment updates and is expected to follow the schedule defined by the Magnuson-Stevens Act.

As noted in the response to Comment 7, the Council's SSC is currently developing rebuilding plan adequacy review standards to be included in their Terms of Reference for Rebuilding Analyses. A draft set of standards are to be provided to the Council for review in September 2004 with final adoption in November 2004. By including the setting of rebuilding plan progress standards in the stock assessment development and review process for overfished species, the NMFS/Council process for developing and reviewing stock assessments would continue the link between stock assessments and rebuilding plans for overfished species. NMFS expects that these standards will be defined before the Secretary's review of Amendment 16–2 species in January 2006.

As mentioned previously in the response to comment 5, management measures to ensure species are rebuilding are included in the harvest specifications and management measures. Accountability mechanisms, like enforcement and data collection, are included as part of the management of the groundfish fishery as a whole, through the FMP and implementing policies and regulations. These programs are designed for multi-species fisheries, wherein overfished species and abundant species co-occur. Therefore, it is not necessary for these measures to be included in rebuilding plans.

New Rockfish Species in Regulations

With this action, NMFS is updating the list of rockfish species defined in the CFR at § 660.302 to match the list of rockfish species included in the Pacific Coast Groundfish FMP. The FMP and CFR state that, "Rockfish includes all genera and species of the family Scorpaenidae, even if not listed, that occur in the Washington, Oregon, and California area." These species are already specifically listed in the FMP and will be added to the CFR. The following seven new rockfish species in the family Scorpaenidae will be listed in the CFR as species managed under the FMP: chameleon rockfish, dwarf-red rockfish, freckled rockfish, half-banded rockfish, pinkrose rockfish, pygmy rockfish, and swordspine rockfish. In addition, dusty rockfish is corrected to read dusky rockfish.

Corrections

NMFS re-arranged the Pacific Coast Groundfish regulations on July 15, 2004 (69 FR 42345) so that they read in a more logical order. This reorganization did not make substantive changes to the existing regulations; rather, it reorganized regulatory measures into a more logical and cohesive order. In publishing the rule on July 15, 2004, NMFS neglected to remove § 660.321, specifications and management measures, which was also added at § 660.370. Therefore, this final rule removes the duplicative and outdated specifications and management measures section at § 660.321. In addition, § 660.334(d)(1)(i) and (ii) were inadvertently removed and are added with this rule.

The observer rule for the whiting at-sea processing fleet (69 FR 31751, June 7, 2004) is corrected so that the paragraphs are numbered according to the proper format. Since the observer rule was published, regulations for the groundfish observer program have moved from § 660.360 to § 660.314 via the re-arranging rule (69 FR 42345, July 15, 2004). Therefore, paragraphs (f)(3)(ii)(B)(*i*)–(*iii*) of § 660.314, groundfish observer program, are corrected to read (f)(3)(ii)(B)(*1*)–(*3*).

Finally, a reference to the limited entry permit renewal process in § 660.373(h)(3) erroneously refers to § 660.333 and is corrected to refer to § 660.335. These revisions are all housekeeping changes to the regulations

and do not alter the effect of Federal groundfish regulations.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 16–3 is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared an FEIS that discusses the effects on the environment as a result of this action. The FEIS was filed with the Environmental Protection Agency on July 23, 2004. A notice of availability for this FEIS was published on July 30, 2004 (69 FR 45707). In approving Amendment 16–3, on September 13, 2004, NMFS issued a ROD identifying the selected alternative. A copy of the ROD is available from NMFS (see **ADDRESSES**).

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) as part of the regulatory impact review. The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and a summary of the analyses completed to support the action. A copy of the FRFA is available from NMFS (see **ADDRESSES**) and a summary of the FRFA follows:

During the comment period for the proposed rule, NMFS received three letters of comment, but none of these comments addressed the IRFA or economic impacts of the rule on small businesses. There are no recordkeeping, reporting, or other compliance issues forthcoming from the proposed rule. This final rule does not duplicate, overlap, or conflict with other Federal rules.

The purpose of this action is to implement rebuilding plans for four overfished species, bocaccio, cowcod, widow rockfish and yelloweye rockfish. This action is needed because the Magnuson-Stevens Act at 304 (e)(3) requires rebuilding plans to be implemented as FMPs, FMP amendments, or regulations. The objective of this final rule is to implement rebuilding parameters that are intended to result in bocaccio, cowcod, widow rockfish, and yelloweye rockfish stocks rebuilding to their MSY biomass levels.

Amendment 16–3 responds to a Court order in *Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001,), in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act. On October 27, 2003, the Court ordered NMFS to approve rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish by September 15, 2004.

Amendment 16–3 follows the framework established by Amendment 16–1 and amends the FMP to include rebuilding plans for bocaccio, cowcod, widow rockfish, and yelloweye rockfish. For each overfished species rebuilding plan, the following parameters would be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under national standard guidelines were applied (T_{MAX}), the target year in which the stock would be rebuilt under the rebuilding plan (T_{TARGET}), and the harvest control rule. No new management measures are proposed in Amendment 16–3. Amendment 16–1 described and authorized the use of numerous types of management measures intended to achieve rebuilding. These management measures will be implemented through the biennial harvest specifications and management measures process and will be used to constrain fishing to the targets identified in the rebuilding plans.

The FEIS/RIR/IRFA for this final rule defines six alternative actions that were considered for each of the four overfished species. The alternatives present a range of rebuilding strategies in terms of rebuilding probabilities for each species. The no action alternative is based on the "40–10 harvest policy", which is the default rebuilding policy for setting OYs. Under the 40–10 harvest policy, stocks with biomass levels below $B_{40\%}$ (40 percent of the unfished biomass, a proxy for B_{MSY}) have OYs set in relation to the biomass level. At $B_{40\%}$ and greater, an OY may be set equal to the ABC. However, if a stock's spawning biomass declines below $B_{40\%}$, the OY is scaled downward until at 10 percent ($B_{10\%}$), the harvest OY is set at zero unless modified for a species-specific rebuilding plan. In comparison to the other alternatives, the 40–10 harvest policy generally results in lower OYs in the short term, when a stock is at a low biomass level, but allows greater harvests when a stock is at higher biomass levels. For further information on the 40–10 harvest policy, see the preamble to the final rule for Amendment 16–1 (February 26, 2004, 69 FR 8861) or Section 5.3 of the FMP. The 40–10 harvest policy alternative would not result in rebuilding for three of the four overfished species (i.e., only bocaccio would be rebuilt within T_{MAX}) within the maximum allowable rebuilding time. Lack of rebuilding for these species makes this alternative not a legally-viable alternative and increases the risk to long-term productivity of the stock.

The maximum conservation alternative, Alternative 4, specifies the most conservative harvests that would allow these four species to rebuild and has the highest probability, 90 percent, of rebuilding within T_{MAX} (except for cowcod which has a 60–percent probability). Each stock is expected to rebuild fastest under this alternative, but at considerable socioeconomic cost. Short-term socioeconomic costs would be highest under this alternative due to severe restrictions on fishing opportunity to allow the stock to rebuild faster.

The maximum harvest alternative, Alternative 1, for each overfished species was based on a 60 percent probability of rebuilding the stocks to their MSY biomass levels by T_{MAX}, except for cowcod which was based on a 55 percent probability. This alternative would delay rebuilding for the longest period of time with the intent of keeping harvests at the highest allowable levels for the duration of rebuilding. Because this alternative would allow fishermen an opportunity to harvest higher levels in the short-term, this alternative would have the least socioeconomic impact. However, allowing higher harvest levels in the short-term would slow down rebuilding and, thus, have the highest risk among the action alternatives of not rebuilding within T_{MAX}.

Intermediate alternatives, Alternatives 2 and 3, were defined for each overfished species and were based on 70–and 80- percent probabilities of rebuilding the stocks to their MSY biomass by T_{MAX} (except that cowcod was based on a 60–percent probability for Alternatives 2 and 3). The socio-economic impacts of the intermediate alternatives fall within the range of the other alternatives that were fully analyzed in the FEIS. Alternative 2 would have more socio-economic impacts than Alternative 1, but less than Alternative 3. Alternative 3 would have more socio-economic impacts than Alternative 2, but less than Alternative 4. Alternative 2 would have a lower risk of not rebuilding within T_{MAX} than Alternative 1, but higher than Alternative 3. Alternative 3 would have a lower risk of not rebuilding within T_{MAX} than Alternative 2, but higher than Alternative 4.

After the draft EIS was made available by EPA for public review (69 FR 18897, April 9, 2004), the Council selected

their preferred alternatives at their April 2004 meeting. The Council-preferred alternative for each species, as analyzed in the FEIS, is as follows: bocaccio, Alternative 2 (using the STATc Model) – 70–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2023 and a harvest rate of 0.0498; cowcod, Alternatives 2 through 4 (all the same) - 60–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2090 and a harvest rate of 0.009; widow rockfish, Alternative 1 (using Model 8) – 60–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2038 and a harvest rate of 0.0093; and yelloweye rockfish, Alternative 3 – 80–percent probability of rebuilding the stock to its MSY biomass by T_{MAX} with a T_{TARGET} of 2058 and a harvest rate of 0.0153. The Council-preferred alternative for each species was chosen by balancing biological and economic risks, maximizing the likelihood of rebuilding the stock while minimizing the socio-economic impacts on the industry.

A fish-harvesting business, including commercial harvesters and charter/party boat operators, is considered a "small" business by the Small Business Administration if it has annual receipts not in excess of $3.5 million. For wholesale businesses, a small business is one that employs not more than 100 people. The economic impact of implementing these rebuilding plans will be shared among commercial harvesters and recreational operators. More detailed information on the groundfish catch in these sectors is provided in the FEIS/IRFA.

There are approximately 4,600 commercial vessels fishing from West Coast ports. Of these, 1,709 vessels had some involvement in West Coast groundfish fisheries, 421 of those held groundfish limited entry permits, and an additional 771 participated in open access groundfish fisheries (if vessels derive more than 5 percent of total revenue from groundfish and do not have a limited entry permit, then they are considered to be participating in open access fisheries). After the buyback program in the fall of 2003, 91 limited entry trawl vessels and their permits were permanently retired, representing a 35 percent reduction in the capacity of the limited entry trawl fleet in terms of permits.

In 2001, there were an estimated 753 recreational fishing charter vessels operating in ocean fisheries on the West Coast: 106 in Washington, 232 in Oregon and 415 in California.

There are about 1,700 commercial vessels and 750 recreational charter operators that may be affected by these actions. Although there is some double counting, most of these entities would probably qualify as small businesses under SBA criteria. No alternatives, other than those considered in the FEIS, have been identified that would reduce the impact on small entities. In addition to an opportunity for public comment on the proposed rule, DEIS and IRFA, the Council process for developing a preferred alternative is conducted in an open forum with industry advisory groups that assist the Council in developing options that meet regulatory objectives and conservation goals, in particular, with the least possible impact on fishing businesses. This rule is not expected to yield disproportionate economic impacts between those small and large entities.

Implementation of specific rebuilding plans may entail substantial economic impacts on some groundfish buyers, commercial harvesters, and in the case of bocaccio, cowcod, and yelloweye rockfish, recreational operators. The economic impact will vary according to their dependency on groundfish-related income, the frequency of overfished species in their area of the coast, and the severity of those species overfished status. The Council-preferred alternative specifies annual OY levels for the overfished species that are sufficient to mitigate some of the adverse economic impacts on these entities, while not compromising the statutory requirement for timely rebuilding. NMFS will implement the Council-preferred alternative.

This action was developed after meaningful consultation and collaboration with tribal representatives on the Council, who have agreed with the provisions that apply to tribal vessels. This action is, therefore, compliant with Executive Order 13175 (Consultation and coordination with Indian tribal governments).

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: September 22, 2004.

Rebecca Lent,

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

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

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

■ 2. In § 660.302, in the definition of "Groundfish," under "Rockfish:" remove "dusky rockfish, *S. ciliatus*," and add "chameleon rockfish, *S. phillipsi*," "dwarf-red rockfish, *S. rufinanus*," "dusky rockfish, *S. ciliatus*," "freckled rockfish, *S. lentiginosus*," "half-banded rockfish, *S. semicinctus*," "pinkrose rockfish, *S. simulator*," "pygmy rockfish, *S. wilsoni*," and "swordspine rockfish, *S. ensifer*" in alphabetical order to read as follows:

§ 660.302 Definitions.

* * * * *

Groundfish * * *

Rockfish:

* * * * *

chameleon rockfish, *S. phillipsi*

* * * * *

dwarf-red rockfish, *S. rufinanus*

dusky rockfish, *S. ciliatus*

* * * * *

freckled rockfish, *S. lentiginosus*

* * * * *

half-banded rockfish, *S. semicinctus*,

* * * * *

pinkrose rockfish, *S. simulator*

pygmy rockfish, *S. wilsoni*

* * * * *

swordspine rockfish, *S. ensifer*

* * * * *

§ 660.314 [Amended]

■ 3. In § 660.314, paragraphs (f)(3)(ii)(B)(*i*) through (*iii*) are redesignated to read (paragraphs f)(3)(ii)(B)(*1*) through (*3*).

§ 660.321 [Removed and reserved]

■ 4. Remove and reserve § 660.321.

■ 5. In § 660.334, paragraphs (d)(1)(i) and (ii) are added to read as follows:

§ 660.334 Limited entry permits – endorsements.

* * * * *

(d) * * *

(1) * * *

(i) A sablefish endorsement with a tier assignment will be affixed to the permit and will remain valid when the permit is transferred.

(ii) A sablefish endorsement and its associated tier assignment are not separable from the limited entry permit, and therefore may not be transferred

separately from the limited entry permit.

* * * * *

■ 6. In § 660.365, the introductory paragraph and paragraphs (e) through (h) are added to read as follows:

§ 660.365 Overfished species rebuilding plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock.

* * * * *

(e) *Bocaccio.* The target date for rebuilding the southern bocaccio stock to B_{MSY} is 2023. The harvest control rule to be used to rebuild the southern bocaccio stock is an annual harvest rate of F=0.0498.

(f) *Cowcod.* The target year for rebuilding the cowcod stock south of Point Conception to B_{MSY} is 2090. The harvest control rule to be used to rebuild the cowcod stock is an annual harvest rate of F=0.009.

(g) *Widow rockfish.* The target year for rebuilding the widow rockfish stock to B_{MSY} is 2038. The harvest control rule to be used to rebuild the widow rockfish stock is an annual harvest rate of F=0.0093.

(h) *Yelloweye rockfish.* The target year for rebuilding the yelloweye rockfish stock to B_{MSY} is 2058. The harvest control rule to be used to rebuild the yelloweye rockfish stock is an annual harvest rate of F=0.0153.

■ 7. In § 660.373, paragraph (h)(3) is revised to read as follows:

§ 660.373 Pacific whiting (whiting) fishery management.

* * * * *

(h) * * *

(3) When renewing its limited entry permit each year under § 660.335, the owner of a catcher/processor used to take and retain whiting must declare if the vessel will operate solely as a mothership in the whiting fishery during the calendar year to which its limited entry permit applies. Any such declaration is binding on the vessel for the calendar year, even if the permit is transferred during the year, unless it is rescinded in response to a written request from the permit holder. Any request to rescind a declaration must be made by the permit holder and granted in writing by the Regional Administrator before any unprocessed whiting has been taken on board the vessel that calendar year.

* * * * *

[FR Doc. 04–21691 Filed 9–27–04; 8:45 am]
BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031124287–4060–02; I.D. 092204A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

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

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2004 total allowable catch (TAC) of Atka mackerel in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 23, 2004, through 2400 hrs, A.l.t., December 31, 2004.

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

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

The 2004 TAC specified for Atka mackerel in the Central Aleutian District of the BSAI is 28,768 metric tons (mt) as established by the 2004 harvest specifications for groundfish of the BSAI (69 FR 9242, February 27, 2004).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2004 TAC for Atka mackerel in the Central Aleutian District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 28,650 mt, and is setting aside the remaining 118 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 Atka mackerel in the Central Aleutian District of the BSAI.

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 a requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the directed fishery for Atka mackerel in the Central Aleutian District of the BSAI.

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

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

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

Dated: September 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–21685 Filed 9–23–04; 2:57 pm]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 187
Tuesday, September 28, 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. 2003–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes. That action would have required modifying the strap configuration of IC–600 #1 and #2 integrated computers to disable CAT II operations with the flight director. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the identified unsafe condition has been corrected on all airplanes that would have been subject to the proposed AD. Accordingly, the proposed rule is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on January 27, 2004 (69 FR 3863). The proposed rule would have required modifying the strap configuration of IC–600 #1 and #2 integrated computers to disable CAT II operations with the flight director. That action was prompted by a report that IC–600 integrated computers, equipped with certain Engine Indication and Crew Alerting System (EICAS) software versions not configured through configuration module IM–600, enable CAT II operations with the flight director. The proposed actions were intended to prevent the flightcrew from receiving hazardously misleading guidance information, which, in the event of a high-workload landing, could result in reduced controllability of the airplane.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the airplane manufacturer has provided us with data that indicate that the identified unsafe condition (enabling of CAT II operations with the flight director, which could cause the flightcrew to receive hazardously misleading guidance information that, in the event of a high-workload landing, could result in reduced controllability of the airplane) has already been corrected on all airplanes that would have been subject to the proposed AD. On all affected airplanes, either the strap configuration of IC–600 #1 and #2 integrated computers has been modified as proposed in the NPRM, or a later EICAS software version has been installed that is not affected by the identified unsafe condition. Thus, the unsafe condition no longer exists on the subject airplanes.

Comments

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

Request To Expand Applicability of Proposed AD

One commenter requests that we expand the applicability of the proposed AD to include airplanes equipped with IM–600 configuration modules. The commenter states that the configuration software for Model EMB–135 and –145XR series airplanes allows either Autopilot or Flight Director modes of CAT II operation. The commenter states that applying the proposed requirements to airplanes equipped with IM–600 configuration modules would standardize the FAA's approach to CAT II operations.

We are reviewing the commenter's statements and may consider additional rulemaking to require actions on airplanes equipped with IM–600 configuration modules if we determine that an unsafe condition exists on those airplanes. No change to this action is necessary in this regard.

FAA's Conclusions

Upon further consideration, the FAA has determined that the actions that would have been required by the proposed AD have already been done on all affected airplanes, and the identified unsafe condition has been corrected. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2003–NM–66–AD, published in the **Federal Register** on January 27, 2004 (69 FR 3863), is withdrawn.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21647 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19175; Directorate Identifier 2003–NM–246–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100B SUD, –200B, –300, –400, and –400D Series Airplanes

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 Boeing Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes. This proposed AD would require repetitive inspections for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations; and repair if necessary. This proposed AD is prompted by findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body stations 460, 480, and 500 frame locations. We are proposing this AD to detect and correct fatigue cracking in certain fuselage stringers which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent rapid depressurization of the airplane.

DATES: We must receive comments on this proposed AD by November 12, 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.
- By 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 proposed AD from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You may examine the AD docket, which contains the proposed AD, comments received, and any final disposition, on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Nick Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19175; Directorate Identifier 2003–NM–246–AD" in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed 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 proposed AD. Using the search function of that website, 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 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You may examine the AD docket 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 located 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.

Discussion

We have received reports of cracking at fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations. These stringers are above and below the upper deck windows. The cracking was found on certain Boeing Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes having stretched upper decks. Investigation revealed that the cracking was caused by fatigue. The affected airplanes had between 29,873 and 90,333 total flight hours and between 9,691 and 25,513 total flight cycles. If the fatigue cracking at the specified locations is not detected and corrected, the cracking could grow to include the fuselage skin along the window belt of the upper deck. Such cracking of the fuselage skin could result in reduced structural integrity of the skin panel, and consequent rapid depressurization of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003. The service bulletin describes procedures for doing repetitive detailed visual inspections of fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations and repairing areas with cracking. The repair procedures include installing new frame clips and new, additional stringer splices and doublers. For cracking that exceeds the specified limitations, the service bulletin specifies to install new sections of stringer in accordance with the 747 Structural Repair Manual along with incorporation of repair parts from the service bulletin. The service bulletin also describes an optional modification, which eliminates the need for the repetitive inspections. The optional modification includes procedures for installing new frame

clips and new doublers; and repairing, as applicable. Accomplishing the actions specified in the service bulletin is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require repetitive inspections for fatigue cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations; and repair if necessary. The proposed AD also would provide an optional terminating action for the repetitive inspections. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Between the Proposed AD and Service Information."

Differences Between the Proposed AD and Service Information

The manufacturer reanalyzed the service problem and has advised the FAA that the reanalysis has resulted in threshold and repetitive inspection intervals different from the service bulletin. This resulted in simplified initial thresholds and an increased number of flight cycles between repetitive inspections. This difference has been coordinated with the manufacturer.

Clarification of Inspection Terminology

In this proposed AD, the "detailed visual inspection" specified in the Boeing service bulletin is referred to as a "detailed inspection." We have included the definition for a "detailed inspection" in a note in this proposed AD.

Costs of Compliance

This proposed AD would affect about 243 Boeing Model 747–100B SUD, –200B, –300, –400, and –400D series airplanes worldwide. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspection	3	$65	None	$195	69	$13,455

Regulatory Findings

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.

For the reasons discussed above, I certify that the 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. 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 proposed 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, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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):

Boeing: Docket No. FAA–2004–19175; Directorate Identifier 2003–NM–246–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 12, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to certain Boeing Model 747–100B SUD, –200B, –300. –400, and –400D series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003.

Unsafe Condition

(d) This AD was prompted by findings of cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations. We are proposing this AD to detect and correct fatigue cracking in the specified fuselage stringers which, if left undetected, could result in fuselage skin cracking that reduces the structural integrity of the skin panel, and consequent rapid depressurization 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.

Inspection

(f) Do a detailed inspection for cracking in fuselage stringers 8L, 8R, 10L, and 10R at body station 460, 480, and 500 frame locations, in accordance with Part 1 of the Accomplishment Instructions in Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003. Do the inspections at the applicable time specified in paragraph (f)(1) or (f)(2) of this AD. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles until the requirements of paragraph (h) of this AD are accomplished.

(1) For airplanes with 19,000 total flight cycles or less as of the effective date of this AD: Prior to the accumulation of 8,000 total flight cycles or within 2,000 flight cycles after the effective date of this AD, whichever is later, not to exceed 20,000 total flight cycles.

(2) For airplanes with more than 19,000 total flight cycles as of the effective date of this AD: Within 1,000 flight cycles after the effective date of this AD.

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

Repair

(g) If any cracking is found during any inspection required by paragraph (f) of this AD: Before further flight, repair the affected stringer in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003. Repair terminates the repetitive inspections required by paragraph (f) of this AD for only the repaired stringer/frame location.

Optional Terminating Action

(h) Installing new frame clips and new doublers; and repairing as applicable; in accordance with Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2484, dated June 26, 2003, terminates the repetitive inspections required by this AD.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Seattle Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21648 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19177; Directorate Identifier 2002–NM–202–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Falcon 10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Dassault Model Falcon 10 series airplanes. This proposed AD would require a temporary change to the airplane flight manual to provide procedures to the flight crew for touchdown using the main landing gear to avoid a three-point landing. This proposed AD also would require repetitive inspections of the piston rod of the drag strut actuator of the nose landing gear (NLG) for cracks, which would terminate the AFM revision, and corrective actions if necessary. In addition, this proposed AD provides for a terminating modification, which would end the repetitive inspections. This proposed AD is prompted by reports of failure of the piston rod of the drag strut actuator of the NLG. The cause of such failure has been attributed to fatigue cracking caused by corrosion in the piston rod of the drag strut actuator. We are proposing this AD to prevent cracking and/or fracture of the piston rod of the drag strut actuator of the NLG, which could result in a gear-up landing, structural damage, and possible injury to passengers and crew.

DATES: We must receive comments on this proposed AD by October 28, 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.
- By 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.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606.

You can 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.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19177; Directorate Identifier 2002–NM–202–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed 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 proposed 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 can review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can examine the AD docket 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 located 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.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France,

notified us that an unsafe condition may exist on all Dassault Model Falcon 10 series airplanes. The DGAC advises that there have been reports of failure of the piston rod of the drag strut actuator of the nose landing gear (NLG). The cause of such failure has been attributed to fatigue cracking caused by corrosion in the piston rod of the drag strut actuator. That cracking can cause the piston rod to break and the NLG to retract during a three-point landing. These conditions, if not found and fixed, could result in a gear-up landing, structural damage, and possible injury to passengers and crew.

Relevant Service Information

Dassault has issued Temporary Change (TC) No. 24 to the Falcon 10 Airplane Flight Manual. This TC provides procedures for touchdown using the main landing gear to avoid a three-point landing.

Dassault has issued Service Bulletin F10–294, dated March 20, 2002, which describes procedures for an ultrasonic inspection of the piston rod of the drag strut actuator of the nose landing gear (NLG) for cracks. The service bulletin recommends sending the actuator back to the component repair agent for replacing the piston rod if any crack is found.

Dassault has also issued Service Bulletin F10–297, dated October 1, 2003, which describes procedures for replacing the drag strut actuator with a new, improved drag strut actuator. The service bulletin references Messier-Dowty Service Bulletin 747721–32–057, dated February 5, 2003, as an additional source of service information for modifying the actuator piston rod. Service Bulletin F10–297 also recommends prior or concurrent accomplishment of Messier-Hispano-Bugatti (MHB) Service Bulletin 511–32–26, dated November 9, 1979. The MHB service bulletin describes procedures for modifying the drag strut actuator.

Accomplishing the actions specified in the Dassault service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive 2002–137(B), dated March 20, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGACs findings, evaluated all pertinent information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require a temporary change to the airplane flight manual to provide procedures to the flight crew for touchdown using the main landing gear to avoid a three-point landing. The proposed AD also would require repetitive inspections of the piston rod of the drag strut actuator of the NLG for cracks, which would terminate the AFM revision, and corrective actions if necessary. In addition, the proposed AD provides for a terminating modification, which would end the repetitive inspections. The proposed AD would require you to use the Dassault service information described previously to perform these actions, except as discussed under "Differences Among the Proposed AD, French Airworthiness Directive, and Service Bulletins."

Differences Among the Proposed AD, French Airworthiness Directive, and Service Bulletins

For the AFM revision, the French airworthiness directive requires compliance before the next flight. This proposed AD would require compliance within 5 days after the effective date of this AD. In developing an appropriate compliance time for this proposed AD, we considered the DGAC's recommendation, as well as the degree of urgency associated with the subject unsafe condition. In light of these factors, we find that a 5-day compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

This proposed AD allows operators to do repetitive inspections instead of doing the terminating modification, unless cracking is found. In making these determinations, the FAA considers that, in the case of this AD, long-term continued operational safety is adequately ensured by doing the repetitive inspections to find cracking before it represents a hazard to the airplane, and by modifying the drag strut actuator if cracking is found.

Service Bulletin F10–294 recommends returning the drag strut actuator to the component repair agent for replacement if a crack is found; however, the proposed AD requires doing the terminating modification. Service Bulletins F10–294 and F10–297 recommend submitting certain inspection results to the manufacturer. The proposed AD would not require those actions.

These differences have been coordinated with the DGAC.

Costs of Compliance

This proposed AD would affect about 154 airplanes of U.S. registry.

The proposed AFM revision would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the AFM revision proposed by this AD for U.S. operators is $10,010, or $65 per airplane.

The proposed inspection would take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of the inspection proposed by this AD for U.S. operators is $10,010, or $65 per airplane, per inspection cycle.

Regulatory Findings

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.

For the reasons discussed above, I certify that the 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. 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 proposed 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, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA 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):

Dassault Aviation [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Docket No. FAA–2004–19177; Directorate Identifier 2002–NM–202–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 28, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Model Falcon 10 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by reports of failure of the piston rod of the drag strut actuator of the NLG. We are issuing this AD to prevent cracking and/or fracture of the piston rod of the drag strut actuator of the NLG, which could result in a gear-up landing, structural damage, and possible injury to passengers and crew.

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.

Airplane Flight Manual (AFM) Revision

(f) Within 5 days after the effective date of this AD: Revise the Limitations Section of the Falcon 10 AFM by incorporating Dassault Temporary Change (TC) No. 24 into the AFM. That TC provides procedures to the flight crew for touchdown using the main landing gear to avoid a three-point landing. Thereafter, operate the airplane in accordance with the limitations specified in the AFM revision.

(g) When the information in TC No. 24 has been included in general revisions of the AFM, the TC may be removed from the AFM, provided the relevant information in the general revision is identical to that in TC No. 24.

Repetitive Inspections

(h) Within 7 months after the effective date of this AD: Do an ultrasonic inspection of the piston rod of the drag strut actuator of the NLG for cracks in accordance with Dassault Service Bulletin F10–294, dated March 20, 2002. After the initial inspection has been done, the TC required by paragraph (f) of this AD may be removed from the AFM.

(1) If any crack is found, before further flight, do the terminating modification specified in paragraph (i) of this AD.

(2) If no crack is found, repeat the inspection thereafter at intervals not to exceed 700 landings on the drag strut actuator.

Terminating Modification

(i) Accomplishment of the modification of the drag strut actuator in accordance with Dassault Service Bulletin F10–297, dated October 1, 2003, and prior or concurrent accomplishment of the related modification in accordance with Messier-Hispano-Bugatti Service Bulletin 511–32–26, dated November 9, 1979, ends the repetitive inspections required by paragraph (h)(2) of this AD.

Additional Source of Service Information

(j) Messier-Dowty Service Bulletin 747721–32–057, dated February 5, 2003, is referenced in Dassault Service Bulletin F10–294 as an additional source of service information for replacing the drag strut actuator rod.

Actions Not Required

(k) Dassault Service Bulletin F10–294 recommends returning the drag strut actuator to the component repair agent for replacement if a crack is found, but this AD requires doing the terminating modification specified in paragraph (i) of this AD.

(l) Dassault Service Bulletins F10–294 and F10–297 recommend submitting certain inspection results to the manufacturer. This AD does not require those actions.

Part Installation

(m) As of the effective date of this AD, no person may install on any airplane a drag strut actuator having part number 747721.

Alternative Methods of Compliance (AMOCs)

(n) The Manager, International Branch, ANM–116, Transport Airplane Directorate, 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

(o) French airworthiness directive 2002–137(B) dated March 20, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on September 17, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21643 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19176; Directorate Identifier 2003–NM–36–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for all EMBRAER Model EMB–135 and –145 series airplanes. That AD currently requires repetitive inspections of the electrical connectors of the electric fuel pumps to detect discrepancies, and follow-on corrective actions. This proposed AD would extend the repetitive intervals for the inspections; add new criteria for replacing discrepant fuel pumps; add a new requirement for applying anti-corrosion spray; add a requirement to replace all fuel pumps with improved fuel pumps; and add repetitive inspections after all six fuel pumps are replaced. This proposed AD is prompted by the manufacturer's development of a new modification that addresses the unsafe condition in the existing AD. We are proposing this AD to prevent an ignition source in the fuel tank or adjacent dry bay, which could result in fire or explosion.

DATES: We must receive comments on this proposed AD by October 28, 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 proposed AD from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil.

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.

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

SUPPLEMENTARY INFORMATION:

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.

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include "Docket No. FAA–2004–19176; Directorate Identifier 2003–NM–36–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed 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 proposed 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the Docket

You may examine the AD docket 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 located 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.

Discussion

The FAA has examined the underlying safety issues involved in recent fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

Based on this process, we have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

On September 8, 2000, we issued AD 2000–19–02, amendment 39–11903 (65 FR 56233, September 18, 2000), for all EMBRAER Model EMB–135 and –145 series airplanes. That AD requires repetitive inspections of the electrical connectors of the electric fuel pumps to detect discrepancies, and follow-on corrective actions. That AD was prompted by a report of damage to the pins and elastomeric inserts in the hermetically sealed wire connectors of the electric fuel pumps located in the main wing fuel tanks. We issued that AD to prevent failure of the electrical connectors or electrical arcing across the connector pins of the pump, and consequent fuel fire or explosion.

Actions Since Existing AD Was Issued

The preamble to AD 2000–19–02 stated that we considered the requirements "interim action" and that the manufacturer was developing a modification to address the unsafe condition. That AD explained that we may consider further rulemaking if a modification is developed, approved, and available. The manufacturer now has developed a modification, and we have determined that further rulemaking is indeed necessary; this proposed AD follows from that determination.

Relevant Service Information

EMBRAER has issued Service Bulletin 145–28–0013, dated April 25, 2001. This service bulletin supersedes EMBRAER Service Bulletin 145–28–A013, dated August 16, 2000, which was cited in AD 2000–19–02 as the appropriate source of service information for accomplishing the actions required by that AD.

EMBRAER Service Bulletin 145–28–0013 describes procedures for:

- Repetitive inspections of the electrical connectors of the fuel pumps to detect discrepancies such as corrosion, surface irregularities, damaged plating, blackened pins, damaged elastomeric inserts, cracks, erosion, or charring of the connector.
- Applying anti-corrosion spray on the male contacts of the fuel pump electrical connectors if no discrepancy is found.
- Replacing the fuel pumps with new, improved fuel pumps (with gold-plated connectors), and a follow-on inspection

of the mating aircraft connectors, if any discrepancy is found.

• Replacing only the socket contacts with new contacts having the same part number if no damage is found to the mating aircraft connectors; or replacing the affected connector with a new connector having the same part number if any damage is found to the mating aircraft connectors; and applying anti-corrosion spray on the male contacts of the electrical connectors for the new, improved fuel pumps.

The Departmento de Aviacao Civil (DAC) mandated the service bulletin and issued Brazilian airworthiness directive 2000–08–01R2, dated February 13, 2002, to ensure the continued airworthiness of these airplanes in Brazil.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Brazil and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. We have examined the DAC's findings, evaluated all pertinent information, and determined that AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would supersede AD 2000–19–02 to continue to require repetitive inspections of the electrical connectors of the electric fuel pumps to detect discrepancies, and follow-on corrective actions. This proposed AD would also extend the repetitive intervals for the inspections; add new criteria for replacing discrepant fuel pumps, add a new requirement for applying anti-corrosion spray; add a requirement to replace all fuel pumps with improved fuel pumps; and add repetitive inspections after all six pumps are replaced. The proposed AD would require you to use the service information described previously to perform these actions, except as discussed under "Differences Among the Proposed AD, the Service Bulletin, and the Brazilian Airworthiness Directive."

Differences Among the Proposed AD, the Service Bulletin, and the Brazilian Airworthiness Directive

The service bulletin states that you may replace the fuel pumps with electric fuel pumps that have part number (P/N) 2C7–1, but this proposed AD would require you to replace them with fuel pumps that have P/N 2C7–4.

The Brazilian airworthiness directive does not give a time for replacing all six fuel pumps, but this proposed AD would require you to replace all six fuel pumps with new, improved pumps within 8,000 flight hours after the effective date of the proposed AD.

We have coordinated these differences with the DAC.

Changes to Existing AD

This proposed AD would retain all requirements of AD 2000–19–02. Since AD 2000–19–02 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 proposed AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2000–19–02	Corresponding requirement in this proposed AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (n).
Paragraph (c)	Paragraph (g).
Paragraph (d)	Paragraph (h).

We have also included a definition of "general visual inspection," which was not included in the existing AD. This definition is in Note 1 of the proposed AD.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Inspections (required by AD 2000–19–02).	1 per inspection cycle.	$65	None	$65 per inspection	290	$18,850 per inspection cycle.
Repetitive inspections (new proposed action).	1 per inspection cycle.	65	None	$65 per inspection cycle.	290	$18,850 per inspection cycle.
Replacing the fuel pump (new proposed action).	1 per pump (6 per airplane).	65	Free	$390	290	$113,100.

Regulatory Findings

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.

For the reasons discussed above, I certify that the 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. 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 proposed 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, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing amendment 39–11903 (65 FR 56233, September 18, 2000) and adding the following new airworthiness directive (AD):

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket No. FAA–2004–19176; Directorate Identifier 2003–NM–36–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by October 28, 2004.

Affected ADs

(b) This AD supersedes AD 2000–19–02, amendment 39–11903.

Applicability

(c) This AD applies to all EMBRAER Model EMB–135 and –145 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by the manufacturer's development of a new modification that addresses the unsafe condition in the AD 2000–19–02. We are issuing this AD to prevent an ignition source in the fuel tank or adjacent dry bay, which could result in fire or explosion.

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.

Restatement of the Requirements of AD 2000–19–02

Repetitive Inspections

(f) Perform a general visual inspection of the electrical connectors of the fuel pumps in the right- and left-hand wings to detect discrepancies (including blackened connector pins, damage to electrometric insert, cracks, erosion, or charring), in accordance with EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000, at the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable. Repeat the inspection thereafter at intervals not to exceed 400 flight hours until the inspection required by paragraph (i) of this AD is done.

(1) For airplanes having 1,200 total flight hours or less as of October 3, 2000 (the effective date of AD 2000–19–02, amendment 39–11903): Prior to the accumulation of 1,600 total flight hours.

(2) For airplanes having more than 1,200 total flight hours, but less than 4,000 total flight hours, as of October 3, 2000: Within 400 flight hours after October 3, 2000.

(3) For airplanes having 4,000 total flight hours or more as of October 3, 2000: Prior to the accumulation of 4,400 total flight hours, or within 50 flight hours after October 3, 2000, whichever occurs later.

Note 1: For the purposes of this AD, a general visual inspection is "a visual examination of a interior or exterior area, installation or assembly to detect obvious damage, failure or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normal available lighting conditions such as daylight, hangar lighting, flashlight or drop-light and may require removal or opening of access panels or doors. Stands, ladders or platforms may be required to gain proximity to the area being checked."

Follow-On Corrective Actions

(g) If any discrepancy (including blackened connector pins, damage to electrometric insert, cracks, erosion, or charring) is detected after accomplishment of any inspection required by paragraph (f) of this AD: Before further flight, replace the fuel pump and its mating airplane connector in accordance with EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000.

(h) After accomplishment of the replacement required by paragraph (g) of this AD, before further flight: Perform a general visual inspection of the electrical connectors adjacent to the fuel pump to detect damage (visible cracks, erosion, or charring), in accordance with EMBRAER Alert Service Bulletin S.B. 145–28–A013, dated August 16, 2000, and accomplish the requirements in paragraph (h)(1) or (h)(2) of this AD, as applicable.

(1) If any damage is detected, before further flight, replace the connectors with new ones in accordance with the alert service bulletin.

(2) If no damage is detected, before further flight, replace only the socket contacts with new contacts in accordance with the alert service bulletin.

New Requirements of This AD

Inspections

(i) Do a general visual inspection of the electrical connectors of the fuel pumps in the right- and left-hand wings to detect discrepancies (including any corrosion, surface irregularities, damaged plating, blackened pins, damaged elastomeric inserts, cracks, erosion, or charring of the connector). Do the first inspection at the applicable time in paragraph (i)(1) or (i)(2) of this AD, in accordance with Part I of the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001. Repeat the inspection thereafter at intervals not to exceed 1,200 flight hours until all six fuel pumps are replaced in accordance with paragraph (k) or (l) of this AD. When all six fuel pumps have been replaced in accordance with paragraph (k) or (l) of this AD, repeat the inspection thereafter at intervals not to exceed 8,000 flight hours. Doing the inspection required by this paragraph terminates the repetitive inspections required by paragraph (f) of this AD.

(1) For airplanes that have been inspected in accordance with paragraph (f) of this AD as of the effective date of this AD: Within 1,200 flight hours since the most recent inspection done in accordance with paragraph (f) of this AD.

(2) For airplanes that have not been inspected in accordance with paragraph (f) of this AD as of the effective date of this AD: Within 1,200 flight hours after the effective date of this AD.

Corrective Action if No Discrepancy Is Found

(j) If there is no evidence of a discrepancy found during any inspection required by paragraph (i) of this AD: Before further flight, apply anti-corrosion spray on the male contacts of the fuel pump electrical connectors in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001.

Replacement if Any Discrepancy Is Found

(k) If any evidence of a discrepancy is found during any inspection required by paragraph (i) of this AD: Before further flight, replace the electric fuel pump with a new electric fuel pump that has part number (P/N) 2C7–4, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001. After the replacement, repeat the inspection required by paragraph (i) of this AD at the applicable interval in that paragraph.

Replacement

(l) Within 8,000 flight hours after the effective date of this AD, replace any electric fuel pump that has not been replaced in accordance with paragraph (k) of this AD with a new electric fuel pump that has part number (P/N) 2C7–4, in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001. After the replacement, repeat the inspection required by paragraph (i) of this AD at intervals not to exceed 8,000 flight hours.

Inspection and Corrective Actions

(m) Before further flight after replacing a fuel pump, as required by paragraph (k) and (l) of this AD: Do a general visual inspection for damage of the mating aircraft connectors; and do the applicable corrective action in paragraph (m)(1) or (m)(2) of this AD; in accordance with the Accomplishment Instructions of EMBRAER Service Bulletin 145–28–0013, dated April 25, 2001.

(1) If there is any sign of damage to the mating aircraft connectors: Replace the affected connector with a new connector, and apply anti-corrosion spray on the male contacts of the fuel pump electric connectors.

(2) If there is no sign of damage to the mating aircraft connectors: Replace only the socket contacts with new socket contacts, and apply anti-corrosion spray on the male contacts of the fuel pump electric connectors.

Master Minimum Equipment List (MMEL)

(n) The inspections required by paragraphs (f) and (i) of this AD apply to the six electric fuel pumps in the right- and left-hand wings (three pumps in each wing). For pump replacement planning purposes, the airplane may be operated in accordance with the provisions and limitations specified in an operator's FAA-approved MMEL, provided

that no more than one fuel pump on each wing on the airplane is inoperative.

Note 2: When operating under the MMEL, operators must comply with the unusable fuel quantity as referenced in the Limitations Section of the appropriate FAA-approved Airplane Flight Manual (AFM).

Parts Installation

(o) As of the effective date of this AD, no person may install a fuel pump, P/N 2C7–1, on any airplane.

Alternative Methods of Compliance (AMOCs)

(p)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Alternative methods of compliance, approved previously per AD 2000–19–02, amendment 39–11903, are not approved as alternative methods of compliance with this AD.

Related Information

(q) Brazilian airworthiness directive 2000–08–01R2, dated February 13, 2002, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21644 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–182–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B 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 Saab Model SAAB SF340A and SAAB 340B series airplanes, that would have required replacement of the retract actuator bracket attachment bolt (RABAB) of the main landing gear (MLG) with a new RABAB, and reidentification of the MLG shock strut. This new action revises the proposed rule by referencing new service information; and by adding an inspection for corrosion, fretting, or other damage of any RABAB installed in accordance with the old service information; and applicable corrective actions. The actions specified by this new proposed AD are intended to prevent failure of the RABAB, which could result in loosening of the actuator bracket and consequent failure of the MLG to retract, with considerable damage to other landing gear parts, including the MLG trunnion fitting. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 25, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–182–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–182–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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Link"ping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–182–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–182–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 Saab Model SAAB SF340A and SAAB 340B series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on April 15, 2004 (69 FR 19952). That NPRM would have required replacement of the retract actuator bracket attachment bolt (RABAB) of the main landing gear (MLG) with a new RABAB, and reidentification of the MLG shock strut. That NPRM was prompted by reports of failures of the RABAB of the MLG due to hydrogen embrittlement. This can be caused by failure to fully de-embrittle after electroplating the RABAB during manufacture. That condition, if not corrected, could result in loosening of the retract actuator bracket and consequent failure of the MLG to retract, with considerable damage to other landing gear parts, including the MLG trunnion fitting.

Actions Since Issuance of Previous Proposal

Since the issuance of the original NPRM, the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified us of reports of failures of RABABs that were replaced in accordance with Saab Service Bulletin 340–32–124, Revision 01, dated May 21, 2002 (which the original NPRM refers to as the acceptable source of service information for replacing the RABAB). Investigation revealed that the service bulletin does not specify the torque value for installing the new RABAB. This condition, if not corrected, could result in improper installation of the RABAB with consequent failure and possible collapse of the MLG.

Explanation of New Relevant Service Information

Saab has issued Saab Service Bulletin 340–32–131, dated June 29, 2004; including as Attachments 1 and 2, APPH Ltd. Service Bulletins AIR83022–32–28 and AIR83064–32–08, both dated January 2002; and as Attachments 3 and 4, APPH Ltd. Service Bulletins AIR83022–32–29 and AIR83064–32–09, both dated April 2002. Saab Service Bulletin 340–32–131 supersedes Saab Service Bulletin 340–32–124, Revision 01, dated May 21, 2002, including as Attachments 1 and 2, APPH Ltd. Service Bulletins AIR83022–32–28 and AIR83064–32–08, both dated January 2002; and Saab Service Bulletin 340–32–125, dated April 29, 2002, including as Attachments 1 and 2, APPH Ltd. Service Bulletins AIR83022–32–29 and AIR83064–32–09, both dated April 2002. Saab Service Bulletin 340–32–131 describes procedures for replacing the RABAB with a new RABAB and reidentifying the MLG strut. If Service Bulletin 340–32–124, Revision 01, has been accomplished previously, Saab Service Bulletin 340–32–131 describes procedures for a one-time visual inspection of the new RABAB for corrosion, fretting, or other damage; and applicable corrective actions. Corrective actions could include replacing the RABAB with a new RABAB and repairing any other damage. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The LFV mandated the service information and issued Swedish airworthiness directive 1–195, dated July 6, 2004, to ensure the continued airworthiness of these airplanes in Sweden.

Comments

Comments were submitted on the original NPRM. Due to the release of new service information, those comments are no longer applicable and are not addressed by this supplemental NPRM.

Conclusion

Since this change expands 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.

Differences Between the Supplemental NPRM and Service Bulletin

The service bulletin refers to a "visual inspection" of a previously replaced RABAB for corrosion, fretting, or other damage. We have determined that the procedures in the service bulletin should be described as a "detailed inspection." We have included Note 2 to define this type of inspection.

Cost Impact

We estimate that approximately 281 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would be supplied at no cost by the manufacturer. Based on these figures, the cost impact of this proposed AD on U.S. operators is estimated to be $127,855, or $455 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Saab Aircraft AB: Docket No. 2002–NM–182–AD.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the retract actuator bracket attachment bolt (RABAB), which could result in loosening of the retract actuator bracket and consequent failure of the main landing gear (MLG) to retract, with considerable damage to other landing gear parts, including the MLG trunnion fitting, accomplish the following:

Replacement/Reidentification of RABAB

(a) For airplanes not previously modified in accordance with Saab Service Bulletin 340–32–124, Revision 01, dated May 21, 2002: Within 12 months after the effective date of this AD, perform the actions specified in paragraphs (a)(1) and (a)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–131, dated June 29, 2004, including Attachments 1 and 2, both dated January

2002, and Attachments 3 and 4, both dated April 2002.

Note 1: APPH Ltd. Service Bulletins AIR83022–32–28 and AIR83064–32–08, both dated January 2002, comprising Attachments 1 and 2, and Service Bulletins AIR83022–32–29 and AIR83064–32–09, both dated April 2002, comprising Attachments 3 and 4, are incorporated into Saab Service Bulletin 340–32–131 as additional sources of service information.

(1) Replace the existing RABAB with a new RABAB.

(2) Reidentify the MLG shock strut.

Inspection of RABAB

(b) For airplanes previously modified in accordance with Saab Service Bulletin 340–32–124, Revision 01, dated May 21, 2002: Within 6 months after the effective date of this AD, perform a one-time detailed inspection for corrosion, fretting, or other damage of any RABAB replaced in accordance with Saab Service Bulletin 340–32–124, Revision 01; and applicable corrective actions; in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–131, dated June 29, 2004, including Attachments 1 and 2, both dated January 2002, and Attachments 3 and 4, both dated April 2002.

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."

Parts Installation

(c) As of the effective date of this AD, no person may install a RABAB, part number (P/N) AIR83022–5 through –18 inclusive, or P/N AIR83064 (any suffix), on any airplane.

Special Flight Permits

(d) Special flight permits are not allowed as specified in section 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199).

Alternative Methods of Compliance

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

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–195, dated July 6, 2004.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21645 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 040913263–4263–01]

Effectiveness of Licensing Procedures for Agricultural Commodities to Cuba

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments.

SUMMARY: The Bureau of Industry and Security (BIS) is requesting public comments on the effectiveness of licensing procedures set forth in the Export Administration Regulations for the export of agricultural commodities to Cuba. BIS will include a description of these comments in its biennial report to the Congress, required by the Trade Sanctions Reform and Export Enhancement Act of 2000.

DATES: Comments must be received by October 28, 2004.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044, or to e-mail *SQuarter@bis.doc.gov*. Comments may also be e-mailed to Brian Nilsson, Office of Nonproliferation and Treaty Compliance, at *BNilsson@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Nilsson, Foreign Policy Controls Division, Bureau of Industry and Security, Telephone: (202) 482–4252. Additional information on BIS procedures and our previous biennial report under the Trade Sanctions Reform and Export Enhancement Act, as amended, is available at *http://www.bis.doc.gov/licensing/TSRA_TOC.html*. Copies of these materials may also be requested by contacting the Office of Nonproliferation and Treaty Compliance.

SUPPLEMENTARY INFORMATION: The Bureau of Industry and Security (BIS) authorizes exports of agricultural commodities to Cuba pursuant to section 906(a) of the Trade Sanctions Reform and Export Enhancement Act of 2000 (TSRA) (22 U.S.C. 7205(a)), under the procedures set forth in § 740.18 of the Export Administration Regulations (EAR) (15 CFR 740.18). These are the only licensing procedures currently in effect pursuant to the requirements of section 906(a) of TSRA.

Under the provisions of section 906(c) of TSRA (22 U.S.C. 7205(c)), BIS must submit a biennial report to the Congress on the operation of the licensing system implemented pursuant to section 906(a) for the preceding two-year period. This report is to include the number and types of licenses applied for, the number and types of licenses approved, the average amount of time elapsed from the date of filing of a license application until the date of its approval, the extent to which the licensing procedures were effectively implemented, and a description of comments received from interested parties during a 30-day public comment period about the effectiveness of the licensing procedures. BIS is currently preparing a biennial report on the operation of the licensing system for the two-year period from October 1, 2002 to September 30, 2004.

By this notice, BIS requests public comments on the effectiveness of the licensing procedures for the export of agricultural commodities to Cuba set forth under § 740.18 of the EAR. Parties submitting comments are asked to be as specific as possible. All comments received by the close of the comment period will be considered by BIS in developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

Copies of the public record concerning these regulations may be requested from: Bureau of Industry and Security, Office of Administration, U.S. Department of Commerce, Room 6883, 1401 Constitution Avenue, NW., Washington, DC 20230; (202) 482–2165. The Office of Administration displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–2165 for assistance.

Dated: September 17, 2004.

Peter Lichtenbaum,

Assistant Secretary for Export Administration.

[FR Doc. 04–21733 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Chapter VII

[Docket No. 040910262–4262–01]

Effects of Foreign Policy-Based Export Controls

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Request for comments on foreign policy-based export controls.

SUMMARY: The Bureau of Industry and Security (BIS) is reviewing the foreign policy-based export controls in the Export Administration Regulations to determine whether they should be modified, rescinded or extended. To help make these determinations, BIS is seeking comments on how existing foreign policy-based export controls have affected exporters and the general public.

DATES: Comments must be received by November 19, 2004.

ADDRESSES: Written comments (three copies) should be sent to Sheila Quarterman, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044. Alternatively, comments may be e-mailed to Sheila Quarterman at *SQuarter@bis.doc.gov*.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–4252. Copies of the current Annual Foreign Policy Report to the Congress are available at *http://www.bis.doc.gov/PoliciesAndRegulations/04ForPolControls/index.htm* and copies may also be requested by calling the Office of Nonproliferation and Treaty Compliance at the number listed above.

SUPPLEMENTARY INFORMATION: Foreign policy based controls in the Export Administration Regulations (EAR) are implemented pursuant to section 6 of the Export Administration Act of 1979, as amended. The current foreign policy-based export controls maintained by the Bureau of Industry and Security (BIS) are set forth in the EAR, including in parts 742 (CCL Based Controls), 744 (End-User and End-Use Based Controls) and 746 (Embargoes and Special Country Controls). These controls apply to a range of countries, items and activities including: high performance computers (§ 742.12); certain general purpose microprocessors for "military end-uses" and "military end-users" (§ 744.17); significant items (SI): hot section technology for the development, production, or overhaul of commercial aircraft engines, components, and systems (§ 742.14); encryption items (§ 742.15 and § 744.9); crime control and detection commodities (§ 742.7); specially designed implements of torture (§ 742.11); certain firearms included within the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (§ 742.17); regional stability commodities and equipment (§ 742.6); equipment and related technical data used in the design, development, production, or use of missiles (§ 742.5 and § 744.3); chemical precursors and biological agents, associated equipment, technical data, and software related to the production of chemical and biological agents (§ 742.2 and § 744.4) and various chemicals included in those controlled pursuant to the Chemical Weapons Convention (§ 742.18); nuclear propulsion (§ 744.5); aircraft and vessels (§ 744.7); embargoed countries (part 746); countries designated as supporters of acts of international terrorism (§§ 742.8, 742.9, 742.10, 742.19, 742.20, 746.2, 746.3, and 746.7); certain entities in Russia (§ 744.10); and individual terrorists and terrorist organizations (§§ 744.12, 744.13 and § 744.14. Attention is also given in this context to the controls on nuclear-related commodities and technology (§§ 742.3 and 744.2), which are, in part, implemented under section 309(c) of the Nuclear Non Proliferation Act.

Under the provisions of section 6 of the Export Administration Act of 1979, as amended (EAA), export controls maintained for foreign policy purposes require annual extension. Section 6 of the EAA requires a report to Congress when foreign policy-based export controls are extended. The EAA expired on August 20, 2001. Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 FR 48763, August 10, 2004), continues the EAR and, to the extent permitted by law, the provisions of the EAA, in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000). The Department of Commerce, insofar as appropriate, is following the provisions of section 6 in reviewing foreign policy-based export controls, requesting public comments on such controls, and submitting a report to Congress.

In January 2004, the Secretary of Commerce, on the recommendation of the Secretary of State, extended for one year all foreign policy-based export controls then in effect.

To assure maximum public participation in the review process, comments are solicited on the extension or revision of the existing foreign policy-based export controls for another year. Among the criteria considered in determining whether to continue or revise U.S. foreign policy-based export controls are the following:

1. The likelihood that such controls will achieve the intended foreign policy purpose, in light of other factors, including the availability from other countries of the goods, software or technology proposed for such controls;

2. Whether the foreign policy purpose of such controls can be achieved through negotiations or other alternative means;

3. The compatibility of the controls with the foreign policy objectives of the United States and with overall United States policy toward the country subject to the controls;

4. Whether reaction of other countries to the extension of such controls by the United States is not likely to render the controls ineffective in achieving the intended foreign policy purpose or be counterproductive to United States foreign policy interests;

5. The comparative benefits to U.S. foreign policy objectives versus the effect of the controls on the export performance of the United States, the competitive position of the United States in the international economy, the international reputation of the United States as a supplier of goods and technology; and

6. The ability of the United States to enforce the controls effectively.

BIS is particularly interested in the experience of individual exporters in complying with the proliferation controls, with emphasis on economic impact and specific instances of business lost to foreign competitors. BIS is also interested in industry information relating to the following:

1. Information on the effect of foreign policy-based export controls on sales of U.S. products to third countries (*i.e.*, those countries not targeted by sanctions), including the views of foreign purchasers or prospective customers regarding U.S. foreign policy-based export controls.

2. Information on controls maintained by U.S. trade partners. For example, to what extent do they have similar controls on goods and technology on a worldwide basis or to specific destinations?

3. Information on licensing policies or practices by our foreign trade partners

which are similar to U.S. foreign policy-based export controls, including license review criteria, use of conditions, requirements for pre and post shipment verifications (preferably supported by examples of approvals, denials and foreign regulations).

4. Suggestions for revisions to foreign policy-based export controls that would (if there are any differences) bring them more into line with multilateral practice.

5. Comments or suggestions as to actions that would make multilateral controls more effective.

6. Information that illustrates the effect of foreign policy-based export controls on the trade or acquisitions by intended targets of the controls.

7. Data or other information as to the effect of foreign policy-based export controls on overall trade at the level of individual industrial sectors.

8. Suggestions as to how to measure the effect of foreign policy-based export controls on trade.

9. Information on the use of foreign policy-based export controls on targeted countries, entities, or individuals.

BIS is also interested in comments relating generally to the extension or revision of existing foreign policy-based export controls.

Parties submitting comments are asked to be as specific as possible. All comments received before the close of the comment period will be considered by BIS in reviewing the controls and developing the report to Congress.

All information relating to the notice will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, BIS requires written comments. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at *http://www.bis.doc.gov/foia*. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–2165 for assistance.

Dated: September 22, 2004.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 04–21734 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35, 131, 154, 157, 250, 281, 284, 300, 341, 344, 346, 347, 348, 375, and 385

[Docket No. RM01–5–000]

Electronic Tariff Filings

September 17, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; extension of comment deadline.

SUMMARY: The Federal Energy Regulatory Commission is extending the October 4, 2004, deadline for comments on the Commission's July 8, 2004, Notice of Proposed Rulemaking. (69 FR 43929, July 23, 2004.) A document will be published in the **Federal Register** to establish the new comment date.

DATES: A document will be published in the **Federal Register** establishing the new comment date.

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

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8525, *Keith.Pierce@ferc.gov*.

Jamie Chabinsky (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–6040, *Jamie.Chabinsky@ferc.gov*.

Bolton Pierce (Software Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. (202) 502–8803, *Bolton.Pierce@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Tariff Filings; Notice of Extension of Comment Deadline

Take notice that the Federal Energy Regulatory Commission is extending the October 4, 2004, deadline for comments on the Commission's July 8, 2004, Notice of Proposed Rulemaking [1] on electronic tariff and rate case filing. This extension is to allow time for continued development and experimental use of the software to be used for tariff and rate filings. A subsequent notice will be published establishing the new comment date as well as the date for the technical conference.

For more information, please contact: Keith Pierce, Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 202–502–8525, *Keith.Pierce@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. 04–21467 Filed 9–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129771–04]

RIN 1545–BD49

Guidance Under Section 951 for Determining *Pro Rata* Share; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to notice of proposed rulemaking that were published in the **Federal Register** on August 6, 2004 (69 FR 47822) providing guidance for determining a United States shareholder's *pro rata* share of a controlled foreign corporation's (CFC's) subpart F income, previously excluded subpart F income withdrawn from investment in less developed countries, previously excluded subpart F income withdrawn from foreign base company shipping operations, and amounts determined under section.

FOR FURTHER INFORMATION CONTACT: Jonathan A. Sambur at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under

[1] Electronic Tariff Filings, Notice of Proposed Rulemaking, 69 FR 43929 (July 23, 2004), FERC Stats. & Regs. Proposed Regulations ¶ 32,575 (July 8, 2004).

section 951 (a) of the Internal Revenue Code.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–129771–04), which was the subject of FR Doc. 04–17907, is corrected as follows:

1. On page 47823, column 1, in the preamble under the caption **ADDRESSES**, remove the last sentence.

§ 1.951–1 [Corrected]

2. On page 47826, column 2, § 1.951–1, paragraph (e)(5)(iii), line 11, the language "distribution of earnings or profits that" is corrected to read "distribution of earnings and profits that".

Cynthia E. Grigsby,

Acting Chief, Regulations and Publications Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–21699 Filed 9–27–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–135898–04]

RIN 1545–BD63

Extension of Time To Elect Method for Determining Allowable Loss; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document corrects a notice of proposed rulemaking by cross-reference to temporary regulations (REG–135898–04) that was published in the **Federal Register** on Thursday, August 26, 2004 (69 FR 52462), that extends time for consolidated groups to elect to apply a method for determining allowable loss on a disposition of subsidiary stock, and permit consolidated groups to revoke such elections.

FOR FURTHER INFORMATION CONTACT: Theresa Abell, (202) 622–7700 or Martin Huck, (202) 622–7750 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations (REG–135898–04) that is the subject of this correction is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking by cross-reference to temporary regulations (REG–135898–04) which is the subject of FR Doc. 04–19477 is corrected as follows:

§ 1.1502–20 [Corrected]

On page 52463, column 2, § 1.1502–20, in the amendatory language, Par. 3., line 4, the language "August 25, 2004" each time it appears." is corrected to read "August 26, 2004" each time it appears.".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedures and Administration).

[FR Doc. 04–21701 Filed 9–27–04; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2913; MB Docket No. 04–357, RM–11076; MB Docket No. 04–358, RM–11071; MB Docket No. 04–359, RM–11072; MB Docket No. 04–360, RM–11073; MB Docket No. 04–361, RM–11074]

Radio Broadcasting Services; Adams, MA; Ashtabula, OH; Crested Butte, CO; Lawrence Park, PA; Roswell, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes five new FM broadcast allotments in Adams, Massachusetts; Ashtabula, Ohio; Crested Butte, Colorado; Lawrence Park, Pennsylvania; Roswell, New Mexico. The Audio Division, Media Bureau, requests comment on a petition filed by Dana Puopolo, proposing the allotment of Channel 255A at Adams, Massachusetts, as the community's local aural transmission service. That allotment also requires a site change for Channel 255A at Rosendale, NY. Channel 255A can be allotted to Adams in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.6 kilometers (1 mile) west of the community. The reference coordinates for Channel 255A at Adams are 42–37–12 NL and 73–08–12 WL. The reference coordinates for Channel 255A at Rosendale are 41–54–47 NL and 74–09–00 WL. Since Adams is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the Canadian government has been requested. *See* **SUPPLEMENTARY INFORMATION**, *infra*.

DATES: Comments must be filed on or before November 8, 2004, and reply comments on or before November 23, 2004.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Dana J. Puopolo, 2134 Oak Street, Unit C, Santa Monica, California 90405; Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, California 90405.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–357, 04–358, 04–359, 04–360, 04–361, adopted September 15, 2004 and released September 17, 2004. The full text of this Commission document is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*.

The Audio Division requests comments on a petition filed by Dana Puopolo, proposing the allotment of Channel 241A at Ashtabula, Ohio, as the community's fourth local aural transmission service. Channel 241A can be allotted to Ashtabula in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.5 kilometers (.09 miles) northwest of the community. The reference coordinates for Channel 241A at Ashtabula are 41–52–38 North Latitude and 80–47–49 West Longitude. Since Ashtabula is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence from the

Canadian government has been requested.

The Audio Division requests comments on a petition filed by Linda Davidson proposing the allotment of Channel 246C3 at Crested Butte, Colorado, as the community's second local aural transmission service. Channel 246C3 can be allotted to Crested Butte in compliance with the Commission's minimum distance separation requirements with a site restriction of 8..0 kilometers (5.0 miles) east of the community. The reference coordinates for Channel 246C3 at Crested Butte are 38–50–42 North Latitude and 106–54–00 West Longitude.

The Audio Division requests comment on a petition filed by Dana Puopolo proposing the allotment of Channel 224A at Lawrence Park, Pennsylvania, as the community's first local aural transmission service. Channel 224A can be allotted to Lawrence Park in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.6 kilometers (6.6 miles) southwest of the community. The reference coordinates for Channel 224A at Lawrence Park are 42–06–00 North Latitude and 80–07–48 West Longitude.

The Audio Division requests comment on a petition filed by Dana Puopolo proposing the allotment of Channel 289C0 at Roswell, New Mexico, as the community's thirteenth local aural transmission service. A later filed minor change application filed by Rooney Moon Broadcasting, Inc., licensee of Station Channel KSEL–FM, which conflicts with this proposal will be treated as a counterproposal. Channel 289C0 can be allotted to Roswell in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.4 kilometers (8.3 miles) north of Roswell. The reference coordinates for Channel 289C0 at Roswell are 33–30–50 North Latitude and 104–30–05 West Longitude.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Colorado is amended by adding Crested Butte, Channel 246C3.

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Adams, Channel 224A.

3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 289C0 at Roswell.

4. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by adding Channel 241A at Ashtabula.

5. Section 73.202(b), the Table of FM allotments under Pennsylvania, is amended by adding Lawrence Park, Channel 224A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–21726 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–2914; MB Docket No. 04–362; RM–11066]

Radio Broadcasting Services; Olustee, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed by Charles Crawford requesting the allotment of Channel 252A at Olustee, Oklahoma as that community's first local service. The coordinates for Channel 252A at Olustee are 34–33–00 NL and 99–24–00 WL. There is a site restriction 2.0 kilometers (1.3 miles) east of the community. To accommodate the proposal, petitioner requests that the coordinates for vacant Channel 253C3 at Wellington, Texas be modified to 34–53–00 NL and 100–18–00 WL with a site restriction 8.5 kilometers (5.3 miles) west of the community. Petitioner also indicates that the required spacing separations are met due to the fact that Channel 253C is no longer allotted to Elk City, Oklahoma and Channel 251C1 is no longer allotted to Lawton, Oklahoma pursuant to *Crowell, Texas et al.*, 19 FCC Rcd 5347 (MB 2004).

DATES: Comments must be filed on or before November 8, 2004, and reply comments on or before November 23, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner as follows: Charles Crawford, 4553 Bordeaux Avenue, Dallas, Texas 75205.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making*, MB Docket No. 04–362, adopted September 15, 2004, and released September 17, 2004. The full text of this Commission notice is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 Twelfth Street, SW., Washington, DC. This document may also be purchased from the Commission's duplicating contractors, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Olustee, Channel 252A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–21728 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 091704A]

South Atlantic Fishery Management Council; Informational Public Hearings

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

ACTION: Notice of public hearings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a series of five public hearings for proposed actions specified in Draft Amendment 15 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic Resources in the Atlantic and Gulf of Mexico. The Amendment addresses the current moratorium for the commercial king mackerel fishery and changes in the fishing year for both king mackerel and Spanish mackerel in the Atlantic.

DATES: The hearings will be held in October 2004. See **SUPPLEMENTARY INFORMATION** for specific dates, locations, and times. Written comments, including e-mail comments, will be accepted until 5 p.m. on October 29, 2004.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific locations, times, and dates.

Written comments should be sent to Kathi R. Kitner, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407. Comments may also be submitted via e-mail to *mackerelcomments@safmc.net.*

Copies of the public hearing document are available by contacting the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; telephone: 843–571–4366 or toll free 1–866–SAFMC–10; fax: 843–769–4520; or e-mail: *safmc@safmc.net.* The public hearing document will also be available at the meetings.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free 1–866–SAFMC–10; fax: 843–769–4520; e-mail: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council has developed proposed actions specified in Draft Amendment 15 to the FMP for Coastal Migratory Pelagic Resources in the Atlantic and Gulf of Mexico. Draft Amendment 15 includes alternatives to limit entry and change the fishing year in the king mackerel fishery. Management alternatives include: a "no action" alternative that would allow the moratorium to expire; an extension of the existing moratorium for a designated time frame; and the establishment of some form of license limitation system. In terms of the fishing year (for king mackerel only), options include: beginning the fishing year on April 1 of each year (status quo); changing the beginning of the fishing year to January 1 of each year; and other possible dates.

These alternatives are described in the Council's public hearing document "Draft Amendment 15 to the Fishery Management Plan for Coastal Migratory Resources in the Atlantic and Gulf of Mexico" (see **ADDRESSES** for information on obtaining the public hearing document).

Public hearings will be held at the following dates and locations. All meetings are scheduled to begin at 6 p.m.

1. Wednesday, October 6, 2004, Holiday Inn, 3845 Veterans Memorial Highway, Ronkonkoma, NY 11779; telephone: 631–585–9500;

2. Monday, October 11, 2004, Crystal Coast Civic Center, 3505 Arendell Street, Morehead City, NC 28557; telephone: 252–247–3883;

3. Tuesday, October 12, 2004, Bay Watch Resort and Conference Center, (Center Tower, 2nd Floor), 2701 South Ocean Blvd., Myrtle Beach, SC 29584; telephone: 843–361–2110;

4. Wednesday, October 13, 2004, Comfort Inn Oceanfront, 1515 N. First Street, Jacksonville, FL 32250; telephone 904–241–0774; and

5. Thursday, October 14, 2004, Old City Hall, 315 Avenue A, Ft. Pierce, FL 34950; telephone: 772–466–3880.

These meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 8, 2004.

Dated: September 22, 2004.

Alan D. Risenhoover,

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

[FR Doc. 04–21692 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 69, No. 187
Tuesday, September 28, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[FV–04–338]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the intention of the Agricultural Marketing Service (AMS) to request an extension for and revision to a currently approved information collection in support of the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products.

DATES: Comments may be submitted on or before November 29, 2004.

ADDITIONAL INFORMATION OR COMMENTS: Contact Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1527; or e-mail *terry.bane@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products—7 CFR 52".

OMB Number: 0581–0123.

Expiration Date of Approval: April 30, 2005.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) (AMA) directs and authorizes the Department to develop standards of quality, grades, grading programs, and other services to facilitate trading of agricultural products and assure consumers of quality products which are graded and identified under USDA programs. Section 203(h) of the AMA specifically directs and authorizes the Secretary of Agriculture to inspect, certify, and identify the grade, class, quality, quantity, and condition of agricultural products under such rules and regulations as the Secretary may prescribe, including assessment and collection of fees for the cost of the service. The regulations for such services for processed fruits and vegetables and related products may be found at 7 CFR Part 52. AMS also provides other types of voluntary services under the same regulations, *e.g.*, contract and specification acceptance services, facility assessment services and certifications of quantity and quality. Grading services are available on a resident basis or a lot-fee basis. Respondents may request resident service on a continuous basis or on an as-needed basis. The service is paid for by the user (user-fee). The AMA and these regulations do not mandate the use of these services; they are provided only to those entities that request or apply for a specific service. In order for the Agency to satisfy those requests for service, the Agency must request certain information from those who apply for service. The information collected is used only by Agency personnel and is used to administer services requested by the respondents. Affected public may include any partnership, association, business trust, corporation, organized group, and State, County or Municipal government, and any authorized agent that has a financial interest in the commodity involved and requests service.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.05 hours per response (1124 total hours divided by 21,068 total annual responses).

Respondents: Applicants who are applying for grading and inspection services.

Estimated Number of Respondents: 1,437.

Estimated Number of Responses: 21,068.

Estimated Number of Responses per Respondent: 0.07.

Estimated Total Annual Burden on Respondents: 1,124.

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 proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Mr. Terry B. Bane, Processed Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0247, 1400 Independence Avenue, SW., Washington, DC 20250–0247; fax (202) 690–1527; or e-mail *terry.bane@usda.gov.*

All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: September 22, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–21626 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Sanders County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lolo and Kootenai National Forests' Sanders County Resource Advisory Committee will meet on November 10, 2004 at 6:30 p.m. in

Thompson Falls, Montana for business meetings. The meetings are open to the public.

DATES: November 10, 2004.

ADDRESSES: The meeting will be held at the Thompson Falls Courthouse, 1111 Main Street, Thompson Falls, MT 59873.

FOR FURTHER INFORMATION CONTACT: Randy Hojem, Designated Forest Official (DFO), District Ranger Plains/Thompson Falls District, Lolo National Forest at (406) 826–3821, or Shana Neesvig, Committee Coordinator, Cabinet Ranger District, Koorenai National Forest at (406) 827–3533.

SUPPLEMENTARY INFORMATION: Agenda topics include approving project proposals for funding and receiving public comment. If the meeting location is changed, notice will be posted in the local newspapers, including the Clark Fork Valley Press, Sanders County Ledger, Missoulian, and River Journal.

Dated: September 20, 2004.

Randy Hojen,

Designated Federal Official, District Ranger, Plains/Thompson Falls Ranger District.

[FR Doc. 04–21697 Filed 9–27–04; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Subcommittees of Each Advisory Committee in the Western Region

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the State Advisory Committee Chairpersons in the Western Region (Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Texas and Washington) will convene at 1 p.m. (PDT) and adjourn at 2 p.m., Friday, October 15, 2004. The purpose of the conference call is to discuss regional civil rights issues and update information. This conference call is available to the public through the following call-in number: 1–800–497–7709, access code number 26344934. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Thomas Pilla of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, October 14, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC September 21, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–21667 Filed 9–27–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD AUGUST 21, 2004–SEPTEMBER 17, 2004

Firm name	Address	Date petition accepted	Product
Carol Carter Enterprises d.b.a. Cooley Sportswear.	8938 East Admiral Place, Tulsa, OK 74165.	8/23/04	Track suits.
Dramm & Echter, Inc	P.O. Box 230816, Encinitas, CA 92023 ..	8/23/04	Cut flowers.
Carol Carter Enterprises d.b.a. Cooley Sportswear.	8938 East Admiral Place, Tulsa, OK 74165.	8/23/04	Track suits.
Elec-Tec., Inc	707 Industrial Boulevard Valdosta, GA 31601.	8/23/04	Electrical wiring harnesses.
Pines International, Inc	1992 East 1400 Road, Lawrence, KS 66044.	8/23/04	Barley and alfalfa products.
Weiler Corporation	One Wildwood Drive, Cresco, PA 18326	8/24/04	Wire brushes and abrasives for the automotive, welding and fabrication and pipeline industries.
Intermountain Furniture Manufacturing Company, Inc.	235 S. 600 W. Salt Lake City, UT 84101	8/31/04	Upholstered sofas, loveseats and chairs for household use.
Absolute Control Systems, Inc	14452 West 44th Avenue, Golden, CO 80403.	9/1/04	Enclosure systems for process control in industrial applications.
Artisans, Inc	W4146 2nd Street, Glen Flora, WI 54526.	9/1/04	Screen printed and embroidered sportswear.
MAFCO, Inc	1203 North 6th Street, Rogers, AR 72757.	9/1/04	Cast iron hydrants and brass valves.
Vista Metals, Inc	1024 East Smithfield Street, McKeesport, PA 15135.	9/1/04	Die-grade cemented tungsten carbide products.
A. D. Harrington d.b.a. Temple Industries	153–B Extrusion Place Hot Springs, AR 71901.	9/2/04	Aluminum extrusions.
Pipeline Inspection Co., Ltd	1919 Antoine, Houston, TX 77055	9/2/04	Holiday detectors.
Woolrich, Inc	P.O. Box 138, Woolrich, PA 17779	9/3/04	Wool broadloom blankets and piece goods.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD AUGUST 21, 2004–SEPTEMBER 17, 2004—Continued

Firm name	Address	Date petition accepted	Product
Christian Plastics, Inc	240 North Hollywood Road, Houma, LA 70364.	9/9/04	Plastic injection molds.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

(The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance)

Dated: September 22, 2004.

Brenda A. Johnson,

National Technical Assistance Specialist, Public Affairs Division.

[FR Doc. 04–21641 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092204C]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Joint Herring Oversight and Advisory Panel and Groundfish Oversight Committee and Advisory Panel in October, 2004 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held on October 14, 21 & 22, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Portland, ME and Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, October 14, 2004 at 9:30 a.m. — Joint Herring Oversight Committee and Advisory Panel Meeting.

Location: The meeting will be held at the Eastland Park Hotel, 157 High Street, Portland, ME 04101; telephone: (207) 775–5411.

The Herring Committee and Advisory Panel will continue work on the development of alternatives for inclusion in the Draft Supplemental Environmental Impact Statement (DSEIS) for Amendment 1 to the Herring Fishery Management Plan (FMP). The Committee and Advisory Panel will review Draft Amendment 1 alternatives ("strawman") developed by the Herring Plan Development Team (PDT) and Council staff, as well as any related Herring PDT and Council staff recommendations. The Committee will consider Herring Advisory Panel input and develop recommendations regarding the range of alternatives to be included in the Amendment 1 DSEIS. The Committee and Advisory Panel also will receive an update on the development of options for inclusion in Framework Adjustment 40B to the Northeast Multispecies (Groundfish) FMP, which may prohibit fishing for herring in the groundfish year-round closed areas.

Thursday, October 21, 2004 at 9:30 a.m. — Groundfish Advisory Panel Meeting.

Location: Holiday Inn, 1 Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

The Groundfish Advisory Panel will meet to review draft Framework 40B (FW 40B) to the Northeast Multispecies Fishery Management Plan (FMP). FW 40B will consider modifying the days-at-sea (DAS) leasing and transfer programs, creating a special access program (SAP) to target Georges Bank haddock and a SAP to target GOM haddock, modifying the CAII Georges Bank yellowtail flounder SAP, restricting herring fishing in groundfish mortality closed areas, allocating a minimum number of Category B (reserve) DAS to permits that did not receive any DAS under Amendment 13 allocations, modifying incidental catch TACs, changing provisions of the Georges Bank Cod Hook Sector, and providing DAS credit for vessels that standby an entangled large whale. The Panel will review the proposed measures and analyses of the impacts of those measures. They will develop recommendations for the Groundfish Oversight Committee's consideration and may also consider other business.

Friday, October 22, 2004 at 9:30 a.m. — Groundfish Oversight Committee Meeting.

Location: Holiday Inn, 1 Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

The Groundfish Oversight Committee will meet to review draft Framework 40B (FW 40B) to the Northeast Multispecies Fishery Management Plan (FMP). FW 40B will consider modifying the days-at-sea (DAS) leasing and transfer programs, creating a special access program (SAP) to target Georges Bank haddock and a SAP to target GOM haddock, modifying the CAII Georges Bank yellowtail flounder SAP, restricting herring fishing in groundfish mortality closed areas, allocating a minimum number of Category B (reserve) DAS to permits that did not receive any DAS under Amendment 13 allocations, modifying incidental catch TACs, changing provisions of the Georges Bank Cod Hook Sector, and providing DAS credit for vessels that

standby an entangled large whale. The Committee will receive the report of the Advisory Panel and review the proposed measures and analyses of the impacts of those measures. They will develop recommendations for the Council's consideration, which may include the identification of preferred alternatives and/or modifications to the specific measures. The Committee will also review a Groundfish Plan Development Team evaluation of the mortality impacts of proposed experimental fishing impacts on mortality targets. The Committee will meet in a closed session to review applications to the Council's Groundfish Advisory Panel, and may consider other business.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during these meetings. 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

These meetings are 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: September 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2400 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092204B]

South Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of South Atlantic Fishery Management Council Internet Mapping Server (ArcIMS) Workshop.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a workshop to refine the prototype South Atlantic Fishery Management Council Coral and Benthic Habitats Internet Mapping Server. The workshop will take place in St. Petersburg, FL. See **SUPPLEMENTARY INFORMATION.**

DATES: The workshop will take place October 13–14, 2004. See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The workshop will be held at the Florida Fish and Wildlife Research Institute, 100 Eighth Ave. SE, St. Petersburg, FL, 33701; 727/896–8626; fax: 727/893–2947.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council,; telephone: 843/571–4366 or toll free 866/SAFMC–10; fax: 843/769–4520; email: kim.iverson@safmc.net.

SUPPLEMENTARY INFORMATION: The South Atlantic Council ArcIMS Workshop will be conducted from 1 p.m. until 5 p.m. on October 13, 2004 and from 8:30 a.m. until 5 p.m. on October 14,2004. The workshop will focus on an internet mapping server (ArcIMS) being developed by the Council in cooperation with the Florida Fish and Wildlife Research Institute (FWRI). The ArcIMS application is located within the Council's Habitat/Ecosystem website. Workshop participants will review data currently available through the ArcIMS, identify data needs, refine data presentation with emphasis on form, functionality and accessibility. An overall goal of this workshop is to discuss the availability and initiate transfer of data sets applicable to the conservation and management of fishery resources and habitats they depend upon.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 13, 2004.

Dated: September 23, 2004.

Alan D. Risenhoover,

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

[FR Doc. E4–2401 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 081104G]

Marine Mammals; NMFS Permit No. 764–1703–01; USFWS Permit No. MA068532

AGENCIES: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; U.S. Fish and Wildlife Service (USFWS), Interior.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that The National Museum of Natural History, Department of Systematic Biology, MRC 108, P.O. Box 37012, Washington, D.C. 20013–7012 [Charles Potter, Principal Investigator], has been issued an amendment to scientific research Permit No. 764–1703–00.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s): See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 9, 2003, notice was published in the **Federal Register** (68 FR 58316) that a request for a joint NMFS/USFWS scientific research permit to collect, obtain, and import/export samples taken from marine mammals of the Orders Pinnipedia, Cetacea, Sirenia; and Carnivora (marine and sea otters) had been submitted by the above-named organization. The permit amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR parts 18 and 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered

and threatened species (50 CFR parts 17 and 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

On February 5, 2004, a permit was issued to take only those species under the jurisdiction of the NMFS. This permit amendment allows The National Museum of Natural History to salvage and collect, import/export samples, whole carcasses, hard and soft parts from the above mentioned species that are under USFWS jurisdiction, including polar bear that were inadvertently omitted from the original **Federal Register** notice. No live animal takes are authorized.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a final determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Issuance of this amendment, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Documents may be reviewed in the following locations:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Northwest Region, NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206)526–6150; fax (206)526–6426;

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249;

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018;

Pacific Islands Region, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700; phone (808)973–2937; fax (808)973–2941;

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320; and

U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, VA 22203 (1–800–358–2104).

Dated: September 16, 2004.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

Dated: September 16, 2004.

Charlie R. Chandler,

Chief, Branch of Permits, Division of Management Authority, U.S. Fish and Wildlife Service.

[FR Doc. 04–21689 Filed 9–27–04; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

September 23, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a determination that certain circular single knit jersey fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On September 20, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Jaclyn, Inc. of New York, alleging that certain circular single knit jersey fabric of the specifications detailed below, classified in subheading 6006.34.00.80 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that women's and girl's nightwear of such fabric assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by October 13, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, NW., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On September 20, 2004, the Chairman of CITA received a petition on behalf of Jaclyn, Inc. of New York, alleging that certain circular single knit jersey fabric, of the specifications detailed below, classified HTSUS subheading 6006.34.00.80, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for certain apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabric.

Specifications:

Fabric Description:	single knit jersey, jacquard geometric rib stitch
Petitioner Style No:	4944
HTS Subheading:	6006.34.00.80
Fiber Content:	64% polyester staple/35.5% - 35.8% cotton/0.2% - 0.5% spandex
Weight:	6.06 sq. meters/kg
Yarn Size:	54.14 metric (32/1 English), spun, filament core
Gauge:	28
Finish:	(Piece) dyed and printed
Stretch Characteristics:	25% from relaxed state; 90% recovery to relaxed state

The petitioner emphasizes that the fabric must be knit on a jacquard machine in order to provide the geometric pattern and puckered effect apparent in the fabric. Also, the petitioner states that it is imperative that

the fabric be piece dyed before it is printed.

CITA is soliciting public comments regarding this request, particularly with respect to whether this fabric can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than October 13, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

If a comment alleges that this fabric can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–21751 Filed 9–24–04; 9:41 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comments on Commercial Availability Petition under the United States - Caribbean Basin Trade Partnership Act (CBTPA)

September 24, 2004.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for public comments concerning a petition for a determination that certain woven, 100 percent cotton, double-napped flannel fabric cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

SUMMARY: On September 23, 2004, the Chairman of CITA received a petition from Sandler, Travis & Rosenberg, P.A., on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, double-napped flannel fabric, of the specifications detailed below, classified in subheading 5209.31.60.50 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. The petition requests that shirts, trousers, nightwear, robes, dressing gowns and woven underwear of such fabrics assembled in one or more CBTPA beneficiary countries be eligible for preferential treatment under the CBTPA. CITA hereby solicits public comments on this petition, in particular with regard to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by October 13, 2004 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, 14th and Constitution, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Janet E. Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 213(b)(2)(A)(v)(II) of the CBERA, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

Background:

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns or fabrics formed in the United States. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On September 23, 2004, the Chairman of CITA received a petition on behalf of Picacho, S.A., alleging that certain woven, 100 percent cotton, double-napped flannel fabric. of the specifications detailed below, classified HTSUS subheading 5209.31.60.50, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for certain apparel articles that are cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

Specifications:

Petitioner Style No:	2897A
Fiber Content:	100% Cotton
Weight:	203 g/m2
Width:	150 centimeters
Thread Count:	21 warp ends per centimeter; 18 filling picks per centimeter; total: 39 threads per square centimeter
Yarn Number:	Warp: 40.6 metric, ring spun; filling: 13.54 metric, open end spun; overall average yarn number: 19.2 metric
Finish:	(Piece) dyed; napped on both sides, sanforized

The petitioner emphasizes that the fabrics must be napped on both sides, that the yarn sizes and thread count, and consequently, the weight of the fabrics must be as nearly exact as possible as sepcified. The warp yarns must be ring spun and the filling yarns must be open end spun.

CITA is soliciting public comments regarding this request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. Also relevant is whether other fabrics that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the fabric for purposes of the intended use. Comments must be received no later than October 13, 2004. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, DC 20230.

If a comment alleges that these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely

review any supporting documentation, such as a signed statement by a manufacturer of the fabric stating that it produces the fabric that is the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked "business confidential" from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, N.W., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.04–21826 Filed 9–24–04; 2:09 pm]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR04–3–000]

America West Airlines, Inc., Southwest Airlines Co., Northwest Airlines, Inc., and Continental Airlines, Inc., Complainants v. SFPP, L.P., Respondent; Notice of Complaint Requesting Fast Track Processing

September 22, 2004.

Take notice that on September 21, 2004, America West Airlines, Inc. ("America West"), Southwest Airlines Co. ("Southwest Airlines"), Northwest Airlines, Inc., ("Northwest Airlines") and Continental Airlines, Inc., ("Continental Airlines") (collectively, "Airline Complainants") filed a complaint against SFPP, L.P. (SFPP) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure (18 CFR 385.206) and the Procedural Rules Applicable to Oil Pipline Proceedings (18 CFR 343.1(A)). Airline Complainants state that SFPP has violated and continues to violate the Interstate Commerce Act, 49 U.S.C. App. 1 *et seq.* by charging unjust and unreasonable rates and charges for all of SFPP's jurisdictional interstate services associated with its West Line and its Watson VDC facilities.

Airline Complainants request that the Commission: (1) Examine the challenge rates and charges collected by SFPP for its West Line and Watson VDC jurisdictional interstate service; (2) determine, consistent with the Commission precedent, that SFPP's rates for the West Line and the Watson VDC are unjust and unreasonable; (3) determine just, reasonable, and non-discriminatory rates for SFPP's West Line and Watson VDC jurisdictional interstate services; (4) order reparations and/or refunds to Airline Complainants, including appropriate interest thereon, for the applicable reparations and/or refunds periods; (5) award Airline Complainants reasonable attorney's fees and costs; and (6) order such other relief as may be appropriate.

Airline Complainants state that they have served this complaint on SFPP.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 October 12, 2004.

Linda Mitry,

Acting Secretary.

[FR Doc. E4–2394 Filed 9–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2105–089, California]

Pacific Gas and Electric Company; Notice of Intention To Hold Public Meetings for Discussion of the Draft Environmental Impact Statement for the Upper North Fork Feather River Hydropower Project

September 21, 2004.

On September 10, 2004, the Commission staff delivered the Upper North Fork Feather River Project Draft Environmental Impact Statement (DEIS) to the Environmental Protection Agency and mailed it to resource and land management agencies, interested organizations, and individuals.

The DEIS was noticed in the **Federal Register** on September 17, 2004 (69 FR 56054) and comments are due November 1, 2004. The DEIS evaluates the environmental consequences of the issuance of a new license for the continued operation and maintenance of the Upper North Fork Feather River Project, located in Plumas County, California. The project occupies 1,500 acres of land administered by the Forest Supervisors of the Lassen and Plumas National Forests. It also evaluates the environmental effects of implementing the licensee's proposals, agency and NGO recommendations, staff's recommendations, and the no-action alternative.

Two public meetings, which will be recorded by an official stenographer, are scheduled as follows.

Date: Tuesday, October 19, 2004.
Time: 6–9 p.m. (p.s.t.).
Place: Veterans Memorial Hall.
Address: 225 Gay Street, Chester, California.

Date: Wednesday, October 20, 2004.
Time: 1–4 p.m. (p.s.t.).
Place: Chico Masonic Family Center, Yorkrite Room.
Address: 1110 West East Avenue, Chico, California.

At these meetings, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact John Mudre at e-mail address *john.mudre@ferc.gov*, or by telephone at (202) 502–8902.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2393 Filed 9–27–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

September 21, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 9042–062.

c. *Date Filed:* August 10, 2004.

d. *Applicants:* Gallia Hydro Partners and Rathgar Development Associates, LLC.

e. *Name and Location of Project:* The Gallipolis Hydroelectric Project is located at the U.S. Army Corps of Engineers' Gallipolis Lock and Dam on the Ohio River near Gallipolis in Gallia County, Ohio.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Paul V. Nolan, Esquire, 5515 North 17th Street, Arlington, VA 22205, (703) 534–5509, Daniel O'Shea, c/o Sithe Energies, Inc., 335 Madison Avenue, 28th Floor, New York, NY 10017, (212) 351–0000.

h. *FERC Contact:* Lynn R. Miles (202) 502–8763.

i. *Deadline for filing comments, protests, and motions to intervene:* October 22, 2004.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. 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. Please include the project number (P–9042–062) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the documents on that resource agency.

j. *Description of Application:* Gallia Hydro Partners, (Transferor) licensee for the Gallipolis Hydroelectric Project, and Rathgar Development Associates, LLC, (Transferee) jointly and severally are applying to the Commission for approval to transfer the license from the Transferor to the Transferee.

k. 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 "FERRIS" link. Enter the project number excluding the last three digits (P–9042–062) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item g. above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

m. *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, 385.211, 385.214. 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.

n. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

o. *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. E4–2392 Filed 9–27–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0110, FRL–7820–9]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 1504.05; OMB Control No. 2070–0107; Data Generation for Pesticide Reregistration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: **Data Generation for Pesticide Reregistration**; EPA ICR No. 1504.05; OMB Control No. 2070–0107. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Nathanael Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *martin.nathanael@epa.gov*.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2004–0110, to: (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC, 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 2, 2004 (69 FR 31095). EPA received one public comment on this ICR during the 60-day comment period and has addressed it in the ICR.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0110, which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. Please note, EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

ICR Title: Data Generation for Pesticide Reregistration.

ICR Status: This is a request for extension of an existing approved collection that is currently scheduled to expire on September 30, 2004. EPA is asking OMB to approve this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This information collection activity enables EPA to fulfill the requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, which mandates that EPA reregister pesticides originally registered before November 1, 1984. Section 4 of FIFRA, as amended, establishes a process and a schedule for the development of the information EPA needs (*e.g.*, various scientific studies related to certain pesticides) to assess whether the reregistration of a pesticide or pesticide product would cause an unreasonable adverse effect on human health or the environment. Pesticide registrants seeking reregistration must generate and report the required data according to specified time tables.

This information collection will also enable EPA to collect certain company data about pesticide registrants that may be needed in order to verify eligibility for certain waivers and exemptions. The information collection allows EPA's Office of Pesticide Programs (OPP) to obtain data needed by OPP scientists to assess and characterize pesticide risks, and for risk managers to determine whether and under what conditions pesticides may be reregistered and to reassess existing tolerances as required by Section 408 of the Federal Food Drug and Cosmetic Act to ensure that they meet the standards established by law. Data collected may consist of toxicology studies, residue chemistry studies, fish and wildlife studies, environmental fate studies, or other data needed to analyze the potential risks associated with pesticide chemicals and products. This collection also supports the Agency's reassessment of food tolerances associated with reregistration. Responses to this information collection activity are generally required in order to maintain a benefit (*i.e.*, in order to reregister certain pesticides).

Burden Statement: The annual "respondent" burden for this ICR is estimated to average about 596 hours per response to an EPA request for confirmatory data, 2,560 hours per response for an EPA request for product-specific data, 596 hours per response for any voluntarily submitted data considered to be "low burden" and 3,587 hours per response for any voluntarily submitted data considered to be "high burden." According to the Paperwork Reduction Act, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Pesticide and other agricultural chemical manufacturing (NAICS 325320), *e.g.*, Businesses engaged in the manufacture of pesticides.

Estimated total number of potential respondents: 1,565.

Frequency of response: As needed.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 275,063.

Estimated total annual labor costs: $24,529,295.

Changes in the ICR since the last approval: The estimated annual burden for this ICR has increased by 184,338 hours (from 90,725 hours to 275,063 hours) related primarily to an increase of the average number of chemicals for which EPA will annually request certain data before they may be reregistered. This increase is an adjustment and is explained in detail in the ICR.

Dated: September 21, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–21702 Filed 9–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0109, FRL–7820–8]

Agency Information Collection Activities; Submission to OMB; Comment Request; EPA ICR No. 1911.02; OMB Control No. 2070–0164; Data Acquisition for Anticipated Residue and Percent of Crop Treated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR)

has been forwarded to the Office of Management and Budget (OMB) for review and approval: **Data Acquisition for Anticipated Residue and Percent of Crop Treated;** EPA ICR No. 1911.02; OMB Control No. 2070–0164. This is a request to renew an existing approved collection that is currently scheduled to expire on September 30, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before October 28, 2004.

FOR FURTHER INFORMATION CONTACT: Nathanael R. Martin, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6475; fax number: (703) 305–5884; e-mail address: *martin.nathanael@epa.gov*.

ADDRESSES: Submit your comments, referencing docket ID number OPP–2004–0109 to: (1) EPA online using EDOCKET (our preferred method), by e-mail to *opp-docket@epa.gov*, or by mail to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Mailcode: 7502C, 1200 Pennsylvania Ave., NW., Washington, DC, 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. The **Federal Register** document, required under 5 CFR 1320.8(d), soliciting comments on this collection of information published on May 5, 2004 (69 FR 25079). EPA received no comments on this ICR during that 60-day comment period.

EPA has established a public docket for this ICR under Docket ID No. OPP–2004–0109 which is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805. An electronic version of the public docket is available through EDOCKET at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice.Please note, EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

ICR Title: Data Acquisition for Anticipated Residue and Percent of Crop Treated.

ICR Numbers: EPA ICR No. 1911.02; OMB Control No. 2070–0164.

ICR Status: EPA is asking OMB to extend the existing approval of this ICR for three years. Under 5 CFR 1320.12(b)(2), the Agency may continue to conduct or sponsor the collection of information while the submission is pending at OMB.

Abstract: This ICR will enable EPA's Office of Pesticide Programs (OPP) to obtain information needed to re-evaluate the Agency's original tolerance decisions as mandated by the Food Quality Protection Act of 1996 (FQPA), which amended the two primary statutes regulating pesticides, *i.e.*, the Federal Food, Drug, and Cosmetic Act (FFDCA) and the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). Among other things, FQPA amended FFDCA to authorize the Agency to use anticipated or actual residue (ARs) data and percent crop treated (PCT) data to establish, modify, maintain, or revoke a tolerance for a pesticide residue. The new law also requires that tolerance decisions based on ARs or PCT data be verified to ensure that residues in or on food are not above the residue levels relied on for establishing the tolerance.

In order to conduct the required re-evaluation, a Pesticide Registrant may be required to submit specific data necessary to demonstrate that residues do not exceed the residue levels used to establish the tolerance.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The total annual "respondent" burden for this ICR is estimated to be 28,569 hours. According to the Paperwork Reduction Act, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The following is a summary of the burden estimates taken from the ICR:

Respondents/affected entities: Businesses engaged in the manufacture of pesticides who file a petition asking the Agency to take a specific tolerance action.

Estimated total number of potential respondents: 16.

Frequency of response: On occasion, *i.e.*, once five years after initial tolerance is established.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 28,569.

Estimated total annual costs: $2,524,938, includes $0 annualized capital or O&M costs.

Changes in the ICR Since the Last Approval: The total annual respondent burden estimate for this ICR has decreased 1,238 hours, from 29,807 to 28,569, and the total respondent cost has decreased $248,928, from $2,773,866 to $2,594,938. These reductions are adjustments due to the

fact that the Agency expects to issue fewer data call-ins under this program than originally estimated.

Dated: September 21, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–21703 Filed 9–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0059, FRL–7820–7]

Agency Information Collection Activities: Submission for OMB Review and Approval; Comment Request; Emissions Certification and Compliance Requirements for Nonroad Compression-Ignition Engines and On-Highway Heavy Duty Engines (Renewal); EPA ICR Number 1684.06, OMB Control Number 2060–0287

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 9/30/2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 28, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0059, to: (1) EPA online using EDOCKET (our preferred method), by e-mail to a-and-r-*docket@epamail.epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9264; fax number: (202) 343–2804; e-mail address: *reyes-morales.nydia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2004 (69 FR 34158), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received only one comment. The commenter suggested that EPA establish zero-emission requirements for nonroad engines.

EPA has established a public docket for this ICR under Docket ID number OAR–2004–0059, which is available for public viewing at the Air and Radiation Docket and Information Center, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Emissions Certification and Compliance Requirements for Nonroad Compression-ignition Engines and On-highway Heavy Duty Engines (Renewal).

Abstract: This information collection is requested under the authority of Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*). Under this Title, EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system, and test data. This information is organized by "engine family" groups expected to have similar emission characteristics. There are also recordkeeping and labeling requirements. Manufacturers electing to participate in the Averaging, Banking, and Trading (AB&T) Program are also required to submit information regarding the calculation of projected and actual generation and usage of credits in an initial report, end-of-the-year report and final report. These reports are used for certification and enforcement purposes. Manufacturers need to maintain records for eight years on the engine families participating in the program. Portions of former ICR 0011.08 ("Selective Enforcement Auditing and Recordkeeping Requirements for On-Highway Heavy-Duty Engines, Nonroad Large Compression Ignition Engines, and On-Highway Light-Duty Vehicles and Light-Duty Trucks," OMB Control Number 2060–0064, expired on 8/31/1999) are being incorporated into ICR 1684.06. No collection of information from ICR 0011.08 has been conducted since its expiration; upon approval of ICR 1684.06, the agency shall resume this information collection. Portions of former ICR 1897.05 ['Information Requirements for Nonroad Diesel Engines (Nonroad Large SI Engines and Marine Diesel Engines)," OMB Control Number 2060–0460, expiring on 10/31/2004] related to certification and compliance requirements for marine compression-ignition engines are also being incorporated into ICR 1684.06. This action is undertaken to consolidate information requirements for the same industry into one ICR, for simplification and to avoid duplicity. With this

consolidation, we combine the burden associated with the certification, AB&T, Production-line Testing (PLT) and Selective Enforcement Audits (SEA) programs for non-road compression-ignition engines and on-highway heavy-duty engines.

The information is collected for compliance purposes by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 2,112 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of nonroad compression-ignition engines and on-highway heavy-duty engines.

Estimated Number of Respondents: 68.

Frequency of Response: Annually, quarterly and on occasion.

Estimated Total Annual Hour Burden: 143,604.

Estimated Total Annual Cost: $13,978,203, which includes $0 annual capital/startup costs, $5,484,884 O&M costs, and $8,493,319 annual labor costs.

Changes in the Estimates: There is an increase of 54,557 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to: (1) Changes in the estimated number of hours that respondents spend carrying out each task and (2) the consolidation of portions of ICRs 0011.08 and 1897.05 into this ICR, as explained above.

Dated: September 20, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–21704 Filed 9–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2004–0061, FRL–7820–6]

Agency Information Collection Activities: Proposed Collection; Comment Request; Emission Certification and Compliance Requirements for Marine Spark-ignition Engines (Renewal), EPA ICR Number 1722.04, OMB Control Number 2060–0321

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on 9/30/2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 28, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2004–0061, to: (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nydia Y. Reyes-Morales, Mail Code 6403J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 343–9264; fax number: (202) 343–2804; e-mail address: *reyes-morales.nydia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On June 18, 2004 (69 FR 34158), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID number OAR–2004–0061, which is available for public viewing at the Air and Radiation Docket, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the

electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: Emission Certification and Compliance Requirements for Marine Spark-ignition Engines (Renewal).

Abstract: Under Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*; the Act), EPA is charged with issuing certificates of conformity for certain spark-ignition engines used to propel marine vessels that comply with applicable emission standards. Such a certificate must be issued before engines may be legally introduced into commerce. To apply for a certificate of conformity, marine spark-ignition engine manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system and engine emission test data. This information is organized by "engine family" groups expected to have similar emission characteristics. To comply with the corporate average emission standard, manufacturers must use the Averaging, Banking and Trading Program (AB&T) and must submit information regarding the calculation, actual generation and usage of emission credits in an initial report, end-of-the-year report, and final report. These reports are used for engine family certification; that is, to insure pre-production compliance with emissions requirements, and for enforcement purposes. Manufacturers must maintain records for eight years on the engine families included in the program. In this notice, former ICRs 1725.03 ("Marine Engine Manufacturers Assembly-Line Testing Reporting & Recordkeeping Requirements, "OMB Control Number 2060–0323, expiring on 9/30/2004) and 1726.03 ("Marine Engine Manufacturer Based In-Use Emission Testing Program," OMB Number 2060–0322, expiring on 10/31/2004) are being incorporated into ICR 1722.04 . This action is undertaken to consolidate information requirements for the same industry into one ICR, for simplification. With this consolidation, we combine the burden associated with the certification, AB&T, Production-line Testing (PLT) and In-use Testing programs for marine spark-ignition engines. Under the PLT Program, manufacturers are required to test a sample of engines as they leave the assembly line. This self-audit program allows manufacturers to monitor compliance with statistical certainty and minimize the cost of correcting errors through early detection. Under the In-use Testing Program, manufacturers are required to test engines after a number of hours of use to verify that they comply with emission standards throughout their useful lives. There are recordkeeping requirements in all programs.

The information requested by this information collection is used to enforce different provisions of the Act and maintain the integrity of the overall emissions reduction program. Data generated through the PLT, In-use Testing and AB&T programs may be used to evaluate future applications for certification, to identify potential issues, and as basis to suspend or revoke the certificate of conformity of those engines that fail. There are recordkeeping requirements in all programs.

The information is collected by the Engine Programs Group, Certification and Compliance Division, Office of Transportation and Air Quality, Office of Air and Radiation. Confidentiality of proprietary information submitted by manufacturers is granted in accordance with the Freedom of Information Act, EPA regulations at 40 CFR part 2, and class determinations issued by EPA's Office of General Counsel.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4,029 hours per respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Manufacturers of marine spark-ignition engines.

Estimated Number of Respondents: 10.

Frequency of Response: Annually and quarterly.

Estimated Total Annual Hour Burden: 40,293.

Estimated Total Annual Cost: $2,240,875 includes $200,966 O&M costs, $0 annualized capital costs, and $2,039,909 labor costs.

Changes in the Estimates: There is an increase of 1,619 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to the fact that we are consolidating three ICRs (1722.03, 1725.03, and 1726.03) into 1722.04, as explained above. The increase in burden is, therefore, due to an adjustment to the estimates.

Dated: September 21, 2004.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 04–21705 Filed 9–27–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7820–3]

Good Neighbor Environmental Board Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The next meeting of the Good Neighbor Environmental Board, a Federal advisory committee that reports to the President and Congress on environmental and infrastructure projects along the U.S. border with Mexico, will take place in Douglas, Arizona, on October 27th and the morning of October 28th, 2004. It is open to the public.

DATES: On October 27th, the meeting will begin at 8:30 a.m. (registration at 8 a.m.) and end at 5:30 p.m. On October 28th, the Board will hold a routine business meeting from 8 a.m. until 12 noon (registration at 7:30 a.m.).

ADDRESSES: The meeting site is the City of Douglas Police Department Conference Room, located at 300 14th St., Douglas, AZ, 85607. The phone number is (520) 364–8422.

FOR FURTHER INFORMATION CONTACT: Elaine M. Koerner, Designated Federal Officer for the Good Neighbor Environmental Board, U.S. Environmental Protection Agency Region 9 Office, 75 Hawthorne St., San Francisco, California, 94105. Tel: Region 9 office: (415) 972–3437; DC office (202) 233–0069. e-mail: *koerner.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION: Agenda: On the first day of the meeting, which

begins at 8:30 a.m. (registration at 8 a.m.), the Board has invited the Mayor of Douglas to address attendees at the onset, followed by presentations from local experts throughout the day on three border-region environmental issues: drought; environmental impacts of immigration; and air quality. The first day also will include a public comment session, an update from Board members about their organizations' recent activities, and a report-out from a Mexican counterpart advisory group. It will conclude at 5:30 p.m. The second day of the meeting, October 28th, will take the form of a half-day routine business meeting. It will begin at 8 a.m., with registration at 7:30 a.m. The meeting will end at noon.

Public Attendance: The public is welcome to attend all portions of the meeting. Members of the public who plan to file written statements and/or make brief (suggested 5-minute limit) oral statements at the public comment session on the first day are encouraged to contact the Designated Federal Officer (DFO) for the Board prior to the meeting.

Meeting Access: Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Background: The Good Neighbor Environmental Board meets three times each calendar year at different locations along the U.S.-Mexico border and in Washington, DC. It was created by the Enterprise for the Americas Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico, and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

Dated: September 7, 2004.

Elaine Koerner,

Designate Federal Officer.

[FR Doc. 04–21706 Filed 9–27–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

September 22, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0971.

Title: Numbering Resource Optimization, Second Report and Order, Order on Reconsideration in CC Docket No. 96–98 and CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 99–200.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,050 respondents; 50,500 responses.

Estimated Time Per Response: .25–3 hours.

Frequency of Response: On occasion and semi-annual reporting requirements and third party disclosure requirement.

Total Annual Burden: 14,000 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: The Second Report and Order imposed two information collection requirements on carriers. First, a request for "For Cause" auditing requests, the North American Number Plan Administrator (NANPA), the Pooling Administrator or a state commission must state, in writing, the reason for the request (such as misleading or inaccurate data) and provide supporting documentation. Audits will be performed by the Commission's Enforcement Bureau or by other designated agents. State commissions may participate in these audits along with the commission's auditors or its designated agents. Secondly, State commissions requesting copies of carriers' applications for initial and growth numbering resources should obtain such copies directly from the carriers, rather than from the NANPA or the Pooling Administrator. This approach avoids a costly burden on national numbering administration while placing only a minimal burden on carriers. The Commission is seeking an extension (no change in requirements) for this information collection. We are requesting continued OMB approval for this collection and thus, the full three-year clearance from the OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21729 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 20, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 29, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0316.

Title: Section 76.1700, Records To Be Maintained Locally by Cable Systems Operators for Public Inspection.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 4,000.

Estimated Time per Response: 26 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 104,000 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 76.1700 of the Commission's rules requires cable television systems having 1,000 or more subscribers to maintain a public inspection file containing certain records. The records are used by FCC staff in field inspections/investigations, local public officials, and the public to access a cable television system's performance and to ensure that the system is in compliance with all of the Commission's applicable rules and regulations.

OMB Control Number: 3060–0332.

Title: Section 76.614, Cable Television System Regular Monitoring and Section 76.1706, Signal Leakage Logs and Repair Records.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 8,250.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirement.

Total Annual Burden: 5,775 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The requirements under this OMB control number were previously contained in 47 CFR Section 76.614. The data is used by cable television systems and the Commission to prevent, locate and eliminate harmful interference as it occurs, to help assure safe operation of aeronautical and marine radio services, and to minimize the possibility of interference to these safety-of-life services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21731 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–10–M

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket Nos. 96–262, 91–213; DA 04–2997]

Reconsideration of Price Cap Carrier Reallocation of General Support Facilities Costs

AGENCY: Federal Communications Commission.

ACTION: Notice; termination of proceedings.

SUMMARY: This document is a notification of final termination of the petitions for reconsideration of a 1997 Commission order regarding the reallocation of costs of general purpose computers and other general support facilities to the billing and collection account for incumbent local exchange carriers subject to price cap regulation. The petitions for reconsideration have been withdrawn by the petitioners. No oppositions to the prior notice of termination were received; therefore, interested parties are hereby notified that this proceeding has been terminated.

DATES: This proceeding was terminated effective September 9, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On July 22, 2004, the Wireline Competition Bureau's Pricing Policy Division issued a Public Notice in the Access Charge Reform Third Report and Order reconsideration proceeding stating that the proceeding would be terminated effective 30 days after publication of the Public Notice in the **Federal Register**, unless the Bureau received oppositions to the termination before that date. The notice was published in the **Federal Register** on August 10, 2004. *See* 69 FR 48492, August 10, 2004. The Bureau did not receive any oppositions to the termination of this proceeding within 30 days of **Federal Register** publication of the notices; therefore, this proceeding was terminated as of September 9, 2004.

Authority: 47 U.S.C. 152, 153, 154, 155, 303; 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

Jeffrey J. Carlisle,

Chief, Wireline Competition Bureau.

[FR Doc. 04–21732 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the final meeting of the Technological Advisory Council ("Council") under its charter renewed as of November 25, 2002. The meeting will be held at the Federal Communications Commission in Washington, DC.

DATES: October 27, 2004 beginning at 10 a.m. and concluding at 3 p.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305 Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp, (202) 418–1096.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from different areas such as manufacturing, academia, communications services providers, the research community, etc., can provide advice to the FCC on innovation in the communications industry. At this seventh and last meeting of the Technological Advisory Council III, the Council will discuss the current state-of-the art of Ultra Wide Band (UWB), planned applications, and product roadmaps for the applications, and challenges. Invited speakers from the Multiband OFDM Alliance (MBOA) and UWB Forum will present live demonstrations of alternative UWB technologies: multiband OFDM and DSC–SS.

The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *Jeffery.Goldthorp@fcc.gov*. Mail delivery address is: Federal Communications Commission, 445 12th Street, SW., Room 7–A325, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–21730 Filed 9–27–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent to Request Clearance for Extension of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request from the Office of Management and Budget ("OMB") clearance for extension of collections of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR part 1102, subpart A, Temporary Waiver Requests. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before November 29, 2004.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, Subpart A; Temporary Waiver Requests.

ASC Form Number: None.

OMB Number: 3139–0003.

Expiration Date: Three years from OMB approval date.

Type of Request: Extension of existing collection of information.

Description of Need. The information sets out detailed procedures governing temporary waiver proceedings under § 1119(b) of the Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)).

Automated Data Collection: None.

Description of Respondents: State, local or Tribal government; individuals or households; and business and other for-profit institutions.

Estimated Average Number of Respondents: 1 respondent.

Estimated Average Number of Responses: Once.

Estimated Average Burden Hours Per Response: 10 hours for each proceeding.

Estimated Annual Reporting Burden: 10 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: September 22, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–21635 Filed 9–27–04; 8:45 am]

BILLING CODE 6700–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent to Request Clearance for Extension of Collection of Information; Opportunity For Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request from the Office of Management and Budget ("OMB") clearance for extension of collection of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR part 1102, subpart C, Rules Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity

of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before November 29, 2004.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart C; Rules Pertaining to the privacy of Individuals and Systems of Records Maintained by the Appraisal Subcommittee.

ASC Form Number: None.

OMB Number: 3139–0004.

Expiration Date: Three years from OMB approval date.

Type of Request: Extension of existing collection of information.

Description of Need: The information sets out detailed procedures implementing the Privacy Act of 1974, as amended. 12 U.S.C. 552a.

Automated Data Collection: None.

Description of Respondents: State, local or Tribal government; individuals or households; not-for-profit institutions; farms; business or other for-profit; and Federal government.

Estimated Average Number of Respondents: 4 respondents.

Estimated Average Number of Responses: Once per respondent.

Estimated Average Burden Hours per Response: 4.25 hours.

Estimated Annual Reporting Burden: 17 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: September 22, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–21636 Filed 9–27–04; 8:45 am]

BILLING CODE 6700–01–M

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Appraisal Subcommittee; 60 Day Notice of Intent to Request Clearance for Extension of Collection of Information; Opportunity for Public Comment

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Notice of intent to request from the Office of Management and Budget ("OMB") clearance for extension of collections of information and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and 5 CFR part 1320, Reporting and Recordkeeping Requirements, the Appraisal Subcommittee of the Federal Financial Institutions Examination Council ("ASC") is soliciting comments on the need for the collection of information contained in 12 CFR part 1102, subpart D, Description of Office, Procedures, Public Information. The ASC also requests comments on the practical utility of the collection of information; the accuracy of the burden hour estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden to respondents, including use of automated information collection techniques or other forms of information technology.

DATES: Comments on this information collection must be received on or before November 29, 2004.

ADDRESSES: Send comments to Ben Henson, Executive Director, Appraisal Subcommittee, 2000 K Street, NW., Suite 310, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Marc L. Weinberg, General Counsel, Appraisal Subcommittee, at 2000 K Street, NW., Suite 310, Washington, DC 20006 or 202–293–6250.

SUPPLEMENTARY INFORMATION:

Title: 12 CFR part 1102, subpart D; Description of Office, Procedures, Public Information.

ASC Form Number: None.

OMB Number: 3139–0006.

Expiration Date: Three years from OMB approval date.

Type of Request: Extension of existing collection of information.

Description of Need: The information sets out detailed procedures implementing the Freedom of Information Act, as amended. 12 U.S.C. 552.

Automated Data Collection: None.

Description of Respondents: State, local or Tribal government; individuals or households, business or other for-profit institutions; not-for-profit institutions; farms; and Federal government.

Estimated Average Number of Respondents: 11 respondents.

Estimated Average Number of Responses: Once per respondent.

Estimated Average Burden Hours Per Response: .5 hours.

Estimated Annual Reporting Burden: 5.5 hours.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: September 22, 2004.

Ben Henson,

Executive Director.

[FR Doc. 04–21637 Filed 9–27–04; 8:45 am]

BILLING CODE 6700–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P5–04]

Petition of American President Lines, Ltd., and APL Co. Pte. Ltd., for a Full Exemption From the First Sentence of Section 9(c) of the Shipping Act of 1984, as Amended; Notice of Filing

Notice is hereby given that American President Lines, Ltd., and APL Co. Pte. Ltd., ("Petitioners") have petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.69, for a full exemption from the first sentence of Section 9(c) of the 1984 Act, 46 U.S.C. app. 1708(c).* Petitioners seek an exemption to permit them to reduce their tariff rates, charges, classifications, rules or regulations, effective upon publication.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than October 12, 2004. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Robert T. Basseches, Esq., or David B. Cook, Esq., Shea & Gardner, 1800 Massachusetts Avenue, NW., Washington, DC 20036. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word, or ASCII) on

* While Petitioners, at the time they filed their Petition, do not meet the statutory definition of a controlled carrier within the meaning of the Shipping Act of 1984, as amended, Petitioners advise that they anticipate meeting this statutory definition in the very near future.

diskette, or e-mailed to *secretary@fmc.gov*.

Copies of the Petition are available at the Office of the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling 202–523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–21743 Filed 9–27–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 22, 2004.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045–0001:

1. Popular, Inc., Popular International Bank, Inc., and Popular North America, all of San Juan, Puerto Rico; to acquire 100 percent of the voting shares of Kislak Financial Corporation, and thereby indirectly acquire voting shares of Kislak National Bank, both of Miami Lakes, Florida.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. Nicholas, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Marshall Bancorp, Inc., Minneapolis, Minnesota; to acquire 100 percent of the voting shares of BANKFIRST Corporation, Sioux Falls, South Dakota, and thereby indirectly acquire voting shares of BANKFIRST, Sioux Falls, South Dakota.

2. State Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of First State Bank of Audubon, Audubon, Minnesota.

Board of Governors of the Federal Reserve System, September 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21634 Filed 9–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 12, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; through its subsidiary, Metavante Corporation, to acquire NuEdge Systems, LLC, Brookfield, Wisconsin, and thereby engage in data processing, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, September 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21633 Filed 9–27–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

[Docket No. OP–1182]

Policy Statement on Payments System Risk

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: The Board has revised its Policy Statement on Payments System Risk (PSR policy) to modify the daylight overdraft measurement rules ("posting rules") for interest and redemption payments on securities issued by entities for which the Reserve Banks act as fiscal agents but whose securities are not obligations of, or fully guaranteed as to principal and interest by, the United States—that is, securities issued by government-sponsored enterprises (GSEs) and certain international organizations. In connection with this policy change, the Board supports the formation of an industry working group to promote a smooth transition through collaborative discussion of implementation issues. The working group will be coordinated through the Federal Reserve Banks' Wholesale Product Office in New York; organizations that commented on the planned policy changes, members of those organizations, and fiscal principals to whom the policy applies will be invited to participate.

Additionally, the Board has revised its PSR policy to align the policy's treatment of the general corporate account activity (activity other than interest and redemption payments) of GSEs and certain international organizations with the treatment of account activity of other Federal Reserve account holders that do not have regular access to the Federal Reserve's discount window. Such treatment includes strongly discouraging daylight overdrafts and applying a penalty fee to daylight overdrafts that nonetheless result from these entities' general corporate payment activity.

The Board has also revised its policy to reflect the recent changes to the operating hours of the on-line Fedwire Funds Service, to clarify certain items, and to remove or update items that have become outdated.[1]

DATES: The PSR policy revisions concerning the posting rules for interest and redemption payments on securities issued by GSEs and certain international organizations and the revisions that align the policy's treatment of the general corporate account activity of these entities will take effect on July 20, 2006. The other changes to the PSR policy are effective September 22, 2004.

FOR FURTHER INFORMATION CONTACT: Paul Bettge, Associate Director (202/452–3174), Lisa Hoskins, Assistant Director (202/452–3437), or Connie Horsley, Senior Financial Services Analyst (202/452–5239), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Background

In February 2004, the Federal Reserve Board announced two intended revisions to its PSR policy (69 FR 6292, Feb. 10, 2004). The first revision would modify the daylight overdraft posting rules under the PSR policy to specify that Reserve Banks will release interest and redemption payments on the Fedwire-eligible securities issued by a GSE or international organization only when the issuer's Federal Reserve account contains funds equal to or in excess of the amount of the interest and redemption payments to be made.[2, 3] The second revision would align the PSR policy's treatment of the general corporate account activity of these entities with the treatment of activity of other account holders that do not have regular access to the discount window.[4] Such treatment would include applying a penalty fee to daylight overdrafts resulting from these entities' general corporate payment activity and potentially applying additional risk controls as a means of deterring further the use of Federal Reserve daylight credit.[5, 6]

The policy revisions result from an assessment of the temporary exemption granted to GSEs under the Board's 1994 interpretation of the PSR policy (59 FR 25060, May 13, 1994). That earlier interpretation had stated that GSEs should not incur daylight overdrafts in their accounts and would not be allowed to adopt positive net debit caps because they do not have regular access to the discount window. However, in its 1994 interpretation, the Board granted a temporary exemption from fees on daylight overdrafts resulting from the Reserve Banks' release of interest and redemption payments on Fedwire-eligible securities issued by GSEs prior to the issuers' full funding of such payments.[7] The Board granted this temporary exemption because it was uncertain of the effect that daylight overdraft fees would have on securities markets and did not want to introduce too much change at one time. The Board, however, indicated that it would revisit the temporary exemption after market participants adjusted to the effects of daylight overdraft fees. In addition, the Board applied the regular daylight overdraft fee to the daylight overdrafts arising from the GSEs' general corporate funding activity, but did not apply the penalty fee that applies to other institutions that lack regular discount window access.[8] The Board stated it was not, however, ruling out the future application of the penalty fee.

In 2000, the Board began a general evaluation of the effectiveness of the PSR policy's daylight overdraft fee. Recognizing that significant changes had occurred in the banking, payments, and regulatory environment since the fee was introduced in 1994, the Board decided to broaden its evaluation of the fee to include all aspects of the Federal Reserve's daylight credit policies. Based on its review, the Board identified growing liquidity pressures among certain payments system participants and, as a result, made several modifications to the PSR policy (66 FR 64419, Dec. 13, 2001).[9] The Board also determined that the PSR policy appears to be generally effective in controlling risk to the Federal Reserve and creating incentives for depository institutions to manage their intraday credit exposures. In addition, the Board determined that market participants appear to have adjusted to daylight overdraft fees; this determination prompted an assessment of the Board's 1994 interpretation of the PSR policy. In conducting this assessment, the Board evaluated the treatment of interest and redemption payments on Fedwire-eligible securities issued by GSEs and certain international organizations as well as the treatment of other payment services these entities

[1] Fedwire is a registered servicemark of the Federal Reserve Banks.

[2] The GSEs include Fannie Mae, the Federal Home Loan Mortgage Corporation (Freddie Mac), entities of the Federal Home Loan Bank System (FHLBS), the Farm Credit System, the Federal Agricultural Mortgage Corporation (Farmer Mac), the Student Loan Marketing Association (Sallie Mae), the Financing Corporation, and the Resolution Funding Corporation. The international organizations include the World Bank, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank.

[3] In their role as fiscal agents, the Reserve Banks maintain securities issued by GSEs and international organizations on the Fedwire Securities Service and make interest and redemption payments to depository institutions on each issuer's behalf, in addition to providing other payment services generally related to these fiscal agency services.

[4] Under the PSR policy, an institution's eligibility to access daylight credit is contingent upon whether the institution is eligible for regular access to the Federal Reserve's discount window and whether it is in sound financial condition. By statute, regular access to the discount window generally is available to institutions that are subject to reserve requirements (12 U.S.C. 461(b)(7)).

[5] A daylight overdraft occurs when an account holder's Federal Reserve account is in a negative position during the business day.

[6] The penalty fee is equal to the regular daylight overdraft fee, currently 36 basis points, plus 100 basis points. A Reserve Bank may apply other risk controls to an account holder's payment activity if the account holder incurs daylight overdrafts in violation of the PSR policy or if the Reserve Bank believes that the account holder poses credit risk in excess of what the Reserve Bank determines to be prudent. For example, a Reserve Bank may place real-time controls on the account holder's payment activity, so as to reject those payments that would create, or increase, a daylight overdraft in the entity's account. These payment types include Fedwire funds transfers, National Settlement Service (NSS) transactions, and certain automated clearing house transactions. The Reserve Bank could also require the account holder to pledge collateral to cover any daylight overdrafts it does incur.

[7] The term "interest and redemption payments" refers to payments of principal, interest, and redemption on securities maintained on the Fedwire Securities Service.

[8] To facilitate measurement of overdrafts arising from the different activity, the Board required the GSEs and Reserve Banks to establish separate GSE accounts for principal and interest activity (P&I account) and for general corporate payment activity (general account).

[9] These modifications included changes to the net debit cap calculation for U.S. branches and agencies of foreign banks and a provision that would allow certain depository institutions to pledge collateral to the Federal Reserve in order to access additional daylight overdraft capacity above their net debit caps, subject to Reserve Bank approval.

use for their general corporate payment activity. The Board's assessment led to the policy modifications discussed below.

A. Treatment of Interest and Redemption Payments

According to the Board's current daylight overdraft measurement rules, U.S. Treasury and government agency interest and redemption payments are posted, that is, debited from the issuers' accounts and credited to the receivers' accounts, by 9:15 a.m. ET and original issues of securities are posted on a flow basis, as they are issued, but no earlier than 9:15 a.m. ET.[10] These posting rules were designed primarily to grant depository institutions the benefit of receiving interest and redemption payments on U.S. Treasury or government agency securities prior to debits being made to their accounts for the purchase of new issues. For operational ease, the Reserve Banks have applied the same posting rules to interest and redemption payments on Fedwire-eligible securities issued by GSEs and international organizations.

In the course of its assessment of the 1994 policy interpretation, the Board found that the dollar volume of interest and redemption payments on Fedwire-eligible securities issued by GSEs and international organizations that are credited to the receiving depository institutions' Federal Reserve accounts prior to such payments being fully funded by the issuer has grown significantly and to very large amounts over the past ten years. In large part, this increase owes to the rapid growth in Fedwire-eligible securities issued by GSEs. In addition, for some issuers, the lag between the time the Reserve Banks credit depository institutions' accounts for the interest and redemption payments and the time the issuer covers the payments extends, at times, until shortly before the close of the Fedwire Funds Service.[11]

The Board determined that the practice of releasing such payments before they are fully funded by the issuer is neither necessary to achieve the Federal Reserve's statutory mission nor appropriate risk management policy for the central bank. To control their risks, private issuing and paying agents generally do not allow payments to be made for a securities issuer before the issuer has fully funded its payments. The Board, therefore, announced in February 2004 its intention to revise its policy to specify that the Reserve Banks will release interest and redemption payments on Fedwire-eligible securities issued by a GSE or an international organization only when the issuer's Federal Reserve account contains funds equal to or in excess of the amount of the issuer's interest and redemption payments to be made and provided that these funds are in the issuer's Federal Reserve account prior to an established cut-off hour on the Fedwire Securities Service.[12] This stated policy direction was intended to eliminate the Federal Reserve's intraday credit exposure that results from the current manner in which the Reserve Banks process and post interest and redemption payments on securities issued by GSEs and international organizations to the receiving depository institutions' Federal Reserve accounts prior to such payments being fully funded by the issuer.

B. Treatment of Other Payment Services

In its assessment of the 1994 policy interpretation, the Board also evaluated the treatment of other Federal Reserve payment services used by GSEs and international organizations for their general corporate payment activity, that is, payment activity unrelated to interest and redemption payments. While most of these entities only infrequently incur daylight overdrafts at Federal Reserve Banks as a result of their general corporate payment activity, a few of these entities incur such daylight overdrafts on an almost daily basis.

The Board determined that GSEs and international organizations for which the Reserve Banks act as fiscal agents should not be permitted the same access to intraday credit as depository institutions because, by statute, the former do not have regular access to the discount window. Therefore, to provide uniform treatment of account holders that do not have regular access to the discount window, the Board announced its intention to apply the same penalty fee that applies to daylight overdrafts of these entities to daylight overdrafts that result from GSEs' and international organizations' general corporate payment activity. This policy change will be implemented concurrent with the posting rule change for interest and redemption payments described above. This policy change supersedes the Board's 1994 temporary exemption pertaining to GSEs, and the Board, therefore, is rescinding its 1994 interpretation upon implementation of the new policy.

C. Request for Comment

With respect to the posting rule changes described above, the Board requested comment on how best to implement the policy change in order to promote a smooth market adjustment. More specifically, if market participants believed that a phased approach would better facilitate implementation of the planned change, the Board requested comment on the rationale for why such an approach is considered preferable to one of full implementation as of a single date and on the specific structure and objectives of any such approach. Below is a summary and analysis of the comments received on the planned policy changes.

II. Summary of Comments and Analysis

The Board received ten comment letters on its proposed policy changes. The commenters included five commercial banking organizations, two GSEs, two industry groups, and one Federal Reserve Bank. The majority of the comments focused on different approaches for implementing the posting rule changes. Although several commenters recognized the policy changes as consistent with the overall objectives of the PSR policy, one commenter noted that the posting rule change may represent a suboptimal solution to the current practice because it may only redistribute credit risk from the Federal Reserve to other parties rather than reduce or eliminate it. Four commenters proposed the formation of a working group to evaluate further the impact of the intended policy revisions. Three commenters discussed the appropriateness of the 4 p.m. ET cut-off hour. Finally, one commenter expressed concern that issuers might prioritize funding of their general corporate payment activity before funding of their interest and redemption payments, thereby delaying interest and redemption payments in order to avoid daylight overdrafts and the associated penalty fee under the Board's revised policy.

A. Implementation Approaches

1. Phased Implementation

Seven commenters recommended some form of a phased implementation. These commenters raised concerns that an abrupt change in available intraday liquidity under a full implementation scenario has the potential to increase

[10] While transactions for various payment types are processed throughout the business day, daylight overdrafts in an entity's Federal Reserve account are calculated on an ex post basis according to the daylight overdraft posting rules.

[11] The scheduled close of the Fedwire Funds Service is 6 p.m. ET for third-party transfers and 6:30 pm ET for bank-to-bank transfers.

[12] The Board established a cut-off hour of 4 p.m. ET by which issuers must fund the amount of their respective interest and redemption payments to be made on a given day in order for Reserve Banks to release such payments on that day.

systemic risk, particularly in light of the aggregate dollar amounts involved and the potential loss of liquidity early in the day. Two commenters urged a phased approach to avert potential payments gridlock stemming from the loss of market liquidity early in the day, arguing that this gridlock could increase the risk of overnight exposure if payment flows were to shift to later in the day. One commenter noted that the policy changes could put pressure on overnight investment markets to return funds earlier in the day. Three commenters expressed uncertainty as to whether sufficient intraday credit exists among depository institutions generally to absorb the issuers' liquidity demands. These commenters raised concerns that the effects of the policy changes would likely be concentrated among a small number of institutions, such as the larger custody and clearing banks. These commenters also stressed that daylight overdrafts and the associated costs at these institutions would likely increase as a result of the policy changes and would make it difficult for them to serve as a potential source of liquidity to issuers. Another commenter raised concerns that full implementation with no phase-in would be unnecessarily burdensome to broker-dealers as well as depository institutions in terms of the availability and cost of daylight overdrafts.

The seven commenters generally viewed a phased approach to implementation as preferable because they believe it would promote better understanding of the effects of the posting rule change among market participants and allow for a more gradual and orderly adjustment to the potential removal of liquidity currently provided early in the day, thereby reducing the potential for unintended consequences. One commenter stated that a phased implementation would also allow issuers time to identify and gradually access alternative sources of funding. Two commenters emphasized that a phased approach would have information value to market participants and the Federal Reserve and could provide the Federal Reserve with a better opportunity to observe and assess the effects of the policy changes prior to full implementation. One commenter likened phasing in this policy change to the approach the Board used to introduce pricing of daylight overdrafts.

Commenters described a variety of potential phased approaches that attempt to address the concerns outlined above. These approaches include phasing in the changes by payment type, by product type, or by time of day. One commenter suggested treating the issuers' accounts, during a predefined phase-in period, similarly to those of other account holders that do not have regular access to the discount window, which implies applying a penalty fee to daylight overdrafts resulting from the release of the issuers' interest and redemption payments. Two commenters recommended piloting the changes with a subset of issuers. One of these commenters suggested that such an approach could begin prior to July 2006. Three commenters recommended that a phased implementation begin in July 2006. One commenter suggested adoption of a phased approach after a study of potential market implications. Each of the commenters' suggested phase-in options is described below.

Two commenters recommended a phased implementation approach by payment type, whereby an issuer's principal and interest payments would be separated from its redemption payments. These commenters are likely referring to mortgage-backed securities, whose payments have a principal and interest component as well as a redemption component. One of these commenters reasoned that the funding for principal and interest payments is presumably more readily available than the funding for redemption payments because the principal and interest payments accrue (as the mortgages that underlie the securities are paid) and are invested over time and should be available on payment date, whereas redemption payments are funded from the proceeds of new securities issuances. Under these assumptions, the commenter suggested that the Board consider continuing to fund one type of payment and phase in the funding requirement on the other. Another commenter suggested the option of a phasing in implementation by product type under each issuer, whereby the provision of intraday credit supporting the release of interest and redemption payments on different products would be removed gradually.

Three commenters addressed the potential for a phased implementation by time of day. One commenter suggested an approach that would gradually reduce the amount of time between the release of interest and redemption payments and the deadline for reimbursement of those funds. Another commenter described a similar approach whereby the Federal Reserve would continue to extend credit during an interim period in order to release the interest and redemption payments, but the time at which these payments are made would be pushed back gradually until such time that the credit is ultimately withdrawn. The commenter noted that this approach would ensure that interest and redemption payments would be made during the interim period and could avert precipitation of systemic liquidity problems. A third commenter, however, expressed concern that the latter approach may not be worth pursuing because the system changes required to adopt such an approach would be short-lived.

One commenter suggested that the Board consider an approach whereby the Federal Reserve continues to fund issuers' interest and redemption payments in the early morning over an interim period while treating the issuers' accounts in the same manner as other account holders that do not have regular access to the discount window. The Board notes that such treatment includes strongly discouraging daylight overdrafts and applying a penalty fee to daylight overdrafts that nonetheless result. Under this approach, the Reserve Banks' release of the interest and redemption payments could result in daylight overdrafts in the issuers' Federal Reserve accounts to which the penalty fee would then be applied. The commenter reasoned that this phased approach could reduce the daylight overdraft implications to depository institutions as compared with an approach of full implementation, and it would allow them more time to assess the effect of the policy changes.

Two commenters suggested the option of phasing in the policy changes on an issuer-by-issuer basis to allow market participants to gradually adjust practices. The Federal Farm Credit Banks Funding Corporation expressed its willingness to participate in a pilot program of the policy changes prior to July 2006 if the Board viewed such an approach as useful. This commenter, self-described as "a smaller GSE debt-issuing agent," proposed the approach as a means for the Federal Reserve to gain experience with the policy changes with smaller organizations prior to implementation with the largest organizations that presumably have greater intraday credit demands.

2. Full Implementation

One commenter supported full implementation of the planned policy changes, stating that the entities potentially affected by the changes have sufficient capability and appropriate incentives to transition to the new policy without further guidance from the Board. This commenter believed that a phased approach was unnecessary and that the policy changes should be implemented fully beginning July 2006.

One commenter noted that separation of each issuers' principal and interest

payments from its redemption payments (again, likely referring to payments on mortgage-backed securities) and potentially further separation of each issuers' payments by product type would allow issuers to segment their respective funding requirements to potentially more manageable levels throughout the day. The commenter recognized that decisions regarding separation and prioritization of payments are at the discretion of each issuer, but anticipated that such an approach would be supported by market participants, including issuers, because the commenter believes the approach would reduce the potential adverse effects of the Board's posting rule change on financial markets generally and, in particular, on the marketplace for these issuers' securities.

Another commenter urged consideration of an alternative method of processing interest and redemption payments that would involve an acceleration of new issue processing that allows for netting of refunding instruments against interest and redemption payments. The commenter noted that this approach could allow for periodic posting of debits to issuers' accounts throughout the day as opposed to the current process of posting single, aggregate debits early in the day and would reduce issuers' intraday credit needs to the residual amount resulting from any mismatch between new issuances and interest and redemption payments. This commenter suggested that the Board additionally consider some form of a collateralized borrowing arrangement or a committed, but unfunded backup line of credit to further offset a portion of an issuer's funding requirement.

3. Assessment of Implementation Approaches

As mentioned, those commenters supporting a phased approach to one of full implementation asserted that, in general, such an approach would allow market participants to adapt gradually to the potential removal of liquidity early in the day and would decrease the potential for payments gridlock that could otherwise increase systemic risk. These commenters further asserted that a phased implementation would promote a better understanding among market participants, including the Federal Reserve, of the liquidity and operational effects of the policy changes.

As explained in more detail below, the Board does not view a phased implementation as necessary or in the public interest. The Board acknowledges that the posting rule modification for the interest and redemption payments on securities issued by GSEs and certain international organizations will remove one source of free intraday credit and necessitate adjustments by market participants. However, after reviewing commenters' rationales for a phased implementation, including their concerns regarding liquidity and gridlock, the Board does not believe that commenters identified any particular aspect of the planned policy changes or related adjustments that would impede a smooth implementation or that would cause significant market disruptions were the new policy to become effective without a phase-in period. In addition, experiences with previous changes to the PSR policy indicate that full implementation of such changes can occur successfully and without disrupting payments systems, provided market participants have adequate lead time and engage in active planning. To facilitate such planning and information sharing among affected parties, the Board supports the formation of an industry working group, as described further below.

The Board also believes that commenters' specific phased approaches have a number of disadvantages when compared to a full-implementation approach. In particular, some of the approaches, especially in their early stages, may not provide a good indication of the influences and pressures that will shape full implementation. That is, one stage of a phased implementation does not necessarily have predictive value for subsequent stages or for full implementation. The Board is concerned, therefore, that practices adopted under a phased implementation may not facilitate smooth market functioning or preparedness when full implementation occurs. In addition, some of the approaches impose explicit conditions that would not exist upon full implementation of the policy changes. To the extent the proposed approach differs from the future steady-state environment, the approach may adversely affect market participants' ability to adapt effectively to the policy changes. Finally, many of the phased approaches would require numerous changes in practices and systems to accommodate the various steps, with the consequent potential for additional costs, coordination issues, and increased operational risk. For these reasons, the Board believes that the potential drawbacks of a phased implementation outweigh the potential benefits, and therefore that full implementation of the policy changes, with adequate planning, is appropriate.

In terms of commenters' specific concerns with the potential removal of liquidity early in the day, the Board believes that this concern is based on a belief that there may be insufficient market liquidity to smoothly adjust to the policy changes and that issuers will take little or no action to adjust their funding patterns in response to these changes. The Board acknowledges that while the policy changes will result in the removal of free Federal Reserve intraday credit and certain market participants will have to adjust, sufficient aggregate market liquidity exists to absorb the potential reduction in liquidity early in the day. Additionally, while the Board understands that there may be some uncertainty regarding the intraday timing of receipt of interest and redemption payments given that each issuer's response to the revised policy cannot be predicted, the Board believes it is likely that issuers have a strong business incentive to respond to the policy changes in a manner that would avoid potential adverse liquidity effects. Moreover, the Board believes that issuers and market participants, particularly those that receive interest and redemption payments on the issuers' securities, will have been provided ample time to engage one another in discussions regarding potential changes to funding patterns in response to the policy changes. These discussions should allow market participants to better anticipate issuer behavior and appropriately adjust liquidity and account management practices as necessary. The Board believes that the Federal Reserve's coordination of an industry working group may provide an effective forum for such discussions.

In response to commenters' gridlock concerns, the Board notes that similar concerns were raised before the Board's introduction of net debit caps that took effect in 1986, the reduction of net debit caps that took effect in 1988, and the announcement of daylight overdraft fees in 1992 (50 FR 21120, May 22, 1985; 52 FR 29255, Aug. 6, 1987; 54 FR 26094, June 21, 1989). With respect to the net debit cap introduction and subsequent reduction, the Board found no empirical support suggestive of any significant change to intraday payment patterns among depository institutions. With the introduction of daylight overdraft fees, while certain adjustments to payment patterns occurred, payments gridlock did not occur because institutions continued to have sufficient business incentive to ensure execution of their

customers' payments, particularly those considered to be time-critical. Similarly, with the posting rule change for interest and redemption payments, the Board believes that market participants will make some adjustments to their payment patterns, but that wide-ranging payments gridlock is highly unlikely given the payment expectations of customers and the business incentives that exist between counterparties. The Board is confident that issuers would consider these expectations and incentives in their decisions regarding management of their interest and redemption payments and their general corporate payment activity.

Commenters also discussed approaches that the Board might consider with respect to full implementation of the posting rule change. Regarding one commenter's suggestion of netting new issuances against interest and redemption payments, the Board notes that this approach, as described by the commenter, involves a continued extension of Federal Reserve intraday credit to finance any mismatch in timing between new issuances and interest and redemption payments. This commenter also suggested that the Board consider some form of a collateralized borrowing arrangement or a backup line of credit as "readily available" to further offset a portion of an issuer's funding requirement, which also involves a continued extension of Federal Reserve intraday credit. As mentioned, the Board has determined that the Federal Reserve will not extend intraday credit to entities that do not have regular access to the discount window. As such, the aforementioned implementation approaches are not viable.

In summary, the Board does not view a phased implementation as necessary to ensure a smooth market adjustment or as preferable to an approach of full implementation. As such, the Board plans to implement fully without a phase-in the policy changes effective July 20, 2006. The Board believes that full implementation in July 2006 should provide market participants sufficient time to adjust their systems and account management practices, as needed, to address operational or liquidity concerns. The Federal Reserve will communicate operational changes related to this policy change with account holders in a timely manner over the planning period and provide opportunities to test those changes prior to implementation.

B. Formation of a Working Group

Four commenters discussed the merits of forming a work group to discuss the planned policy changes. The general consensus among these commenters was that the group should be sponsored by the Federal Reserve with representation from a cross-section of market participants. The commenters' objective is to facilitate information sharing to minimize potential market disruptions stemming from the planned policy changes, such as the removal of free liquidity that has been provided early in the day under the current practice of releasing interest and redemption payments by 9:15 a.m. ET. Three of the commenters stated that the formation of such a group would promote transparency in devising an appropriate implementation plan. One of the commenters noted that precedent exists for forming such an industry group: the group formed to facilitate the migration of Ginnie Mae securities from the Depository Trust and Clearing Corporation to the Fedwire Securities Service.

One commenter suggested that the group perform an impact study of the changes prior to implementation. Another commenter suggested that the group evaluate the credit implications of treating the issuers similarly to other large corporate customers. This commenter also recommended that the group evaluate the system requirements and operational issues associated with implementation. Another commenter suggested that the purpose of the group would be to formulate a phase-in plan, while another stated that the group should develop a conversion plan and implementation schedule, regardless of whether a phased approach was adopted.

One commenter suggested that the group analyze various aspects of the interest and redemption payment data in order to make recommendations on items such as the timing of each issuer's interest and redemption payments, possible implementation methods, potential sources of credit to facilitate processing of interest and redemption payments, and management of depository institutions' daylight overdrafts. The proposed analysis would include evaluation of the dollar amounts of historical and prospective interest and redemption payments as well as the current timing of and any related overdrafts associated with these payments. The Board notes, however, that data regarding individual account holders' payment or daylight overdraft activity are confidential, and, as such, cannot be shared without their permission.

The Board recognizes that the effect of these policy changes on market participants may vary depending on the payment practices that each issuer ultimately adopts. As such, the Board sees value in fostering collaborative discussion among stakeholders regarding the policy implementation and will sponsor a working group, coordinated through the Federal Reserve Banks' Wholesale Product Office in New York. The Board believes that such a group could help to identify potential market adaptations to the policy changes and associated operational considerations. The Board also believes that the working group could enhance stakeholders' understanding of the future steady-state environment and therefore minimize the potential for market disruptions.

Organizations that commented on the planned policy changes, members of those organizations, and fiscal principals affected by these policy changes will be invited to participate in the working group. The Board notes that participation is not mandatory. In order to allow market participants and the Reserve Banks sufficient time to implement the planned policy changes on July 20, 2006, the majority of system requirements to implement the changes will need to be well-formulated by year-end 2004. Throughout implementation, the Wholesale Product Office will work closely with account holders to address operational considerations associated with the policy changes, as it does for other significant Fedwire-related operational changes.

The working group may also find it useful to discuss issues identified by two commenters relating to account reconciliation and repo tracking.[13] One commenter noted that, with the planned posting rule change, it would be necessary for payment recipients to receive an end-of-day file from the Reserve Banks to facilitate

[13] Repo tracking is a facility that allows adjustments to be made to the accounts of participants on the Fedwire Securities Service to ensure that the appropriate party receives principal and interest payments on mortgage-backed securities that have been marked with a repo identifier. The holder of one of these securities at close of business on record date will receive the associated principal and interest payment. However, the holder (identified as the "repo in" party) is not entitled to this payment in transactions such as those involving a repurchase agreement. The Reserve Banks keep track of repo records and make the necessary adjustment to ensure that the appropriate party receives the payment. The "repo in" party will receive a funds debit, and the "repo-out" party will receive a funds credit through the NSS. For more information, see *http://www.frbservices.org/Wholesale/CM-2001/CM-221.pdf.*

reconcilement of expected interest and redemption payments with those that were actually released on a given day. Another commenter recommended that the Federal Reserve examine the effects of the policy changes on the repo tracking functionality currently available to participants on the Fedwire Securities Service, given that payments will be processed by individual issuer under the revised policy.

The Board recognizes that the PSR policy changes will necessitate some operational changes to Federal Reserve systems and operating practices, such as the provision of additional files or modifications to allow interest and redemption payments to be released on an issuer-by-issuer basis. As such, Reserve Banks will conduct a comprehensive analysis of the current processes and system requirements to determine the necessary modifications to implement the policy changes effectively. The Board believes that the working group may be instrumental in identifying and discussing issues of this nature.

C. Establishment of a Cut-Off Hour

Three commenters addressed the establishment of a 4 p.m. ET cut-off hour by which issuers must fund their respective interest and redemption payments. One commenter urged the Federal Reserve to keep processing interest and redemption payments to the extent they are funded up until the close of the Fedwire Funds Service (6:30 p.m. ET) to avoid a technical default on the part of the issuer. Two commenters supported a cut-off hour earlier than 4 p.m. ET. Specifically, one of these commenters recommended that the cut-off hour be set at 3:30 p.m. ET to facilitate processing of payments dependent on the receipt of interest and redemption payments. Another commenter recommended a cut-off hour more similar to that of other issuing and paying agents, indicating that an earlier cut-off hour would facilitate orderly end-of-day processing and provide sufficient time for affected parties to make appropriate funding arrangements, if necessary. In addition, this commenter indicated that an earlier cut-off hour might reduce intraday liquidity pressures on interest and redemption payment recipients, presumably because it would offer greater predictability of payment receipt. This commenter also supported the ability for Reserve Banks to grant extensions of the cut-off hour in instances of significant market disruptions to ensure orderly settlement.

The Board established a cut-off hour of 4 p.m. ET because it is the latest time by which issuers could fund their interest and redemption payments for release that day and still allow the Reserve Banks to close the Fedwire Securities Service on time.[14] The Board views the establishment of a deadline no later than 4 p.m. ET as necessary to avoid disruptions to end-of-day processing for this and related systems. With respect to establishing a cut-off hour earlier than 4 p.m. ET, the Board views it as appropriate to base the cutoff hour on the Reserve Banks' operational capabilities, rather than on some other measure, such as the funding needs of individual market participants, because the Board views the former basis as both objective and transparent.

In the event an issuer does not fund its interest and redemption payments by the established cut-off hour of 4 p.m. ET, its payments would not be processed on that day. Requests by an issuer for extensions of the 4 p.m. ET funding deadline would not be granted in the normal course. Rather, the Reserve Banks would exercise their discretion in determining whether an extension is warranted in instances of significant market disruptions.

III. Other Policy Revisions

In addition to the changes described above, the Board has revised its policy to reflect recent changes to the operating hours of the on-line Fedwire Funds Service, to remove or update items that have become outdated, and to incorporate minor editorial changes to clarify meaning. The principal changes are described below.

Beginning in May 2004, the Federal Reserve changed the operating hours of the on-line Fedwire Funds Service from 18 to 21.5 hours. Because daylight overdraft fees are calculated based on the number of hours in the Fedwire Funds Service operating day, the fee calculation as described in the policy has been revised. The Board notes that the effective daily rates for both the regular daylight overdraft fee and the penalty fee have been truncated at seven decimal places because of programming changes made to Federal Reserve systems to expedite processing.[15] Similarly, the effective daily rate used to calculate the value of the deductible has been rounded to seven decimal places.[16] The Board recognizes that these changes may affect the fee calculations for some account holders; however, none of the changes result in increased daylight overdraft fees. The revised calculation is described in detail in section I.B. of the policy.

The Board has modified the posting rule for payments on U.S. Treasury and government agency matured coupons or definitive securities. The posting rule now distinguishes U.S. Treasury and government agency securities from securities issued by GSEs or international organizations. Until July 20, 2006, the posting rule for matured coupons and definitive securities issued by GSEs and international organizations will continue to specify that electronic credits for these items will post to recipients' Federal Reserve accounts by 9:15 a.m. ET.[17] Beginning on July 20, 2006, however, these payments will post throughout the business day as directed by the issuer, but only when the issuer's Federal Reserve account contains funds equal to or in excess of the amount of the payments to be made. This change is consistent with the aforementioned principle that entities that do not have regular access to the discount window are not eligible for intraday credit.

Finally, the Board has revised its policy to remove language pertaining to foreign banking organizations that became outdated as of February 20, 2002 and to remove language pertaining to electronic check presentments that became outdated as of April 1, 2002.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. ch. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the policy statement under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the policy statement.

[14] According to the Reserve Banks' Operating Circular 7, *Fedwire Securities Account Maintenance and Transfer Services*, funds-only transactions on the Fedwire Securities Service cannot be processed after 4:30 p.m. ET. Interest and redemption payments on Fedwire-eligible securities are processed through the Fedwire Securities Service as funds-only transactions. As such, a 4 p.m. ET cut-off hour provides the Reserve Banks a 30-minute window in which to complete the requisite processing for funds-related transactions in order to close the Fedwire Securities Service on time.

[15] The effective daily rate used in the calculation of the regular daylight overdraft fee has been truncated to 0.0000089. The effective daily rate used in the calculation of the penalty daylight overdraft fee has been truncated to 0.0000338.

[16] The effective daily rate used in the calculation of any applicable deductible amount has been rounded to 0.0000042.

[17] The policy clarifies that most payments on matured coupons or definitive securities are made by check and, as such, will post according to the policy's established check posting rules.

V. Federal Reserve Policy Statement on Payments System Risk

Section I. of the PSR policy is revised, effective September 22, 2004, to read as follows:

Introduction
I. Federal Reserve Daylight Credit Policies
A. Daylight Overdraft Definition and Measurement
B. Pricing
C. Net Debit Caps
1. Definition
2. Cap Categories
a. Self-assessed
b. De minimis
c. Exempt-from-filing
d. Zero
3. Capital Measure
a. U.S.-chartered institutions
b. U.S. branches and agencies of foreign banks
D. Collateralized Capacity
E. Special Situations
1. Edge and Agreement Corporations
2. Bankers' Banks
3. Limited-Purpose Trust Companies
4. Government-Sponsored Enterprises and International Organizations
5. Problem Institutions
F. Monitoring
1. Ex Post
2. Real Time
3. Multi-District Institutions
G. Transfer-Size Limit on Book-Entry Securities

Introduction

The Federal Reserve Board has developed this policy to address the risks that payment systems present to the Federal Reserve Banks (Reserve Banks), to the banking system, and to other sectors of the economy. This policy is directed primarily at risks on large-dollar payment systems, including Federal Reserve and private-sector systems. Risk can arise from transactions on the Federal Reserve's real-time gross settlement system (Fedwire), from transactions processed in other Federal Reserve payment systems (for example, the automated clearinghouse (ACH) system), and from transactions on private large-dollar systems.

The Reserve Banks face direct risk of loss should institutions be unable to settle their intraday or "daylight" overdrafts in their Federal Reserve accounts before the end of the day.[1] Moreover, systemic risk may occur if an institution participating in a private large-dollar payment system were unable to settle its net debit position. If this were to occur, the institution's creditors in that system might then be unable to settle their obligations in that system or other systems. Serious repercussions could spread to other participants in the private system, to other institutions not participating in the system, and to the nonfinancial economy generally. A Reserve Bank could be exposed to an indirect risk if the Federal Reserve's policies did not address this systemic risk. Finally, institutions create risk by permitting their customers, including other depository institutions, to incur daylight overdrafts in the institutions' accounts in anticipation of receiving covering funds before the end of the day.

The Board is aware that large-dollar systems are an integral part of clearing and settlement systems and that it is vital to keep the payments mechanism operating without significant disruption. Recognizing the importance of avoiding such disruptions, the Board continues to seek to reduce the risks of settlement failures that could cause these disruptions. The Board is also aware that some intraday credit may be necessary to keep the payments mechanism running smoothly and efficiently. The reduction and control of intraday credit risks, although essential, must be accomplished in a manner that will minimize disruptions to the payments mechanism. The Board expects to reduce and control risks without unduly disrupting the smooth operation of the payments mechanism by establishing guidelines for use by institutions and relying largely on the efforts of individual institutions to identify, control, and reduce their own exposures.

The Board expects institutions to manage their Federal Reserve accounts effectively and use Federal Reserve daylight credit efficiently and appropriately, in accordance with this policy. Although some intraday credit may be necessary, the Board expects that, as a result of its policies, relatively few institutions will consistently rely on significant amounts of intraday credit supplied by the Federal Reserve to conduct their business. The Board will continue to monitor the effect of its policies on the payments system.

The general methods used to control intraday credit exposures are explained in the policies below. These methods include limits on daylight overdrafts in institutions' accounts at Reserve Banks; collateralization, in certain situations, of daylight overdrafts at the Federal Reserve; limits on the maximum level of credit exposure that can be produced by each participant on private large-dollar systems; availability of backup facilities capable of completing daily processing requirements for private large-dollar systems; and credit and liquidity safeguards for private delivery-against-payment systems. To assist institutions in implementing the Board's policies, the Federal Reserve has prepared two documents, the "Overview of the Federal Reserve's Payments System Risk Policy" (Overview) and the "Guide to the Federal Reserve's Payments System Risk Policy" (Guide), which are available online at *http://www.federalreserve.gov/PaymentSystems/PSR*. The Overview summarizes the Board's policy on payments system risk, including net debit caps and daylight overdraft fees and is intended for use by institutions that incur only small and infrequent daylight overdrafts. The Guide explains in detail how these policies apply to different institutions and includes procedures for completing a self-assessment and filing a cap resolution, as well as information on other aspects of the policy.

I. Federal Reserve Daylight Credit Policies

A. Daylight Overdraft Definition and Measurement

A daylight overdraft occurs when an institution's Federal Reserve account is in a negative position during the business day. The Reserve Banks use an ex post system to measure daylight overdrafts in institutions' Federal Reserve accounts. Under this ex post measurement system, certain transactions, including Fedwire funds transfers, book-entry securities transfers, and net settlement transactions, are posted as they are processed during the business day. Other transactions, including ACH and check transactions, are posted to institutions' accounts according to a defined schedule. The following table presents the schedule used by the Federal Reserve for posting transactions to institutions' accounts for purposes of measuring daylight overdrafts.

Procedures for Measuring Daylight Overdrafts[2]

Opening Balance (Previous Day's Closing Balance)
Post Throughout Business Day:
+/− Fedwire funds transfers.

[1] In this policy statement, the term "institution" will be used to refer to institutions defined as "depository institutions" in 12 U.S.C. 461(b)(1)(A), U.S. branches and agencies of foreign banking organizations, Edge and agreement corporations, bankers' banks, limited-purpose trust companies, government-sponsored enterprises, and international organizations, unless the context indicates a different reading.

[2] This schedule of posting rules does not affect the overdraft restrictions and overdraft-measurement provisions for nonbank banks established by the Competitive Equality Banking Act of 1987 and the Board's Regulation Y (12 CFR 225.52).

+/− Fedwire book-entry securities transfers.

+/− National Settlement Service entries.

Post Throughout Business Day (Beginning July 20, 2006):

+ Fedwire book-entry interest and redemption payments on securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States.[3, 4, 5]

+ Electronic payments for matured coupons and definitive securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States.[6]

Post at 8:30 a.m. Eastern Time:

+/− Government and commercial ACH credit transactions.[7]

+ Treasury Electronic Federal Tax Payment System (EFTPS) investments from ACH credit transactions.

+ Advance-notice Treasury investments.

+ Treasury checks, postal money orders, local Federal Reserve Bank checks, and EZ-Clear savings bond redemptions in separately sorted deposits; these items must be deposited by 12:01 a.m. local time or the local deposit deadline, whichever is later.

− Penalty assessments for tax payments from the Treasury Investment Program (TIP).[8]

Post at 8:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:

+/− Main account administrative investment or withdrawal from TIP.

+/− Special Direct Investment (SDI) administrative investment or withdrawal from TIP.

+ 31 CFR Part 202 account deposits from TIP.

− Uninvested paper tax (PATAX) tax deposits from TIP.

− Main account balance limit withdrawals from TIP.

− Collateral deficiency withdrawals from TIP.

− 31 CFR Part 202 deficiency withdrawals from TIP.

Post at 8:30 a.m., 1 p.m., and 6:30 p.m. Eastern Time:

− Main account Treasury withdrawals from TIP.[9]

Post by 9:15 a.m. Eastern Time:

+ U.S. Treasury and government agency Fedwire book-entry interest and redemption payments.[10]

+ Electronic payments for U.S. Treasury and government agency matured coupons and definitive securities.[11]

Post by 9:15 a.m. Eastern Time (Until July 20, 2006):

+ Fedwire book-entry interest and redemption payments on securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States,[12]

+ Electronic payments for matured coupons and definitive securities that are not obligations of, or fully guaranteed as to principal and interest by, the United States.[13]

Post Beginning at 9:15 a.m. Eastern Time:

− Original issues of Treasury securities.[14]

Post at 9:30 a.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:

+ Federal Reserve Electronic Tax Application (FR–ETA) value Fedwire investments from TIP.

Post at 11 a.m. Eastern Time:

+/− ACH debit transactions.

+ EFTPS investments from ACH debit transactions.

Post at 11 a.m. Eastern Time and Hourly Thereafter:

+/− Commercial check transactions, including returned checks.[15, 16]

+/− Check corrections amounting to $1 million or more.

+/− Currency and coin deposits.

+ Credit adjustments amounting to $1 million or more.

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[3] The Reserve Banks act as fiscal agents for certain entities, such as government-sponsored enterprises (GSEs) and international organizations, whose securities are Fedwire-eligible but are not obligations of, or fully guaranteed as to principal and interest by, the United States. The GSEs include Fannie Mae, the Federal Home Loan Mortgage Corporation (Freddie Mac), entities of the Federal Home Loan Bank System (FHLBS), the Farm Credit System, the Federal Agricultural Mortgage Corporation (Farmer Mac), the Student Loan Marketing Association (Sallie Mae), the Financing Corporation, and the Resolution Funding Corporation. The international organizations include the World Bank, the Inter-American Development Bank, the Asian Development Bank, and the African Development Bank. The Student Loan Marketing Association Reorganization Act of 1996 requires Sallie Mae to be completely privatized by 2008; however, Sallie Mae plans to complete privatization by September 2006. Upon privatization, the Reserve Banks will no longer act as fiscal agents for new issues of Sallie Mae securities, and the new Sallie Mae will not be considered a GSE.

[4] The term "interest and redemption payments" refers to payments of principal, interest, and redemption on securities maintained on the Fedwire Securities Service.

[5] The Reserve Banks will post these transactions, as directed by the issuer, provided that the issuer's Federal Reserve account contains funds equal to or in excess of the amount of the interest and redemption payments to be made. In the normal course, if a Reserve Bank does not receive funding from an issuer for the issuer's interest and redemption payments by the established cut-off hour of 4 p.m. Eastern Time on the Fedwire Securities Service, the issuer's payments will not be processed on that day.

[6] Electronic payments for credits on these securities will post according to the posting rules for the mechanism through which they are processed, as outlined in this policy. However, the majority of these payments are made by check and will be posted according to the established check posting rules as set forth in this policy.

[7] Institutions that are monitored in real time must fund the total amount of their commercial ACH credit originations in order for the transactions to be processed. If the Federal Reserve receives commercial ACH credit transactions from institutions monitored in real time after the scheduled close of the Fedwire Funds Service, these transactions will be processed at 12:30 a.m. the next business day, or by the ACH deposit deadline, whichever is earlier. The Account Balance Monitoring System provides intraday account information to the Reserve Banks and institutions and is used primarily to give authorized Reserve Bank personnel a mechanism to control and monitor account activity for selected institutions. For more information on ACH transaction processing, refer to the ACH Settlement Day Finality Guide available through the Federal Reserve Financial Services Web site at *http://www.frbservices.org.*

[8] The Reserve Banks will identify and notify institutions with Treasury-authorized penalties on Thursdays. In the event that Thursday is a holiday, the Reserve Banks will identify and notify institutions with Treasury-authorized penalties on the following business day. Penalties will then be posted on the business day following notification.

[9] On rare occasions, the Treasury may announce withdrawals in advance that are based on institutions' closing balances on the withdrawal date. The Federal Reserve will post these withdrawals after the close of Fedwire.

[10] For purposes of this policy, government agencies are those entities (other than the U.S. Treasury) for which the Reserve Banks act as fiscal agents and whose securities are obligations of, or fully guaranteed as to principal and interest by, the United States.

[11] Electronic payments for credits on these securities will post by 9:15 a.m. Eastern Time; however, the majority of these payments are made by check and will be posted according to the established check posting rules as set forth in this policy.

[12] See footnote 3.

[13] See footnote 11.

[14] Original issues of government agency, government-sponsored enterprise, or international organization securities are delivered as book-entry securities transfers and will be posted when the securities are delivered to the purchasing institutions.

[15] This does not include electronic check presentments, which are posted at 1 p.m. local time and hourly thereafter. Paper check presentments are posted on the hour at least one hour after presentment. Paper checks presented before 10:01 a.m. Eastern Time will be posted at 11 a.m. Eastern Time. Presentment times will be based on surveys of endpoints' scheduled courier deliveries and so will occur at the same time each day for a particular institution.

[16] Institutions must choose one of two check-credit posting options: (1) all credits posted at a single, float-weighted posting time, or (2) fractional credits posted throughout the day. The first option allows an institution to receive all of its check credits at a single time for each type of cash letter. This time may not necessarily fall on the clock hour. The second option lets the institution receive a portion of its available check credits on the clock hours between 11 a.m. and 6 p.m. Eastern Time. The option selected applies to all check deposits posted to an institution's account. Reserve Banks will calculate crediting fractions and float-weighted posting times for each time zone based on surveys. Credits for mixed cash letters and other Fed cash letters are posted using the crediting fractions or the float-weighted posting times for the time zone of the Reserve Bank servicing the depositing institution. For separately sorted deposits, credits are posted using the posting times for the time zone of the Reserve Bank servicing the payor institution.

Post at 12:30 p.m. Eastern Time and Hourly, on the Half-Hour, Thereafter:

+ Dynamic investments from TIP.

Post by 1 p.m. Eastern Time:

+ Same-day Treasury investments.

Post at 1 p.m. Local Time and Hourly Thereafter:

− Electronic check presentments.[17]

Post at 5 p.m. Eastern Time:

+ Treasury checks, postal money orders, and EZ-Clear savings bond redemptions in separately sorted deposits; these items must be deposited by 4 p.m. Eastern Time.

+ Local Federal Reserve Bank checks; these items must be presented before 3 p.m. Eastern Time.

+/− Same-day ACH transactions; these transactions include ACH return items, check-truncation items, and flexible settlement items.

Post at 6:30 p.m. Eastern Time:[18]

+ Penalty Abatements from TIP.

Post After the Close of Fedwire Funds Service:

+/− All other transactions. These transactions include the following: local Federal Reserve Bank checks presented after 3 p.m. Eastern Time but before 3 p.m. local time; noncash collection; currency and coin shipments; small-dollar credit adjustments; and all debit adjustments. Discount-window loans and repayments are normally posted after the close of Fedwire as well; however, in unusual circumstances a discount window loan may be posted earlier in the day with repayment 24 hours later, or a loan may be repaid before it would otherwise become due.

Equals: Closing balance.

B. Pricing

Reserve Banks charge institutions for daylight overdrafts incurred in their Federal Reserve accounts. For each two-week reserve-maintenance period, the Reserve Banks calculate and assess daylight overdraft fees, which are equal to the sum of any daily daylight overdraft charges during the period.

Daylight overdraft fees are calculated using an annual rate of 36 basis points, quoted on the basis of a 24-hour day. To obtain the effective annual rate for the standard Fedwire operating day, the 36-basis-point annual rate is multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate. For example, under a 21.5-hour scheduled Fedwire operating day, the effective annual rate used to calculate daylight overdraft fees equals 32.25 basis points (36 basis points multiplied by 21.5/24).[19] The effective daily rate is calculated by dividing the effective annual rate by 360.[20] An institution's daily daylight overdraft charge is equal to the effective daily rate multiplied by the institution's average daily daylight overdraft minus a deductible valued at the deductible's effective daily rate.

An institution's average daily daylight overdraft is calculated by dividing the sum of its negative Federal Reserve account balances at the end of each minute of the scheduled Fedwire operating day by the total number of minutes in the scheduled Fedwire operating day. In this calculation, each positive end-of-minute balance in an institution's Federal Reserve account is set to equal zero.

The daily daylight overdraft charge is reduced by a deductible, valued at the effective daily rate for a 10-hour operating day. The deductible equals 10 percent of a capital measure (*see* section I.C.3., "Capital measure"). Because the effective daily rate applicable to the deductible is kept constant at the 10-hour-operating-day rate, any changes to the scheduled Fedwire operating day should not significantly affect the value of the deductible.[21] Reserve Banks will waive fees of $25 or less in any two-week reserve-maintenance period. Certain institutions are subject to a penalty fee and modified daylight overdraft fee calculation as described in section I.E.

C. Net Debit Caps

1. Definition

To limit the aggregate amount of daylight credit that the Reserve Banks extend, each institution incurring daylight overdrafts in its Federal Reserve account must adopt a net debit cap, that is, a ceiling on the uncollateralized daylight overdraft position that it can incur during a given interval. If an institution's daylight overdrafts generally do not exceed the lesser of $10 million or 20 percent of its capital measure, the institution may qualify for the exempt-from-filing cap. An institution must be financially healthy and have regular access to the discount window in order to adopt a net debit cap greater than zero or qualify for the filing exemption.

An institution's cap category and capital measure determine the size of its net debit cap. More specifically, the net debit cap is calculated as an institution's cap multiple times its capital measure:

net debit cap = cap multiple × capital measure

Cap categories (see section I.C.2., "Cap categories") and their associated cap levels, set as multiples of capital measure, are listed below:

NET DEBIT CAP MULTIPLES

Cap category	Single day	Two-week average
High	2.25	1.50
Above average.	1.875	1.125
Average	1.125	0.75
De minimis	0.40	0.40
Exempt-from-filing[22].	$10 million or 0.20.	$10 million or 0.20
Zero	0.0	0.0

An institution is expected to avoid incurring daylight overdrafts whose daily maximum level, averaged over a two-week period, would exceed its two-week average cap, and, on any day, would exceed its single-day cap.[23] The two-week average cap provides flexibility, in recognition that fluctuations in payments can occur from day to day. The purpose of the higher single-day cap is to limit excessive daylight overdrafts on any day and to ensure that institutions develop internal controls that focus on their exposures each day, as well as over time.

The Board's policy on net debit caps is based on a specific set of guidelines and some degree of examiner oversight. Under the Board's policy, a Reserve Bank may limit or prohibit an institution's use of Federal Reserve intraday credit if (1) the institution's use of daylight credit is deemed by the institution's supervisor to be unsafe or unsound; (2) the institution does not

[17] The Federal Reserve Banks will post debits to institutions' accounts for electronic check presentments made before 12 p.m. local time at 1 p.m. local time. The Reserve Banks will post presentments made after 12 p.m. local time on the next clock hour that is at least one hour after presentment takes place but no later than 3 p.m. local time.

[18] The Federal Reserve Banks will process and post Treasury-authorized penalty abatements on Thursdays. In the event that Thursday is a holiday, the Federal Reserve Banks will process and post Treasury-authorized penalty abatements on the following business day.

[19] A change in the length of the scheduled Fedwire operating day should not significantly change the amount of fees charged because the effective daily rate is applied to average daylight overdrafts, whose calculation would also reflect the change in the operating day.

[20] Under the current 21.5-hour Fedwire operating day, the effective daily daylight-overdraft rate is truncated to 0.0000089.

[21] Under the current 21.5-hour Fedwire operating day, the effective daily deductible rate is rounded to 0.0000042.

[22] The net debit cap for the exempt-from-filing category is equal to the lesser of $10 million or 0.20 multiplied by the institution's capital measure.

[23] The two-week period is the two-week reserve-maintenance period. The number of days used in calculating the average daylight overdraft over this period is the number of business days the institution's Reserve Bank is open during the reserve-maintenance period.

qualify for a positive net debit cap (*see* section I.C.2., "Cap categories"); or (3) the institution poses excessive risk to a Reserve Bank by incurring chronic overdrafts in excess of what the Reserve Bank determines is prudent.

While capital measures differ, the net debit cap provisions of this policy apply to foreign banking organizations (FBOs) to the same extent that they apply to U.S. institutions. The Reserve Banks will advise home-country supervisors of the daylight overdraft capacity of U.S. branches and agencies of FBOs under their jurisdiction, as well as of other pertinent information related to the FBOs' caps. The Reserve Banks will also provide information on the daylight overdrafts in the Federal Reserve accounts of FBOs' U.S. branches and agencies in response to requests from home-country supervisors.

2. Cap Categories

The policy defines the following six cap categories, described in more detail below: high, above average, average, de minimis, exempt-from-filing, and zero. The high, above average, and average cap categories are referred to as "self-assessed" caps.

a. Self-assessed. In order to establish a net debit cap category of high, above average, or average, an institution must perform a self-assessment of its own creditworthiness, intraday funds management and control, customer credit policies and controls, and operating controls and contingency procedures.[24] The assessment of creditworthiness is based on the institution's supervisory rating and Prompt Corrective Action (PCA) designation.[25] An institution may perform a full assessment of its creditworthiness in certain limited circumstances, for example, if its condition has changed significantly since its last examination or if it possesses additional substantive information regarding its financial condition. An institution performing a self-assessment must also evaluate its intraday funds-management procedures and its procedures for evaluating the financial condition of and establishing intraday credit limits for its customers. Finally, the institution must evaluate its operating controls and contingency procedures to determine if they are sufficient to prevent losses due to fraud or system failures. The "Guide to the Federal Reserve's Payments System Risk Policy" includes a detailed explanation of the self-assessment process.

Each institution's board of directors must review that institution's self-assessment and recommended cap category. The process of self-assessment, with board-of-directors review, should be conducted at least once in each twelve-month period. A cap determination may be reviewed and approved by the board of directors of a holding company parent of an institution, provided that (1) the self-assessment is performed by each entity incurring daylight overdrafts, (2) the entity's cap is based on the measure of the entity's own capital, and (3) each entity maintains for its primary supervisor's review its own file with supporting documents for its self-assessment and a record of the parent's board-of-directors review.[26]

In applying these guidelines, each institution should maintain a file for examiner review that includes (1) worksheets and supporting analysis used in its self-assessment of its own cap category, (2) copies of senior-management reports to the board of directors of the institution or its parent (as appropriate) regarding that self-assessment, and (3) copies of the minutes of the discussion at the appropriate board-of-directors meeting concerning the institution's adoption of a cap category.[27]

As part of its normal examination, the institution's examiners may review the contents of the self-assessment file.[28] The objective of this review is to ensure that the institution has applied the guidelines appropriately and diligently, that the underlying analysis and method were reasonable, and that the resultant self-assessment was generally consistent with the examination findings. Examiner comments, if any, should be forwarded to the board of directors of the institution. The examiner, however, generally would not require a modification of the self-assessed cap category, but rather would inform the appropriate Reserve Bank of any concerns. The Reserve Bank would then decide whether to modify the cap category. For example, if the institution's level of daylight overdrafts constitutes an unsafe or unsound banking practice, the Reserve Bank would likely assign the institution a zero net debit cap and impose additional risk controls.

The contents of the self-assessment file will be considered confidential by the institution's examiner. Similarly, the Federal Reserve and the institution's examiner will hold the actual cap level selected by the institution confidential. Net debit cap information should not be shared with outside parties or mentioned in any public documents; however, net debit cap information will be shared with the home-country supervisor of U.S. branches and agencies of foreign banks.

The Reserve Banks will review the status of any institution with a self-assessed net debit cap that exceeds its cap during a two-week reserve-maintenance period and will decide if the cap should be maintained or if additional action should be taken (see section I.F., "Monitoring").

b. De minimis. Many institutions incur relatively small overdrafts and thus pose little risk to the Federal Reserve. To ease the burden on these small overdrafters of engaging in the self-assessment process and to ease the

[24] This assessment should be done on an individual-institution basis, treating as separate entities each commercial bank, each Edge corporation (and its branches), each thrift institution, and so on. An exception is made in the case of U.S. branches and agencies of FBOs. Because these entities have no existence separate from the FBO, all the U.S. offices of FBOs (excluding U.S.-chartered bank subsidiaries and U.S.-chartered Edge subsidiaries) should be treated as a consolidated family relying on the FBO's capital.

[25] An insured depository institution is (1) "well capitalized" if it significantly exceeds the required minimum level for each relevant capital measure, (2) "adequately capitalized" if it meets the required minimum level for each relevant capital measure, (3) "undercapitalized" if it fails to meet the required minimum level for any relevant capital measure, (4) "significantly undercapitalized" if it is significantly below the required minimum level for any relevant capital measure, or (5) "critically undercapitalized" if it fails to meet any leverage limit (the ratio of tangible equity to total assets) specified by the appropriate Federal banking agency, in consultation with the FDIC, or any other relevant capital measure established by the agency to determine when an institution is critically undercapitalized (12 U.S.C. 1831o).

[26] An FBO should undergo the same self-assessment process as a domestic bank in determining a net debit cap for its U.S. branches and agencies. Many FBOs, however, do not have the same management structure as U.S. institutions, and adjustments should be made as appropriate. If an FBO's board of directors has a more limited role to play in the bank's management than a U.S. board has, the self-assessment and cap category should be reviewed by senior management at the FBO's head office that exercises authority over the FBO equivalent to the authority exercised by a board of directors over a U.S. institution. In cases in which the board of directors exercises authority equivalent to that of a U.S. board, cap determination should be made by the board of directors.

[27] In addition, for FBOs, the file that is made available for examiner review by the U.S. offices of an FBO should contain the report on the self-assessment that the management of U.S. operations made to the FBO's senior management and a record of the appropriate senior management's response or the minutes of the meeting of the FBO's board of directors or other appropriate management group, at which the self-assessment was discussed.

[28] Between examinations, examiners or Reserve Bank staff may contact an institution about its cap if there is other relevant information, such as statistical or supervisory reports, that suggests there may have been a change in the institution's financial condition.

burden on the Federal Reserve of administering caps, the Board allows institutions that meet reasonable safety and soundness standards to incur *de minimis* amounts of daylight overdrafts without performing a self-assessment. An institution may incur daylight overdrafts of up to 40 percent of its capital measure if the institution submits a board-of-directors resolution.

An institution with a *de minimis* cap must submit to its Reserve Bank at least once in each 12-month period a copy of its board-of-directors resolution (or a resolution by its holding company's board) approving the institution's use of daylight credit up to the *de minimis* level. The Reserve Banks will review the status of a *de minimis* cap institution that exceeds its cap during a two-week reserve-maintenance period and will decide if the *de minimis* cap should be maintained or if the institution will be required to perform a self-assessment for a higher cap.

c. Exempt-from-filing. Institutions that only rarely incur daylight overdrafts in their Federal Reserve accounts that exceed the lesser of $10 million or 20 percent of their capital measure are excused from performing self-assessments and filing board-of-directors resolutions with their Reserve Banks. This dual test of dollar amount and percent of capital measure is designed to limit the filing exemption to institutions that create only low-dollar risks to the Reserve Banks and that incur small overdrafts relative to their capital measure.

The Reserve Banks will review the status of an exempt institution that incurs overdrafts in its Federal Reserve account in excess of $10 million or 20 percent of its capital measure on more than two days in any two consecutive two-week reserve-maintenance periods. The Reserve Bank will decide if the exemption should be maintained or if the institution will be required to file for a cap. Granting of the exempt-from-filing net debit cap is at the discretion of the Reserve Bank.

d. Zero. Some financially healthy institutions that could obtain positive net debit caps choose to have zero caps. Often these institutions have very conservative internal policies regarding the use of Federal Reserve daylight credit or simply do not want to incur daylight overdrafts and any associated daylight overdraft fees. If an institution that has adopted a zero cap incurs a daylight overdraft, the Reserve Bank counsels the institution and may monitor the institution's activity in real time and reject or delay certain transactions that would cause an overdraft. If the institution qualifies for a positive cap, the Reserve Bank may suggest that the institution adopt an exempt-from-filing cap or file for a higher cap if the institution believes that it will continue to incur daylight overdrafts.

In addition, a Reserve Bank may assign an institution a zero net debit cap. Institutions that may pose special risks to the Reserve Banks, such as those without regular access to the discount window, those incurring daylight overdrafts in violation of this policy, or those in weak financial condition, are generally assigned a zero cap (*see* section I.E.5., "Problem institutions"). Recently-chartered institutions may also be assigned a zero net debit cap.

3. Capital Measure

As described above, an institution's cap category and capital measure determine the size of its net debit cap. The capital measure used in calculating an institution's net debit cap depends upon its chartering authority and home-country supervisor.

a. U.S.-chartered institutions. For institutions chartered in the United States, net debit caps are multiples of "qualifying" or similar capital measures that consist of those capital instruments that can be used to satisfy risk-based capital standards, as set forth in the capital adequacy guidelines of the federal financial regulatory agencies. All of the federal financial regulatory agencies collect, as part of their required reports, data on the amount of capital that can be used for risk-based purposes—"risk-based" capital for commercial banks, savings banks, and savings associations and total regulatory reserves for credit unions. Other U.S.-chartered entities that incur daylight overdrafts in their Federal Reserve accounts should provide similar data to their Reserve Banks.

b. U.S. branches and agencies of foreign banks. For U.S. branches and agencies of foreign banks, net debit caps on daylight overdrafts in Federal Reserve accounts are calculated by applying the cap multiples for each cap category to the FBO's U.S. capital equivalency measure.[29] U.S. capital equivalency is equal to the following:

- 35 percent of capital for FBOs that are financial holding companies (FHCs).[30]
- 25 percent of capital for FBOs that are not FHCs and have a strength of support assessment ranking (SOSA) of 1.[31]
- 10 percent of capital for FBOs that are not FHCs and are ranked a SOSA 2.
- 5 percent of "net due to related depository institutions" for FBOs that are not FHCs and are ranked a SOSA 3.

Granting a net debit cap, or any extension of intraday credit, to an institution is at the discretion of the Reserve Bank. In the event a Reserve Bank grants a net debit cap or extends intraday credit to a financially healthy SOSA 3-ranked FBO, the Reserve Bank may require such credit to be fully collateralized, given the heightened supervisory concerns with SOSA 3-ranked FBOs.

D. Collateralized Capacity

The Board recognizes that while net debit caps provide sufficient liquidity to most institutions, some institutions may still experience liquidity pressures. The Board believes it is important to provide an environment in which payment systems may function effectively and efficiently and to remove barriers, as appropriate, to foster risk-reducing payment system initiatives. Consequently, certain institutions with self-assessed net debit caps may pledge collateral to their administrative Reserve Banks to secure daylight overdraft capacity in excess of their net debit caps, subject to Reserve Bank approval.[32, 33] This policy is intended to

[29] The term "U.S. capital equivalency" is used in this context to refer to the particular capital measure used to calculate net debit caps and does not necessarily represent an appropriate capital measure for supervisory or other purposes.

[30] The Gramm-Leach-Bliley Act defines a financial holding company as a bank holding company that meets certain eligibility requirements. In order for a bank holding company to become a financial holding company and be eligible to engage in the new activities authorized under the Gramm-Leach-Bliley Act, the Act requires that all depository institutions controlled by the bank holding company be well capitalized and well managed (12 U.S.C. 1841(p)). With regard to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, the Act requires the Board to apply comparable capital and management standards that give due regard to the principle of national treatment and equality of competitive opportunity (12 U.S.C. 1843(l)).

[31] The SOSA ranking is composed of four factors, including the FBO's financial condition and prospects, the system of supervision in the FBO's home country, the record of the home country's government in support of the banking system or other sources of support for the FBO; and transfer risk concerns. Transfer risk relates to the FBO's ability to access and transmit U.S. dollars, which is an essential factor in determining whether an FBO can support its U.S. operations. The SOSA ranking is based on a scale of 1 through 3, with 1 representing the lowest level of supervisory concern.

[32] The administrative Reserve Bank is responsible for the administration of Federal Reserve credit, reserves, and risk management policies for a given institution or other legal entity.

[33] Institutions have some flexibility as to the specific types of collateral they may pledge to the Reserve Banks; however, all collateral must be acceptable to the Reserve Banks. The Reserve Banks may accept securities in transit on the Fedwire

provide extra liquidity through the pledge of collateral to the few institutions that might otherwise be constrained from participating in risk-reducing payment system initiatives.[34] The Board believes that requiring collateral allows the Federal Reserve to protect the public sector from additional credit risk. Additionally, providing extra liquidity to these few institutions should help prevent liquidity-related market disruptions.

An institution with a self-assessed net debit cap that wishes to expand its daylight overdraft capacity by pledging collateral should consult with its administrative Reserve Bank. Institutions that request daylight overdraft capacity beyond the net debit cap must have already explored other alternatives to address their increased liquidity needs.[35] The Reserve Banks will work with an institution that requests additional daylight overdraft capacity to determine the appropriate maximum daylight overdraft capacity level. In considering the institution's request, the Reserve Bank will evaluate the institution's rationale for requesting additional daylight overdraft capacity as well as its financial and supervisory information. The financial and supervisory information considered may include, but is not limited to, capital and liquidity ratios, the composition of balance sheet assets, CAMELS or other supervisory ratings and assessments, and SOSA rankings (for U.S. branches and agencies of foreign banks). An institution approved for a maximum daylight overdraft capacity level must submit at least once in each twelve-month period a board-of-directors resolution indicating its board's approval of that level.

If the Reserve Bank approves an institution's request, the Reserve Bank approves a maximum daylight overdraft capacity level. The maximum daylight overdraft capacity is defined as follows:

maximum daylight overdraft capacity = single-day net debit cap + collateralized capacity[36]

An institution that has a self-assessed net debit cap and that has also been approved for a maximum daylight overdraft capacity level has a two-week average limit equal to its two-week average net debit cap plus its collateralized capacity, averaged over a two-week reserve-maintenance period. The single-day limit is equal to an institution's single-day net debit cap plus its collateralized capacity. The institution should avoid incurring daylight overdrafts whose daily maximum level, averaged over a two-week period, would exceed its two-week average limit, and, on any day, would exceed its single-day limit. The Reserve Banks will review the status of any institution that exceeds its single-day or two-week limit during a two-week reserve-maintenance period and will decide if the maximum daylight overdraft capacity should be maintained or if additional action should be taken (*see* section I.F., "Monitoring").

Institutions with exempt-from-filing and *de minimis* net debit caps may *not* obtain additional daylight overdraft capacity by pledging collateral without first obtaining a self-assessed net debit cap. Likewise, institutions that have voluntarily adopted zero net debit caps may *not* obtain additional daylight overdraft capacity by pledging collateral without first obtaining a self-assessed net debit cap. Institutions that have been assigned a zero net debit cap by their administrative Reserve Bank are not eligible to apply for any daylight overdraft capacity.

E. Special Situations

Under the Board's policy, certain institutions warrant special treatment primarily because of their charter types. As mentioned previously, an institution must have regular access to the discount window and be in sound financial condition in order to adopt a net debit cap greater than zero. Institutions that do not have regular access to the discount window include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, limited-purpose trust companies, government-sponsored enterprises (GSEs), and certain international organizations.[37] Institutions that have been assigned a zero cap by their Reserve Banks are also subject to special considerations under this policy based on the risks they pose. In developing its policy for these institutions, the Board has sought to balance the goal of reducing and managing risk in the payments system, including risk to the Federal Reserve, with that of minimizing the adverse effects on the payments operations of these institutions.

Regular access to the Federal Reserve discount window generally is available to institutions that are subject to reserve requirements. If an institution that is not subject to reserve requirements and thus does not have regular discount-window access were to incur a daylight overdraft, the Federal Reserve might end up extending overnight credit to that institution if the daylight overdraft were not covered by the end of the business day. Such a credit extension would be contrary to the quid pro quo of reserves for regular discount-window access as reflected in the Federal Reserve Act and in Board regulations. Thus, institutions that do not have regular access to the discount window should not incur daylight overdrafts in their Federal Reserve accounts.

Certain institutions are subject to a daylight-overdraft penalty fee levied against the average daily daylight overdraft incurred by the institution. These include Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, and limited-purpose trust companies. The annual rate used to determine the daylight-overdraft penalty fee is equal to the annual rate applicable to the daylight overdrafts of other institutions (36 basis points) plus 100 basis points multiplied by the fraction of a 24-hour day during which Fedwire is scheduled to operate (currently 21.5/24). The daily daylight-overdraft penalty rate is calculated by dividing the annual penalty rate by 360.[38] The daylight-overdraft penalty rate applies to the institution's average daily daylight overdraft in its Federal Reserve account. The daylight-overdraft penalty rate is charged in lieu of, not in addition to, the rate used to calculate daylight overdraft fees for institutions described in section I.B. Institutions that are subject to the daylight-overdraft penalty fee do not benefit from a deductible and are subject to a minimum fee of $25 on any daylight overdrafts incurred in their Federal Reserve accounts.[39]

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book-entry securities system as collateral to support the maximum daylight overdraft capacity level. Securities in transit refer to book-entry securities transferred over the Fedwire Securities Service that have been purchased by an institution but not yet paid for and owned by the institution's customers.

[34] Institutions may consider applying for a maximum daylight overdraft capacity level for daylight overdrafts resulting from Fedwire funds transfers, Fedwire book-entry securities transfers, National Settlement Service entries, and ACH credit originations. Institutions incurring daylight overdrafts as a result of other payment activity may be eligible for administrative counseling flexibility (59 FR 54915–18, Nov. 2, 1994).

[35] Some potential alternatives available to an institution to address increased intraday credit needs include shifting funding patterns, delaying the origination of funds transfers, or transferring some payments processing business to a correspondent bank.

[36] Collateralized capacity, on any given day, equals the amount of collateral pledged to the Reserve Bank, not to exceed the difference between the institution's maximum daylight overdraft capacity level and its single-day net debit cap.

[37] See footnote 3.

[38] Under the current 21.5-hour Fedwire operating day, the effective daily daylight-overdraft penalty rate is truncated to 0.0000338.

[39] While daylight overdraft fees are calculated differently for these institutions than for institutions that have regular access to the discount

Continued

1. Edge and Agreement Corporations [40]

Edge and agreement corporations should refrain from incurring daylight overdrafts in their Federal Reserve accounts. In the event that any daylight overdrafts occur, the Edge or agreement corporation must post collateral to cover the overdrafts. In addition to posting collateral, the Edge or agreement corporation would be subject to the daylight-overdraft penalty rate levied against the average daily daylight overdrafts incurred by the institution, as described above.

This policy reflects the Board's concerns that these institutions lack regular access to the discount window and that the parent company may be unable or unwilling to cover its subsidiary's overdraft on a timely basis. The Board notes that the parent of an Edge or agreement corporation could fund its subsidiary during the day over Fedwire or the parent could substitute itself for its subsidiary on private systems. Such an approach by the parent could both reduce systemic risk exposure and permit the Edge or agreement corporation to continue to service its customers. Edge and agreement corporation subsidiaries of foreign banking organizations are treated in the same manner as their domestically owned counterparts.

2. Bankers' Banks [41]

Bankers' banks are exempt from reserve requirements and do not have regular access to the discount window. They do, however, have access to Federal Reserve payment services. Bankers' banks should refrain from incurring daylight overdrafts and must post collateral to cover any overdrafts they do incur. In addition to posting collateral, a bankers' bank would be subject to the daylight-overdraft penalty fee levied against the average daily daylight overdrafts incurred by the institution, as described above.

The Board's policy for bankers' banks reflects the Reserve Banks' need to protect themselves from potential losses resulting from daylight overdrafts incurred by bankers' banks. The policy also considers the fact that some bankers' banks do not incur the costs of maintaining reserves as do some other institutions and do not have regular access to the discount window.

Bankers' banks may voluntarily waive their exemption from reserve requirements, thus gaining access to the discount window. Such bankers' banks are free to establish net debit caps and would be subject to the same policy as other institutions. The policy set out in this section applies only to those bankers' banks that have not waived their exemption from reserve requirements.

3. Limited-Purpose Trust Companies [42]

The Federal Reserve Act permits the Board to grant Federal Reserve membership to limited-purpose trust companies subject to conditions the Board may prescribe pursuant to the Act. As a general matter, member limited-purpose trust companies do not accept reservable deposits and do not have regular discount-window access. Limited-purpose trust companies should refrain from incurring daylight overdrafts and must post collateral to cover any overdrafts they do incur. In addition to posting collateral, limited-purpose trust companies would be subject to the same daylight-overdraft penalty rate as other institutions that do not have regular access to the discount window.

4. Government-Sponsored Enterprises and International Organizations (Beginning July 20, 2006)

The Reserve Banks act as fiscal agents for certain GSEs and international organizations in accordance with federal statutes. These institutions generally have Federal Reserve accounts and issue securities over the Fedwire Securities Service. The securities of these institutions are not obligations of, or fully guaranteed as to principal and interest by, the United States. Furthermore, these institutions are not subject to reserve requirements and do not have regular access to the discount window. GSEs and international organizations should refrain from incurring daylight overdrafts and must post collateral to cover any daylight overdrafts they do incur. In addition to posting collateral, these institutions would be subject to the same daylight-overdraft penalty rate as other institutions that do not have regular access to the discount window.

5. Problem Institutions

For institutions that are in weak financial condition, the Reserve Banks will impose a zero cap. The Reserve Bank will also monitor the institution's activity in real time and reject or delay certain transactions that would create an overdraft. Problem institutions should refrain from incurring daylight overdrafts and must post collateral to cover any daylight overdrafts they do incur.

F. Monitoring

1. Ex Post

Under the Federal Reserve's ex post monitoring procedures, an institution with a daylight overdraft in excess of its maximum daylight overdraft capacity or net debit cap may be contacted by its Reserve Bank. The Reserve Bank may counsel the institution, discussing ways to reduce its excessive use of intraday credit. Each Reserve Bank retains the right to protect its risk exposure from individual institutions by unilaterally reducing net debit caps, imposing collateralization or clearing-balance requirements, rejecting or delaying certain transactions as described below, or, in extreme cases, taking the institution off line or prohibiting it from using Fedwire.

2. Real Time

A Reserve Bank will, through the Account Balance Monitoring System, apply real-time monitoring to an individual institution's position when the Reserve Bank believes that it faces excessive risk exposure, for example, from problem banks or institutions with chronic overdrafts in excess of what the Reserve Bank determines is prudent. In such a case, the Reserve Bank will control its risk exposure by monitoring the institution's position in real-time, rejecting or delaying certain transactions that would exceed the institution's maximum daylight overdraft capacity or net debit cap, and taking other prudential actions, including requiring collateral.[43]

window, overnight overdrafts at Edge and agreement corporations, bankers' banks that are not subject to reserve requirements, limited-purpose trust companies, GSEs, and international organizations are priced the same as overnight overdrafts at institutions that have regular access to the discount window.

[40] These institutions are organized under section 25A of the Federal Reserve Act (12 U.S.C. 611–631) or have an agreement or undertaking with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601–604(a)).

[41] For the purposes of this policy statement, a bankers' bank is a depository institution that is not required to maintain reserves under the Board's Regulation D (12 CFR 204) because it is organized solely to do business with other financial institutions, is owned primarily by the financial institutions with which it does business, and does not do business with the general public. Such bankers' banks also generally are not eligible for Federal Reserve Bank credit under the Board's Regulation A (12 CFR 201.2(c)(2)).

[42] For the purposes of this policy statement, a limited-purpose trust company is a trust company that is a member of the Federal Reserve System but that does not meet the definition of "depository institution" in section 19(b)(1)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(1)(A)).

[43] Institutions that are monitored in real time must fund the total amount of their ACH credit originations in order for the transactions to be processed by the Federal Reserve, even if those transactions are processed one or two days before settlement.

3. Multi-District Institutions

Institutions, such as those maintaining merger-transition accounts and U.S. branches and agencies of a foreign bank, that access Fedwire through accounts in more than one Federal Reserve District are expected to manage their accounts so that the total daylight overdraft position across all accounts does not exceed their net debit caps. One Reserve Bank will act as the administrative Reserve Bank and will have overall risk-management responsibilities for institutions maintaining accounts in more than one Federal Reserve District. For domestic institutions that have branches in multiple Federal Reserve Districts, the administrative Reserve Bank generally will be the Reserve Bank where the head office of the bank is located.

In the case of families of U.S. branches and agencies of the same foreign banking organization, the administrative Reserve Bank generally is the Reserve Bank that exercises the Federal Reserve's oversight responsibilities under the International Banking Act.[44] The administrative Reserve Bank, in consultation with the management of the foreign bank's U.S. operations and with Reserve Banks in whose territory other U.S. agencies or branches of the same foreign bank are located, may determine that these agencies and branches will not be permitted to incur overdrafts in Federal Reserve accounts. Alternatively, the administrative Reserve Bank, after similar consultation, may allocate all or part of the foreign family's net debit cap to the Federal Reserve accounts of agencies or branches that are located outside of the administrative Reserve Bank's District; in this case, the Reserve Bank in whose Districts those agencies or branches are located will be responsible for administering all or part of the collateral requirement.[45]

G. Transfer-Size Limit on Book-Entry Securities

Secondary-market book-entry securities transfers on Fedwire are limited to a transfer size of $50 million par value. This limit is intended to encourage partial deliveries of large trades in order to reduce position building by dealers, a major cause of book-entry securities overdrafts before the introduction of the transfer-size limit and daylight overdraft fees. This limitation does not apply to either of the following:

a. Original issue deliveries of book-entry securities from a Reserve Bank to an institution.

b. Transactions sent to or by a Reserve Bank in its capacity as fiscal agent of the United States, government agencies, or international organizations.

Thus, requests to strip or reconstitute Treasury securities or to convert bearer or registered securities to or from book-entry form are exempt from this limitation. Also exempt are pledges of securities to a Reserve Bank as principal (for example, discount-window collateral) or as agent (for example, Treasury Tax and Loan collateral).

By order of the Board of Governors of the Federal Reserve System, September 22, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–21669 Filed 9–27–04; 8:45 am]

BILLING CODE 6210–01–P

[44] 12 U.S.C. 3101–3108.

[45] As in the case of Edge and agreement corporations and their branches, with the approval of the designated administrative Reserve Bank, a second Reserve Bank may assume the responsibility of managing and monitoring the net debit cap of particular foreign branch and agency families. This would often be the case when the payments activity and national administrative office of the foreign branch and agency family is located in one District, while the oversight responsibility under the International Banking Act is in another District. If a second Reserve Bank assumes management responsibility, monitoring data will be forwarded to the designated administrator for use in the supervisory process.

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission ("FTC" or "Commission") has submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act ("PRA"), the information collection requirements described below. The FTC is seeking public comments on its proposal to extend through October 28, 2007, the current PRA generic clearance for a group of consumer surveys that will examine the comprehensibility of various forms, disclosures, and notices required by The Fair and Accurate Credit Transactions Act of 2003 ("FACTA" or "the Act"), Pub. L. 108–159. That clearance expires on October 31, 2004.

DATES: Comments must be submitted on or before October 28, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "FACTA Surveys: Paperwork Comment, [P044804]" 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 P), 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled "Confidential."[1] 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.

All comments should additionally be submitted via facsimile to: Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, fax #: (202) 395–6974.

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: Requests for additional information should be addressed to Lisa M. Harrison, (202) 326–3204, or William P. Golden, (202) 326–2494, Federal Trade Commission, Office of the General Counsel, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On April 28, 2004, the FTC submitted a request to the Office of Management and Budget (OMB) for generic clearance of a group of consumer surveys that will examine

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

the comprehensibility of various forms, disclosures, and notices required by FACTA. The FTC asked for expedited processing of the clearance request because of the short deadline for completing many of the rulemakings mandated by FACTA. The FTC intends to use the consumer surveys in order to inform these rulemakings. The methodologies that may be employed for the surveys include personal interviews and/or focus groups, telephone interviews, and mall intercepts. The Commission's staff estimated that the total burden for all FACTA-related surveys would be approximately 4000 hours.

On May 12, 2004, OMB approved the collection of information through October 31, 2004, assigned OMB control number 3084–0130, and permitted the FTC to provide opportunity for public comment while the clearance was in effect. On June 18, 2004, the FTC sought comment on the information collection requirements associated with the group of consumer surveys. *See* 69 FR 34166 (June 18, 2004). The FTC also sought comment on its proposal to extend the clearance through October 28, 2007. No comments were received. Pursuant to the OMB regulations that implement the PRA (5 CFR Part 1320), the FTC is providing this second opportunity for public comment while seeking OMB approval to extend the existing paperwork clearance. In accordance with the terms of the clearance, the FTC will submit each survey instrument to OMB for review prior to conducting the survey.

Description of the collection of information and proposed use: The FTC intends to use consumer survey research to develop and test the comprehensibility of disclosures regarding consumer rights and options that are mandated by various provisions in FACTA. The consumer surveys will involve individual interviews by telephone or focus groups and mall intercepts. For most of the surveys, the FTC is seeking consumers with open credit card accounts. Recent statistics indicate that 75% of adult consumers have credit cards. The FTC therefore estimates that, for example, a survey using 650 respondents will require roughly 870 consumers to be screened. The FTC will ensure that the selected contractors screen potential respondents on a set of demographic characteristics that will result in a representative sample.

The FTC will contract with a research firm for each of the surveys that will utilize mall intercept and telephone surveys (including screening). For mall intercepts, the contractor will screen consumers in up to 15 shopping malls that represent diverse geographic areas of the United States. Respondents may be shown sample solicitations and asked a series of questions about the disclosures contained in the solicitations. The results will allow the FTC to examine the comprehensibility of the disclosures. In addition, some of the surveys will utilize personal interviews or focus groups to assist the FTC in developing the disclosures to be tested.

Burden Statement

Estimated annual hours burden: The surveys that the FTC proposes to conduct will use mall intercepts, telephone surveys (including screening), and, in some cases, personal interviews or focus groups. The telephone and mall intercepts will involve between 650 and 1,300 respondents and will take between one minute (for screening purposes) and 30 minutes per respondent; the focus groups and personal interviews will involve approximately 150 respondents and will take up to one hour per respondent. The annual burden imposed by each survey would range from approximately 90 hours to 900 hours for a cumulative total estimated burden of approximately 3,500 hours.

Estimated annual cost burden: The cost per respondent should be negligible. Participation is voluntary and will not require start-up, capital, or labor expenditures by respondents. The contractors retained by the FTC may pay respondents a token honorarium. The honorarium is provided as an incentive to encourage participation and to increase the survey response rate. The amount offered will be established at a level consistent with the contractor's usual practice. For shorter interviews (15 to 30 minutes), the amount will not exceed $10. For longer interviews, any fees will not exceed $40.

For each survey, staff estimates that obtaining the services of a contractor to screen potential respondents, administer the survey, and tabulate the results will cost approximately $40,000. Also, each survey will require 400 attorney, economist and research analyst hours valued at approximately $25,000. Therefore, the expected cost to the Federal Government for each survey will be approximately $65,000.

William E. Kovacic,

General Counsel.

[FR Doc. 04–21686 Filed 9–27–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission ("FTC").

ACTION: Notice.

SUMMARY: The information collection requirements described below will be submitted to the Office of Management and Budget ("OMB") for review, as required by the Paperwork Reduction Act ("PRA"). The FTC is seeking public comments on its proposal to extend through December 31, 2005 the current PRA clearance for information collection requirements for its Mortgage Disclosure Study. That clearance expires on November 30, 2004.

DATES: Comments must be submitted on or before November 29, 2004.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Mortgage Disclosure Study—FTC File No. P025505," 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 X), 600 Pennsylvania Avenue, NW., Washington, DC 20580. 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. Alternatively, comments may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to e-mail messages directed to the following e-mail box: *MortgageDS@ftc.gov*. 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."[1]

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

appropriate. All timely and responsive public comments 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: Requests for additional information should be addressed to James M. Lacko, Economist, Bureau of Economics, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Telephone: (202) 326–3387; e-mail *jlacko@ftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing paperwork clearance for the Mortgage Disclosure Study (OMB Control Number 3084–0126).

The FTC invites comments 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 proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Recent deceptive lending cases at the FTC and elsewhere suggest that consumers who do not understand the terms of their mortgages can be subject to deception, that deception can occur even when consumers receive the disclosures required by the Truth-in-Lending Act, 15 U.S.C. 1601 *et seq.* (TILA), and that deception about mortgage terms can result in substantial consumer injury.

Despite a long history of mortgage disclosure requirements and many new legislative and regulatory proposals regarding disclosures, little empirical evidence exists to document the effect of current disclosures on consumer understanding of mortgage terms, consumer mortgage shopping behavior, or consumer mortgage choice.

The FTC intends to conduct consumer research to examine: (1) How consumers search for and choose mortgages; (2) how consumers use and understand information about mortgages, including required disclosures; and (3) whether improved disclosures might improve consumer understanding, consumer mortgage shopping, and consumers' ability to avoid deception. The research also may assist the targeting of the FTC's enforcement actions by identifying areas most prone to consumer misunderstanding and lender deception and may help refine disclosure remedies imposed on deceptive lenders.

1. Description of the Collection of Information and Proposed Use

The FTC proposes to conduct this study in two phases: (1) A qualitative research phase; and (2) a quantitative research phase. The qualitative research phase will include focus groups and in-depth interviews. The quantitative research will include copy tests of current and alternative disclosures. Results from the first phase will be used to refine the design of the second phase.

The qualitative-phase focus groups will be completed under the current PRA clearance and are not part of this extension request.[2] The qualitative-phase in-depth interviews may be completed under the current clearance, but scheduling considerations make this uncertain. The quantitative-phase copy tests will not be started before the expiration of the current clearance. Accordingly, this extension request covers information collection for the in-depth interviews and copy tests.

The in-depth interviews will be conducted with 36 consumers who have recently completed a mortgage transaction. Respondents will be asked to bring their loan documents to the interview. Half of the interviews will be with consumers who obtained their mortgage from a prime lender and half will be consumers who obtained their mortgage from a subprime lender. The purpose of the interviews is to gain in-depth knowledge of the extent to which consumers use, search for, and understand mortgage information—including information about their own recent loans.

The quantitative research phase will consist of copy test interviews of 800 consumers who entered into a mortgage transaction within the previous two years. If possible, approximately half of the respondents will be consumers who obtained their mortgage from a prime lender and half will be consumers who obtained their mortgage from a subprime lender. The purpose of the copy tests will be to examine whether alternative disclosures can improve consumer understanding of mortgage terms and help to reduce potential deception about mortgage offers. The findings from the focus groups and in-depth interviews will be used to refine the alternative disclosures used in the copy tests.

All information will be collected on a voluntary basis and consumers will receive usual and customary compensation for their participation. For the qualitative research the FTC has contracted with a consumer research firm to locate eligible borrowers, recruit respondents, moderate the focus groups, conduct the interviews, and write a report of the findings. For the quantitative research the FTC has contracted with a consumer research firm to locate eligible borrowers, recruit respondents, conduct the copy tests, and write a brief methodological report. The results will assist the FTC in determining how required disclosures and other information affects consumers' ability to understand the cost and features of mortgages. This understanding will further the FTC's mission of protecting consumers and competition in this important market.

2. Estimated Hours Burden

Qualitative Research

Approximately 36 one-hour long, in-depth interviews will be conducted. If all respondents are single decision makers, this would amount to a 36 hour burden. However, some of the interviews may include couples. Assuming that half of the interviews include couples (the upper bound offered by the contractor), the hours burden for the in-depth interviews would increase to 54 hours ((18 × 2 hours) + (18 × 1 hour)).

[2] The focus groups will be used to examine how well consumers understand mortgage terms, how consumers shop for mortgages, if consumers recognize features of a mortgage offer that may significantly increase the cost of the loan, and whether consumers use and understand required disclosures.

Quantitative Research

Approximately 800 consumers who engaged in a mortgage transaction during the previous two years will participate in the quantitative phase of the research. Each copy test interview will take roughly 20–30 minutes. The estimated hours burden for the quantitative research ranges from 267 hours (800 respondents × ⅓ hour per respondent) to 400 hours (800 respondents × ½ hour per respondent).

Total

The total estimated hours burden for both phases of the study ranges from 303 hours (36 hours + 267 hours) to 454 hours (54 hours + 400 hours). The hours burden due to the qualitative focus groups (40 hours) have not been included in this estimate because the focus groups will be completed under the current clearance.

William E. Kovacic,

General Counsel.

[FR Doc. 04–21687 Filed 9–27–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
Transactions Granted Early Termination—08/16/2004			
20041201	Carlyle Partners III, L.P.	Piedmont/Hawthorne Holdings, L.L.C	Piedmont/Hawthorne Holdings, L.L.C.
20041218	Tiger Key Acquisition, L.P.	KAC Mezzanine Holdings Company	KAC Mezzanine Holdings Company.
20041219	Tiger Key Acquisition, L.P.	KSS Holdings, Inc.	KSS Holdings, Inc.
20041228	TA IX L.P.	GlobeOp Financial Services S.A.	GlobeOp Financial Services S.A.
20041229	Flextronics International Ltd	Nortel Networks Corporation	Nortel Networks Limited, Nortel Networks S.A., Nortel Networks Tele. do Brasil Comercio e Servicos Ltda., Nortel Networks Tele. do Brasil Industria e Comeercio Ltda., Nortel Networks UK Limited.
20041233	The Warnaco Group, Inc.	Doyle & Boissiere Fund I, LLC.	Ocean Pacific Apparel Corp.
20041236	Mervyn's Holding, LLC.	Target Corporation	Mervyn's, Mervyn's Brand.
20041238	Public Service Enterprise Group Incorporated.	TECO Energy, Inc.	TPS Holdings II, Inc.
20041240	J.M. Huber Corporation	Lehman FG, LLC.	CP Kelco ApS.
20041243	Nautic Partners V, L.P.	Francis G.Hickey, Jr.	Manhattan Digital Corporation.
20041256	West Virginia United Health System, Inc..	Gateway Regional Health System, Inc..	Gateway Regional Health System, Inc.
Transactions Granted Early Termination—08/17/2004			
20041245	Wachovia Corporation	Venturi Partners, Inc.	Venturi Partners, Inc.
20041254	ASP III Alternative Investments, L.P.	Reservoir Capital Master Fund, L.P.	RQ, LLC.
20041267	Babcock & Brown Holdings Inc.	Babcock & Brown Associates LLC. ..	Babcock & Brown Associates LLC.
20041268	Babcock & Brown Associates LLC. ..	Babcock & Brown Holdings Inc.	Babcock & Brown Holdings Inc.
20041272	The PNC Financial Services Group, Inc..	Aviation Finance Group, LLC.	Aviation Finance Group, LLC.
Transactions Granted Early Termination—08/18/2004			
20041230	Carl C. Icahn	Mylan Laboratories, Inc.	Mylan Laboratories, Inc.
20041231	James F. Dieberg	Capital Resource Lenders II, L.P.	Loan Source Funding Corporation, Small Business Loan Source, Inc.
20041242	2003 Riverside Capital Appreciation Fund, L.P..	Code, Hennessy & Simmons III, L.P.	United Central Industrial Supply Company, L.L.C.
20041244	Quad-C Partners VI, L.P.	Dubin Clark Fund II, L.P.	Universal Trailer Holdings Corp.
20041246	Western & Southern Mutual Holding Company.	Lafayette Life MIHC, Inc.	Lafayette Life MIHC, Inc.
20041248	Clayton, Dubilier & Rice Fund VI Limited Partnership.	Veolia Environnement S.A.	APIC Filter GmbH, APIC SAS, Culligan Corporation, Culligan Espana, S.A., Culligan France SAS, Culligan International (UK) Limited, Culligan Italiana, S.p.A., Culligan N.V., Culligan of Canada, Ltd., Culligan Vostok, Culligan Wassertechnik, GmbH, US Filter Argentina S.A.

Trans No.	Acquiring	Acquired	Entities
20041249	Dynamics Research Corporation	CGW Southeast Partners IV, L.P.	Impact Innovations Group LLC.
20041252	Venturi Partners, Inc.	Comsys Holding, Inc.	Comsys Holding, Inc.
20041264	Boral Limited	Ready Mixed Concrete Company (RMCC).	McKinney Concrete Products, LLC, Ready Mixed Concrete Company (RMCC), Sprat-Platte Ranch Co., LLLP.
Transactions Granted Early Termination—08/19/2004			
20041183	Verizon Communications, Inc.	Qwest Communications International Inc..	Qwest Wireless L.L.C.
20041277	Joe Lewis Allbritton	Riggs National Corporation	Riggs National Corporation.
Transactions Granted Early Termination—08/20/2004			
20041259	Avaya, Inc.	Spectel plc	Spectel plc.
20041271	Carlyle Europe Partners II LP	Clariant Ltd.	Clariant Corporation
20041275	ASP III Alternative Investments, L.P.	Thomas L. Phillips	Doctors' Preferred, Inc., Phillips Health, LLC.
20041279	William J. McEnery	Don H. Barden	Barden Colorado Gaming, LLC.
20041282	New Enterprise Associates 10, L.P.	Jeffrey Citron	Vonage Holdings Corporation.
20041283	Wells Fargo & Company	Colleen D. Porterfield	Bates Leasing Company, Ltd., Mile-High Deep Rock Water Company.
20041284	Wells Fargo & Company	Roxanne F. Anderson	Bates Leasing Company, Ltd., Mile-High Deep Rock Water Company.
20041285	Long Point Capital Fund, L.P.	Bank of America Corporation	Savage Sports Corporation.
20041293	Cooperatieve Centrale Raiffeisen-Boerenleenbank B.A..	Maize Acquisition Corporation	Farm Credit Services of America, FLCA; Farm Credit Services of America, PCA; Maize Acquisition Corporation; Maize Acquisition Corporation II (FLCA).
20041295	Sumner M. Redstone	SportsLine.com, Inc.	SportsLine.com, Inc.
20041299	Globix Corporation	NEON Communications, Inc.	NEON Communications, Inc.
20041301	ALLTEL Corporation	ALLTEL Coropration	Eau Claire Cellular Telephone Limited Partnership, Raleigh-Durham MSA Limited Partnership.
Transactions Granted Early Termination—08/23/2004			
20041200	Carlyle Partners III, L.P.	General Electric Company	GE Engine Services—Corporate Aviation, Inc.
20041206	Medtronic, Inc.	Coalescent Surgical, Inc.	Coalescent Surgical, Inc.
20041216	Teva Pharmaceutical Industries Ltd ..	Active Biotech AB	Active Biotech AB.
20041237	Gardner Denver, Inc.	Audax Private Equity Fund, L.P.	nash_elmo Corp., nash_elmo Holdings LLC.
20041269	Madison Dearborn Capital Partners IV, L.P..	Boise Cascade Corporation	BC Brazil Investment Corporation; BC Chile Investment Corp.; BCT, Inc.; BC China Corp.; Boise Alljoist Ltd.; Boise Building Products Limited; Boise Cascade do Brasil LTDA, Dr. Lauro Azambuja; Boise Cascade Corporation Chiles, S.A.; Boise Southern Company; Canada, Minnesota, Dakota & Western Railway Company; Compania Industrial Puerto Montt, S.A.; International Falls Power Company; Minidoka Paper Company.
Transactions Granted Early Termination—08/24/2004			
20041276	R.H. Donnelley Corporation	SBC Communications Inc.	APIL Partners Partnership, The Don Tech II Partnership.
20041278	R.H. Donnelley Corporation	R.H. Donnelley Corporation	The AM–DON Partnership, The Don Tech II Partnership.
0041297	Tootsie Roll Industries, Inc.	Concord Confections Inc.	Alpharetta Confections, Inc.; Concord Wax, LLC; Impel Movieline Inc.; Terra Rouge Estates Inc.
20041298	Marathon Fund Limited Partnership IV.	VFI Holdings, Inc.	Vitality Foodservice, Inc.
Transactions Granted Early Termination—08/25/2004			
20041208	Flextronics International Ltd.	Northfield Acquisition Co.	Northfield Acquisition Co.

Trans No.	Acquiring	Acquired	Entities
20041239	Regal-Beloit Corporation	General Electric Company	GE Industrial Systems Mexico LP, GE Industrial Systems Technology Management, Inc.
Transactions Granted Early Termination—08/26/2004			
20041250	The Garfield Weston Charitable Foundation.	Graeme R. Hart	Burns, Philp Inc.
20041260	The Garfield Weston Charitable Foundation.	Mr. Graeme R. Hart	Tone Bros. Inc.
20041262	The Sherwin-Williams Company	Bessemer Securities LLC.	Paint Sundry Brands Corporation.
20041302	ALLTEL Corporation	Telephone and Data Systems, Inc., Voting Trust.	Georgia RSA #12 Partnership.
Transactions Granted Early Termination—08/27/2004			
20040902	The Sherwin-Williams Company	Duron, Inc.	Duron, Inc.
20041291	SLM Corporation	Helios Education Foundation	Southwest Student Services Corporation.
20041306	Bruckmann, Rosser, Sherrill & Co. II, L.P..	SPC Partners II, L.P.	Totes Acquisition Corporation.
20041307	CGW Southeast Partners IV, L.P.	TRP Investors LP	TruckPro, Inc.
20041308	Citigroup Inc.	Knight Trading Group, Inc.	Knight Execution Partners LLC, Knight Financial Products LLC.
20041310	KKR Millennium Fund L.P.	DLJ Merchant Banking Partners III, L.P..	Jostens Holding Corp.
20041320	General Electric Company	W.D. Company, Inc.	Dillard Asset Funding Company, Dillard Credit Card Master Trust I, Dillard National Bank, Dillard's, Inc.
Transactions Granted Early Termination—09/01/2004			
20041289	FedEx Corporation	Quad/Graphics, Inc.	Parcel Direct/DDU, Inc., Parcel Direct DDU, LLC, Parcel/Direct, Inc., Parcel Direct Logistics, Inc., Parcel Direct, LP.
20041304	Caterpillar Inc.	Remy International, Inc.	Williams Technologies, Inc.
20041318	Mr. Bryan Gentry	L'Air Liquide SA	GT&S, LP.
20041323	Alvarion Ltd	interWAVE Communications International Inc..	interWAVE Communications International, Inc.
Transactions Granted Early Termination—09/02/2004			
20041255	Symbol Technologies, Inc.	Matrics, Inc.	Matrics, Inc.
Transactions Granted Early Termination—09/03/2004			
20041261	Raytheon Company	Photon Research Associates, Inc.	Photon Research Associates, Inc.
20041327	Banco Santander Central Hispano, S.A..	Abbey National plc	Abbey National plc.
20041330	DEI Holdings, Inc.	Sanford M. Gross	Definitive Technology, LLP.
20041339	Marquee Holdings, Inc.	AMC Entertainment Inc.	AMC Entertainment Inc.
20041341	Macquarie Infrastructure Assets Trust.	Macquarie Bank Limited	Macquarie District Energy Holdings LLC, North America Capital Holdings Company.
20041351	Tekelec	Steleus Group, Inc.	Steleus Group, Inc.
20041359	Caroline Hunt Trust Estate	BMC Industries, Inc.	P.T. Vision-Ease Asia, Vision-Ease Canada Ltd., Vision-Ease Lens Europe Ltd., Vision-Ease Lens, Inc.
Transactions Granted Early Termination—09/07/2004			
20041135	General Dynamics Corporation	Thyssen-Bornemieza Continuity Trust.	TriPoint Global Communications Inc.
20041326	Encore Medical Corporation	MPI Holdings, LLC.	Empi, Inc.
20041338	Green Field II, LLC.	MMM Healthcare, Inc.	MMM Healthcare, Inc.
Transactions Granted Early Termination—09/08/2004			
20041317	The Children's Place Retail Stores, Inc..	The Walt Disney Company	TDS Franchising, LLC, The Disney Store, LLC.
20041336	The McGraw-Hill Companies, Inc.	Capital IQ, Inc.	Capital IQ, Inc.

Trans No.	Acquiring	Acquired	Entities
20041348	AGL Resources Inc.	American Electric Power Company, Inc..	Jefferson Island Storage & Hub L.L.C.
20041349	Ainsworth Lumber Co., Ltd	Potlatch Corporation	Potlatch Corporation.
20041355	HKW Capital Partners II, L.P.	Maxon Corporation	Maxon Corporation.
Transactions Granted Early Termination—09/09/2004			
20041322	Michael E. Heisley, Sr	Ivaco Inc.	Ifastgroupe and Company, Limited Partnership, Ifastgroupe Realty Inc., IFC (Fasteners) Inc.
Transactions Granted Early Termination—09/10/2004			
20041292	The Pepsi Bottling Group, Inc.	Seltzer & Rydholm, Inc.	Seltzer & Rydholm, Inc.
20041311	Merck & Co., Inc.	DOV Pharmaceutical, Inc.	DOV Pharmaceutical Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative; or Renee Hallman, Case Management Assistant, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 04–21688 Filed 9–27–04; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0045]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Health and Diet Survey—2004 Supplement

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Health and Diet Survey—2004 Supplement" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 19, 2004 (69 FR 28928), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0545. The approval expires on September 30, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: September 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21674 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0023]

Determination of Regulatory Review Period for Purposes of Patent Extension; REYATAZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for REYATAZ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product REYATAZ (atazanavir sulfate). REYATAZ is indicated in combination with other

antiretroviral agents for the treatment of HIV–1 infection. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for REYATAZ (U.S. Patent No. 5,849,911) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of REYATAZ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for REYATAZ is 1,723 days. Of this time, 1,540 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 3, 1998. The applicant claims October 2, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was October 3, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 20, 2002. FDA has verified the applicant's claim that the new drug application (NDA) for REYATAZ (NDA 21–567) was initially submitted on December 20, 2002.

3. *The date the application was approved*: June 20, 2003. FDA has verified the applicant's claim that NDA 21–567 was approved on June 20, 2003.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 72 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Copies are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 2004.

Jane A. Axelrad,

Associate Commissioner for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–21625 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002E–0065]

Determination of Regulatory Review Period for Purposes of Patent Extension; KINERET

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for KINERET and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written or electronic comments and petitions 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.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product KINERET (anakinra). KINERET is indicated for the reduction of signs and symptoms of moderately to severely active rheumatoid arthritis, in patients 18 years or older who have failed 1 or more disease modifying antirheumatic drugs (DMARDs). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Kineret (U.S. Patent No. 5,075,222) from Amgen, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 30, 2002, FDA advised the Patent and Trademark Office that this human biologic product had undergone a regulatory review period and that the approval of KINERET represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office

requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for KINERET is 4,101 days. Of this time, 3,413 days occurred during the testing phase of the regulatory review period, while 688 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: August 25, 1990. The applicant claims August 23, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 25, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: December 28, 1999. The applicant claims December 27, 1999, as the date the product license application (BLA) for KINERET (BLA 103950) was initially submitted. However, FDA records indicate that BLA 103950 was submitted on December 28, 1999.

3. *The date the application was approved*: November 14, 2001. FDA has verified the applicant's claim that BLA 103950 was approved on November 14, 2001.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,825 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–21675 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2001E–0032]

Determination of Regulatory Review Period for Purposes of Patent Extension; VISUDYNE

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VISUDYNE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions 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.*

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–013), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–453–6699.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product VISUDYNE (verteporfin). VISUDYNE is indicated for the treatment of age-related macular degeneration in patients with predominantly classic subfoveal choroidal neovascularization. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VISUDYNE (U.S. Patent No. 5,095,030) from University of British Columbia, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated May 2, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of VISUDYNE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VISUDYNE is 3,194 days. Of this time, 2,953 days occurred during the testing phase of the regulatory review period, while 241 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: July 17, 1991. The applicant claims June 21, 1991, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the

IND effective date was July 17, 1991, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: August 16, 1999. The applicant claims August 24, 1999, as the date the new drug application (NDA) for VISUDYNE (NDA 21–119) was initially submitted. However, FDA records indicate that NDA 21–119 was submitted on August 16, 1999.

3. *The date the application was approved*: April 12, 2000. FDA has verified the applicant's claim that NDA 21–119 was approved on April 12, 2000.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 5 years of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 29, 2004. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 28, 2005. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 30, 2004.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 04–21678 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0423]

Second Annual Stakeholder Meeting on the Implementation of the Medical Device User Fee and Modernization Act of 2002 Provisions; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following public meeting: Second Annual Stakeholder Meeting on the Implementation of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). The topic of discussion is the agency's progress in implementing the various MDUFMA provisions, including the guidances FDA has issued on the new law.

DATES: The public meeting will be held on November 18, 2004, from 9 a.m. to 5 p.m. Registration is required by Friday, October 22, 2004. All individuals wishing to make a presentation or to speak on an issue should indicate their intent and the topic to be addressed and provide an abstract of the topic to be presented by October 22, 2004. Time for presentations will be limited to 10 minutes.

ADDRESSES: The public meeting will be held at the Marriott Gaithersburg Washingtonian Center, 9751 Washingtonian Blvd., Gaithersburg, MD.

Submit written requests to make an oral presentation to Cindy Garris, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 121, FAX: 301–443–8818, e-mail: *cxg@cdrh.fda.gov*. Include your name, title, firm name, address, telephone, and fax number with your request. All requests and presentation materials should include the docket number found in brackets in the heading of this document. Submit all request for suggestions and recommendations to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Cindy Garris, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–443–6597, ext. 121, FAX: 301–443–8818, e-mail: *cxg@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On October 26, 2002, MDUFMA amended the Federal Food, Drug, and Cosmetic Act to include several new significant provisions. MDUFMA authorizes the following provisions: (1) User fees for certain premarket applications, (2) establishment of good manufacturing practice (GMP) inspections by FDA-accredited persons (third-parties), and (3) new requirements for reprocessed single-use devices. In addition, the new law contains several provisions that, while narrower in scope than the previously mentioned provisions, are significant changes to the device law. These include a modular review program for premarket approval applications (PMAs), electronic labeling for certain prescription devices, several provisions concerning devices for pediatric use, and a new labeling requirement that requires the manufacturer's name to appear on the device itself, with certain exceptions.

The agency has been working to implement the new law since its passage in October 2002. During this time, FDA has accomplished the following significant milestones: (1) Established a user fee program with payment, billing, and appeals procedures; (2) published accreditation criteria for persons conducting third-party inspections and accredited 15 such persons; (3) identified certain reprocessed single-use devices that will be subject to additional marketing requirements; and (4) published guidances related to the PMA, premarket notification (510(k)), and biologics license application (BLA) programs, bundling multiple devices in a single application, and premarket review of pediatric devices. The agency is drafting additional documents to be issued in the near future.

II. Agenda

On November 18, 2004, FDA is providing the opportunity for all interested persons to provide information and share their views on the implementation of MDUFMA. The following topics will be discussed:

- User Fees Process—This panel will consider the small business determination and the user fee payment processes.

Premarket Review Performance Goals—This panel will discuss the agency's progress in meeting the PMA, 510(k), and BLA review performance goals.

- Qualitative Performance Goals (e.g., Modular PMA and GMP and

Bioresearch Monitoring (BIMO) Inspection Programs)— This panel will discuss the agency's progress in developing various qualitative performance goals, such as those related to the modular PMA and GMP inspection programs. This panel will also discuss internally-established milestones for the BIMO inspection process.

- Third-Party Inspection Program— This panel will discuss implementing guidances for the program, including establishment eligibility criteria for inspection by a third party.
- Reuse— This panel will discuss the FDA-identified reprocessed single-use devices that require submission of certain validation data and the guidance that describes the agency's review procedures for such submissions. This panel will also report on FDA's progress in reviewing the validation data submissions.

At the conclusion of the meeting, there will be a general discussion from the floor.

III. Registration

Online registration for the meeting is required by October 22, 2004. Acceptance will be on a first-come, first-served basis. There will be no onsite registration. Please register online at *http://www.fda.gov/cdrh/meetings/120303.html*. FDA is pleased to provide the opportunity for interested persons to listen from a remote location to the live proceedings of the meeting. In order to ensure that a sufficient number of call-in lines are available, please register to listen to the meeting at *http://www.fda.gov/cdrh/meetings/120303.html* by October 22, 2004. Persons without Internet access may register for the onsite meeting or to listen remotely by calling 301–443–6597, ext. 121 by October 22, 2004.

If you need special accommodations due to a disability, please contact Cindy Garris at 301–443–6597, ext. 121 at least 7 days in advance.

IV. Request for Suggestions, Recommendations, and Materials

FDA is particularly interested in receiving suggestions from stakeholders on other topics for discussion. The agency is interested in receiving recommendations about other provisions yet to be implemented both in terms of their priority for implementation and specifics on the implementation itself. Send suggestions or recommendations to the Division of Dockets Management (see **ADDRESSES**).

FDA will place an additional copy of any material it receives on the docket for this document (2004N–0423). Suggestions, recommendations, and materials may be seen at the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday (see **ADDRESSES**).

V. Transcripts

Following the meeting, transcripts will be available for review at the Division of Dockets Management (see **ADDRESSES**).

Dated: September 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21676 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0422]

Guidance for Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance (#173) entitled "Guidance For Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act (ADUFA)." This draft guidance describes how FDA intends to implement the Federal Food, Drug, and Cosmetic Act (the act) as it relates to animal drug sponsor fees.

DATES: Submit written or electronic comments on the draft guidance by October 28, 2004, to ensure their adequate consideration in preparation of the final document. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance document to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests.

Submit written comments on the draft guidance document 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*. Comments should be identified with the full title of the draft guidance document and the docket number found in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: David Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *dnewkirk@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Animal Drug User Fee Act of 2003 (ADUFA), enacted on November 18, 2003, amends the act by adding sections 739 and 740 (21 U.S.C. 379j-11 and 379j-12). Section 740 requires FDA to assess and collect user fees for certain applications, products, establishments, and sponsors. This draft guidance represents FDA's current thinking on how it intends to implement the animal drug sponsor fee provision of ADUFA.

II. Paperwork Reduction Act of 1995

FDA tentatively concludes that this draft guidance contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

III. Significance of Guidance

This draft guidance is being issued as a level 1 guidance consistent with our good guidance practices regulation (21 CFR 10.115). It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternate method may be used as long as it satisfies the requirements of the applicable statutes and regulations.

III. Comments

This draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this draft guidance document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Electronic comments may be submitted on the Internet at *http://www.fda.gov/dockets/ecomments*. Once on this site, select [2004D–0422]

"Guidance for Industry: Animal Drug Sponsor Fees Under the Animal Drug User Fee Act" and follow the directions. Copies of this guidance may be obtained on the Internet from the CVM home page at *http://www.fda.gov/cvm.*

Dated: September 21, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21677 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004D–0410]

Draft Guidance for Industry and Food and Drug Administration Staff: Application User Fees for Combination Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry and FDA Staff: Application User Fees for Combination Products." This draft guidance provides guidance to industry and FDA staff on marketing application user fees for combination products. The guidance also describes how the "barrier to innovation" waiver provision under the prescription drug user fee provisions of the Federal Food, Drug, and Cosmetic Act (act) may be applied to innovative combination products in the infrequent situation where FDA requires the submission of two marketing applications.

DATES: Submit written or electronic comments on this draft guidance by November 29, 2004 to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Combination Products, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the draft 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.*

FOR FURTHER INFORMATION CONTACT: Mark D. Kramer, Office of Combination Products (HFG–3), Food and Drug Administration, 15800 Crabbs Branch Way, suite 200, Rockville, MD 20855, 301–427–1934.

SUPPLEMENTARY INFORMATION:

I. Background

A combination product is a product comprised of any combination of a drug and a device; a biological product and a device; a drug and a biological product; or a drug, device and a biological product. Depending upon the type of combination product, approval, clearance or licensure may be obtained through submission of a single marketing application, or through separate marketing applications for the individual constituent parts of the combination product. For most combination products, a single marketing application is sufficient for the product's approval, clearance, or licensure. In some cases, two marketing applications may be submitted for a combination product when one application would suffice. For example, a sponsor may choose to submit two applications when one would suffice in order to receive some benefit from having two applications. In other cases, FDA may determine that two marketing applications are necessary.

In 1992, Congress passed the Prescription Drug User Fee Act (PDUFA). PDUFA authorized FDA to collect fees from companies that produce certain human drug and biological products. The Medical Device User Fee and Modernization Act of 2002 amended the act to provide for user fees for the review of device applications. When a company requests approval of a new drug, device or biological product prior to marketing, it must submit an application along with a fee to support the review process.

This document provides guidance to industry and FDA staff on marketing application user fees for combination products as defined under 21 CFR 3.2(e). The guidance document explains that combination products for which a single marketing application is submitted will be assessed the user fee associated with that particular type of marketing application. The document explains that, if a sponsor chooses to submit two marketing applications when one would suffice, a user fee for each application would ordinarily be assessed. The document also explains that, in the infrequent situation where FDA requires two marketing applications for a combination product, two application fees would ordinarily be assessed. However, the guidance also describes how the PDUFA "barrier to innovation" waiver provision may be applied to innovative combination products for which FDA requires the submission of two marketing applications. Such a waiver would provide a reduction in application user fees equivalent to the additional fee burden associated with the submission of two marketing applications. This guidance does not address how FDA will determine whether a single marketing application or multiple marketing applications should be submitted for a combination product. Such guidance is in development and will be provided separately for public review and comment.

II. Significance of Guidance

This draft guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized will represent the agency's current thinking on application user fees for combination products. 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 statute and regulations.

III. Electronic Access

To receive "Guidance for Industry and FDA Staff: Application User Fees for Combination Products," you may either send a fax request to 301–427–1935, or an e-mail request to *combination@fda.gov* to receive a hard copy or electronic copy of the document.

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/oc.combination/default.htm* or *http://www.fda.gov/ohrms/dockets/default.htm.*

IV. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the

brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 22, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21673 Filed 9–23–04; 3:08 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0367]

Cumulative List of Exceptions and Alternative Procedures Approved by the Director of the Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability a cumulative list of exceptions and alternative procedures to requirements regarding blood, blood components, and blood products that have been approved by the Director of the Center for Biologics Evaluation and Research (CBER). Also, FDA is announcing that this list is posted on the Internet and it will be periodically updated.

ADDRESSES: Copies of the cumulative list of exceptions and alternative procedures are available from the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and the Office of Communication, Training and Manufacturers Assistance (HFM–40), Food and Drug Administration, suite 200 N, 1401 Rockville Pike, Rockville, MD 20852–1448, 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the cumulative list of exceptions and alternative procedures.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, suite 200N, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

The Director of CBER has approved exceptions or alternative procedures that have been requested by blood establishments under § 640.120 (21 CFR 640.120). Section 640.120 grants the Director authority to approve exceptions or alternatives to any requirement in subchapter F (Biologics) of chapter I, parts 600 through 680 (21 CFR parts 600 through 680) regarding blood, blood components, or blood products.

FDA is announcing publication of a cumulative list of exceptions and alternative procedures to requirements regarding blood, blood components, and blood products that have been approved by the Director of CBER. Also, FDA is announcing that this list is posted on the Internet and it will be periodically updated.

II. List of Approved Exceptions and Alternative Procedures (§ 640.120(b))

§ 600.15(a)

- Allow use of autologous units that were transported in a shipping container without ice and exposed to temperatures of 10.0 °C to 10.5 °C for 10 minutes.

§ 606.60(b)

- Calibrate digital thermometer according to the schedule recommended by manufacturer, instead of monthly as required by regulation.

§ 606.65(e)

- Deviate from manufacturer's instructions to use the Gen-Probe Procleix HIV–1/HCV Assay and Roche COBAS Ampliscreen HIV–1 and HCV nucleic acid tests on whole blood, red blood cells (RBC), platelets, source leukocytes, therapeutic exchange plasma, and recovered plasma intended for further manufacturing.
- Deviate from manufacturer's instruction to use samples containing up to 200 milligrams (mg)/deciliters (dL) hemoglobin or 800 mg/dL triglycerides in the following assays: Abbott HIV AB HIV–1/HIV–2, (rDNA) EIA (LN3A77), Ortho Hepatitis B Core Antibody, Ortho Hepatitis B Surface Antigen ELISA System 2, and Roche Alanine Aminotransferase.
- Deviate from manufacturer's instruction to use an alternate testing algorithm for confirming repeatedly reactive HIV–1 p24 antigen test results. Specifically, a licensed HIV–1 single unit Nucleic Acid Test will be performed in place of the HIV–1 p24 antigen neutralization test and the results used for donor notification and counseling and recipient tracing.
- Deviate from manufacturer's instructions to test donor specimens that were initially reactive using Ortho HbsAg System 3, in duplicate using Genetic Systems HbsAg EIA 3.0 (shaker method). If either or both of the donor samples test reactive using Genetic Systems HbsAg EIA 3.0 (shaker method), the donor specimen will be tested using Genetic Systems HbsAg Confirmatory 3.0 (shaker method).

§ 606.121

- Use of full face green labels for autologous use only units.
- Use of black print for all statements on container labels (omit use of statements in red print.) (Regulation revised—variance request no longer needed.)
- Use of "Autologous" on label in lieu of "Paid" or "Volunteer"
- Omit special labeling from RBC with positive antibody screens that are suspended in additive solution, if the supernatant of the additive solution was tested using approved methods and found to be negative for unexpected antibodies.
- Place ABO/Rh label and "Donor Untested" on group and type label position.
- Print the anticoagulant name after the proper product name instead of preceding it. (Done for ISBT 128 labels.)

§ 606.122(m)

- Extend the storage time of thawed Fresh Frozen Plasma (FFP) at 1 to 6 °C to 24 hours, instead of 6 hours.

§ 606.151

- Omit performing a minor side crossmatch on RBC prepared in additive solutions that have not been screened for unexpected antibodies.
- Use of a computer (electronic) crossmatch instead of a major side crossmatch. (Regulation revised—variance request no longer needed.)
- Use of a type and screen procedure as an alternative method for the antiglobulin crossmatch. (Regulation revised—variance request no longer needed.)
- Allow use of a recipient sample up to 72 hours old for pre-transfusion testing. (Regulation revised—variance request no longer needed.)

§ 610.40

- Ship source leukocytes to the manufacturer before infectious disease testing has been completed, provided the product is labeled that testing is not complete and stored in quarantine until the manufacturer has received the test results. (Regulation revised—variance request no longer needed.)
- Ship autologous blood unit to another establishment without testing unit for communicable disease agents. Testing performed on sample drawn on subsequent donation.
- Ship autologous blood unit to another establishment for processing and labeling and return to collecting facility without testing unit for communicable disease agents, provided neither facility has a crossover policy.
- Allow shipment under quarantine of untested source plasma labeled as

tested negative, to warehouse operated by another manufacturer for storage until testing is completed.

• Reinstate one donor with nondiscriminated results (NDR) on the Procleix HIV–1/HCV assay provided the donor tests negative for HIV RNA and HCV RNA using the Procleix Discriminatory assays and anti-HIV 1/2 using Genetic Systems ElA.

• Allow shipment under quarantine of source plasma before completion of PCR testing, and labeled as pending NAT, to another licensed manufacturer who will cull and destroy NAT reactive units under a contractual arrangement with the source plasma manufacturer.

• Allow shipment under quarantine of source plasma that is labeled as negative/nonreactive for infectious diseases before completion of the infectious disease tests, to a contract off-site storage facility not operating under a U.S. license. source plasma manufacturer will cull and destroy reactive units according to their standard procedures.

§ 610.53

• Extend CPD and CP2D liquid plasma expiration date to 42 days when stored at 1 to 6 °C.

• Allow use of 53 vials of deglycerolized immunogen RBC that were exposed to temperatures from 6 to 8 °C for up to 3 hours.

§ 640.3

• Allow whole blood collection from autologous donors who don't meet donor suitability requirements.

• Allow whole blood collection from donors with a history of hepatitis before age 11. (Regulation revised—variance request no longer needed.)

• Allow 4-week intervals between FFP donations when it is collected as a by-product of a plateletpheresis procedure.

• Allow individuals with hereditary hemochromatosis to donate blood and blood components more frequently than every 8 weeks without examination or certification of health by physician at time of donation and to be exempt from placing special labeling about the donor's disease on the blood components.

• Allow post-donation requalification after day of donation of donors who used an outdated vCJD donor questionnaire.

§§ 640.4(h) and 640.11(a)

• Allow use of whole blood and RBC that have been exposed to temperatures up to 11.5 °C for 4.5 hours or 17 °C for 2 hours and 15 minutes, provided that the safety, purity, and potency were not affected.

§ 640.5

• Allow syphilis testing to be performed on 27 donors on a substitute sample drawn after day of donation.

• Allow specimens used for NAT assay to be collected up to 24 hours prior to the collection of heparinized whole blood units.

§ 640.11(a)

• Allow use of RBC and RBC Leukocyte-Reduced that were stored at 1 °C to −3 °C for up to 4 hours, provided each unit was examined for hemolysis before distribution.

• Allow use of RBC that were exposed to temperatures between 6 °C and 10.5 °C for up to 4.75 hours, provided each unit was examined for hemolysis before distribution.

§ 640.23(b)

• Allow ABO and Rh testing on plateletpheresis donors to be performed every 90 days.

§ 640.32(b)

• Relabel FFP collected by apheresis as recovered plasma prior to expiration of the original product. (Done to manage FFP inventory collected during periods of increased risk for West Nile Virus.)

§ 640.34

• Allow use of A and AB FFP that was warmed to −4 °C over an 18-hour time period, provided that safety, purity, and potency were not affected and the consignee is notified of the temperature deviation. Relabeling or shortening of the expiration date is not required.

• Allow plasma manufactured from whole blood to be frozen within 24 hours after phlebotomy. Blood component must be labeled as "PLASMA Frozen within 24 hours after Phlebotomy."

• Allow use of 45 units of FFP that were exposed to temperatures between -6 °C and −18 °C for a total of 4.5 hours, provided the blood components remained frozen during the whole time period.

• Allow distribution of 1,201 units of FFP and 395 units of Plasma Cryoprecipitate Reduced that were exposed to temperatures between -16.4 °C and -18 °C for a total of 1.5 hours, provided the blood components remained frozen during the whole time period.

§§ 640.34 and 640.54(a)

• Allow distribution of 1,235 units of FFP and 963 units of Plasma Cryoprecipitate Reduced and prepare Cryoprecipitated AHF from 1,531 units Cryoprecipitate rich plasma that were exposed to temperatures between -11.8 °C and -18 °C for a total of 5.5 hours, provided the blood components remained frozen during the whole time period.

§§ 640.61, 640.62, and 640.63

• Permit trained staff to explain the hazards of plasmapheresis and obtain informed consent.

• Allow physician substitutes to perform some of the duties of a physician (i.e., physical examinations of source plasma donors) and to approve physician substitute training programs.

§ 640.63

• Draw one donor with a rare RBC antibody who was Anti-HCV positive.

• Draw a donor with lgM Anti-HAV with a disease state program approval.

• Allow plasmapheresis of an asymptomatic donor with a history of Lyme Disease, provided product is labeled that it was collected from donor with a history of Lyme Disease.

• Allow a donor with a slightly abnormal Serum Protein Electrophoresis (SPE) to donate for an Infant Botulism Program.

• Allow individuals with childhood history of hepatitis at age 10 or younger to donate. (Regulation revised–variance request no longer needed.)

• Allow source plasma to be collected from a specific anti-e donor whose weight fluctuates between 108 and 112 pounds (lbs) to donate, provided the weight does not drop below 108 lbs at time of donation and donor meets all other eligibility requirements.

§ 640.65

• Allow an infrequent plasmapheresis program in source plasma facilities. Donors may donate without a physical examination or SPE.

• Allow collection of source plasma from anti-HCV reactive donors with elevated SPE results (no more than 25 percent over normal limits established by testing lab), provided the donor's personal physician has given written approval.

§ 640.66

• Allow a physician substitute to schedule Tetanus Toxoid injections and review responses of donors immunized with licensed vaccines. The center physician must still do weekly evaluation of records.

§ 640.76

• Allow source plasma exposed to more than one episode of storage temperature fluctuations warmer than −20 °C and colder than −5 °C for less than 72 total hours to not be relabeled as "Source Plasma, Salvaged," provided the plasma was not allowed to thaw and the consignee is notified of the temperature deviations.

• Allow a revised procedure for labeling shipments of Source Plasma, Salvaged. Instead of labeling each unit, the facility may mark "Source Plasma, Salvaged" on the shipping cartons and packing slips.

• Allow 600 liters of source plasma stored at temperatures ranging from

−20 °C to +19 °C for 3 1/2 hours to be relabeled as "Source Plasma, Salvaged."

• Allow 53 units of source plasma intended for further manufacture into injectable products, that were stored at 14 °C to be relabeled for further manufacture into noninjectable products, provided that label states that it was stored at 14 °C.

§§ 660.22 and 660.28

• Use FTA–ABS methodology as an alternative procedure to quantitative RPR testing on samples with a qualitative reactive RPR test for syphilis.

• Use an alternate procedure to perform FDA required tests for lot release action on bulk product prior to filling final containers for RBC antigen phenotyping reagents and Anti-Human Globulin reagents.

§ 660.28

• Allow the use of existing labels for blood grouping reagents, pending reprinting of corrected labels.

III. Electronic Access

Persons with access to the Internet may obtain the cumulative list of exceptions and alternative procedures at *http://www.fda.gov/cber/blood/exceptions.htm.*

Dated: September 20, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–21624 Filed 9–27–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, In Vivo Cellular and Molecular Imaging Centers (ICMICS).

Date: November 4–5, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Kenneth L. Bielat, PhD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892, (301) 496–7576, *bielatk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21710 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Review of Program Project Grant Application.

Date: October 10–11, 2004.

Time: 6 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21711 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Review of Program Project Grant Application.

Date: October 12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: William D. Merritt, PhD, Scientific Review Administrator, Grants Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8034, MSC 8328, Bethesda, MD 20892–8328, 301–496–9767.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer

Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy,

[FR Doc. 04–21712 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sickle Cell Disease Advisory Committee.

Date: November 1, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: Discussion of program policies and issues.

Place: National Institutes of Health, 6701 Rockledge Drive, Room 9112, Bethesda, MD 20892.

Contact Person: Charles M. Peterson, M.D., Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0080.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21715 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Pulmonary Complications of Sickle Cell Disease.

Date: October 22, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

Contact Person: David A. Wilson, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7204, MSC 7924, Bethesda, MD 20892, (301) 435–0929.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21716 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the pubic in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Developmental Biology Subcommittee.

Date: October 14–15, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 496–1485, *changn@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21707 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Regulation of NuMa in Cloned Pig Embryos.

Date: October 7, 2004.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone conference call.)

Contact Person: Jon M. Ranhand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884, *ranhandj@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21708 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, The Function of Cyclin A2 in Meiosis of the Mouse Oocyte.

Date: October 20, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone conference call.)

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892. (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21709 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, The Function of Cyclin A2 in Meiosis of the Mouse Oocyte.

Date: October 20, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21717 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: October 18–19, 2004.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg. Rm. 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21718 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Cholesterol Absorption and Metabolism.

Date: November 18, 2004.

Time: 3 p.m. to 7:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Translational Research for the Prevention and Control of Diabetes.

Date: November 22, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21719 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01)M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Fifth Virtual Conference on Genomics and Bioinformatics (VCGB–V).

Date: November 18, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21720 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Bacterial and TH1.

Date: November 2, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, Two Democracy Plaza, 6707 Democracy

Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Nephrology Training and Ion Channels.

Date: November 5, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Carol J. Goter-Robinson, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 748, 6707 Democracy Boulevard, Bethesda, MD 20892, (301) 594–7791, *goterrobinsonc@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21721 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Cancellation of Meeting

Notice is hereby given of the cancellation of the Pathobiochemistry Study Section, October 15, 2004, 8 a.m. to October 15, 2004, 5 p.m., Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD, 20814 which was published in the **Federal Register** on September 9, 2004, 69 FR 546994–54696.

The meeting is cancelled due to a lack of quorum.

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21713 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 14, 2004, 8:30 AM to October 15, 2004, 6 pm, Hilton Crystal City, 2399 Jefferson Davis Highway, Crystal City, VA, 22202 which was published in the **Federal Register** on September 9, 2004, 69 FR 54694–54696.

The meeting time has been changed to 8 AM on October 14, 2004, to 6 PM on October 15, 2004. The meeting date and location remain the same. The meeting is closed to the public.

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21714 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemoprevention of Colon Cancer.

Date: October 13, 2004.

Time: 1:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Eun Ah Cho, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6202, MSC 7804, Bethesda, MD 20892. (301) 451–4467, *choe@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Hematopoietic Stem Cells.

Date: October 21, 2004.

Time: 8 a.m. to 9 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892. (301) 435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering-Respiratory Diseases.

Date: October 27, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892. (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.

Date: October 28-29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892. 301/435–1503. *elwoodwi@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Language and Communication Study Section.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Weijia Ni, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 ZIP), Bethesda, MD 20892. (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunology Fellowship Study Section.

Date: October 28–29, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 208892. 301–435–1221, *laingc@csr.nih.gov*,

Name of Committee: Center for Scientific Review Special emphasis Panel, Diet and Exercise Assessment Methods.

Date: October 28, 2004.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications. One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Place: One Washington circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Ann Hardy, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3158, MSC 7770, Bethesda, MD 20892. (301) 435–0695, *hardyan@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biomaterials and Bioninterfaces: Quorum.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Alexander Gubin, PhD, Scientific Review Administrator Intern, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892. 301–435–2902, *gubina@csr.nih.gov*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Cathleen L Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 4208, MSC 7812, Bethesda, MD 20892. 301–435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study Section.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892. 301–435–1034, *ravindrn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 DT(01) Q—Developmental Therapeutics Study Section.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Sharon K, Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892. (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.

Date: October 28, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Donald L. Schneider, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4172, MSC 7806, Bethesda, MD 20892. (301) 435–1727, *schneidd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CMAD 01Q: Cellular Mechanisms in Aging and Development: Quorum.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: James P. Harwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7843, Bethesda, MD 20892. 301–435–1256, *harwoodj@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Host Interactions with Bacterial Pathogens Study Section.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., RM 3212, MSC 7808, Bethesda, MD 20892. (301) 435–1147, *henryt@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Hypertension and Microcirculation Study Section.

Date: October 28–29, 2004.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Ai-Ping Zou, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892. (301) 435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innovative Research Topics in Virology.

Date: October 28–29, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.

Date: October 28–29, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Modeling and Analysis of Biological Systems.

Date: October 28–29, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892. (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cell Death and Injury in Neurodegeneration.

Date: October 28–30, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate applications.

Place: Westin Horton Plaza Hotel, 910 Broadway Circle, San Diego, CA 92101.

Contact Person: David L. Simpson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5192, MSC 7846, Bethesda, MD 20892. (301) 435–1278, *simpsond@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Immunity and Host Defense.

Date: October 28–29, 2004.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Virginian Suites Hotel, 1500 Arlington Blvd., Arlington, VA 22209.

Contact Person: Patrick K. Lai, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892. 301–435–1052, *laip@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group,

Behavioral Genetics and Epidemiology Study Section.

Date: October 28–29, 2004.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. (301) 435–0906, *davisy@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Bioengineering-Digestive Diseases.

Date: October 28, 2004.

Time: 1 p.m to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Gopal C. Sharma, DVM, MS, PhD, Diplomate American Board of Toxicology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2184, MSC 7818, Bethesda, MD 20892. (301) 435–1783, *sharmag@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Viral Transport, Entry, and Immune Responses.

Date: October 28, 2004.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Rouge, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Joseph D. Mosca, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7808, Bethesda, MD 20892. (301) 435–2344, *moscajos@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 EMNR E (10) Small Business Activities Special Emphasis Panel.

Date: October 28–29, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892. (301) 435–1041, *krishnak@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306 Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93–892, 93.893, National Institutes of Health, HHS)

Dated: September 22, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–21722 Filed 9–27–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Directorate of Information Analysis and Infrastructure Protection (IAIP); Open Meeting of National Infrastructure Advisory Council (NIAC)

AGENCY: Directorate of Information Analysis and Infrastructure Protection, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Infrastructure Advisory Council (NIAC) will meet on Tuesday, October 12, 2004, from 1 p.m. until 4 p.m. at the Hamilton Crowne Plaza Hotel in Washington, DC. The meeting will be open to the public. Limited seating will be available. Reservations are not accepted.

The NIAC advises the President of the United States on the security of information systems for critical infrastructure supporting other sectors of the economy, including banking and finance, transportation, energy, manufacturing, and emergency government services. At this meeting, the NIAC will be briefed on the status of several Working Group activities, including those that the Council undertook at its last meeting.

DATES: The NIAC will meet Tuesday, October 12, 2004, from 1 p.m. until 4 p.m.

ADDRESSES: The NIAC will meet at the Hamilton Crowne Plaza Hotel, 529 14th & K St., NW., Washington, DC 20005.

The NIAC Designated Federal Official can be contacted via mail: Ms. Nancy J. Wong, Infrastructure Coordination Division, Directorate of Information Analysis and Infrastructure Protection, Department of Homeland Security, Room 6095, 14th Street & Constitution Avenue, NW., Washington, DC. 20230.

FOR FURTHER INFORMATION CONTACT: Nancy J. Wong, NIAC Designated Federal Official, 202–482–1929.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Committee Meeting on October 12, 2004

I. Opening of Meeting
  Nancy J. Wong, Department of Homeland Security (DHS)/ Designated Federal Officer, NIAC
II. Roll Call of Members
  NIAC Staff
III. Opening Remarks
  Frances Fragos Townsend, Assistant to the President and Homeland Security Advisor, Homeland Security Council, (invited);
  Secretary Tom Ridge, DHS (invited);
  Lt. Gen. Frank Libutti (USMC, ret.), Under Secretary for Information Analysis and Infrastructure Protection, DHS (invited); and
  Robert P. Liscouski, Assistant Secretary for Infrastructure Protection, Department of Homeland Security (invited);
IV. Status Reports on Pending Initiatives:
  A. Intelligence Process and Work Products Regarding Critical Infrastructures
  Vice Chairman John T. Chambers, Chairman & CEO, Cisco Systems, Inc. and Chief Gilbert Gallegos, Police Chief, City of Albuquerque, New Mexico Police Department; NIAC Member
  B. Risk Management Approaches to Protection
  Thomas E. Noonan, Chairman, President & CEO, Internet Security Systems, Inc.; NIAC Member and Martha Marsh, President & CEO, Stanford Hospital & Clinics; NIAC Member
  C. Assuring Adequate National Intellectual Capital to Secure Cyber-Based Critical Infrastructures
  Vice Chairman Chambers, Chairman & CEO, Cisco Systems, Inc. and Dr. Linwood Rose, President, James Madison University; NIAC Member
V. Final Report and Discussion on Hardening the Internet
  George H. Conrades, Chairman & CEO Akamai Technologies; NIAC Member
VI. Final Report and Discussion on the Common Vulnerability Scoring System
  Vice Chairman Chambers; and John W. Thompson, Chairman & CEO, Symantec Corporation; NIAC Member
VII. Final Report and Discussion on Prioritization of Cyber Vulnerabilities
  Martin G. McGuinn, Chairman & CEO, Mellon Financial Corporation; NIAC Member
VIII. Adoption Of NIAC Recommendations
  NIAC Members
IX. New Initiatives
  Chairman Erle A. Nye; NIAC Members
X. New Business
  Chairman Erle A. Nye; NIAC Members
XI. Adjournment

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, telephone the Designated Federal Official as soon as possible.

Dated: September 13, 2004.

Nancy J. Wong,

Designated Federal Official for NIAC.

[FR Doc. 04–21690 Filed 9–27–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed continuing information collection. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the need to conduct a continuous evaluation of emergency management training programs as it relates to the knowledge and skills gained by participants through the various courses.

SUPPLEMENTARY INFORMATION: 44 CFR part 360 implements the Emergency Management Training Program, designed to increase States' emergency management capabilities through training of personnel with responsibilities over preparedness, response, and recovery from all types of disasters. The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Public Law 93–288) as amended, authorizes training programs for emergency preparedness for State, local and tribal government personnel. In response to the Government Performance and Results Act (GPRA), the information obtained from the Emergency Management Institute "Follow-up Evaluation Survey," will be a follow-up tool used to evaluate the knowledge and/or skills participants obtained at EMI during training courses, and to improve Emergency Management Institute courses. The information is critical to determine if the Emergency Management Institute is meeting strategic goals and objectives established by the Federal Emergency Management Agency in order to fulfill its mission.

Collection of Information

Title: Emergency Management Institute Follow-up Evaluation Survey.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 1660–0044.

Form Numbers: 95–56.

Abstract: FEMA Form 95–56, is a self-assessment tool to identify knowledge and skills gained by trainees in the various emergency management-related courses taken. The information collected is used to: (1) Document and measure the performance of the training program to comply with mandates from the Government Performance and Results Act (GPRA) and accountability reporting requirements, and (2) conduct reviews of course contents and offerings by program officials in order to make modifications to improve effectiveness and efficiency based on survey results.

Affected Public: Federal, State, local or tribal government officials.

Estimated Total Annual Burden Hours: 600 burden hours.

ANNUAL BURDEN HOURS

Project/activity (survey, form(s), focus group, etc.)	No. of respondents (A)	Frequency of responses (B)	Burden hours per respondent (C)	Annual responses (A × B)	Total annual burden hours (A × B × C)
FF 95–56	2,200	[a] 1	0.25	2,200	550
Pilot Test-e-mail	100	1	0.50	100	50
Total	2,300			2,300	600

[a] Frequency of response is dependent on how many courses the individual student takes.

Estimated Cost: The annualized cost estimate of this collection for each individual participant is $8.00 per course evaluation and $16.00 for a one-time only participation in a pilot test of sending the questionnaires via e-mail. Annualized cost for all respondents is $5,200.00.

Comments: Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, Chief, Records Management Section, Information Resources Management Branch, Information Technology Services Division, Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security, 500 C Street, SW., Room 316, Washington, DC 20472, or e-mail address: *FEMA-Information-Collections@dhs.gov*, or facsimile number (202) 646–3347.

FOR FURTHER INFORMATION CONTACT: Contact Dennis Hickethier, Supervisory Training Specialist, National Emergency Training Center, phone number (301) 447–1148, for additional information. You may contact Ms. Anderson for copies of the proposed collection of information at the above e-mail address or facsimile number.

Dated: September 20, 2004.

Edward W. Kernan,

Branch Chief, Information Resources Management Branch, Information Technology Services Division.

[FR Doc. 04–21666 Filed 9–27–04; 8:45 am]

BILLING CODE 9110–17–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: September 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Georgia resulting from Hurricane Ivan beginning on September 14, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Georgia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas; and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, James N. Russo, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Georgia to have been affected adversely by this declared major disaster:

Carroll, Cherokee, Cobb, Dawson, DeKalb, Early, Franklin, Fulton, Gilmer, Madison, Rabun, Towns, Union, and White Counties for Individual Assistance.

Carroll, Cherokee, Cobb, Dawson, DeKalb, Early, Franklin, Fulton, Gilmer, Madison, Rabun, Towns, Union, and White Counties for Public Assistance Categories A and B, including direct Federal assistance, at 100 percent of the total eligible costs for a period of up to 72 hours.

All counties within the State of Georgia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21663 Filed 9–27–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1548–DR]

Louisiana; Amendment No. 1 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA–1548–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective September 17, 2004.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21660 Filed 9–27–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1550–DR]

Mississippi; Amendment No. 2 to Notice of a Major Disaster Declaration

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

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Mississippi (FEMA–1550–DR), dated September 15, 2004, and related determinations.

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Mississippi is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 15, 2004:

Clarke and Lauderdale Counties for Individual Assistance (already designated for Public Assistance Categories A & B, including direct Federal assistance, for 100 percent of the total eligible costs for a period of up to 72 hours).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program-Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21661 Filed 9–27–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1553–DR]

North Carolina; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of North Carolina (FEMA–1553–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: September 18, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 18, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that damage in certain areas of the State of North Carolina resulting from Hurricane Ivan beginning on September 16, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of North Carolina.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas; and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments. Direct Federal assistance is authorized.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. For a period of up to 72 hours, you are authorized to fund assistance for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justin DeMello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of North Carolina to have been affected adversely by this declared major disaster:

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, and Yancey Counties for Individual Assistance.

Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, and Yancey Counties for Public Assistance Categories A and B, including direct Federal assistance, at 100 percent of the total eligible costs for a period of up to 72 hours.

All counties within the State of North Carolina are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21662 Filed 9–27–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: September 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated

September 19, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding beginning on September 8, 2004, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas; and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Lee Champagne, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Belmont, Carroll, Columbiana, Guernsey, Harrison, Jefferson, Monroe, Morgan, Muskingum, Noble, Perry, Stark, Trumbull, Tuscarawas, and Washington Counties for Individual Assistance.

All counties in the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21665 Filed 9–27–04; 8:45 am]
BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1557–DR]

Pennsylvania; Major Disaster and Related Determinations

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

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1557–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: September 19, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 19, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania resulting from Tropical Depression Ivan beginning on September 17, 2004, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program in the designated areas; and Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate subject to completion of Preliminary Damage Assessments.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation, and the Other Needs Assistance under Section 408 of the Stafford Act will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Allegheny, Armstrong, Beaver, Butler, Centre, Clearfield, Cumberland, Dauphin, Indiana, Lackawanna, Luzerne, Lycoming, Northampton, Perry, Schuylkill, Susquehanna, Washington, Westmoreland, and Wyoming Counties for Individual Assistance.

Allegheny, Armstrong, Beaver, Butler, Centre, Clearfield, Cumberland, Dauphin, Indiana, Lackawanna, Luzerne, Lycoming, Northampton, Perry, Schuylkill, Susquehanna, Washington, Westmoreland, and Wyoming Counties for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations;

97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–21664 Filed 9–27–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–76]

Notice of Submission of Proposed Information Collection to OMB; Housing Discrimination Complaint

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval of a revision to the collection of information used for housing discrimination complaints filed under the Fair Housing Act. The information is needed to contract the complainant, and to assess the complaint.

DATES: *Comments Due Date:* October 28, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2529–0011) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov* and Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This Notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (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 the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Discrimination Complaint.

OMB Approval Number: 2529–0011.

Form Numbers: Form–HUD–903.1.

Description of the Need for the Information and its Proposed Use: This collection of information is necessary to receive housing discrimination complaints. The information collection is being revised in that form HUD–903 is being eliminated.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Average hrs per response	=	Burden hours
Reporting Burden	10,750	1		0.333		3,583

Total Estimated Hours: 3,583

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 21, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2397 Filed 9–27–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4917–N–03]

Notice of FHA Debenture Call

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice announces a debenture recall of certain Federal Housing Administration (FHA) debentures, in accordance with authority provided in the National Housing Act.

FOR FURTHER INFORMATION CONTACT: Richard Keyser, Office of Evaluation, Room 2232, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone (202) 755–7510, extension 7546. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 204(c) and 207(j) of the National Housing Act, 12 U.S.C. 1710(c) and section 1713(j), and in accordance with HUD's regulations at 24 CFR 203.409 and § 207.259(e)(3), the Assistant Secretary for Housing-Federal Housing Commissioner, with the approval of the Secretary of the Treasury, announces the call of all FHA debentures with a coupon rate of 6 percent or above, except for those debentures subject to "debenture lock agreements," that have been registered on the books of the Bureau of Public Debt, Department of the Treasury, and are, therefore, "outstanding" as of September 30, 2004. The date of the call is January 1, 2005.

The debentures will be redeemed at par plus accrued interest. Interest will cease to accrue on the debentures as of the call date. Final interest on any called debentures will be paid with the principal at redemption.

During the period from the date of this Notice to the call date, debentures that are subject to the call may not be used by the mortgagee for a special redemption purchase in payment of a mortgage insurance premium.

No transfer of debentures covered by the foregoing call will be made on the books maintained by the Treasury Department on or after December 1, 2004. This does not affect the right of the holder of a debenture to sell or assign the debenture on or after this date. Payment of final principal and interest due on January 1, 2005, will be made automatically to the registered holder.

Dated: September 17, 2004.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 04–21671 Filed 9–27–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–190–0777–XG]

Central California Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting: Central California Resource Advisory Council.

SUMMARY: In accordance with the Federal Land and Policy Management Act of 1976 (FLPMA), and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet at the Hacienda, Building 101, Infantry Road, located on Fort Hunter-Liggett. Access to the Hacienda is from U.S. Highway 101 (North). Take the "Fort Hunter Liggett/Jolon Road" exit just north of King City; proceed 18 miles to the intersection of Jolon and Mission Roads and the entrance to Fort Hunter Liggett. Continue five miles to the main post area where a series of signs will provide directions to the Hacienda. From U.S. Highway 101 (South) near Bradley take the "Fort Hunter Liggett/Jolon Road" exit, proceed 16 miles to Lockwood. Proceed through Lockwood for five miles to Mission Road. Turn left on Mission Road through the gate to Fort Hunter Liggett and continue five miles to the main post area where a series of signs will provide directions to the Hacienda. To enter the Fort, all visitors must have a valid drivers' license, vehicle registration, and proof of auto insurance.

DATES: The meeting will be held Friday, October 15 and Saturday, October 16, 2004, in the Hacienda on Fort Hunter-Liggett, California. On Friday, October 15, the meeting will begin at 8 a.m. at the Hacienda. At 2 p.m. on Friday, October 15, a public comment period will be held at the Hacienda. On Saturday, October 15 the meeting will begin at 8 a.m. at the Hacienda. A field tour of public lands at the Joaquin Rocks will commence at 9 a.m.

SUPPLEMENTARY INFORMATION: The 12-member council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Central California. At this meeting, agenda topics will include discussions of the abandoned mine lands program on BLM managed lands in Central California, regional resource management planning efforts, conservation programs, recreation, grazing, cultural resources, and land access issues. The RAC members will also hear status reports from the Bakersfield, Bishop, Folsom, and Hollister field office managers. All meetings are open to the public. Members of the public may present written comments to the council. Each formal council meeting allocates time for oral public comments. Depending on the number of persons wishing to speak and the time available, time for individual comments may be limited. Members of the public are welcome on field tours but they must provide for their own transportation and sustenance. Individuals who plan to attend and need special assistance, such as sign language interpretation and other reasonable accommodations, should contact the BLM Hollister Field Office.

FOR FURTHER INFORMATION CONTACT: George Hill—Assistant Field Manager, BLM Hollister Field Office, 20 Hamilton Court, Hollister, CA 95023, (831) 630–5036 or e-mail: *George_Hill@ca.blm.gov.*

Dated: September 22, 2004.

Robert E. Beehler,

Field Office Manager; Hollister Field Office.

[FR Doc. 04–21746 Filed 9–27–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–04–1420–BJ]

Montana: Filing of Plats of Amended Protraction Diagrams

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice of Filing of Plats of Amended Protraction Diagrams.

SUMMARY: The Bureau of Land Management (BLM) will file the plats of the amended protraction diagrams of the lands described below in the BLM Montana State Office, Billings, Montana, (30) days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Roger C. Baxter, Cadastral Surveyor, Branch of Cadastral Survey, Bureau of Land Management, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800, telephone (406) 896–5009.

SUPPLEMENTARY INFORMATION: The amended protraction diagrams were prepared at the request of the U.S. Forest Service and are necessary to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

The lands for the prepared amended protraction diagrams are:

Principal Meridian, Montana

Tps. 6, 7, 8, and 9 S., Rs. 8, 9, 10, 11, and 12 E.

The plat, representing the Amended Protraction Diagram 4 Index of unsurveyed Townships 6, 7, 8, and 9 South, Ranges 8, 9, 10, 11, and 12 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 6 S., R. 10 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 6 South, Range 10 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 6 S., R. 11 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 6 South, Range 11 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 6 S., R. 12 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 6 South, Range 12 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 7 S., R. 8 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 7 South, Range 8 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 7 S., R. 9 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 7 South, Range 9 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 7 S., R. 10 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 7 South, Range 10 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 7 S., R. 11 E.

The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 7 South, Range 11 East, Principal

Meridian, Montana, was accepted August 12, 2004.

T. 7 S., R. 12 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 7 South, Range 12 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 8 S., R. 9 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 8 South, Range 9 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 8 S., R. 10 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 8 South, Range 10 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 8 S., R. 11 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 8 South, Range 11 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 8 S., R. 12 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 8 South, Range 12 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 9 S., R. 8 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 9 South, Range 8 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 9 S., R. 9 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 9 South, Range 9 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 9 S., R. 10 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 9 South, Range 10 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 9 S., R. 11 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 9 South, Range 11 East, Principal Meridian, Montana, was accepted August 12, 2004.

T. 9 S., R. 12 E.
The plat, representing Amended Protraction Diagram 4 of unsurveyed Township 9 South, Range 12 East, Principal Meridian, Montana, was accepted August 12, 2004.

Tps. 3, 4, and 5 S., Rs. 10, 11, and 12 E.
The plat, representing the Amended Protraction Diagram 5 Index of unsurveyed Townships 3, 4, and 5 South, Ranges 10, 11, and 12 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 3 S., R. 10 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 3 South, Range 10 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 3 S., R. 11 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 3 South, Range 11 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 4 S., R. 10 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 4 South, Range 10 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 4 S., R. 11 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 4 South, Range 11 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 4 S., R. 12 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 4 South, Range 12 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 5 S., R. 10 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 5 South, Range 10 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 5 S., R. 11 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 5 South, Range 11 East, Principal Meridian, Montana, was accepted August 13, 2004.

T. 5 S., R. 12 E.
The plat, representing Amended Protraction Diagram 5 of unsurveyed Township 5 South, Range 12 East, Principal Meridian, Montana, was accepted August 13, 2004.

Tps. 7 and 9 N., Rs. 12 and 13 West
The plat, representing the Amended Protraction Diagram 18 Index of unsurveyed Townships 7 and 9 North, Ranges 12 and 13 West, Principal Meridian, Montana, was accepted August 11, 2004.

T. 7 N., R. 12 W.
The plat, representing Amended Protraction Diagram 18 of unsurveyed Township 7 North, Range 12 West, Principal Meridian, Montana, was accepted August 11, 2004.

T. 7 N., R. 13 W.
The plat, representing Amended Protraction Diagram 18 of unsurveyed Township 7 North, Range 13 West, Principal Meridian, Montana, was accepted August 11, 2004.

T. 9 N., R. 12 W.
The plat, representing Amended Protraction Diagram 18 of unsurveyed Township 9 North, Range 12 West, Principal Meridian, Montana, was accepted August 11, 2004.

Tps. 33, 34, 35, 36, and 37 N., Rs. 13, 14, 15, and 16 W.
The plat, representing the Amended Protraction Diagram 45 Index of unsurveyed Townships 33, 34, 35, 36, and 37 North, Ranges 13, 14, 15, and 16 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 33 N., R. 13 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 33 North, Range 13 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 33 N., R. 14 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 33 North, Range 14 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 33 N., R. 15 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 33 North, Range 15 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 33 N., R. 16 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 33 North, Range 16 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 34 N., R. 14 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 34 North, Range 14 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 34 N., R. 15 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 34 North, Range 15 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 34 N., R. 16 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 34 North, Range 16 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 35 N., R. 14 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 35 North, Range 14 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 35 N., R. 15 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 35 North, Range 15 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 35 N., R. 16 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 35 North, Range 16 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 36 N., R. 15 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 36 North, Range 15 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 36 N., R. 16 W.
The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 36 North, Range 16 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 37 N., R. 15 W.

The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 37 North, Range 15 West, Principal Meridian, Montana, was accepted July 14, 2004.

T. 37 N., R. 16 W.

The plat, representing Amended Protraction Diagram 45 of unsurveyed Township 37 North, Range 16 West, Principal Meridian, Montana, was accepted July 14, 2004.

Tps. 33, 34, 35, 36, and 37 N., Rs. 17, 18, 19, and 20 W.

The plat, representing the Amended Protraction Diagram 46 Index of unsurveyed Townships 33, 34, 35, 36, and 37 North, Ranges 17, 18, 19, and 20 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 33 N., R. 17 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 33 North, Range 17 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 33 N., R. 18 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 33 North, Range 18 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 33 N., R. 19 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 33 North, Range 19 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 33 N., R. 20 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 33 North, Range 20 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 34 N., R. 17 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 34 North, Range 17 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 34 N., R. 18 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 34 North, Range 18 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 34 N., R. 19 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 34 North, Range 19 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 34 N., R. 20 W.

The plat, representing Amended Protraction Diagram 46 of unsurveyed Township 34 North, Range 20 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 35 N., R. 17 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 35 North, Range 17 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 35 N., R. 18 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 35 North, Range 18 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 35 N., R. 19 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 35 North, Range 19 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 35 N., R. 20 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 35 North, Range 20 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 36 N., R. 17 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 36 North, Range 17 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 36 N., R. 18 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 36 North, Range 18 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 36 N., R. 19 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 36 North, Range 19 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 36 N., R. 20 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 36 North, Range 20 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 37 N., R. 17 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 37 North, Range 17 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 37 N., R. 18 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 37 North, Range 18 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 37 N., R. 19 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 37 North, Range 19 West, Principal Meridian, Montana, was accepted April 30, 2004.

T. 37 N., R. 20 W.

The Plat, representing Amended Protraction Diagram 46 of unsurveyed Township 37 North, Range 20 West, Principal Meridian, Montana, was accepted April 30, 2004.

We will place copies of the plats of the amended protraction diagrams we described in the open files. They will be available to the public as a matter of information.

If BLM receives a protest against these amended protraction diagrams, as shown on these plats, prior to the date of the official filings, we will stay the filings pending our consideration of the protest.

We will not officially file these plats of the amended protraction diagrams until the day after we have accepted or dismissed all protests and they have become final, including decisions or appeals.

Dated: September 21, 2004.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 04–21642 Filed 9–27–04; 8:45 am]

BILLING CODE 4310–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–78993, 4–08807]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) has asked the Secretary of the Interior to transfer jurisdiction of 154.70 acres of public land within Clark County, Nevada, to the Department of Veterans Affairs for a period of 20 years the land to be dedicated to the use of the VA for a medical center.

DATES: Comments and requests for a public meeting must be received by December 27, 2004.

ADDRESSES: Comments and meeting requests should be submitted in writing to the Bureau of Land Management (BLM), Nevada State Director, P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis Samuelson, Bureau of Land Management, Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has filed an application to withdraw, reserve and transfer jurisdiction over the following described land from the Department of the Interior (Interior) to the VA:

Mount Diablo Meridian

T. 19 S., R. 62 E.,
Sec. 19, lots 2 and 3, SE¼NW¼ and NE¼SW¼.

The area described contains 154.70 acres in Clark County.

The above-described public land also is located within the city limits of the City of North Las Vegas, Nevada. The purpose of the proposed withdrawal, reservation and transfer of jurisdiction

(hereinafter the "withdrawal") is to allow the VA to construct, operate and maintain a medical center, including a hospital, an outpatient clinic and a nursing home for the care of veterans of the United States armed forces. The term of the proposed withdrawal would be for 20 years and, in the future, the withdrawal could be renewed for the like terms if, when a renewal is requested, it is determined by Interior that the same need for the land as a VA medical center continues to exist.

Currently the above-described public land is subject to a protective withdrawal established pursuant to section 4 (c) of Pub. L. 105–263, as amended. Consequently, there is no need to segregate the above-described land from the operation of the general land laws while BLM processes the VA withdrawal application; and, therefore, this notice does not specify a segregation period.

All persons who wish to submit written comments, including suggestions, or objections in connection with the proposed withdrawal may submit their views by mail in writing to the BLM, Nevada State Director at the address listed above by December 27, 2004. Letters must be post-marked within the 90-day period.

The application and case file for the proposed withdrawal and relevant comments, including names and street addresses of respondents, will be available for public review at the Nevada State Office, 1340 Financial Boulevard, Reno, Nevada, during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal should submit a written request to the Nevada State Director by December 27, 2004. If the authorized officer determines that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

This proposed withdrawal will be processed in accordance with the regulations set forth in 43 CFR part 2300.

Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly conflict with the proposed use may be allowed with the approval of the BLM authorized officer.

(Authority: 43 U.S.C. 1714(b)(1))

Dated: August 26, 2004.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 04–21571 Filed 9–27–04; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of an information collection (1010–0150).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), MMS is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in Form MMS–144, "Rig Movement Notification Report."

DATES: Submit written comments by November 29, 2004.

ADDRESSES: The ability to submit comments is now available through MMS's Public Connect on-line commenting system and is the preferred method for commenting. Interested parties may submit comments on-line at *https://ocsconnect.mms.gov*. From the Public Connect "Welcome" screen you will be able to either search for Information Collection 1010–0150 or select it from the "Projects Open for Comment" menu.

Alternatively, interested parties may mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817; Attention: Rules Processing Team (RPT). Please reference "Information Collection 1010–0150" in your comments and include your name and return address. *Note:* We are no longer accepting comments sent via e-mail.

FOR FURTHER INFORMATION CONTACT: Cheryl Blundon, Rules Processing Team at (703) 787–1600. You may also contact Cheryl Blundon to obtain a copy, at no cost, of Form MMS–144.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–144, Rig Movement Notification Report.

OMB Control Number: 1010–0150.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition. Section 1332(6) of the Act requires that "operations in the [O]uter Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health."

This ICR concerns the regulations in 30 CFR 250 subparts D, E, and F, specifically Sections 403(c), 502, and 602, on the movement of drilling, completion, and workover rigs and related equipment on and off an offshore platform or from well to well on the same offshore platform. The requirement for operators to notify MMS of rig movements is only specifically stated in § 250.403(c). Since MMS is mandated to perform timely inspections on rigs and platforms, we must have accurate information with regard to their location on the OCS. We use this information in scheduling inspections with regard to priority and cost effectiveness.

However, because of the increased volume of activity in the Gulf of Mexico Region (GOMR), it is now standard MMS procedure to require this notification as a condition of approval

for well workover, recompletion, or abandonment operations. Because of this we have included the rig movement notification with the other general information collection requirements of these regulations under OMB control numbers 1010–0141, 1010–0067, and 1010–0043 (30 CFR part 250, subparts D, E, and F, respectively). The MMS District Offices use the information reported to ascertain the precise arrival and departure of all rigs in OCS waters. The accurate location of these rigs is necessary to better facilitate the scheduling of inspections by MMS personnel.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR 250.196, "Data and information to be made available to the public." No items of a sensitive nature are collected. Responses are mandatory.

Frequency: The frequency is on occasion.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Reporting and Recordkeeping "Hour" Burden: We estimate respondents will average 6 minutes to fill out and complete Form MMS–144. The total annual estimate is 180 burden hours.

Estimated Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens associated for this collection.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *". Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Agencies must also estimate the "non-hour cost" burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: MMS's practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. If you wish your name and/or address to be withheld, you must state this prominently at the beginning of your comment. MMS will honor this request to the extent allowable by law; however, anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Arlene Bajusz (202) 208–7744.

Dated: September 17, 2004.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 04–21638 Filed 9–27–04; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act; Record of Vote of Meeting Closure (Public Law 94–409) (5 U.S.C. Sec. 552b)

I, Edward F. Reilly, Jr., Chairman of the United States Parole Commission, was present at a meeting of said Commission, which started at approximately 10:30 a.m. on Tuesday, September 21, 2004, at the U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815. The purpose of the meeting was to decide seven petitions for reconsideration pursuant to 28 CFR Section 2.27. Three Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcement further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Edward F. Reilly, Jr., Cranston J. Mitchell, and Deborah A. Spagnoli.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize the record to be made available to the public.

Dated: September 22, 2004.

Edward F. Reilly, Jr.,

Chairman, U.S. Parole Commission.

[FR Doc. 04–21811 Filed 9–24–04; 1:49 pm]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 21, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on 202–693–4122 (this

is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Financial and Program Reporting and Performance Standards for Indian and Native American Programs Under Title I, Section 166 of the workforce Investment Act.

OMB Number: 1205–0422.

Frequency: Quarterly, Semi-annually and Annually.

Affected Public: State, Local, or Tribal Government; Not-for-profit institutions.

Burden Summary:

Required section 166 activity (comprehensive services)	DINAP Form #	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs
Plan Narrative	.....	145	1	145	12	1,740
Recordkeeping	.....	145	.....	17,000	3	51,000
Participant Report	ETA 9084	145	2	290	9.67	2,804
Totals	.....	145	3	17,435	24.67	55,544

Required section 166 activity (supplemental youth services)	DINAP Form #	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs
Plan Narrative	.....	105	1	105	6	630
Recordkeeping	.....	105	.....	8,000	2	16,000
Participant Report	ETA 9085	105	2	210	9.67	2,031
Totals	.....	105	3	8,315	17.67	18,661

Required section 166 activity (comprehensive services) (supplemental youth services)	DINAP Form #	Number of respondents	Responses per year	Total responses	Hours per response	Total burden hrs
Financial Report	ETA 9080	CSP–145	4	580	9.67	5,608
		SYS–105	4	420	9.67	4,061
Totals	.....	250	4	1,000	24.67	9,669

Total Burden Hours: 83,874.

Description: This is an extension of two currently-approved collections [1205–0422 and 1205–0423] of participant and financial information relating to the operation of employment and training programs for Indians and Native Americans under title I, section 166 of the Workforce Investment Act (WIA). It also contains the basis of the current performance standards system for WIA section 166 grantees. The burden estimates for this collection include the Supplemental Youth Services Program and the Comprehensive Services Program authorized under section 166, as well as financial reporting requirements for both funds sources. Burden estimates do not include those tribes currently participating in the demonstration under Public Law 102–477.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21655 Filed 9–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 21, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
• Enhance the quality, utility, and clarity of the information to be collected; and
• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Applications to Employ Special Industrial Homeworkers and Workers with Disabilities.

OMB Number: 1215–0005.

Frequency: On occasion; Semi-annually; and Annually.

Type of Response: Reporting.

Affected Public: Business and other for-profit; Individuals or households; Not-for-profit institutions; Farms; and State, Local, or Tribal Government.

Number of Respondents: 4,550.

Form	Annual responses	Average response time (hours)	Annual burden hours
WH–2	50	0.5	25
WH–226	4,500	0.75	3,375
WH–226A	12,000	0.75	9,000
Total	16,550		12,400

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $1,820.

Description: This collection of information is necessary to determine whether respondents will be authorized to pay sub-minimum wages to handicapped individuals and employ homeworkers in the restricted industries under the provisions of sections 11(d) and 14(c) of the Fair Labor Standards Act.

Agency: Employment Standards Administration.

Type of Review: Extension of currently approved collection.

Title: Application for Approval of a Representative's Fee in Black Lung Claim Proceedings Conducted by the U.S. Department of Labor.

OMB Number: 1215–0171.

Frequency: On occasion.

Type of Response: Reporting.

Affected Public: Business or other for-profit.

Number of Respondents: 255.

Annual Responses: 255.

Average Response Time: 42 minutes.

Annual Burden Hours: 179.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $102.

Description: The purpose of the Form CM–972 is to collect pertinent data to determine if the a representative's services and fees can be paid under the Black Lung Benefits Act (30 U.S.C. 901 and 20 CFR 725.365 and 725.366).

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21656 Filed 9–27–04; 8:45 am]

BILLING CODE 4510–CK–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 21, 2004.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Ira Mills on (202) 693–4122 (this is not a toll-free number) or e-mail: *mills.ira@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
• Enhance the quality, utility, and clarity of the information to be collected; and
• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Revision of a currently approved collection.

Title: Resource Justification Model.

OMB Number: 1205–0430.

Frequency: Annually.

Affected Public: State, local, or tribal government; Federal Government.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
Crosswalk	53	Annually	53	120	6,360

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden (hours)
Account Summary	53	Annually	53	4	212
RJM 1 through 6 series	53	Annually	53	3	159
Narrative	53	Annually	53	8	424
Totals			212	33.75	7,155

Total Burden Hours: 7,155.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (Operating/Maintaining Systems or Purchasing Services): $375,000.

Description: This program would replace the current methodologies for budget formulation and grant allocation to the states for unemployment insurance program.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 04–21657 Filed 9–27–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 22, 2004.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or email: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Record of Results of Examinations of Self-Rescuers (Underground Coal Mines).

OMB Number: 1219–0044.

Frequency: Quarterly.

Type of Response: Recordkeeping.

Affected Public: Business or other for-profit.

Number of Respondents: 773.

Number of Annual Responses: 143,592.

Estimated Time Per Response: 30 minutes to certify and document that an examination was conducted and 1 minute to document why a device was taken out of service.

Total Burden Hours: 71,748.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Title 30, CFR 75.1714–3(b), (c), (d), and (e) require that self-rescuers be examined regularly at intervals not to exceed 90 days by a qualified person who certifies by date and signature that the tests were conducted. A record must be made when a self-rescue device is removed from service and when corrective action is taken as a result of the examination. The records are used as an enforcement tool to insure that the devices have been examined and are maintained in operable and usable condition.

Agency: Mine Safety and Health Administration.

Type of Review: Extension of currently approved collection.

Title: Escape and Evacuation Plans 30 CFR 57.11053.

OMB Number: 1219–0046.

Frequency: On occasion and semi-annually.

Type of Response: Recordkeeping and Third party disclosure.

Affected Public: Business or other for-profit.

Number of Respondents: 243.

Number of Annual Responses: 486.

Estimated Time Per Response: 8.5 hours.

Total Burden Hours: 4,131.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $0.

Description: Title 30 CFR 57.11053 requires the development of an escape and evacuation plan specifically addressing the unique conditions of each underground metal and nonmetal mine. Section 57.11053 also requires that revisions be made as mining progresses. The plan must be available to the inspector and conspicuously posted at locations convenient to all persons on the surface and underground. The information is prepared by the mine operator for use by miners, MSHA, and persons involved in rescue operations.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 04–21658 Filed 9–27–04; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2004–16; Application No. D–11203]

Class Exemption for the Establishment, Investment and Maintenance of Certain Individual Retirement Plans Pursuant to a Mandatory Distribution

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of class exemption.

SUMMARY: This document contains a final class exemption from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code). The exemption permits a fiduciary of a plan who is also the employer maintaining the plan to establish, on behalf of its separated employees, an individual retirement plan at a financial institution which is the employer or an affiliate, in connection with a Mandatory Distribution, as defined herein. Relief also is provided for a plan fiduciary to select a proprietary product as the initial investment for such individual retirement plan. Finally, relief is provided for the receipt of certain fees by the Individual Retirement Plan Provider in connection with the establishment or maintenance of the individual retirement plan and the initial investment of the Mandatory Distribution. The class exemption affects plan sponsors, plan fiduciaries, Individual Retirement Plan Providers and individual retirement plan account holders.

EFFECTIVE DATE: The exemption is effective for Mandatory Distributions made on or-after March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne or Karen Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Washington, DC 20210, at (202) 693–8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On March 2, 2004, the Department published a notice in the **Federal Register** (69 FR 9846[1]) of the pendency before the Department of a proposed class exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of ERISA and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was published concurrently with the proposed Fiduciary Responsibility under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor to be promulgated at 29 CFR 2550.404a–2 (defined herein as "Automatic Rollover Regulation"), which also was published on March 2, 2004 (69 FR 9899).

The Department proposed this class exemption on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, August 10, 1990).[2] The notice gave interested persons an opportunity to comment or request a public hearing on the proposed exemption. Four comments were received by the Department regarding the proposed class exemption. No requests for a public hearing were received. Upon consideration of the comments received, the Department has determined to grant the proposed exemption subject to certain modifications. These modifications and the comments are discussed below.

Executive Order 12866

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Pursuant to the terms of the Executive Order, it has been determined that this action is "significant" and therefore subject to review by the Office of Management and Budget (OMB). Accordingly, this action has been reviewed by OMB.

This final prohibited transaction class exemption is being published concurrently with a final regulation titled "Fiduciary Responsibility under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor." The exemption permits plan fiduciaries that are also employers maintaining a pension plan to establish, for separated employees, individual retirement plans at financial institutions that are the employer or an affiliate, in connection with a Mandatory Distribution as that term is defined in this exemption. The exemption also permits plan fiduciaries to select a proprietary product as the initial investment for an individual retirement plan. Finally, the exemption provides relief from what would otherwise be a prohibited transaction for the receipt of certain fees by Individual Retirement Plan Providers in connection with the establishment or maintenance of the individual retirement plan and the initial investment of a Mandatory Distribution.

The modifications made to the exemption following the Department's consideration of comments received on both the proposed exemption and the proposed Automatic Rollover Regulation are described in detail in the discussion that follows this summary of costs and benefits. An overview of the economic impacts of those modifications is presented in this section.

In general, the costs and benefits that may accrue to fiduciaries have been described and quantified in connection with the economic impact of the final regulation describing the safe harbor for automatic rollovers of mandatory distributions also published in today's issue of the **Federal Register**. Although they are not separately identified, the fiduciaries of pension plans who are also employers maintaining the plan who would establish these individual retirement plans at a financial institution which is the employer or affiliate pursuant to this exemption are included within the estimates of affected plans and separated employees presented in the final regulation.

The estimates presented in the final regulation have been revised from the proposal to reflect the provision of the final rule with respect to the applicability of the safe harbor to mandatory distributions of $1,000 or less described in section 411(a)(11) of the Code, provided there is no affirmative distribution election by the participant and the fiduciary makes a rollover distribution into an individual retirement plan in accordance with the other conditions of the regulation, without regard to the fact that such a rollover is not described in section 401(a)(31) of the Code.

When the Department originally estimated the costs and benefits of the proposed regulation, which included the potential impact on the plans of financial institutions and affiliates that might make use of this exemption, the conditions of both the proposed regulation and the proposed exemption

[1] As corrected at 69 FR 11043 (March 9, 2004).

[2] Section 102 of Reorganization Plan No. 4 of 1978 generally transferred the authority of the Secretary of the Treasury to issue exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

provided that fees and expenses attendant to the individual retirement plan, other than establishment fees, could be charged only against the income earned by the individual retirement plan. This condition has not been modified in the final exemption. Although the condition has been revised in the final regulation, the change has no impact on the total estimated fees and expenses attendant to these individual retirement plans, regardless of whether they are established in accordance with the conditions of the regulation or exemption. This difference between the regulation and exemption with respect to this condition is expected to result in a difference in only the way in which fees and expenses are allocated between the individual retirement plan and the Individual Retirement Plan Provider. It is likely that the fees and expenses attendant to the individual retirement plan offered by the plan fiduciary or an affiliate will be allocated at least in part to the Individual Retirement Plan Provider due to the limitation on the amount that can be charged to the individual retirement plan. The likelihood of the provider incurring such a limit on the recovery of its cost is greater when rates of return are low.

Certain other costs may be allocated in connection with the conditions of the exemption to plan fiduciaries that select the proprietary products of an employer or an affiliate for investment of individual retirement plans, that would not be allocated to plan fiduciaries absent the prohibited transaction that would otherwise occur. Specifically, in connection with the acquisition of an Eligible Investment Product, section I(h) of the exemption provides that plan fiduciaries are not permitted to charge a sales commission to the individual retirement plans of their separated employees. Foregone sales commissions may result in costs in the form of a reduction in profit margin or an operating loss to some Individual Retirement Plan Providers.

The Department has no basis for estimating a wide array of factors that would affect costs, such as the amount of fees or expenses that might not be fully charged to the individual retirement plans, the extent to which plan fiduciaries will use one or more proprietary products, the number of accounts that could be rolled over into such products, or the lost income, if any, that may result from unpaid sales commissions. Therefore, the Department has not estimated a cost for these provisions of the exemption. However, fiduciaries are in no event required to make use of individual retirement plans offered by the plan fiduciary or an affiliate. In addition, many of the proprietary products permitted under the exemption generally do not charge a sales commission in connection with an initial purchase. In any case, it is likely that a plan fiduciary will use the individual retirement plans of itself or an affiliate, or a proprietary product for these individual retirement plans only if it is financially beneficial to do so, for example, as a way to retain deposits and increase earnings.

Paperwork Reduction Act

The final exemption permits a fiduciary of a pension plan that is also the employer maintaining the plan to establish, on behalf of its separated employees, an individual retirement plan at a financial institution that is the employer or an affiliate, in connection with a Mandatory Distribution. Relief is also being provided for a plan fiduciary to select a proprietary product as the initial investment for such an individual retirement plan. Finally, relief is provided for the receipt of certain fees by the Individual Retirement Plan Provider.

The exemption includes notice and recordkeeping requirements that are meant to inform separated employees and allow for verification by interested persons that the terms of the exemption have been met. Specifically, prior to an automatic rollover of a Mandatory Distribution, a plan fiduciary is required to notify a participant that the distribution may be rolled over into a proprietary investment selected by the plan fiduciary. Notification that a proprietary investment may be selected is to be provided in connection with a written explanation required under section 402(f) of the Code or in the plan's summary plan description or summary of material modifications thereto.

In the Department's view, neither alternative will result in a measurable burden. The additional information required to be included to meet this condition, though important, would require only a minor alteration to an existing disclosure. The fiduciary would also retain flexibility under the exemption as to the most efficient method of conveying the required information. As such, no burden for plan fiduciaries is expected to arise from the notice requirement in the exemption.

Similarly, because the records required to be maintained to enable verification of adherence to the conditions of the exemption would customarily be maintained as a part of usual business practices, this condition is not expected to impose a burden on Individual Retirement Plan Providers.

Accordingly, the Department has made no submission to OMB for approval of an information collection request in connection with the proposed or final exemption. Although the Department requested comments on any potential impact within the terms of the Paperwork Reduction Act of the notice and recordkeeping requirements of the exemption, no comments were received.

Discussion of Comments Received

The Department received four comments in response to the notice of proposed exemption. Additionally, the Department received a number of comments in connection with the proposed Automatic Rollover Regulation. Interested persons should refer to the final Automatic Rollover Regulation, published in this issue of the **Federal Register**, for discussion of these comments.

With respect to the proposed exemption, one commenter stated that the definition of Eligible Investment Product should not be limited to money market funds because such investments might not keep pace with inflation. The commenter asserted that a better safe harbor investment would be any diversified fund that invests in a substantial number of stocks and/or bonds. Another commenter asked that the definition of Eligible Investment Product be revised to include alternative default portfolio allocations for the assets, similar to what is permitted by the Internal Revenue Service (IRS) for automatic enrollments (*i.e.*, balanced funds). The same commenter suggested that the individual retirement plans should replicate the asset allocation that workers selected while in active employment. Upon consideration of the comments, the Department believes that given the nature and the amount of the automatic rollover, investments should be designed to minimize risk, preserve assets for retirement and maintain liquidity. Further, the Department does not believe that an investment strategy adopted by a participant while in a defined contribution plan would necessarily continue to be the appropriate strategy for the participant in the context of an automatic rollover, particularly given the small account balances covered under this exemption. Accordingly, the Department has determined not to modify the definition of "Eligible Investment Product."

One commenter on the proposed exemption requested that the dollar limit on accounts affected by the exemption be raised from $5,000 to $10,000, and that the $1,000 floor be

eliminated. The Department has determined to eliminate the $1,000 floor but retain the $5,000 limit.[3] In this regard, the Department has added a new section IV(i) to the exemption to define the term, "Mandatory Distribution," which includes both an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code and a mandatory distribution of one thousand dollars ($1,000) or less described in section 411(a)(11) of the Code.

Finally, a commenter asked that the Department address "whether a credit union, or other 'Regulated Financial Institution' * * * can establish [individual retirement plans] at its own institution in order to satisfy the automatic rollover requirement with respect to distributions from qualified plans which it maintains for its own employees." The commenter also asked whether such credit union or "Regulated Financial Institution" could charge fees in connection with the establishment and maintenance of such individual retirement plans. The Department notes that the exemption currently permits a fiduciary of a plan to designate itself or an affiliate to provide an individual retirement plan and to receive fees in connection with the establishment and maintenance of the individual retirement plan, if the conditions of the exemption are met. Accordingly, a credit union or other "Regulated Financial Institution" may establish individual retirement plans for distributions from qualified plans it sponsors for its own employees, provided the credit union or "Regulated Financial Institution" meets the definition of Individual Retirement Plan Provider.[4]

The Department did not receive any comments on the proposed exemption regarding the amount of fees and expenses attendant to the individual retirement plan, including the investment of the assets thereof. However, the Department notes that such comments were received in connection with the parallel provisions of the proposed Automatic Rollover Regulation, and that the fee provisions of the final Automatic Rollover Regulation were revised in response to the commenters. Unlike the Automatic Rollover Regulation, the Department has determined to retain the condition of the exemption (section II(j)(2)) that limits fees and expenses other than establishment charges to the income earned by the individual retirement plan. The Department believes that the removal or modification of this requirement would increase the potential for self dealing. This situation presents potential violations of section 406(b) of the Act for which the Department is not prepared to provide additional relief. However, in accordance with the modifications made to the Automatic Rollover Regulation, the Department has revised the language of section II(j)(1). In the proposal, this condition stated that the fees and expenses attendant to the individual retirement plan could not exceed fees and expenses charged by the Individual Retirement Plan Provider for comparable individual retirement plans established for eligible rollover distributions that are not subject to the automatic rollover provisions of section 401(a)(31)(B) of the Code. As revised, the condition requires an Individual Retirement Plan Provider to charge fees and expenses that do not exceed the fees and expenses it charges to comparable individual retirement plans established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code. The Department has made the same revision to similar language in conditions II(e) and II(g).

Description of the Exemption

Section I of the exemption describes the transactions that are covered by the exemption. The plan fiduciary who provides the notice in section II(a) and meets the additional requirements described below would be able to be the Individual Retirement Plan Provider for its separated employees and to make an initial decision to invest the Mandatory Distribution in an investment product in which such plan fiduciary or its affiliate has an interest. Additionally, relief is provided for the receipt of fees by the Individual Retirement Plan Provider in connection with the establishment or maintenance of the individual retirement plan, and as a result of the investment of the Mandatory Distribution in an investment product in which the plan fiduciary or its affiliate has an interest.

Under the exemption, a plan fiduciary must, in connection with the written explanation provided pursuant to section 402(f) of the Code or in the plan's summary plan description or summary of material modifications thereto, notify the participant prior to the Mandatory Distribution that, absent his or her election, the Mandatory Distribution will be rolled over to an individual retirement plan provided by the plan fiduciary or an affiliate, and that the plan fiduciary may select its own proprietary investment as the initial investment of the Mandatory Distribution. In any case, the plan's summary plan description or summary of material modifications thereto will describe the plan's rollover provisions effectuating the requirements of sections 401(a)(31)(B) and 411(a)(11) of the Code.

The plan fiduciary must comply with the requirements of the Automatic Rollover Regulation. The term "Automatic Rollover Regulation" refers to the regulation promulgated by the Department at 29 CFR 2550.404a–2, which is published elsewhere in this issue of the **Federal Register**.

The plan fiduciary must be the employer, any of whose employees are covered by the plan from which the Mandatory Distribution is made, or an affiliate.

Under the exemption, the individual retirement plan must be established and maintained for the exclusive benefit of the account holder of the individual retirement plan, his or her spouse or their beneficiaries. Under section IV(a) of the exemption, the term individual retirement plan is defined in section 7701(a)(37) of the Code. Section 7701(a)(37) defines individual retirement plan as an individual retirement account described in section 408(a) of the Code and an individual retirement annuity described in section 408(b) of the Code. For purposes of this exemption, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA. *See* 29 CFR 2510.3–2(d).

The exemption requires that the terms of the individual retirement plan, including the fees and expenses for establishing and maintaining the individual retirement plan, be no less favorable than those available to comparable individual retirement plans established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code. The exemption further requires that all fees and expenses not be in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code. Corresponding service provider regulations under the Code provide guidance on the meaning of reasonable compensation under section 4975(d)(2). *See* 26 CFR 54.4975–6.

[3] For a further discussion of this issue, refer to the preamble to the final Automatic Rollover Regulation, published in this issue of the **Federal Register**.

[4] The Department notes that the term "Regulated Financial Institution" is defined in section IV(f) of the exemption and refers to the entity that can provide the initial investment product for the Mandatory Distribution. This term is separate from the term "Individual Retirement Plan Provider," defined at section IV(d), which refers to the entity that may provide the individual retirement plan for the Mandatory Distribution.

Under the exemption, the individual retirement plan must be invested in an "Eligible Investment Product." Section IV(e) defines the term "Eligible Investment Product" to mean an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution and shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or a similar financial institution. In addition, the term includes "stable value products" issued by a financial institution that are fully benefit-responsive to the individual retirement plan account holder, *i.e.*, that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder's access to the assets of the individual retirement plan.

The exemption would not apply to the initial investment transaction entered into by an individual retirement plan unless the Eligible Investment Product is offered by a Regulated Financial Institution. A Regulated Financial Institution is defined under the exemption as an entity that: (i) Is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

In addition, the exemption requires that the rate of return or the investment performance of the individual retirement plan investment(s) be no less favorable than the rate of return or investment performance of an identical investment that could have been made at the same time by a comparable individual retirement plan established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code.

The exemption does not permit the individual retirement plan to pay a sales commission in connection with the acquisition of an Eligible Investment Product.

Under the exemption, the individual retirement plan account holder must be able to, within a reasonable time after request and without penalty to the principal amount of the investment, transfer his individual retirement plan balance to a different investment offered by the Individual Retirement Plan Provider, or transfer his or her individual retirement plan balance to another individual retirement plan sponsored at a different financial institution. The Department wants to ensure that, once the account holder discovers that an individual retirement plan has been established on his or her behalf, he or she is able to make appropriate investment decisions with respect to the assets of the individual retirement plan or to change Individual Retirement Plan Providers without penalty.

Section II(j) of the exemption limits the fees that may be paid by the individual retirement plan, as follows: (1) The fees and expenses attendant to the individual retirement plan, including the investment of the assets of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the Individual Retirement Plan Provider for comparable individual retirement plans established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code; (2) the fees and expenses, other than establishment charges, attendant to the individual retirement plan, may be charged only against the income earned by the individual retirement plan; and (3) the fees and expenses shall not exceed reasonable compensation within the meaning of section 4975(d)(2) of the Code. In this regard, an Individual Retirement Plan Provider who has not previously offered comparable individual retirement plans will not be able to satisfy condition II(j)(1) of the exemption.

Lastly, the exemption contains a recordkeeping requirement. The Individual Retirement Plan Provider must maintain records to enable certain persons to determine whether the applicable conditions of the exemption have been met. The records must be available for examination by the IRS, the Department, and account holders and their beneficiaries for at least six years from the date of each automatic rollover.

General Information

The attention of interested persons is directed to the following:

(1) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department finds that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of such plan;

(2) The exemption is supplemental to, and not in derogation of, any other provisions of ERISA and the Code including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(3) The exemption does not extend to transactions prohibited under section 406(b)(3) of ERISA and section 4975(c)(1)(F) of the Code; and

(4) The class exemption is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption.

Exemption

Accordingly, the following exemption is granted under the authority of section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).

I. Transactions

The restrictions of sections 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (i) the fiduciary of an Employee Pension Benefit Plan (plan) using its authority to designate itself or an affiliate as Individual Retirement Plan Provider to receive a Mandatory Distribution, (ii) the initial investment of the Mandatory Distribution by the plan fiduciary in an investment product in which the plan fiduciary or its affiliate has an interest, (iii) the receipt of fees by the Individual Retirement Plan Provider in connection with the establishment or maintenance of the individual retirement plan, and (iv) the receipt of investment fees by the Individual Retirement Plan Provider or an affiliate as a result of the initial investment of the Mandatory Distribution in an investment product in which the plan fiduciary or an affiliate

has an interest, provided that the conditions set forth in sections II and III are satisfied.

II. Conditions

(a) In connection with the written explanation provided to the separating participant pursuant to section 402(f) of the Code, or in the plan's summary plan description or summary of material modifications thereto, the plan fiduciary notifies the participant that, absent his or her election, the Mandatory Distribution will be rolled over to an individual retirement plan offered by the plan fiduciary or an affiliate, and that the plan fiduciary may select its own proprietary investment for the initial investment of the Mandatory Distribution.

(b) The requirements of the Automatic Rollover Regulation are met.

(c) The plan fiduciary is the employer any of whose employees are covered by the plan from which the Mandatory Distribution is made, or an affiliate.

(d) The individual retirement plan is established and maintained for the exclusive benefit of the individual retirement plan account holder, his or her spouse or their beneficiaries.

(e) The terms of the individual retirement plan, including the fees and expenses for establishing and maintaining the individual retirement plan, are no less favorable than those available to comparable individual retirement plans established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code.

(f) The Mandatory Distribution is invested in an Eligible Investment Product(s), as defined in section IV(e).

(g) The rate of return or the investment performance of the individual retirement plan investment(s) is no less favorable than the rate of return or investment performance of an identical investment(s) that could have been made at the same time by comparable individual retirement plans established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code.

(h) The individual retirement plan does not pay a sales commission in connection with the acquisition of an Eligible Investment Product.

(i) The individual retirement plan account holder may, within a reasonable period of time after his or her request and without penalty to the principal amount of the investment, transfer his individual retirement plan balance to a different investment offered by the Individual Retirement Plan Provider, or transfer his individual retirement plan balance to an individual retirement plan sponsored at a different financial institution.

(j)(1) Fees and expenses attendant to the individual retirement plan, including the investment of the assets of such plan, (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs, and surrender charges) shall not exceed the fees and expenses charged by the Individual Retirement Plan Provider for comparable individual retirement plans established for reasons other than the receipt of a Mandatory Distribution made pursuant to section 401(a)(31)(B) of the Code;

(2) Fees and expenses attendant to the individual retirement plan, with the exception of establishment charges, may be charged only against the income earned by the individual retirement plan; and

(3) Fees and expenses are not in excess of reasonable compensation within the meaning of section 4975(d)(2) of the Code.

(k) The present value of the nonforfeitable accrued benefit, as determined under section 411(a)(11) of the Code, does not exceed the maximum amount required to be rolled over under section 401(a)(31)(B) of the Code.

III. Recordkeeping

(a) The Individual Retirement Plan Provider maintains or causes to be maintained for a period of six (6) years from the date of each Mandatory Distribution the records necessary to enable the persons described in paragraph (b) of this section to determine whether the applicable conditions of this exemption have been met. Such records must be readily available to assure accessibility by the persons identified in paragraph (b) of this section.

(b) Notwithstanding any provisions of section 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this section are unconditionally available at their customary location for examination during normal business hours by—

(1) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service; and

(2) Any account holder of an individual retirement plan established pursuant to this exemption, or any duly authorized representative of such account holder.

(c) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Individual Retirement Plan Provider, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Individual Retirement Plan Provider shall be subject to the civil penalty that may be assessed under section 502(i) of ERISA or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b).

IV. Definitions

(a) The term "individual retirement plan" means an individual retirement plan described in section 7701(a)(37) of the Code. For purposes of this exemption, the term individual retirement plan shall not include an individual retirement plan which is an employee benefit plan covered by Title I of ERISA.

(b) The term "Employee Pension Benefit Plan" refers to an employee pension benefit plan defined in ERISA section 3(2)(A).

(c) The term "Automatic Rollover Regulation" refers to the regulation promulgated by the Department at 29 CFR 2550.404a–2.

(d) The term "Individual Retirement Plan Provider" means an entity that is eligible to serve as an individual retirement account trustee under section 408(a)(2) of the Code, or for purposes of an individual retirement annuity described in section 408(b) of the Code, an insurance company which is qualified to do business under the law of the jurisdiction in which the annuity contract, or endowment contract (described in 26 CFR 1.408–3(e)), is sold.

(e) The term "Eligible Investment Product" means an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For this purpose, the product must be offered by a Regulated Financial Institution and shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan. Such term includes money market funds maintained by registered investment companies, and interest-bearing savings accounts and certificates of deposit of a bank or similar financial institution. In addition, the term includes "stable value products" issued by a financial institution that are fully benefit-responsive to the individual retirement plan account holder, *i.e.*, that provide a liquidity guarantee by a financially responsible third party of principal and previously accrued interest for

liquidations or transfers initiated by the individual retirement plan account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions to the account holder's access to the individual retirement plan's assets.

(f) The term "Regulated Financial Institution" means an entity that: (i) Is subject to state or federal regulation, and (ii) is a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

(g) An "affiliate" of a person includes:

(1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; or

(2) Any officer, director, partner or employee of the person;

(h) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(i) The term "Mandatory Distribution" means the automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code, or a mandatory distribution of one thousand dollars ($1,000) or less described in section 411(a)(11) of the Code provided there is no affirmative distribution election by the participant.

Signed at Washington, DC, this 20th day of September, 2004.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 04–21592 Filed 9–27–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA); High-Growth Job Training Initiative Grants Correction

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of September 17, 2004, concerning the availability of grant funds for address labor shortages, innovative training strategies, and other workforce challenges in the healthcare and biotechnology industries. The document contained incorrect application requirements.

FOR FURTHER INFORMATION CONTACT: Kevin Brumback, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879.

Corrections

In the **Federal Register** of September 17, 2004, in FR Volume 69, Number 180:

- On page 56087, in the third column, remove "• Assurances and Certifications Signature Page (Appendix C)."
- On page 56091, in the third column, add "Appendix E: OMB N. 0348–0046: Disclosure of Lobbying Activities. This form will be required upon selection for award."
- On page 56087, in the second column, is corrected to add: The Budget Information Form (Appendix B): "If applying through grants.gov the Budget information Form is to be added as an attachment to the application. This form can be found on *http://www.doleta.gov/sga/sga.cfm.*"

Dated: September 22, 2004.

Signed at Washington, DC, this 22nd day of September, 2004.

Eric D. Luetkenhaus,

Grant Officer.

BILLING CODE 4510–30–P

Lobbying Certification (29 CFR Part 93)

Instructions for Completion of SF-LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal Action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number, the contract, grant, or loan award number, the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

DISCLOSURE OF LOBBYING ACTIVITIES
(Continuation Sheet)

Reporting Entity: Page____ Page

Approved by OMB 0348-0046 Authorized for Local Reproduction Standard Form - LLL-A

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(see reverse for public burden disclosure)

1. Type of Federal Action: a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. Status of Federal Action: a. bid/offer/application b. initial award c. post-award	3. Report Type: a. initial filing b. material change For Material Change Only: year _____ quarter date of last report

4. Name and Address of Reporting Entity: ___ Prime ___ Subawardee Tier _____, if known: Congressional District, if known:	5 If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime. Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable:
8. Federal Action Number, if known:	9. Award Amount, if known: $
10. a Name and Address of Lobbying Entity (if individual, last name, first name, MI): (Attach Continuation Sheet(s) SF-LLL-A, if necessary)	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI): (Attach Continuation Sheet(s) SF-LLL-A, if necessary)
11. Amount of Payment (check all that apply): ____ actual ____ planned $ 12. Form of Payment (check all that apply): ____ a. cash ____ b. in-kind; specify: nature _____ value	13. Type of Payment (check all that apply) ___ a. retainer ___ b. one-time fee ___ c. commission ___ d. contingent fee ___ e. deferred ___ f. other, specify:

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ____ YES ____ NO

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature Print Name: Title: Telephone Number:_____ Date:

Authorized for Local Reproduction Standard Form - LLL-A

[FR Doc. 04–21659 Filed 9–27–04; 8:45 am]
BILLING CODE 4510–30–C

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, 26 October 2004, from 8:30 a.m. to 10 a.m. The public sessions of the Commission and the Committee meeting will be held on Tuesday, 26 October 2004, from 10 a.m. to 5:15 p.m., on Wednesday, 27 October 2004, from 8:30 a.m. to 5 p.m., and on Thursday, 28 October 2004, from 1:30 p.m. to 5:15 p.m.

PLACE: Royal Kona Resort, 75–5852 Alii Drive, Kailua-Kona, Hawaii 96740; telephone: (808) 329–3111; fax: (808) 329–9532.

STATUS: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters, focusing primarily on Hawaii and the Pacific islands region. Although subject to change, major issues that the Commission plans to consider at the meeting include cetacean stock assessment and fisheries management throughout the Pacific islands region; humpback whales in Hawaii; marine mammal stranding response efforts in Hawaii; Hawaiian monk seals; management of national wildlife refuges in the Northwestern Hawaiian Islands; the NWHI Coral Reef Ecosystem Reserve; and spinner dophin populations in Hawaiian waters. A more detailed agenda can be found on the Commission's Web site, *http://www.mmc.gov*.

FOR FURTHER INFORMATION CONTACT: David Cottingham, Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD 20814, (303) 504–0087.

Dated: September 24, 2004.

David Cottingham,

Executive Director.

[FR Doc. 04–21775 Filed 9–24–04; 10:55 am]
BILLING CODE 6820–31–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that six meetings of the Arts Advisory Panel (Arts Education section, Learning in the Arts for Children & Youth category) to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows:

Panel A1: October 11, 2004, Room 716). A portion of this meeting, from 3 p.m. to 3:45 p.m., will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 3 p.m. and from 3:45 p.m. to 4:15 p.m., will be closed.

Panel A2: October 12–13, 2004, Room 716. A portion of this meeting, from 4 p.m. to 4:45 p.m. on October 13th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 12th, and from 9 a.m. to 4 p.m., and 4:45 p.m. to 5:30 p.m. on October 13th, will be closed.

Panel A3: October 14–15, 2004, Room 716. A portion of this meeting, from 4 p.m. to 4:45 p.m. on October 15th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6:15 p.m. on October 14th, and from 8:30 a.m. to 4 p.m., and 4:45 p.m. to 5:30 p.m. on October 15th, will be closed.

Panel B1: October 18–19, 2004, Room 716. A portion of this meeting, from 4:45 p.m. to 5:15 p.m. on October 19th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 18th, and from 9 a.m. to 4:45 p.m., and 5:15 p.m. to 6 p.m. on October 19th, will be closed.

Panel C1: October 20–21, 2004, Room 716. A portion of this meeting, from 4 p.m. to 4:45 p.m. on October 21st, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6 p.m. on October 20th, and from 9 a.m. to 4 p.m., and 4:45 p.m. to 5:30 p.m. on October 21st, will be closed.

Panel B2: October 25–26, 2004, Room 716. A portion of this meeting, from 4:45 p.m. to 5:15 p.m. on October 26th, will be for policy discussion and will be open to the public. The remainder of the meeting, from 9 a.m. to 6:30 p.m. on October 25th, and from 9 a.m. to 4:45 p.m., and 5:15 p.m. to 6 p.m. on October 26th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 14, 2004, these sessions will be closed to the public pursuant to subsection (c) (6) of 5 U.S.C. 552b.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 682–5532, TDY–TDD (202) 682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call (202) 682–5691.

Dated: September 22, 2004.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 04–21620 Filed 9–27–04; 8:45 am]
BILLING CODE 7537–01–P

NATIONAL FOUNDATION OF THE ARTS AND THE HUMANITIES

Sunshine Act; Meeting of the National Museum and Library Services Board

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum and Library Services Board. This notice also describes the function of the Board. Notice of this meeting is required under the Sunshine in Government Act.

Time/Date: 9 a.m. to 12:30 p.m. on Thursday, October 7, 2004.

Agenda: Committee Meetings of the Third Meeting of the National Museum and Library Service Board.

9 a.m.–10:30 p.m. Executive Session (Closed to the Public)

11 a.m.–12:30 p.m. Policy and Planning Committee (Open to the Public)
I. Staff Reports
II. Other Business

11 a.m.–12:30 p.m. Partnerships and Government Affairs (Open to the Public)
I. Staff Reports
II. Other Business

Time/Date: 9 a.m. to 12:30 p.m. on Friday, October 8, 2004.

Agenda: Third Meeting of the National Museum and Library Services Board (Open to the Public).
I. Welcome
II. Approval of minutes
III. Program Reports
IV. Committee Reports

V. Program: Role of Museums and Libraries in Serving Diverse Communities
Dr. Robert S. Martin, Director IMLS
Mr. Edwin Rigaud, President, National Underground Railroad and Freedom Center, Cincinnati, OH and member National Museum and Library Services Board
Ms. Alyce Sadongei (Kiowa/Tohono O'Odham), Assistant Curator for Native American Relations, Arizona State Museum, University of Arizona
Ms. Susan Kent, Director and Chief Executive of The Branch Libraries, New York Public Library
VI. Other Business
VII. Adjourn

ADDRESSES: The Hotel Washington, 515 15th Street, NW., Washington, DC, (202) 638–5900.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum and Library Services Board is established under the Museum and Library Services Act, 20 U.S.C. Section 9101 *et seq.* The Board advises the Director of the Institute on general policies with respect to the duties, powers, and authorities related to Museum and Library Services.

The executive session from 9 a.m. to 10:30 a.m. on Thursday, October 7, 2004 will be closed pursuant to subsections (c)(4) and (c)(6) of section 552b of Title 5, United States Code because the Board will consider information that may disclose: Trade secrets and commercial or financial information obtained from a person and privileged or confidential; and information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The meetings from 11 a.m. until 12:30 p.m. on Thursday, October 7, 2004 and the meeting from 9 a.m. to 12:30 p.m. on Friday, October 8, 2004 are open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, (202) 606–8536, TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

Dated: September 23, 2004.

Teresa LaHaie,

Administrative Officer, National Foundation on the Arts and the Humanities, Institute of Museum and Library Services.

[FR Doc. 04–21828 Filed 9–24–04; 2:11 pm]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: The National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Human Resources, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; telephone (202) 606–8415.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 3393 and 4314 (c) (1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, both an executive resources board and a performance review board for SES. The National Endowment for the Humanities has a combined Board, which is referred to as the Executive Resources and Performance Review Board (ERPRB).

Effective October 1, 2004, the members of the National Endowment for the Humanities SES Performance Review Board selected to serve are Jeffrey Thomas, Assistant Chairman for Planning and Operations—Board Chairman, Howard Dickman, Assistant Chairman for Programs, Stephen Ross, Director Office of Challenge Grants and Candace Katz, Deputy Director, President's Committee on the Arts and Humanities. All members will serve "until replaced."

Bruce Cole,

Chairman.

[FR Doc. 04–21693 Filed 9–27–04; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–335 and 50–389]

Florida Power and Light Company; Notice of Consideration of Issuance of Amendments to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Renewed Facility Operating License Nos. DPR–67 and NPF–16 issued to Florida Power and Light Company for operation of the St. Lucie Plant, Unit Nos. 1 and 2, located in St. Lucie County, Florida.

The proposed amendments would allow the licensee to revise the St. Lucie Units 1 and 2 Technical Specifications to eliminate certain pressure sensor response time testing (RTT) requirements, as discussed in the Combustion Engineering Owners Group (CEOG) Topical Report NPSD–1167, Revision 2, "Elimination of Pressure Sensor Response Time Testing Requirements," which was approved by the NRC staff by letters dated July 24, 2000, and December 5, 2000. Specifically, these amendments revise the St. Lucie Units 1 and 2 Technical Specification Definitions 1.12, "Engineered Safety Features Response Time," and 1.26, "Reactor Protection System Response Time."

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment requests involve no significant hazards consideration. Under the Commission's regulations in Title 10 of the Code of Federal Regulations (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes allow the elimination of pressure sensor response time testing. Response time testing is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The allocated pressure sensor response times allowed in lieu of measurement have been determined to adequately represent the response time of the components such that the safety systems utilizing those components will continue to perform their accident mitigation function as assumed in the safety analysis. Therefore, the consequences of an accident previously evaluated are not significantly increased by this change. Therefore, this change does not

involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes allow the elimination of pressure sensor response time testing. The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed change allows the elimination of pressure sensor response time testing. EPRI [Energy Power Research Institute] Report NP–7243, "Investigation of Response Time Testing Requirements," and CEOG Topical Report NPSD–1167, "Elimination of Pressure Sensor Response Time Testing Requirements," demonstrate that elimination of RTT does not adversely affect the ability to monitor instrument performance and capability to meet design basis requirements. The proposed change also allows the use of allocated response times for certain pressure sensors in lieu of measurement of those response times. These EPRI and CEOG Reports also determined that allocated response times may be used with no reduction in the margin of safety provided by the safety systems supported by those pressure sensors. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendments before expiration of the 60-day period provided that its final determination is that the amendments involve no significant hazards consideration. In addition, the Commission may issue the amendments prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final

determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment requests involve no significant hazards consideration, the Commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments. If the final determination is that the amendment requests involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *hearingdocket@nrc.gov;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by email to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420, attorney for the licensee.

For further details with respect to this action, see the application for amendments dated November 21, 2003, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 22nd day of September 2004.

For the Nuclear Regulatory Commission.

Brendan T. Moroney,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–21652 Filed 9–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 30–5980 and 30–5982 and ASLBP No. 04–833–07–MLA]

Safety Light Corporation; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board is being established to preside over the following proceeding: Safety Light Corporation, Bloomsburg, Pennsylvania Site (Materials License Amendment).

This proceeding concerns a request for hearing submitted on August 30, 2004, by the Pennsylvania Department of Environmental Protection in response to a June 23, 2004 notice of opportunity for hearing regarding a proposed amendment to the 10 CFR Part 30 byproduct materials licenses of the Safety Light Corporation (SLC) that would (1) renew SLC's licenses to manufacture devices containing tritium at its Bloomsburg, Pennsylvania facility; and (2) authorize decommissioning of contaminated portions of that facility. The notice was published in the **Federal Register** on June 30, 2004 (69 FR 39515).

The Board is comprised of the following administrative judges:

E. Roy Hawkens, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Ann M. Young, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed with the administrative judges in accordance with 10 CFR 2.302.

Issued at Rockville, Maryland, this 22nd day of September 2004.

G. Paul Bollwerk, III,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 04–21654 Filed 9–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission will convene an open session teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on October 5, 2004.

PURPOSE: This meeting will be held to discuss the working group's recommendations on a possible amendment of the current 10 CFR Part 35, to include adding required hours of didactic training to sections 35.55, 35.190, 35.390, and 35.290 for the alternate pathway. During this meeting, NRC staff, the ACMUI, and Agreement State personnel will engage in discussions pertaining to NRC staff's recommendations.

DATE AND TIME FOR MEETING: The teleconference meeting will be held on Tuesday, October 5, 2004, from 1 p.m. to 3 p.m.

PUBLIC PARTICIPATION: Any member of the public who wishes to participate in the teleconference discussion may contact Angela R. McIntosh using the contact information below.

ADDRESS FOR PUBLIC MEETINGS: U.S. Nuclear Regulatory Commission, Two White Flint North Building, 11545 Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: Angela R. McIntosh, telephone (301) 415–5030; e-mail *arm@nrc.gov* of the

Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

CONDUCT OF THE MEETING: Dr. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

(1) Persons who wish to provide a written statement should submit a reproducible copy to Angela McIntosh, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Hard copy submittals must be postmarked by September 29, 2004. Electronic submittals must be submitted by October 1, 2004. Any submittal must pertain to the topic on the agenda for the meeting.

(2) Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

(3) The transcript and written comments will be available for inspection on NRC's Web site *(http://www.nrc.gov)* and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about November 12, 2004. Minutes of the meeting will be available on or about December 17, 2004.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, U.S. Code of Federal Regulations, Part 7.

Dated at Rockville, Maryland, this 21st day of September, 2004.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 04–21653 Filed 9–27–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Meetings; Sunshine Act

DATE: Weeks of September 27, October 4, 11, 18, 25, November 1, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of September 27, 2004

There are no meetings scheduled for the week of September 27, 2004.

Week of October 4, 2004—Tentative

Thursday, October 7, 2004

9:25 a.m. Affirmation Session (Public Meeting) (Tentative).

a. State of Alaska Department of Transportation and Public Facilities (Confirmatory Order Modifying License); appeals of LBP–04–16 by NRC Staff and Licensee (Tentative).

b. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–ISFSI (Tentative).

c. USEC, Inc. (Tentative).

10:30 a.m. Discussion of Security Issues (Closed—Ex. 1).

1 p.m. Discussion of Security Issues (Closed—Ex. 1).

2:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of October 11, 2004—Tentative

Wednesday, October 13, 2004

9:30 a.m. Briefing on Decommissioning Activities and Status (Public Meeting) (Contact: Claudia Craig, 301–415–7276).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9).

Week of October 18, 2004—Tentative

There are no meetings scheduled for the week of October 18, 2004.

Week of October 25, 2004—Tentative

There are no meetings scheduled for the week of October 25, 2004.

Week of November 1, 2004—Tentative

There are no meetings scheduled for the week of November 1, 2004.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–4152100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 23, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–21767 Filed 9–24–04; 9:34 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments To Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued, from September 3, 2004, through September 16, 2004. The last biweekly notice was published on September 14, 2004 (69 FR 55466).

Notice of Consideration of Issuance of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve

no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the basis for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the

Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to (301) 415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (First Floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendments request: July 9, 2004.

Description of amendments request: The amendments would revise the Technical Specifications (TSs) to allow operation of Palo Verde Nuclear Generating Station (PVNGS), Units 1 and 3 up to a maximum reactor core power level of 3990 Megawatts thermal (MWt), an increase of 2.94 percent above the current licensed power level of 3876 MWt. The proposed amendments would also make administrative changes to the PVNGS Unit 2 TSs so that the changed pages would apply to the three PVNGS units. Operation at the uprated power level with replacement steam generators has been approved for PVNGS Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated.

Response: No.

(a) Evaluation of the Probability of Previously Evaluated Accidents

Plant Structures, Systems and Components (SSCs) have been verified to be capable of performing their intended design functions at uprated power conditions. Where necessary, a small number of minor modifications will be made prior to implementation of uprated power operations so that surveillance test acceptance criteria continues to be met. The analysis has concluded that operation at uprated power conditions will not adversely affect the capability or reliability of plant equipment. Current technical specification (TS) surveillance requirements ensure frequent and adequate monitoring of system and component operability. All systems will continue to be operated within current operating requirements at uprated conditions. Therefore, no new structure, system or component interactions have been identified that could lead to an increase in the probability of any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR).

(b) Evaluation of the Consequences of Previously Evaluated Accidents

The radiological consequences were reviewed for all design basis accidents (DBAs) (*i.e.*, both LOCA [loss-of-coolant accident] and non-LOCA accidents) previously analyzed in the UFSAR. The analysis showed that the resultant radiological consequences for both LOCA and non-LOCA accidents remain either unchanged or have not significantly increased due to operation at uprated power conditions. The radiological consequences of all DBAs continue to meet established regulatory limits.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The configuration, operation and accident response of the PVNGS [Palo Verde Nuclear Generating Station] Units I and 3 structures, systems, and components are unchanged by operation at uprated power conditions or by the associated proposed TS changes. Analyses of transient events have confirmed that no transient event results in a new sequence of events that could lead to a new accident or different scenario.

The effect of operation at uprated power conditions on plant equipment has been evaluated. No new operating mode, safety-related equipment lineup, accident scenario, or equipment failure mode was identified as a result of operating at uprated conditions. In addition, operation at uprated power conditions does not create any new failure modes that could lead to a different kind of accident. Minor plant modifications, to support Implementation of uprated power conditions, will be made as required to existing SSCs. The basic design function of all SSCs remains unchanged and no new equipment or systems have been installed that could potentially introduce new failure modes or accident sequences.

Based on this analysis, it is concluded that no new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The proposed changes do not have an adverse effect on any safety-related system or design basis function. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed changes involve a significant reduction in a margin of safety?

Response: No.

A comprehensive analysis was performed to evaluate the effects of power uprate on PVNGS Units 1 and 3. This analysis identified and defined the major input parameters to the NSSS [nuclear steam supply system], reviewed NSSS design transients, and reviewed the capabilities of the NSSS and BOP [balance of plant] fluid systems, NSSS/BOP interfaces, NSSS and BOP control systems, and NSSS and BOP SSCs. All appropriate NSSS accident analyses were re-performed to confirm that acceptable results were maintained and that the radiological consequences remained within regulatory and Standard Review Plan (SRP) limits. The nuclear and thermal hydraulic performance of nuclear fuel was also reviewed to confirm acceptable results. The analyses confirmed that all NSSS and BOP SSCs are capable, some with minor modifications, to safely support operations at uprated power conditions.

The margin of safety of the reactor coolant pressure boundary is maintained under uprated power conditions. The design pressure of the reactor pressure vessel and reactor coolant system will not be challenged as the pressure mitigating systems were confirmed to be sufficiently sized to adequately control pressure under uprated power conditions.

Reanalysis of containment structural integrity under Design Basis Accident (DBA) conditions indicates that the calculated peak

containment pressure (Pa) increases from 52.0 psig [pounds per square inch gauge] to 58.0 psig, but remains less than the containment internal design pressure of 60 psig. The proposed value for Pa has been rounded up from the actual calculated value of 57.85 psig.

Radiological consequences of the following accidents were reviewed: Main Steam Line Break, Locked Reactor Coolant Pump (RCP) Rotor, CEA Ejection, Small Steam Line Break Outside Containment, Steam Generator Tube Rupture, LBLOCA, SBLOCA, Waste Gas Decay Tank Rupture, Liquid Waste Tank Failure, and Fuel Handling Accident. The resultant radiological consequences for each of these accidents did not show a significant change due to uprated power conditions and 10 CFR 100 and SRP limits continue to be met.

The analyses supporting operation at power uprate conditions have demonstrated that all systems and components are capable of safely operating at uprated power conditions. All design basis accident acceptance criteria will continue to be met. Therefore, it is concluded that the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Kenneth C. Manne, Senior Attorney, Arizona Public Service Company, P.O. Box 52034, Mail Station 7636, Phoenix, Arizona 85072–2034.

NRC Section Chief: Robert Gramm.

Carolina Power & Light Company, Docket No. 50–261, H.B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: August 19, 2004.

Description of amendment request: The proposed amendment would revise the reactor coolant system (RCS) pressure and temperature limits by replacing Technical Specification Section 3.4.3, "RCS Pressure and Temperature (P/T) Limits," Figures 3.4.3–1 and 3.4.3–2, with figures that are applicable up to 35 effective full-power years (EFPY).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed RCS P/T limits are based on NRC-approved methodology and will continue to maintain appropriate limits for the HBRSEP [H.B. Robinson Steam Electric Plant], Unit No. 2, RCS up to 35 EFPY. These changes provide appropriate limits for pressure and temperature during heatup and cooldown of the RCS, thus ensuring that the probability of RCS failure is maintained acceptably low. These limits are not directly related to the consequences of accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes will continue to ensure that the RCS will be maintained within appropriate pressure and temperature limits during heatup and cooldown. No physical changes to the HBRSEP, Unit No. 2, systems, structures, or components are being implemented. There are no new or different accident initiators or sequences being created by the proposed Technical Specifications changes. Therefore, these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Do the proposed changes involve a significant reduction in the margin of safety?

The proposed changes ensure that the margin of safety for the fission product barriers protected by these functions will continue to be maintained. This conclusion is based on use of the applicable NRC-approved methodology for developing and establishing the proposed RCS P/T limits. Therefore, these changes do not involve a significant reduction in the margin of safety.

Based on the preceding discussion, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Michael Marshall (Acting).

Connecticut Yankee Atomic Power Company, Docket No. 50–213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: August 11, 2004.

Description of amendment requests: The Haddam Neck Plant (HNP) is currently undergoing active decommissioning. The proposed amendment would revise Technical Specifications (TS) to reflect removal of all Spent Nuclear Fuel (SNF) from the HNP spent fuel pool, and delete the requirement for submittal of an annual Occupational Radiation Exposure Report consistent with Industry's Technical Specifications Task Force (TSTF)–369, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, CYAPCO has reviewed the proposed changes and concluded that the proposed changes do not involve a Significant Hazard Consideration (SHC). The following is provided in support of this conclusion:

Incorporation of TSTF–369, Revision 1: CYAPCO has reviewed the no significant hazards consideration determination published in the **Federal Register** (69 FR 35067) as part of the CLIIP. CYAPCO has concluded that the determination presented in the **Federal Register** is applicable to the HNP and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91.

Deletion and Relocation of Technical Specifications: The proposed changes do not involve an SHC because the changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes (deletion of operational requirements and certain design requirements) reflect the complete transfer of the spent fuel from the spent fuel pool to the Independent Spent Fuel Storage Installation (ISFSI). Design basis accidents related to the spent fuel pool are discussed in the Haddam Neck Plant (HNP) Updated Final Safety Analysis (UFSAR) Chapter 15. These postulated accidents are predicated on spent fuel being stored in the spent fuel pool. With the removal of the spent fuel from the spent fuel pool, there are no remaining safety related Structures, Systems, and Components (SSCs) to be monitored and there are no credible accidents that require the actions of a Certified Fuel Handler or an Equipment Operator to prevent occurrence or mitigate the consequences of an accident.

In addition, the HNP UFSAR Chapter 15 also provides a discussion of other radiological events postulated to occur as a result of decommissioning with the bounding consequences resulting from a fire in a resin container. The proposed changes do not have an adverse impact on decommissioning activities or any of their postulated consequences.

The proposed changes related to the relocation of certain administrative requirements do not affect operating procedures or administrative controls that have the function of preventing or mitigating any design basis accidents. In addition, these proposed changes are consistent with the guidance of NRC Administrative Letter 95–06.

Therefore, the proposed changes do not involve a significant increase in the

probability or consequences of any accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes eliminate the operational requirements and certain design requirements associated with the storage of the spent fuel in the spent fuel pool, and relocate certain administrative controls to the Connecticut Yankee Quality Assurance Program (CYQAP). With the complete removal of the spent fuel from the spent fuel pool, there are no safety related SSCs that remain at the plant. Thus the proposed changes will not have any effect on the operation or design function of safety related SSCs. The proposed changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The design basis and accident assumptions within the HNP UFSAR and the Technical Specifications relating to spent fuel are no longer applicable. The proposed changes do not affect remaining plant operations, systems, or components supporting decommissioning activities. In addition, the proposed changes do not result in a change in initial conditions, system response time, or in any other parameter affecting the course of a decommissioning activity accident analysis. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

NRC Section Chief: Claudia Craig.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: May 27, 2004.

Description of amendment request: The proposed amendment would delete the requirements from the Technical Specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. A notice of availability for the TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 554416). Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate.

The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated May 27, 2004. *Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TSs, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TSs, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to

approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TSs will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Mary Jane Ross-Lee (Acting).

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 20, 2004.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.3.8, "Post Accident Monitoring [PAM] Instrumentation," to eliminate TS requirements associated with the reactor building spray (RBS) flow instruments commensurate with the importance of their revised post-accident function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated

Duke proposes to remove the RBS flow instrument from Technical Specification Table 3.3.8–1 based on a change in its purpose due to recent modifications completed at Oconee. The TS 3.3.8 requirement to declare the affect [affected] RBS System train inoperable is conservative (and inappropriate) when the associated RBS flow instrument is inoperable. Due to recent plant modifications, the RBS flow instruments are no longer needed to allow the operator to throttle flow to preclude RBS pump runout post accident. The revised post accident function of this PAM instrument is to provide information to indicate the operation of the RBS System. There are alternate means to verify that the RBS is in operation, such as, verifying the RBS pump and valve status. The failure of an RBS flow instrument has no impact on the probability of an accident analyzed in the UFSAR [Updated Final Safety Analysis Report]. The RBS flow instrument is no longer needed to mitigate the consequences of an accident analyzed in the UFSAR. As such, the proposed LAR [license amendment request] does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated

Duke proposes to remove the RBS flow instrument from Technical Specification Table 3.3.8–1 based on a change in its purpose due to recent modifications completed at Oconee. The TS 3.3.8 requirement to declare the affect [affected] RBS System train inoperable is conservative (and inappropriate) when the associated RBS flow instrument is inoperable. Due to recent plant modifications, the RBS flow instruments are no longer needed to allow the operator to throttle flow to preclude RBS pump runout post accident. These changes do not alter the nature of events postulated in the Safety Analysis Report nor do they introduce any unique precursor mechanisms. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed amendment would not involve a significant reduction in a margin of safety

The proposed TS changes do not unfavorably affect any plant safety limits, set points, or design parameters. The changes also do not unfavorably affect the fuel, fuel cladding, RCS [reactor coolant system], or containment integrity. Therefore, the proposed TS change, which changes TS requirements associated with revised PAM function of the RBS flow instrument channels, does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottingham, Winston and Strawn LPP, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: August 26, 2004.

Description of amendment request: The proposed amendments would add new Technical Specification (TS) 3.3.29 and TS Bases 3.3.29, "Reactor Building Auxiliary Cooler (RBAC) Isolation Circuitry," to accommodate new circuitry that isolates non-safety portions of the low pressure service water (LPSW) system piping inside containment that supply the RBACs. This isolation eliminates potentially damaging water hammers that could occur in the event of certain design-bases events or transients.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—The Proposed Amendment Would Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The requested license amendment would add a new Technical Specification to provide appropriate controls for the Reactor Building (RB) Auxiliary Cooler (RBAC) isolation circuitry that is being added to the design of the three Oconee units. The RBAC isolation circuitry provides an automatic means to isolate the LPSW flow stream to the RBACs on a loss of LPSW flow that can lead to a column closure water hammer inside the RB when LPSW flow is restarted. The new circuitry ensures that significant waterhammers do not occur in the LPSW piping to the RBACs and other RB components. The new circuitry will eliminate an Operable but degraded/non-conforming condition associated with potentially damaging waterhammers.

The proposed RBAC isolation circuitry Technical Specification will provide means to assure that the RBAC isolation circuitry operates at a performance level necessary to provide for safe operation of the LPSW system following installation of the LPSW modification and RBAC isolation circuitry at each of the three units. The addition of the RBAC isolation circuitry Technical Specification does not increase the probability or consequences of any accident previously evaluated.

Criterion 2—The Proposed Amendment Would Not Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed RBAC isolation circuitry Technical Specification provides a means to assure the isolation circuitry operates at a performance level necessary to provide for safe operation

of the modified LPSW system flow to the RBACs. The change enhances the plant design by eliminating the possibility of significant waterhammers that could occur inside the RB on a loss of LPSW flow to the RBACs.

The proposed Technical Specification will not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

Criterion 3—The Proposed Amendment Would Not Involve a Significant Reduction in a Margin of Safety.

The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. The RBACs will continue to be isolated during ES events. The modification eliminates significant waterhammers in the LPSW piping to the RBACs.

The change will enhance the ability to provide LPSW flow to safety related loads following LOOP events. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottingham, Winston and Strawn LPP, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 24, 2004.

Description of amendment request: The proposed amendment would allow entry into a mode or other specified condition in the applicability of a Technical Specification (TS), while in a condition statement and the associated required actions of the TSs, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions would be revised to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 3.0.4 would be revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's TS Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated June 24, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc. 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 1, 2004.

Description of amendment request: The proposed amendment would delete Technical Specification (TS) 5.6.1, "Occupational Radiation Exposure Report," and TS 5.6.4, "Monthly Operating Reports."

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on June 23, 2004 (69 FR 35067). The licensee affirmed the applicability of the model NSHC determination in its application dated September 1, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant

hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change eliminates the TS reporting requirements to provide a monthly operating report of shutdown experience and operating statistics if the equivalent data is submitted using an industry electronic database. It also eliminates the Technical Specification reporting requirement for an annual occupational radiation exposure report, which provides information beyond that specified in NRC regulations. The proposed change involves no changes to plant systems or accident analyses. As such, the change is administrative in nature and does not affect initiators of analyzed events or assumed mitigation of accidents or transients. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a physical alteration of the plant, add any new equipment, or require any existing equipment to be operated in a manner different from the present design. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in a margin of safety?

This is an administrative change to reporting requirements of plant operating information and occupational radiation exposure data, and has no effect on plant equipment, operating practices or safety analyses assumptions. For these reasons, the proposed change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above, the requested change does not involve significance hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania

Date of application for amendments: June 24, 2004.

Description of amendment request: The proposed amendment would incorporate several Technical Specification Task Force (TSTF) changes to the licensees Technical Specifications (TSs). The specific TSTF changes that would be incorporated are:

(1) TSTF–5, Rev. 1, Delete Safety Limit Violation Notification Requirement—This change modifies TS Section 2.2 to remove the requirements to report safety limit violations. Associated references to Title 10 of the Code of Federal Regulations (10 CFR), Sections 50.72 and 50.73, are also removed.

TSTF–208, Rev. 0, Extension of Time to Reach Mode 2 in LCO (Limiting Condition for Operation) 3.0.3—This TSTF modifies TS Section LCO 3.0.3 to revise the time to be in Mode 2 once LCO 3.0.3 is entered from 7 hours to a bracketed site-specific time depending on the individual plant's ability to reach Mode 2 in a controlled shutdown.

TSTF–222, Rev. 1, Control Rod Scram Time Testing and TSTF–229, Rev. 0, Revise Surveillance Requirement 3.2.2.2 for Consistency with 3.1.4.4—This TSTF modifies the TSs to clarify the frequency of performing control rod scram time testing subsequent to performance of an outage that involved the movement of fuel. The current wording of Surveillance Requirement (SR) 3.1.4.1 could be interpreted that all control rods need to be scram time tested even if the shutdown was for a brief amount of time and only a limited amount of fuel was moved in the reactor (*e.g.*, if only one bundle is moved in a mid-cycle fuel replacement). This change clarifies the intent of the TSs.

TSTF–297, Rev. 1, and TSTF–227, Rev. 0—These two TSTFs affect the following three TS Sections:

3.3.2.2—Feedwater and Main Turbine High Water Level Trip Instrumentation

3.3.4.1—Anticipated Transient Without Scram Recirculation Pump Trip (ATWS–RPT) Instrumentation

3.3.4.2—End of Cycle Recirculation Pump Trip (EOC–RPT) Instrumentation

TSTF–297, Rev. 1—This TSTF modifies the TSs to add a new Required Action and corresponding note to allow affected feedwater pump(s) and main turbine valve(s) to be removed from service. This change is necessary to allow components to be removed from service to fulfill the safety function without a reduction in power to less than 25% rated thermal power. A similar note is added to TS Sections 3.3.4.1 and 3.3.4.2 to provide the same clarification for when the associated Required Action is the appropriate action.

TSTF–227, Rev. 0—This TSTF modifies the TSs to eliminate ambiguity in the EOC–RPT Instrumentation Condition A. Since the LCO allows for having EOC–RPT instrumentation OPERABLE or certain fuel thermal limits are met, Condition A was inappropriately worded. The wording of Condition A is revised to add the word 'required' if one or more channels are inoperable. Without the word 'required', one could interpret Condition A as needing entry even if the fuel thermal limits were being applied instead of applying the operability requirements to the EOC–RPT instrumentation.

TSTF–295, Rev. 0, Post-Accident Monitoring Clarifications—This TSTF modifies the TSs to clarify that a separate Condition entry is allowed for each penetration flow path for the Post Accident Monitoring (PAM) instrumentation Primary Containment Isolation Valve (PCIV) indication function.

TSTF–275, Rev. 0, ECCS Instrumentation Clarifications—This TSTF modifies the TSs to clarify which Emergency Core Cooling System (ECCS) instrumentation is required to be OPERABLE to support Emergency Diesel Generator (EDG) operability. Footnote (a) to Table 3.3.5.1–1 has been changed to only require the affected functions to be OPERABLE in Modes 4 and 5 when the associated ECCS is required to be OPERABLE per LCO 3.5.2.

TSTF–306, Rev. 2, Traversing In-Core Probe Instrumentation Specification Requirements—This TSTF modifies the TSs by adding a note that penetration flow path may not be isolated intermittently under administrative control to conform to what is already allowed for similar specifications for Primary Containment Isolation Valves (PCIVs). Also, the Traversing In-core Probe (TIP) system isolation is set apart as a separate function including the allowance of isolating the penetration instead of requiring a plant shutdown.

TSTF–416, Rev. 0, Clarification of LPCI Operability during Decay Heat Removal Operations—This TSTF modifies the TSs by moving the note that modifies Low Pressure Coolant Injection (LPCI) surveillances to the LCO in LCO 3.5.1 and LCO 3.5.2. These notes provide clarity that the LPCI may be considered OPERABLE during alignment and operation in the decay heat removal Mode.

TSTF–17, Rev. 2, Containment Airlock Testing Frequency—This TSTF modifies the TSs to extend the testing frequency of the containment interlock mechanism from 184 days to 24 months. Also, the corresponding note for this surveillance is no longer required due to the longer surveillance frequency.

TSTF–30, Rev. 3, TSTF–323, Rev. 0, TSTF–45, Rev. 2, TSTF–46, Rev. 1, and TSTF–269, Rev. 2, Containment Isolation Valve Specification Changes—These TSTFs modify TS Sections 3.6.1.3 concerning Primary Containment Isolation Valves (PCIVs) and 3.6.4.2 concerning Secondary Containment Isolation Valves (SCIVs).

TSTF–30, Rev. 3 & TSTF–323, Rev. 0—These TSTFs revise TS 3.6.1.3 to allow for a 72-hour completion time for a closed system flow path with an inoperable isolation valve and allow for a 72-hour completion time for a penetration flow path with an inoperable Excess Flow Check Valve (EFCV).

TSTF–45, Rev. 2—This TSTF revises TSs 3.6.1.3 and 3.6.4.2 to revise surveillance requirements for valve line-ups. Specifically, if a containment isolation valve is locked, sealed, or otherwise secured, they are not required to be verified to be closed during the performance of the surveillance test.

TSTF–46, Rev. 1—This TSTF revises containment isolation valve surveillances to delete the reference to verifying the isolation time of 'each power operated' containment isolation valve and only require verification of each 'automatic isolation valve'.

TSTF–269, Rev. 2—This TSTF allows for verification of valve status by administrative means for repetitive verification of locked, sealed, or secured valves.

TSTF–322, Rev. 2, Secondary Containment Operability Clarification—This TSTF modifies the TSs to clarify the intent of the secondary containment boundary integrity. Associated surveillances currently imply that secondary containment would be inoperable if a Standby Gas Treatment (SGT) subsystem was inoperable.

TSTF–276, Rev. 2, Power Factor for Emergency Diesel Generator (EDG) Surveillances—This TSTF modifies the TSs to allow for certain EDG testing to be performed even if the specified power factor cannot be achieved.

TSTF–65, Rev. 1, Generic Organization Titles—This TSTF modifies the TSs to allow the use of generic organizational titles in place of plant-specific titles. Therefore, for the TSs, a change is requested to replace plant-specific titles with generic titles.

TSTF–299, Rev. 0, Primary Coolant Sources Inspection Requirements—This TSTF modifies the TSs Section 5.2.2, 'Primary Coolant Sources Outside Containment' to clarify the intent of refueling cycle intervals with respect to the system leak test requirements and adds a sentence that the leak test is subject to the provisions of Surveillance Requirements (SR) 3.0.2.

TSTF–279, Rev. 0, Inservice Testing Program Clarifications—This TSTF modifies TSs Section 5.5.8, "Inservice Testing Program," to delete the reference to 'applicable supports' as part of the description for the Inservice Testing Program. The applicable TS Section is 5.5.6.

TSTF–118, Rev. 0, Diesel Generator Fuel Oil Testing Program Clarifications—This TSTF modifies TSs Section 5.5.13, "Diesel Fuel Oil Testing Program," to allow for the provisions of SR 3.0.2 (25% extension) and SR 3.0.3 (missed surveillance actions) to apply to surveillances. The applicable TS Section is 5.5.9.

TSTF–106, Rev. 1, Diesel Generator Fuel Oil Testing Program Clarifications—This TSTF modifies the TSs to clarify that Section 5.5.10.b, concerning verification of the diesel fuel oil that was sampled meets the required ASTM properties, only applies to new fuel. As written, it could be interpreted that this testing is required for existing fuel that is routinely sampled. The applicable TS Section is 5.5.9.b.

TSTF–152, Rev. 0, Routine Reporting Requirements Upgrade—This TSTF modifies the TSs to revise the Occupational Radiation Exposure Report and the Radioactive Effluent Release Report requirements to be consistent with other regulatory changes that have occurred.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a) the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. TSTF–5, Rev. 1, Delete Safety Limit Violation Notification Requirements.

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This action does not affect the plant or operation of the plant. The change simply removes duplicative information from the Technical Specifications that is covered in the NRC regulations. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system. This change is considered an administrative action to remove duplicative reporting requirements.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This administrative action does not involve any reduction in a margin of safety. Removal of duplicative information does not affect compliance with the regulations. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

B. TSTF–208, Rev. 0, Extension of Time to Reach Mode 2 in LCO 3.0.3.

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The time frame to take response action in accordance with LCO 3.0.3 is not an initiating condition for any accident previously evaluated and the accident analyses do not assume that any equipment is out of service such that LCO 3.0.3 is entered. The small increase in the time allowed to reach Mode 2 would not place the plant in any significantly increased probability of an accident occurring. The plant would already be proceeding to a plant shutdown condition because of the 1 hour requirement to initiate shutdown actions. There is no change in the time period to reach Mode 3. The Mode 3 Condition is the point where the plant is shutdown. Therefore, since there is no change to the 1 hour requirement to initiate the shutdown nor any change to the time period to reach the shutdown Condition, the small change in the time to reach the Mode 2 status does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. There are no plant physical alterations proposed. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The time period to reach Mode 3 and Mode 4 are unaffected by this activity. This change simply provides a plant specific value for reaching Mode 2 if LCO 3.0.3 is entered

which is within the intent of LCO 3.0.3 for performing a controlled plant shutdown. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

C. TSTF–222. Rev. 1, Control, Red Scram Time Testing, and TSTF–229, Rev. 0, Revise Surveillance Requirement 3.2.2.2 for Consistency with 3.1.4.4

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes are considered clarifications to the original intent of the Technical Specifications. Adequate testing of control rods is ensured by this change. Control rod operability is not affected by these changes. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change is administrative in nature and does not affect any safety analyses assumptions. Adequate control rod testing continues to be maintained with implementation of this activity. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(D) TSTF 297, Rev. 1, and TSTF 227, Rev. 0, Enhancements to Feedwater/Main Turbine High Water Level Trip, EOC–RPT, and ATWS RPT Specifications

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are no changes to the plant configuration assumed for any accident. The removal from service of equipment that results in its safety function being met can not adversely affect the consequences of accidents previously evaluated. Other changes are administrative clarifications that have no affect on accidents. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The actions involved with this activity ensure that safety functions are met. There are no changes in the overall requirements of having trip instrumentation available for event mitigation. There are no affects on the plant safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(E) STF–295, Rev. 0, Post-Accident Monitoring Clarications

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The equipment involved with the revised Technical Specifications are for post-accident monitoring. This equipment has no possibility of increasing the probability of occurrence of the accident since it is monitoring equipment only. The consequences of an accident are not affected since this change maintains the original intent of the Technical Specifications in having available monitoring information for each PCIV penetration path. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The Technical Specifications continue to require appropriate post accident monitoring equipment to be OPERABLE. Adequate instrumentation for post-accident monitoring will be ensured by the Technical Specification requirements. There are no changes to the plant safety analyses involved with this change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(F) TSTF–275, Rev. 0, ECCS Instrumentation Clarifications

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The equipment involved is for mitigative purposes and will not affect the probability of occurrence of an accident. Technical Specifications ensures that adequate mitigative equipment continues to be OPERABLE for any event that may occur in Modes 4 and 5. This change is considered an upgrade to the specifications that will provide more consistency within the Technical Specifications. There are no changes to requirements that ensure appropriate Emergency Core Cooling Systems are OPERABLE. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety-related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There is no impact on mitigative equipment that is required to respond to events while in Modes 4 and 5. There is no impact on the plant safety analyses. This change is considered as an upgrade to Technical Specifications that will improve consistency within the Technical Specifications. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(G) TSTF–306, Rev. 2, Traversing In-Core Probe Instrumentation Specifications Requirements

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The addition of a note that the penetration flow path may be un-isolated under administrative control simply provides

consistency with what is already allowed elsewhere in [the] Technical Specifications. The isolation function of the TIP valves are mitigative equipment. They do not create any increased possibility of an accident since they are mitigative. Also, the operation of the manual shear valves is unaffected by this activity. The ability to manually isolate the TIP system by either the normal isolation valve or the shear valve would be unaffected by the inoperable instrumentation. Therefore, the same action as for manual isolation Functions provides an appropriate level of safety. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The addition of a note that the penetration flow path may be un-isolated under administrative control simply provides consistency with what is already allowed elsewhere in Technical Specifications. The ability to manually isolate the TIP system by either the normal isolation valve or the shear valve would be unaffected by the inoperable instrumentation. Therefore, the same action as for manual isolation Functions provides an appropriate level of safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(H) TSTF–416, Rev. 0 Clarification of LPCI Operability during Decay Heat Removal Operations

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change makes the Technical Specifications and their Bases consistent in their consideration of an LPCI subsystem aligned for decay heat removal being considered OPERABLE for ECCS. The LCO 3.5.1 and LCO 3.5.2 Bases state that a LPCI subsystem may be considered OPERABLE during alignment and operation for decay heat removal. As a result, no initiators to accidents previously evaluated are affected and no mitigating equipment assumed in the accidents previously evaluated are affected since the allowance for LPCI being considered operable during these type of shutdown cooling alignments or operations was the intent of the current technical Specifications. Consequently, the probability or consequences of an accident previous evaluated is not significantly increased.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change makes the Technical Specifications and their Bases consistent in their consideration of an LPCI subsystem aligned for decay heat removal being considered OPERABLE for ECCS. The LCO 3.5.1 and LCO 3.5.2 Bases state that an LPCI subsystem may be considered OPERABLE during alignment and operation for decay heat removal. As the operability requirements of the LPCI subsystem are unaffected, the margin of safety is unaffected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(I) STF–17, Rev. 2, Containment Airlock Testing Frequency

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The containment airlock is considered as mitigative equipment. Therefore, there are no impacts on the probability of accidents. The proposed surveillance frequency assures that the interlock is working such that there is no unintentional opening of both airlock doors when containment is required. Because the interlock is assured to be working, there will be no significant increase in the consequences of an accident. There is no degradation in the ability of the interlock to assure the containment integrity function is maintained. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The frequency of 24 months for the interlock testing has been demonstrated to be adequate with regards to the reliability of the airlock. There is no impact on the leak testing requirements. There is no affect on the plant safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(J) TSTF–30, Rev. 3, TSTF–323, Rev. 0, TSTF–45, Rev. 2, TSTF–46, Rev. 1, and TSTF–269, Rev. 2, Containment Isolation on Valve Specification Changes

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The equipment affected by these changes is for mitigative purposes. Therefore, there cannot be an increase in the probability of occurrence of an accident. The controls required in the Technical Specifications are adequate to ensure that the containment barriers are ensured. Isolation valves will be assured to be in their correct positions. Also, inoperable isolation valves in closed systems and inoperable EFCVs have been evaluated to not have any significant impact to the consequences of an accident due to the closed system providing a barrier for the inoperable closed system isolation valve and bounding analyses have been performed for EFCV instrument line failures. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The equipment affected by these changes is for mitigative purposes. The controls

required in the Technical Specifications are adequate to ensure that the containment barriers are ensured. There is no affect on the plant safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(K) STF–322, Rev. 2, Secondary Containment Operability Clarification

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

This change involves an administrative clarification to reflect the original intent of the Technical Specifications. There is no impact on the availability of the secondary containment. Additionally, secondary containment is mitigative equipment. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

This change involves an administrative clarification to reflect the original intent of the Technical Specifications. There is no impact on the availability of the secondary containment. There is no impact on the plant safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(L) TSTF–276, Rev. 2, Power Factor for Emergency Diesel Generator (EDG) Surveillences

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

These changes only affect mitigative equipment and therefore, would not have an impact on the probability of an accident. Also, the performance of the surveillances ensures that mitigative equipment is capable of performing its intended function. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The performance of the surveillances ensures that mitigative equipment is capable of performing its intended function. There are no degradations in equipment readiness to mitigate design events. There is no adverse affect on the plant safety analysis. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

(M) TSTF–65, Rev. 1, Generic Organizational Titles;

TSTF–299, Rev. 0, Primary Coolant Sources Inspection Requirements;

TSTF–279, Rev. 0, Inservice Testing Program Clarifications;

TSTF–118, Rev. 0, and TSTF–106, Rev. 1, Diesel Generator Fuel Oil Testing Program Clarifications;

TSTF–152, Rev. 0, Routine Reporting Requirement Upgrade

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The changes to Technical Specification 5.0, Administrative Controls, are considered administrative changes. There are no changes to plant structures, systems or components involved with this change. There are no degradations in the availability of mitigative plant equipment. The proposed changes provide enhancements to the administrative controls in Technical Specifications, therefore, there is no affect on any plant safety analyses; therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or limiting single failures are introduced as a result of the proposed changes. All systems, structures, and components previously required for the mitigation of a transient remain capable of fulfilling their intended design functions. The proposed changes have no adverse effects on any safety-related system or component and do not challenge the performance or integrity of any safety related system.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The changes to Technical Specification 5.0, Administrative Controls, are considered administrative changes. There are no changes to plant structures, systems or components involved with this change. There are no degradations in the availability of mitigative plant equipment. The proposed changes provide enhancements to the administrative controls in Technical Specifications; therefore, there is no affect on any plant safety analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Thomas S. O'Neill, Associate and General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Daniel S. Collins, Acting.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: August 20, 2004.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) regarding the requirement to demonstrate transfer of the unit A.C. electrical power supply to each offsite circuit and would increase the surveillance exceptions for the A.C. electrical sources in shutdown Modes 5 and 6. Also, the proposed amendment would delete the TS requirement that the auto-connected loads to each emergency diesel generator (EDG) do not exceed the 2000-hour rating of the EDG.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed surveillance requirement changes do not alter the design or operation of any structure, system, or component. No previously analyzed accident scenario is changed. Initiating conditions and assumptions remain as previously analyzed. The revised surveillance requirements will continue to assure adequate performance of structures, systems, and components. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed surveillance requirement changes do not alter the design or operation of any structure, system, or component. No new or different accident initiators are created as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed surveillance requirement changes do not reduce or adversely affect the capabilities of the offsite and onsite electrical power sources. The revised surveillance requirements will continue to assure adequate performance of structures, systems, and components. The proposed changes do not affect conformance of the electrical power systems to the applicable design criteria. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: September 1, 2004.

Description of amendment request: The proposed amendments would revise the Operating Licenses' licensing basis to allow use of the code for Generation of Thermal-Hydraulic Information for Containment, Version 7.1patch1 (GOTHIC 7) to model Prairie Island Nuclear Generating Plant (PINGP) containment response for loss of coolant accidents (LOCA) and main steam line break (MSLB) accidents. The current PINGP containment response analyses are performed utilizing CONTEMPT. The Nuclear Management Company is making this request to support a transition option from internal analyses using CONTEMPT to an external analyses vendor (Westinghouse), which supports GOTHIC 7.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment will change the Prairie Island Nuclear Generating Plant licensing basis by allowing use of the Generation of Thermal-Hydraulic Information for Containment, Version 7.1patch1, to model containment response for loss of coolant accident (LOCA) and main steam line break (MSLB) accidents.

The containment is not an accident initiator, thus changing the containment modeling methodology does not increase the probability of an accident. This license amendment proposes to use a new methodology for modeling containment response analyses following an accident inside containment involving release of steam and water. This amendment does not alter the nuclear reactor core or reactor coolant system equipment, nor does it alter the methods or equipment used directly in mitigation of an accident. Thus radioactive releases inside containment due to an accident and radioactive releases from containment are not affected by the proposed change in analysis methodology. As discussed in Exhibits C and D, the Gothic 7 sample results for the LOCA and MSLB transients predicted that the containment would remain below design pressure for both cases. Therefore, this change does not increase the consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated.

Response: No.

The proposed amendment will change the Prairie Island Nuclear Generating Plant licensing basis by allowing use of the Generation of Thermal-Hydraulic Information for Containment, Version 7.1patch1, to model containment response for LOCA and MSLB accidents.

The proposed amendment does not involve changes to plant design, hardware, system operation, or procedures involved with containment function. The proposed changes include application of new methodology for analysis of containment response following a loss of coolant accident or steam line break accident. The results of the analyses are used to demonstrate that the acceptance criteria for the containment structure continue to be met. These changes do not create the possibility for a new or different kind of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed amendment will change the Prairie Island Nuclear Generating Plant (PINGP) licensing basis by allowing use of the Generation of Thermal-Hydraulic Information for Containment, Version 7.1patch1 (GOTHIC 7), to model containment response for LOCA and MSLB accidents.

The proposed licensing basis change to use GOTHIC 7 affects the design basis LOCA and MSLB containment accident analyses. As discussed in Exhibits C and D, the GOTHIC 7 sample results for the LOCA and MSLB transients predicted that the containment would remain below design pressure for both cases. The GOTHIC 7 accuracy in this application has been verified through benchmark analyses against the current analyses of record, validated against recognized standard data, and found to be appropriate for application to the PINGP design basis accidents. Safety analysis acceptance criteria are satisfied and adherence to safety analysis acceptance criteria using GOTHIC 7 assures that Technical Specification limits will not be exceeded during normal operation. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jonathan Rogoff, Esquire, Vice President, Counsel & Secretary, Nuclear Management Company, LLC, 700 First Street, Hudson, WI 54016.

NRC Section Chief: L. Raghavan.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: May 21, 2004.

Description of amendment request: The proposed amendment deletes the requirements from the technical specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. Licensees were generally required to implement upgrades as

described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TS for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated May 21, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines (SAMGs), the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

Attorney for licensee: Thomas G. Eppink, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief (Acting): Mary Jane Ross-Lee.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: August 26, 2004.

Description of amendment requests: The proposed amendments would revise the Technical Specifications (TS) to implement ZIRLO™ fuel rod cladding material into the fuel design for San Onofre Nuclear Generating Station (SONGS), Units 2 and 3. Specifically, the licensee requests to add reference to ZIRLO™ clad fuel and filler rods in TS 4.2.1, "Fuel Assemblies," and in TS 5.7.1.5, "Core Operating Limits Report (COLR)," add the following references to the list of analytical methods used to determine the core operating limits: "Calculative Methods for the C–E Nuclear Power Large Break LOCA [loss-of-coolant accident] Evaluation Model," CENPD–1 32, Supplement 4–P–A, August 2000, and "Implementation of ZIRLO™ Cladding Material in CE [Combustion Engineering, Inc.] Nuclear Power Fuel Assembly Designs," CENPD–404–P–A, November 2001.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change allows the use of methods required for the implementation of ZIRLO™ clad fuel rods in San Onofre Nuclear Generating Station (SONGS) Units 2 and 3. The use of this methodology will not increase the probability of an accident because the plant systems will not be operated outside of design limits, no different equipment will be operated, and system interfaces will not change.

As ZIRLO™ material is introduced to the reactor, transition cores will exist in which fuel assemblies containing ZIRLO™ and Zircaloy clad fuel rods are co-resident. Each type of fuel assembly (ZIRLO™ or Zircaloy clad fuel rods) will be evaluated based on the approved topical reports listed in TS 5.7.1.5.

The use of this additional methodology will not increase the consequences of an accident because Limiting Conditions of Operation (LCOs) will continue to restrict operation to within the regions that provide acceptable results, and Reactor Protection System (RPS) trip setpoints will restrict plant transients so that the consequences of accidents will be acceptable. In addition, the consequences of the accidents will be calculated using NRC accepted methodologies.

The transition cores that will exist as ZIRLO™ clad fuel is introduced to the reactor will not increase the consequences of an accident. Operation within the LCOs and RPS setpoints will continue to restrict plant transients so that the consequences of accidents will be acceptable.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not add any new equipment, modify any interfaces with any existing equipment, alter the equipment's function, or change the method of operating the equipment. The proposed change does not alter plant conditions in a manner that could affect other plant components. The proposed change does not cause any existing equipment to become an accident initiator. The ZIRLO™ clad fuel rod design does not introduce features that could initiate an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

Safety Limits ensure that Specified Acceptable Fuel Design Limits (SAFDLs) are not exceeded during steady state operation, normal operational transients and anticipated operational occurrences. All fuel limits and design criteria shall be met based on the approved methodologies defined in the topical reports. The RPS in combination with the LCOs will continue to prevent any anticipated combination of transient conditions for reactor coolant system temperature, pressure, and thermal power level that would result in a violation of the Safety Limits. Therefore, the proposed changes will have no impact on the margins as defined in the Technical Specification bases.

The safety analyses determine the LCO settings and RPS setpoints that establish the initial conditions and trip setpoints, which ensure that the Design Basis Events (Postulated Accidents and Anticipated Operational Occurrences) analyzed in the Updated Final Safety Analysis Report (UFSAR) produce acceptable results. In addition, all fuel limits and design criteria shall be satisfied. The Design Basis Events that are impacted by the implementation of ZIRLO™ cladding will be analyzed using the NRC accepted methodology described in CENPD–404–P–A.

The change in the fuel rod cladding material and the use of the Emergency Core Cooling System (ECCS) performance evaluation models, CENPD–132, Supplement 4–P–A, "Calculative Methods for the CE Nuclear Power Large Break LOCA Evaluation Model" and CENPD–137, Supplement 2–P–A, "Calculative Methods for the ABB [Asea Brown Boveri] CE Small Break LOCA Evaluation Model" will not involve a reduction in the margin of safety because LCOs and Limiting Safety System Settings (LSSS) will be adjusted, if necessary, to maintain acceptable results for the impacted Design Basis Events.

Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Robert Gramm.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: May 21, 2004.

Description of amendment request: The proposed amendment would delete requirements from the Technical Specifications (TSs) to maintain hydrogen recombiners (Unit 2 only) and hydrogen and oxygen monitors. A notice of availability for this TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416). Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration (NSHC) determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated May 21, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not

contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, [classification of the oxygen monitors as Category 2,] and removal of the hydrogen and oxygen monitors from TSs will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and the site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TSs, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TSs will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of amendment request: July 20, 2004.

Description of amendment request: The proposed amendments would revise Administrative Controls Section 5.3.1 to replace the specific designation for the Health Physics Superintendent with a reference to the senior individual in charge of Health Physics, and to add flexibility to the qualification requirements for unit staff positions. This change supports Southern Nuclear Company's ongoing initiative to achieve fleet standardization.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change to Technical Specifications Administrative Controls Section 5.3.1 involves the use of a more generic designation for the unit staff position responsible for Health Physics without reducing the level of authority required for that position. The proposed change also allows the flexibility to use an NRC accredited program for qualifying personnel to fill unit staff positions, which represents an acceptable alternative to the qualification requirements for these positions as currently specified in the Technical Specifications. Since the proposed changes are administrative in nature, they do not involve any physical changes to any structures, systems, or components, nor will their performance requirements be altered. The proposed changes also do not affect the operation, maintenance, or testing of the plant. Therefore, the response of the plant to previously analyzed accidents will not be affected. Consequently, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed changes to the Technical Specifications will have no adverse impact on the overall qualification of the unit staff. The alternative use of an accredited program that has been endorsed by the NRC will ensure the educational requirements and power plant experience for each unit staff position are properly satisfied and will continue to fulfill applicable regulatory requirements. Also, since no change is being

made to the design, operation, maintenance, or testing of the plant, no new methods of operation or failure modes are introduced by the proposed changes. Therefore, the possibility of a new or different kind of accident from any previously evaluated is not created.

(3) Does the proposed change involve a significant decrease in the margin of safety?

The proposed changes to the Technical Specifications will have no adverse impact on the onsite organizational features necessary to assure safe operation of the plant. Lines of authority for plant operation are unaffected by the proposed changes. Also, the adoption of the more generic designation of the individual responsible for Health Physics will reduce the regulatory burden of having to devote limited resources to process a license amendment whenever a title change for this position is implemented. Accordingly, this reduction in regulatory burden and the option to use an accredited program endorsed by NRC to qualify the unit staff will improve plant efficiency without compromising plant safety. Therefore, the proposed changes do not involve a significant decrease in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Southern Nuclear Operating Company, Inc, Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: May 21, 2004.

Description of amendment request: The proposed amendment would delete the requirements from the Technical Specifications (TS) to maintain hydrogen recombiners and hydrogen monitors. A notice of availability for this improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416). Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination (NSHC) for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated May 21, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TSs will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TSs, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to

approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 21, 2004.

Description of amendment request: The proposed amendment would delete the requirements from the Technical Specifications (TSs) to maintain hydrogen recombiners and hydrogen monitors. A notice of availability for the TS improvement using the consolidated line item improvement process was published in the **Federal Register** on September 25, 2003 (68 FR 55416). Licensees were generally required to implement upgrades as described in NUREG–0737, "Clarification of TMI [Three Mile Island] Action Plan Requirements," and Regulatory Guide (RG) 1.97, "Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident." Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the TSs for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, "Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors," eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination (NSHC) for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated May 21, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. Category 1 in RG 1.97 is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TSs will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and the site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TSs, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TSs, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TSs, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TSs will not result in a significant reduction in

their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Mary Jane Ross-Lee, Acting.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 26, 2004.

Description of amendment request: The license amendment request proposes revising the Technical Specifications (TSs) to delete the TS requirements related to Hydrogen Analyzers and Hydrogen Recombiners consistent with NRC-approved TS Task Force (TSTF) Traveler number TSTF–447, Revision 1, "Elimination of Hydrogen Recombiners and Change to Hydrogen and Oxygen Monitors." The TS requirements related to Hydrogen Analyzers and Hydrogen Recombiners are contained in TS Tables 3.3–10 and 4.3–10 and TSs 3.6.4.1 and 3.6.4.2. The availability of this TS improvement was announced in the **Federal Register** on September 25, 2003, as part of the Consolidated Line Item Improvement Process (CLIIP).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The analysis endorses the NRC staff's generic no significant hazards consideration determination for TSTF–447 which was published in the **Federal Register** on September 25, 2003 (68 FR 55416) as follows:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design basis LOCA hydrogen release, hydrogen [and oxygen] monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG [Regulatory Guide] 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents.

The regulatory requirements for the hydrogen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, and removal of the hydrogen monitors from TS will not prevent an accident management strategy through the use of the SAMGs [Severe Accident Management Guidelines], the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors.

Therefore, this change does not involve a significant reduction in the margin of safety. Removal of hydrogen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: A.H. Gutterman, Esq., Morgan, Lewis & Bockius, 1111 Pennsylvania Avenue, NW., Washington, DC 20004.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant

Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (First Floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, (301) 415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendment: August 6, 2002, as supplemented December 12, 2002, July 24, 2003, and March 1, May 20, and August 11, 2004.

Brief description of amendment: The amendments replace the Technical Specifications 3.9.4 and 3.9.5 requirements to close all containment penetrations providing direct access from the containment atmosphere to outside temperature with a set of more detailed and less restrictive requirements.

Date of issuance: September 13, 2004.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 268 and 244.

Renewed Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63690).

The December 12, 2002, July 24, 2003, March 1, 2004, and May 20, 2004, letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The August 11, 2004, letter withdrew the licensee's requested changes to Technical Specification 3.9.3.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 13, 2004.

No significant hazards consideration comments received: No.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 12, 2003.

Brief description of amendments: The amendments delete Technical Specification Section 5.5.3, "Post-Accident Sampling."

Date of issuance: September 15, 2004.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 269 and 245.

Renewed Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 13, 2004 (69 FR 19564).

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated September 15, 2004.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: May 7, 2002, as supplemented April 7, 2003 and July 19, 2004.

Brief description of amendment: The amendment relocates the boration system Technical Specification (TS) requirements to the Technical Requirements Manual and the boron dilution analysis restrictions within the TSs. The amendment also revises the TS limiting condition for operation action and the surveillance requirements associated with the emergency core cooling, containment spray and cooling and auxiliary feedwater systems.

Date of issuance: September 9, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 283.

Facility Operating License No. DRP–65: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** June 11, 2002 (67 FR 40021). The April 7, 2003, and July 19, 2004, supplements contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 9, 2004.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–423, Millstone Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: August 7, 2002, as supplemented November 5, 2003.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) related to safety system settings. Specifically, the amendment revises: (1) TS 1.0 "Definitions;" (2) TS 2.2.1 "Limiting Safety System Settings—Reactor Trip System Instrumentation Setpoints;" (3) TS 3.3.1 "Reactor Trip System Instrumentation;" (4) TS 3.3.2 "Engineered Safety Features Actuation System Instrumentation;" (5) TS 3.7.7 "Control Room Emergency Ventilation System;" and (6) TS 3.8.3.1 "Onsite Power Distribution—Operating."

Date of issuance: September 14, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 220.

Facility Operating License No. DRP–49: The amendment revised the TSs.

Date of initial notice in ***Federal Register:*** October 15, 2002 (67 FR 63692). The November 5, 2003, supplement contained clarifying information and did not change the staff's initial proposed finding of no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: May 25, 2004.

Brief description of amendments: The amendments revised the licensing basis in the Updated Final Safety Analysis Report (UFSAR) to support installation of a low-pressure injection (LPI) cross connect inside containment. The changes to the UFSAR revise the licensing basis for selected portions of the core flood and LPI/Decay Heat Removal piping to allow exclusion of the dynamic effects associated with postulated rupture of that piping by application of leak-before-break technology. The amendments also revise the Technical Specifications (TSs) to delete TSs that will no longer apply when the LPI cross connect modification has been implemented.

Date of issuance: September 2, 2004.

Effective date: As of the date of issuance and shall be implemented during the fall 2004 refueling outage of Unit 3.

Amendment Nos.: 340, 342, and 341.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the TSs.

Date of initial notice in ***Federal Register:*** July 6, 2004 (69 FR 40673). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 2, 2004.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: January 20, 2004, as supplemented by letters dated May 19, July 13, and August 16, 2004.

Brief description of amendments: The amendments change the Prairie Island technical specification (TS) on containment to implement a portion of TSs Task Force Traveler 5, "Revise containment requirements during handling irradiated fuel and core alterations." The amendments also selectively implement an alternative source term per Title 10 of the Code of Federal Regulations, Section 50.67 to perform the radiological consequences analysis of the design-basis fuel handling accident which supports the proposed TS changes.

Date of issuance: September 10, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 166 and 156.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 25, 2004 (69 FR 29769).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket No. 50–133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: June 23, 2004.

Brief description of amendment: The amendment removes a restriction from the Humboldt Bay Power Plant Unit 3 license thereby permitting Pacific Gas and Electric to engage in active decommissioning of the facility.

Date of issuance: September 10, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 35.

Facility Operating License No. DPR–7: This amendment revises the license.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46587).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 10, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 28, 2004, as supplemented by letter dated August 5, 2004.

Brief Description of amendments: The amendments revise TS 3.4.13, "RCS [Reactor Coolant System] Operational Leakage," TS 5.5.9, "Steam Generator [SG] Tube Surveillance Program," and TS 5.6.10, "Steam Generator Tube Inspector Report." They also add a new TS 3.4.17, "Steam Generator Tube Integrity." These changes facilitate implementation of industry initiative NEI [Nuclear Energy Institute] 97–08, "Steam Generator Program Guidelines," which allows a comprehensive, performance-based approach to managing SG performance at Farley Nuclear Plant, Units 1 and 2.

Date of issuance: September 10, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 163 and 156.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 3, 2004 (69 FR 46950). The supplemental letter dated August 5, 2004, provided clarifying information that did not change the initial proposed no significant hazards consideration determinations.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 10, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: September 6, 2002, as supplemented by letters dated December 19, 2002, March 28, June 24, September 3, and October 22, 2003.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) to (1) relocate the pressure temperature limit curves and low temperature overpressure protection system limits to the Pressure and Temperature Limits Report (PTLR), (2) reference the PTLR in the affected TSs limiting conditions for operation and bases, including the addition of the PTLR to the definitions section of the TSs, and the addition of a new TS 6.9.1.15 to the administrative controls section of the TSs, (3) relocate TS 3.4.9.2, Pressurizer, to the Sequoyah Technical Requirements Manual and (4) revise TS 3.4.9.1, Pressure/Temperature Limits, Reactor Coolant System, and TS 3.4.12, Low Temperature Over Pressure Protection Systems, to incorporate standard TSs requirements from NUREG–1431, Revision 2, "Standard Technical Specifications—Westinghouse Plants."

Date of issuance: September 15, 2004.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 294 and 284.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 29, 2002 (67 FR 66015). The supplemental letters provided clarifying information that did not expand the scope of the original application or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a

Safety Evaluation dated September 15, 2004.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 17th day of September, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–21345 Filed 9–27–04; 8:45 am]

BILLING CODE 7590–01–P

PRESIDENT'S COUNCIL ON INTEGRITY AND EFFICIENCY

Senior Executive Service Performance Review Board Membership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice sets forth the names and titles of the current membership of the PCIE Performance Review Board as of September 23, 2004.

EFFECTIVE DATE: September 28, 2004.

FOR FURTHER INFORMATION CONTACT: Individual Offices of (the) Inspector General.

SUPPLEMENTARY INFORMATION:

I. Background

The Inspector General's Act of 1978, as amended, has created independent audit and investigative units—Offices of (the) Inspector General—at 57 Federal agencies. In 1981, the President's Council on Integrity and Efficiency (PCIE) was established by Executive Order as an interagency committee charged with promoting integrity and effectiveness in Federal programs. The PCIE is chaired by the Office of management and Budget's Deputy Director for Management, and comprised principally of the 29 Presidential appointed Inspectors General (IGs). The primary objectives of the PCIE are: (1) Mounting collaborative efforts to address integrity, economy, and effectiveness issues that transcend individual Federal agencies; and (2) increasing the professionalism and effectiveness of IG personnel throughout the Government.

II. PCIE Performance Review Board

Under 5 U.S.C. 4314(c)(1)–(5), and in accordance with regulations prescribed by the Office of Management and Budget, each agency is required to establish one or more Senior Executive Service (SES) performance review boards. The purpose of these boards is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive. The current members of the President's Council on Integrity and Efficiency Performance Review Board, as of September 23, 2004, were as follows:

Agency for International Development

Phone Number: (202) 712–1170; PCIE/ECIE Liaison—Donna Rosa (202) 712–4993

James R. Ebbitt—Deputy Inspector General
Adrienne Rish—Assistant Inspector General for Investigation
Robert S. Perkins—Counsel to the Inspector General
Bruce Crandlemire—Assistant Inspection General for Audit
Paula Hayes—Assistant Inspector General for Management

DEPARTMENT OF AGRICULTURE

Phone Number: (202) 720–8001 PCIE/ECIE Liaison—Cheryl Viani (202) 720–8001

Joyce N. Fleischman—Deputy Inspector General
Tracy A. LaPoint—Deputy Assistant Inspector General
David R. Gray—Counsel to the Inspector General
Suzanne M. Murrin—Assistant Inspector General for Policy Development and Resources Management
Mark R. Woods—Assistant Inspector General for Investigations
Jon E. Novak—Deputy Assistant Inspector General for Investigations
Robert W. Young, Jr.—Assistant Inspector General for Audit
Marlane T. Evans—Deputy Assistant Inspector General for Audit

DEPARTMENT OF COMMERCE

Phone Number: (202) 482–4661 PCIE/ECIE Liaison—Allison Lerner (202) 482–1577

Edward L. Blansitt—Deputy Inspector General
Anthony D. Mayo—Assistant Inspector General for Investigation
Elizabeth T. Barlow—Counsel to the Inspector General
Judith J. Gordon—Assistant Inspector General for Systems Evaluation
Jill A. Gross—Assistant Inspector General for Inspections and Program Evaluation
Jessica Rickenbach—Assistant Inspector General for Compliance and Administration

DEPARTMENT OF DEFENSE

Phone Number: (703) 604–8324 PCIE/ECIE Liaison—John R. Crane (703) 604–8324

Charles W. Beardall—Director, Defense Criminal Investigative Service—Office of the Deputy Inspector General for Investigations
Patricia Brannin—Assistant Inspector General for Audit Policy and Oversight, Office of the Deputy Inspector General for Inspections and Evaluations
John R. Crane—Assistant Inspector General for Communications and Congressional Liaison
Thomas Gimble—Deputy Inspector General for Intelligence
Donald Horstman—Director, Investigations of Senior Officials, Office of the Deputy Inspector General for Investigations
Francis E. Reardon—Deputy Inspector General for Auditing
Mary Ugone—Assistant Inspector General, Acquisition Management, Office of the Deputy Inspector General for Auditing
Keith West—Assistant Inspector General, Audit Followup and Technical Support, Office of the Deputy Inspector General for Auditing
Daniel F. Willkens—Deputy Director, Defense Criminal Investigative Service, Office of the Deputy Inspector General for Investigations
Shelton R. Young—Assistant Inspector General, Readiness and Logistics Support, Office of the Deputy Inspector General for Auditing

DEPARTMENT OF EDUCATION

Phone Number: (202) 205–6900 PCIE/ECIE Liaison—Kira Stankosky (202) 245–6997

Thomas Carter—Deputy Inspector General
Cathy Lewis—Assistant Inspector General for Evaluations, Inspections and Management Services
Helen Lew—Assistant Inspector General for Audit Services
George Rippey—Deputy Assistant Inspector General for Audit Services
Thomas Sipes—Assistant Inspector General for Investigative Services
Charles Coe—Assistant Inspector General for Information Technology and Computer Crimes Investigation
Mary Mitchelson—Counsel to the Inspector General

DEPARTMENT OF ENERGY

Phone Number: (202) 586–4393 PCIE/ECIE Liaison—Arlene Acton (202) 586–1807

John Hartman—Assistant Inspector General for Investigations
Rickey Hass—Assistant Inspector General for Audit Operations
Denise Smith—Assistant Inspector General for Resource Management
Christopher Sharpley—Deputy Inspector General for Investigations and Inspections
Linda Snider Director for Audit Policy and Administration Sanford Parnes Counsel to the Inspector General

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Phone Number: (202) 619–3148 PCIE/ECIE Liaison—Sheri Denkensohn (202) 619–3148

Lewis Morris—Chief Counsel to the Inspector General
Tony Campbell—Assistant Inspector General for Operations Division, Office of Investigations
Donald Dille—Acting Deputy Inspector General for Management and Policy
Joe Green—Assistant Inspector General for Audit Management and Policy

DEPARTMENT OF HOMELAND SECURITY

Phone Number: (202) 254–4100

PCIE/ECIE Liaison—Judy Leonhardt (202) 254–4192

Richard L. Skinner—Deputy Inspector General
Richard N. Reback—Counsel to the Inspector General
J. Richard Berman—Assistant Inspector General for Audits
Robert L. Ashbaugh—Assistant Inspector General for Inspections, Evaluations, and Special Reviews
Edward F. Cincinnati—Assistant Inspector General for Administration
Elizabeth M. Redman—Assistant Inspector General for Investigations
Frank Deffer—Assistant Inspector General for Information Technology
Joseph Sullivan—Deputy Assistant Inspector General for Investigations
Edward M. Stulginsky—Deputy Assistant Inspector General for Audits
Belinda J. Finn—Deputy Assistant Inspector General for Audits

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Phone Number: (202) 708–0430

PCIE/ECIE Liaison—Helen Albert (202) 708–0614, Ext. 8187

Michael P. Stephens—Deputy Inspector General
James A. Heist—Assistant Inspector General for Audit
R. Joseph Haban—Assistant Inspector General for Investigation
Bryan P. Saddler—Counsel to the Inspector General
Michael R. Phelps—Deputy Assistant Inspector General for Audit
Daniel P. Salas—Deputy Assistant Inspector General for Investigation

DEPARTMENT OF THE INTERIOR

Phone Number: (202) 208–5745

PCIE/ECIE Liaison—Renee Pettis (202) 219–0637

Mary Kendall—Deputy Inspector General
Roger LaRouche—Assistant Inspector General for Audits
Kimberly Elmore—Deputy Assistant Inspector General for Audits
David Montoya—Assistant Inspector General for Investigations
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Dated: September 23, 2004.

Nikki L. Tinsley,

Inspector General, Environmental Protection Agency, and Chair, Human Resources Committee, PCIE.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50414; File No. SR–Amex–2004–68]

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 Contingent Principal Protection Notes Linked to the Performance of the Standard and Poor's 500 Index

September 20, 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 16, 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposal rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade under section 107A of the Amex Company Guide ("Company Guide") notes linked to the performance of the Standard and Poor's 500 Index ("S&P 500" or "Index").

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

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240. 19b–4.

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 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 linked to the performance of the Index that provide for contingent principal protection ("Contingent Principal Protected Notes" or "Notes").[4] The Exchange represents that the Index value will be disseminated at least once every fifteen seconds throughout the trading day. The Index is determined, calculated, and maintained solely by S&P.[5] The Notes will provide for an uncapped participation in the positive performance of the Index during their term while also reducing the risk exposure to the principal investment amount, as long as the Index does not at any time decline to a pre-established level to be determined at the time of issuance ("Contingent Level"). This Contingent Level will be a pre-determined percentage decline from the level of the Index at the close of the market on the date the Notes are prices for initial sale to the public ("Initial Level"). The Issuer expects that the Contingent Level will be approximately 60 percent of the initial value of the Index.

The Contingent Principal Protection Notes will initially conform to the listing guidelines under section 107A[6] and continued listing guidelines under sections 1001–1003[7] of the Company Guide. The Notes are senior non-convertible debt securities of Lehman. The Notes will have a term of at least one (1) but no more than ten (10) years. Lehman 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 $1,000 per Unit with a required minimum initial investment of $10,000. The Notes will entitle the owner at maturity to receive at least 100% of the principal investment amount as long as the Index never experiences a Contingent Event. In this case, the holder of the Notes would receive the full principal investment amount of the Note plus the product of $1,000, the percentage change of the Index during the term and the participation rate (expected to be between 105–115 percent). Accordingly, even if the Index declines substantially but never reaches the Contingent Level, the holder will receive the principal investment amount of the Notes at maturity. However, if the Index declines *at any time* during the term of the Notes, to a level expected to be 60% of the Initial Level (the exact percentage amount will be specified in the prospectus supplement), this is a Contingent Event and the holder's principal will be reduced accordingly at maturity. Thus, if the Notes experience a Contingent Event during the term, the holder loses the "principal protection" and will be entitled to receive a payment based on the percentage change of the Index, positive or negative. In this case, the Notes will not have a minimum principal investment 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. Accordingly, if the Index experiences a negative return and a Contingent Event, the Notes would be fully exposed to any decline in the level of the Index.[8] The Notes are also not callable by the Issuer.

The payment that a holder or investor of a Note will be entitled to receive at the stated maturity date[9] ("Redemption Amount") will depend on the relation of the level of the Index at the close of the market on the third business day ("Valuation Date") before maturity of the Notes ("Final Level") and the

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[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] Lehman Brothers Holdings Inc. ("Lehman") 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 Lehman and certain affiliates and subsidiaries in connection with certain securities including these Notes. S&P is not responsible and will not participate in the issuance and creation of the Notes.

[5] Amex represents that the 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 included in the Index are listed on the Amex, New York Stock Exchange, Inc. ("NYSE") or traded through Nasdaq Stock Market, Inc. ("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 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.

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] Pursuant to section 107A of the Company Guide, the initial listing standards for the Notes require: (1) A market value of at least $4 million; and (2) a term of at least one year. Because the Notes will be issued in $1,000 denominations, the minimum public distribution requirement of one million units and the minimum holder requirement of 400 holders do not apply. 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.

[7] 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 or the issuer is not able to meet its obligations on the Notes.

[8] A negative return of the Index, together with a Contingent Event, will reduce the redemption amount at maturity with the potential that the holder of the Note could lose his entire investment amount.

[9] The Commission notes that the expected maturity date of the Note agrees to be September 2009. *See* prospectus supplement dated September, 2004.

closing level of the Index on the date the Notes are priced for initial sale to the public Initial Level. In addition, whether the Notes retain "principal protection" or are fully exposed to the performance of the Index is determined by whether the Index ever experiences a Contingent Event during the term of the Notes.

If the percentage change of the Index is positive, the Redemption Amount per Unit will equal:

$$\$1000 + \left[\$1000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right) \times \text{Participation Rate}\right]$$

If the percentage change of the Index is zero or negative and the Index never experience a Contingent Event, the redemption amount per unit will equal the principal investment amount of $1000.

If the Index experiences a Contingent Event, the Redemption Amount per Unit will equal:

$$\$1000 + \left[\$1000 \times \left(\frac{\text{Final Level} - \text{Initial Level}}{\text{Initial Level}}\right)\right]$$

The Notes are cash-settled in U.S. dollars and do not give the holder any right to receive a portfolio security, dividend payments or any other ownership right or interest in the portfolio or index of securities comprising the Index. The Notes are designed for investors who want to participate or gain exposure to the Index, while partially limiting their investment risk and who are willing to forego market interest payments on the Notes during such term. The Commission has previously approved the listing of securities and options, the performance of which have been linked to or are based on the Index.[10]

As of August 11, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of approximately $339.9 billion to a low of approximately $464.7 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 25.9 million shares to a low of approximately 117,071 shares.

Because the Notes are issued in $1,000 denominations, the Amex's existing debt 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.[11] Second, even though the Exchange's debt trading rules apply, the Notes will be subject to the equity margin rules of the Exchange.[12] 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, Lehman will deliver a prospectus in connection with the 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(b) of the Act [13] in general, and furthers the objectives of section 6(b)(5),[14] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited and 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:

[10] *See e.g.*, Securities Exchange Act Release Nos. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (approving the listing and trading of options on the S&P 500 Index); 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); 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); 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's")); 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); 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); 48152 (July 10, 2003), 68 FR 42435 (July 17, 2003) (approving the listing and trading of UBS Partial Protection Notes linked to the S&P 500); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes linked to the S&P 500); and 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes linked to the S&P 500).

[11] 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.

[12] *See* Amex Rule 462 and Section 107B of the Company Guide.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

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–2004–68 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–2004–68. 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–2004–68 and should be submitted on or before October 19, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[15] The Commission believes that the proposal is similar to several approved instruments currently listed and traded on the Amex.[16] 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.[17]

As described more fully above, at maturity, the holder of the Note will receive at least 100% of the principal investment amount as long as the Final Level of the Index exceeds the Initial Level of the Index and the Index never experiences a Contingent Event. Specifically, at maturity, the holder would receive a full principal investment amount of the Notes plus the percentage change of the Index at the maturity date. Also, if the Index declines substantially but never reaches the Contingent Level, the holder will receive the principal investment amount of the Notes at maturity. However, if the Index declines *at any time* during the term of the Notes, to a level expected to be 60% of the Initial Level (the exact percentage amount will be specified in the prospectus), this is a Contingent Event and the holder's principal will be reduced accordingly at maturity. 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 a minimum payment amount.

The Commission notes that the Notes are non-convertible debt securities whose price will be derived and based upon the Initial Level. In addition, if the level of the Index experiences a Contingent Event during the term, the holder of the Notes will lose the principal protection and will be entitled to receive a payment on the Notes based on the percentage change of the Index. Thus, 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. 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, but the Note holder's principal is permanently reduced if there is a Contingent Event at any time during the term of the Note. 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 minimum payment amount, 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.

In approving the product, the Commission recognizes that the Index is a capitalization-weighted index 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 11, 2004, the market capitalization of the securities included in the S&P 500 ranged from a high of approximately $339.9 billion to a low of approximately $464.7 million. The average daily trading volume for these same securities for the last six (6) months ranged from a high of approximately 25.9 million shares to a low of approximately 117,071 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.[18] 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

[15] 15 U.S.C. 78f(b)(5).

[16] *See* Securities Exchange Act Release Nos. 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); 48486 (September 11, 2003), 68 FR 54758 (September 18, 2003) (approving the listing and trading of CSFB Contingent Principal Protection Notes); 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); 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); and 50019 (July 14, 2004), 69 FR 43635 (July 21, 2004) (approving the listing and trading of Morgan Stanley PLUS Notes).

[17] 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).

[18] The issuer Lehman 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 Lehman'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.

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, Lehman. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the Company Guide, which provide that 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.[19] In any event, financial information regarding Lehman in addition to the information on the 500 common stocks comprising the Index will be publicly available.[20]

The Commission also has a systemic concern, however, that a broker-dealer such as Lehman, 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,[21] the Commission believes that this concern is minimal given the size of the Notes issuance in relation to the net worth of Lehman.

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 thirtieth 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.[22] 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,[23] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Amex–2004–68) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2402 Filed 9–27–04; 8:45 am]

BILLING CODE 8010–01–P

[19] *See* Company Guide Section 107A.

[20] 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.

[21] *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).

[22] *See* supra note 16.

[23] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50413; File No. SR–PCX–2004–45]

Self-Regulatory Organizations; The Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 To Amend the PCX Sanctioning Guidelines To Enforce Compliance With the Exchange's FOCUS Reports Filing Requirements

September 20, 2004.

On May 17, 2004, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the PCX sanctioning guidelines to more effectively enforce compliance with the Exchange's Financial and Operational Combined Uniform Single ("FOCUS") Reports filing requirements. The PCX amended the proposal on July 1, 2004.[3]

The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on August 5, 2004.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

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.[5] The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also finds that the proposal is consistent with Section 6(b)(6) of the Act,[7] which requires that members and persons associated with members be appropriately disciplined for violations of Exchange rules.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–2004–45) be, and it hereby is, approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2395 Filed 9–27–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The July 1, 2004 amendment ("Amendment No. 1") replaced the original filing in its entirety.

[4] Securities Exchange Act Release No. 50126 (July 30, 2004), 69 FR 47477.

[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 6 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78s(b)(2)

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50416; File No. SR–Phlx–2004–45]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule 703 To Adopt a Tiered Late Filing Fee Schedule for Financial Reports

September 21, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, the Securities and Exchange Commission ("Commission") is giving notice that on July 16, 2004, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Commission a proposed rule change to adopt a tiered late filing fee schedule for financial reports. On September 3, 2004, the Phlx amended the proposal.[3] The amendment replaced the original filing. The proposed rule change is described in Items I, II, and III, below. These Items have been prepared by the Phlx. The Exchange has designated this proposed rule change as one establishing or changing a due, fee, or other charge imposed by the Phlx under Section 19(b)(3)(A)(ii) of the Act, which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 703, "Financial Responsibility and Reporting," to adopt a tiered late filing fee schedule.

Currently, Exchange Rule 703(e), "Due Dates; Fees for Late Filing," states in part that "[E]ach financial report required by Rule 703(c) shall be filed with the Exchange within seventeen business days after the conclusion of the reporting period." Should a member organization or foreign currency options participant organization fail to comply with these filing requirements, unless an extension has been granted, that member organization or foreign currency options participant organization must pay a fee of $100 for each week or any part thereof that the report has not been filed.

The Exchange proposes to change the current fee of $100 for each week or any part thereof that the report has not been filed to a tiered method so that the fee for the first late filing in a twelve-month period is $100 per week or any part thereof;[4] the fee for the second late filing during a twelve-month period is $300 per week or any part thereof; and the fee for the third late filing, and subsequent late filings, during a twelve-month period is $1,000 per week or any part thereof.[5] The proposed changes to Exchange Rule 703(e) are set forth below. Proposed new language is in italic and proposed deletions are in brackets.

Rule 703. Financial Responsibility and Reporting

(a)–(d) No change.

(e) Due Dates; Fees for Late Filing.—Each financial report required by Rule 703(c) shall be filed with the Exchange within seventeen business days after the conclusion of the reporting period. Reports shall be deemed to have been filed on the date which they have been postmarked; if such reports have not been postmarked, they shall be deemed to have been filed when received by the Exchange. A request for an extension of time to file any such report must be received by the Exchange no later than the business day before the due date for the required report. Unless such an extension has been granted, a member organization or foreign currency options participant organization shall pay a *late* fee [of $100] *as set forth below* for each week or any part thereof that the report has not been filed.

(i) $100 per week for the first late filing in a twelve-month period;

(ii) $300 per week for the second late filing during a twelve-month period; and

(iii) $1,000 per week for the third late filing, and subsequent late filings, during a twelve-month period.

The twelve-month period is calculated based on report due dates. Delinquencies will be calculated based on a running twelve-month period.

(f) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and stated that no written comments were either solicited or received on the proposed rule change. The text of these statements may be inspected and copied in the Commission's Public Reference Room and at the principal office of the Phlx. 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 encourage increased compliance with the filing requirements of Exchange Rule 703(e). The Exchange believes that implementing higher fees for late filings is necessary to convey the importance of filing the periodic and annual reports, as set forth in Exchange Rule 703, in a timely manner.

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[6] in general, and furthers the objectives of Section 6(b)(4) of the Act[7] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* September 2, 2004 letter from Cynthia Hoekstra, Counsel, Phlx, to Rose Wells, Division of Market Regulation, Commission, and attachments.

[4] The twelve-month calculation period will begin on the date the report is due. For example, if a January report is due on February 24, but not filed until March 15, the twelve-month calculation period would begin on February 24. A filing submitted after its due date and within twelve months from February 24 would be considered a second late filing.

[5] The Exchange may present repeated or aggravated failure to file such reports on a timely basis, regardless of the number of days late, to the Exchange's Business Conduct Committee for disciplinary action under Exchange Rules.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

4(f)(2)[9] thereunder, because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the 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.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the rule change, including whether the 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–2004–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathon G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–Phlx–2004–45. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all electronic 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 rule change that are filed with the Commission, and all written communications relating to the rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the 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 No. SR–Phlx–2004–45 and should be submitted on or before October 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2396 Filed 9–27–04; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 240.19b–4(f)(2).

[10] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act (15 U.S.C. 78s(b)(3)(C)), the Commission considers the period to commence on September 3, 2004, the date the Phlx filed its amendment.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File Nos. SR–Phlx–2004–50 and SR–Phlx–2004–56]

Securities Exchange Act of 1934; Release No. 50420; In the Matter of the Philadelphia Stock Exchange, Inc.; Order of Summary Abrogation

September 22, 2004.

Notice is hereby given that the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(3)(C) of the Securities Exchange Act of 1934 ("Act"),[1] is summarily abrogating certain proposed rule changes of the Philadelphia Stock Exchange, Inc. ("Phlx").

On July 29, 2004, the Phlx filed SR–Phlx–2004–50. On August 16, 2004, the Phlx submitted Amendment No. 1 to the proposed rule change.[2] On August 18, 2004, the Phlx submitted Amendment No. 2 to the proposed rule change.[3] The proposed rule change, as amended, modified the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) charging a $0.35 per contract (for all equity options other than options on the QQQ) or a $1.00 per contract (for options on the QQQ) equity option payment for order flow fee on transactions by Phlx's Registered Options Traders ("ROTs") when they trade with a customer; (2) permitting specialists to opt in or out of the program by notifying the Exchange in writing at least five business days prior to the start of the month; and (3) combining the payment for order flow fees collected from ROTs in one account to form a "pool" from which specialists may request reimbursement for the amounts that they pay to order flow providers to send order flow to the Exchange. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[4]

On August 16, 2004, the Phlx filed SR–Phlx–2004–56. The proposed rule change amended the Phlx's schedule of dues, fees, and charges to revise its equity option payment for order flow program by (1) requiring a specialist unit to pay equity option payment for order flow fees in a given month at the same rate as ROTs if the specialist unit elects to participate in the program and does not pay a specified percentage of the total amount of equity option payment for order flow funds collected from ROTs in the options for which that specialist unit is acting as the specialist, and (2) providing that specialist units may opt out of the equity option payment for order flow program, as long as they notify the Exchange in writing by the 15th day of the month. The filing was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[5]

Pursuant to Section 19(b)(3)(C) of the Act,[6] at any time within 60 days of the date of filing a proposed rule change pursuant to Section 19(b)(1) of the Act,[7] the Commission may summarily abrogate the change in the rules of the self-regulatory organization and require that the proposed rule change be re-filed in accordance with the provisions of Section 19(b)(1) of the Act[8] and reviewed in accordance with Section 19(b)(2) of the Act,[9] 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.

The Commission believes that the above-referenced proposed rule changes raise serious questions as to whether they are consistent with the Act and with the protection of investors.

[1] 15 U.S.C. 78s(b)(3)(C).

[2] *See* letter from Cynthia K. Hoekstra, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 13, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the original proposed rule change in its entirety.

[3] *See* letter from Richard S. Rudoph, Director and Counsel, Phlx, to David Liu, Attorney, Division, Commission, dated August 18, 2004 ("Amendment No. 2"). Amendment No. 2 deleted all references to the proposed $0.05 per contract charge for broker-dealer (AUTOM-delivered) transactions and replaced the proposed rule text contained in Amendment No. 1 in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 15 U.S.C. 78s(b)(3)(C).

[7] 15 U.S.C. 78s(b)(1).

[8] 15 U.S.C. 78s(b)(1).

[9] 15 U.S.C. 78s(b)(2).

Specifically, the proposed rule changes appear to raise serious questions as to whether they provide for the equitable allocation of reasonable dues, fees, and other charges among the Phlx's members and issuers and other persons using its facilities.[10]

Accordingly, the Commission believes that the procedures provided by Section 19(b)(2) of the Act[11] will provide a more appropriate mechanism for determining whether the proposed rule changes are consistent with the Act. Therefore, the Commission finds that it is appropriate in the public interest, for the protection of investors, and otherwise in furtherance of the purposes of the Act, to abrogate the proposed rule changes.

It is therefore ordered, pursuant to Section 19(b)(3)(C) of the Act,[12] that File Nos. SR–Phlx–2004–50 and SR–Phlx–2004–56 be, and they hereby are, summarily abrogated. If the Phlx chooses to re-file the proposed rule changes, it must do so pursuant to Sections 19(b)(1)[13] and 19(b)(2) of the Act.[14]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2398 Filed 9–27–04; 8:45 am]

BILLING CODE 8010–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments on Additional Items for Potential Withdrawal of Tariff Concessions and Increase in Applied Duties In Response to European Union (EU) Enlargement and EU Changes to its Rice Import Regime

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comments.

SUMMARY: The Office of the U.S. Trade Representative seeks comments concerning the addition of several types of cheese, peaches, mandarins and clementines, to a list of goods for which tariff concessions may be withdrawn and duties may be increased in the event the United States cannot reach agreement with the European Union (EU) for adequate compensation owed under World Trade Organization (WTO) rules as a result of EU enlargement and EU changes to its rice import regime.

DATES: Persons wishing to provide written public comments are required to do so no later than noon on Wednesday, September 29, 2004.

ADDRESSES: Submissions by electronic mail to *FR0443@ustr.eop.gov.* Submissions by facsimile to: Anita Thomas at fax: (202) 395–3974. The public is strongly encouraged to submit documents electronically rather than by facsimile. (See requirements for submissions below).

FOR FURTHER INFORMATION CONTACT: For questions contact Lisa Errion, Office of Europe and the Mediterranean, at (202) 395–3320.

SUPPLEMENTARY INFORMATION: By **Federal Register** Vol. 69, No. 175/ Friday, September 10, 2004, p. 54827–54849, "Request for Comments and Notice of Public Hearing on Potential Withdrawal of Tariff Concessions and Increase in Applied Duties in Response to European Union (EU) Enlargement and EU Changes to Its Rice Regime," the Office of the U.S. Trade Representative sought comments concerning the list of goods for which tariff concessions might be withdrawn and duties might be increased in the event the United States could not reach agreement with the European Union (EU) for adequate compensation owed under World Trade Organization (WTO) rules as a result of EU enlargement and EU changes to its rice import regime. The United States has received public comment regarding the addition of several types of cheese, peaches, mandarins and clementines to this list. Public written testimony requesting the addition of several types of cheese and of peaches is available in the USTR Reading Room, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. It is also available on USTR's Web site at: *www.ustr.gov/World_Regions/Europe_Mediterranean/European_Union/Section_Index.html.*

Public Comment

Written comments of interested persons should be limited to the following issues: (1) The appropriateness of withdrawing WTO tariff concessions upon the products listed in the Annex to this notice; (2) the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; (3) the levels at which U.S. customs duties should be set for particular items; and (4) the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex.

Requirements for Submissions

In order to facilitate prompt processing of submissions, the TPSC strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "EU Enlargement/EU Rice Import Regime" followed by "Written Comments." Documents should be submitted as either Adobe PDF, WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notices of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file may be made by calling (202) 395–6186. General information concerning USTR may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Annex: Proposed Additional Items

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(3)(C).

[13] 15 U.S.C. 78s(b)(1).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(58).

HTS#	Description	In quota/ out of quota	MFN rate 2004	MFN unit 2004	Proposed new tariff rate unit
04062085	Cheese (including mixtures), nesoi, n/o 0.5% by wt. of butterfat, grated or powdered, subject to add. U.S. note 23 to Ch. 4.	IQ	10%	.....	55%
04062089	Cheese (including mixtures), nesoi, o/0.5% by wt. of butterfat, w/cow's milk, grated or powdered, subject to add. U.S. note 16 to Ch. 4.	IQ	10%	.....	55%
04063085	Processed cheese (incl. mixtures), nesoi, n/o 0.5% by wt. butterfat, not grated or powdered, subject to Ch. 4 U.S. note 23, not GN15.	IQ	10%	.....	55%
04064048	Stilton cheese, nesoi, not in original loaves, subject to add. U.S. note 24 to Ch. 4.	IQ	17%	.....	55%
04069016	Edam and gouda cheese, nesoi, subject to add. U.S. note 20 to Ch. 4.	IQ	15%	.....	55%
04069042	Romano, Reggiano, Parmesan, Provolone, and Provoletti cheese, nesoi, from cow's milk, not subj. to GN 15 or Ch. 4 U.S. note 21.	OQ	2.146	$/kg	3.7875 $/kg
04069093	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/butterfat n/o 0.5% by wt., subject to add. U.S. note 23 to Ch. 4, not GN15.		10%	.....	55%
04069099	Cheeses & subst. for cheese (incl. mixt.), nesoi, w/o cow's milk, w/butterfat o/0.5% by wt., not GN15.		8.5%	.....	55%
08052000	Mandarins (including tangerines and satsumas); clementines, wilkings and similar citrus hybrids, fresh or dried.		1.9	cents/ kg.	3.3 cents/kg
20087020	Peaches (excluding nectarines), otherwise prepared or preserved, not elsewhere specified or included.		17%	.....	55%

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–21762 Filed 9–27–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Global Positioning Systems (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

DATES: The meeting will be held on October 4–8, 2004, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 159 meeting. **Note:** Specific working group sessions will be held October 4–7. The plenary agenda will include:

- October 8:

—Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
—Review Working Group Progress and Identify Issues for Resolution
—Global Positioning System (GPS)/3rd Civil Frequency (WG–1)
—GPS/Wide Area Augmentation System (WAAS) (WG–2)
—GPS/GLONASS (WG–2A)
—GPS/Inertial (WG–2C)
—GPS/Precision Landing Guidance (WG–4)
—GPS/Airport Surface Surveillance (WG–5)
—GPS/Interference (WG–6)
—GPS/GRAS (WG–8)
—Review of EUROCAE activities
—Review/Approval, Revised DO–245—Minimum aviation System Performance Standards for Local Area Augmentation System (LAAS), RTCA Paper No. 141–04/SC159–919.
—Closing Plenary Session (Assignment/ Review of Future Work, Other Business, Data and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 14, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–21740 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Use the Revenue from a Passenger Facility Charge (PFC) at San Antonio International Airport, San Antonio, Texas

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 use the revenue from a PFC at San Antonio International Airport under the provisions of the

Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 28, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate copies to the FAA at the following address: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kevin Dolliole, Manager of San Antonio International Airport at the following address: Mr. Kevin Dolliole, Director of Aviation, San Antonio International Airport, 9800 Airport Boulevard, San Antonio, TX 78216–9990.

Air carriers and foreign air carriers may submit copies of the written comments previously provided to the Airport under Section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. G. Thomas Wade, Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–611, Fort Worth, Texas 76193–0610, (817) 222–5613.

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 use the revenue from a PFC at San Antonio International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On September 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the 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 January 15, 2005.

The following is a brief overview of the application.

Level of the proposed PFC: N/A.

Proposed charge effective date: N/A.

Proposed charge expiration date: N/A.

Total estimated PFC revenue: $2,400,000.

PFC application number: 04–03–U–00–SAT.

Brief description of proposed project(s): Projects To Use PFC's:

1.1 Acoustical Treatment Program.

Proposed class or classes of air carriers to be exempted from collecting PFC's: N/A.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Southwest Region, Airports Division, Planning and Programming Branch, ASW–610, 2601 Meacham Blvd., Fort Worth, Texas 76137–4298.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at San Antonio International Airport.

Issued in Fort Worth, Texas on September 21, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–21741 Filed 9–27–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34544]

Tazewell & Peoria Railroad, Inc.–Lease and Operation Exemption—Peoria and Pekin Union Railway Company

Tazewell & Peoria Railroad, Inc. (TPR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to lease and operate approximately 19.9 miles of rail line currently owned by Peoria and Pekin Union Railway Company (PPU), extending from: (1) Approximately milepost 0.0 (at or near Peoria, IL, Union Station) to approximately milepost 9.2 (at or near Pekin, IL, IC Junction); (2) approximately milepost 0.0 (at or near Peoria, IL, Union Station) to approximately milepost 3.87N (at or near Iowa Interstate Junction, IL); (3) approximately milepost 0.0 (at or near Peoria, IL, Peoria Wye) to approximately milepost 5.1W (at or near P&PU Junction, IL); and (4) approximately Wesley Junction, IL, to approximately East Peoria, IL (approximately 1.7 miles of track; milepost designations are not available), in Tazewell and Peoria Counties, IL. In addition, TPR will acquire from PPU incidental trackage rights over approximately 1.7 miles of main-line track owned by Union Pacific Railroad Company from approximately milepost 4.0 (at or near P&PU Junction) to approximately milepost 5.7 (at or near Sommer, IL), in Peoria County, IL. TPR certifies that its projected annual revenues will not exceed those that would qualify it as a Class III rail carrier. Although not stated, it appears as though TPR's projected annual revenues will exceed $5 million, as TPR has complied with the posting and service requirements of 49 CFR 1150.32(e). In accordance with that section, the transaction cannot be consummated before October 29, 2004, the effective date of the exemption.

This proceeding is related to *Genesee & Wyoming, Inc.—Continuance in Control Exemption—Tazewell & Peoria Railroad, Inc.*, STB Finance Docket No. 34545, wherein Genesee & Wyoming, Inc., a noncarrier, has concurrently filed a petition for exemption to continue in control of TPR upon TPR's becoming a 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 will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34544, 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 Jo A. DeRoche, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Dated: Decided: September 21, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–21679 Filed 9–27–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Financial Management Service; Senior Executive Service; Combined Performance Review Board (PRB)

AGENCY: Financial Management Service, Treasury Department.

ACTION: Notice of members of Combined Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Combined PRB for the Financial

Management Service, the Bureau of the Public Debt, the U.S. Mint, the Bureau of Engraving and Printing and the Alcohol and Tobacco Tax and Trade Bureau. The Board reviews the performance appraisals of career senior executives below the level of bureau head and principal deputy in the five bureaus, except for executives below the Assistant Commissioner level in the Financial Management Service. The Board makes recommendations regarding proposed performance appraisals, ratings, bonuses and other appropriate personnel actions.

Composition of Combined PRB: The Board shall consist of at least three voting members. In case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the Combined PRB members are as follows:

Primary Members

Scott H. Johnson, Assistant Commissioner (Management), CFO, FMS.

Jerry Horton, Associate Director, CIO, U.S. Mint.

Joel C. Taub, Associate Director (Management), BEP.

Cynthia Z. Springer, Assistant Commissioner (Office of Information Technology), BPD.

Alternate Members

Judy Tillman, Assistant Commissioner (Regional Operations), FMS.

Marcia Coates, Senior Advisor, Mint.

Gregory D. Carper, Associate Director, CFO, BEP.

John W. Swales, Assistant Commissioner (Office of Securities Operations), BPD.

DATES: This notice of the appointment of individuals to serve on the Combined PRB is effective September 28, 2004.

FOR FURTHER INFORMATION CONTACT: Scott H. Johnson, Assistant Commissioner (Management), CFO, Financial Management Service, 401 14th Street, SW., Room 259, Washington, DC 20227. Telephone number: 202 874–7100.

This notice does not meet the Department's criteria for significant regulations.

Dated: September 21, 2004.

Gavin E. Jackson,

Acting Director of the Human Resources Division, Financial Management Service.

[FR Doc. 04–21623 Filed 9–27–04; 8:45 am]

BILLING CODE 4810–35–M

Federal Register

Tuesday,
September 28, 2004

Part II

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 31
Federal Acquisition Regulation; Accounting for Unallowable Costs; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2004–006]

RIN 9000–AK06

Federal Acquisition Regulation; Accounting for Unallowable Costs

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) by revising language regarding accounting for unallowable costs.

DATES: Interested parties should submit comments in writing on or before November 29, 2004 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2004–006 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.2004–006@gsa.gov. Include FAR case 2004–006 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 2004–006 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 Mr. Richard C. Loeb, at (202) 208–3810. Please cite FAR case 2004–006.

SUPPLEMENTARY INFORMATION:

A. Background

The DoD Director of Defense Procurement and Acquisition Policy (DPAP) established a special interagency Ad Hoc Committee to perform a comprehensive review of policies and procedures in FAR Part 31, Contract Cost Principles and Procedures, relating to cost measurement, assignment, and allocation. DPAP announced a series of public meetings in the **Federal Register** notice (66 FR 13712) on March 7, 2001 (with a "correction to notice" published in the **Federal Register** (66 FR 16186) on March 23, 2001). Public meetings were held on April 19, 2001, May 10–11, 2001, and June 12, 2001. Attendees at the public meetings included representatives from industry, Government, and other interested parties who provided views on potential areas for revision in FAR Part 31. The Ad Hoc Committee reviewed the cost principles and procedures and the input obtained during the public meetings; identified potential changes to the FAR; and submitted several reports, including draft proposed rules for consideration by the Councils.

The Councils reviewed the Ad Hoc Committee's reports and draft proposed rules related to FAR 31.204, Application of principles and procedures, and FAR 31.201–6, Accounting for unallowable costs. On May 22, 2003, a proposed rule was published for public comment in the **Federal Register** (68 FR 28108) under FAR case 2002–006. No public comments were received on the proposed rule relating to FAR 31.204. The Councils concluded that the FAR 31.204 proposed rule should be converted to a final rule, with no changes to the proposed rule. The final rule version of 2002–006 was published in the **Federal Register** in Federal Acquisition Circular 2001–24 (69 FR 34224 on June 18, 2004).

As a result of the public comments received under FAR case 2002–006, the Councils also decided to make substantive changes to FAR 31.201–6 and to publish the proposed revisions under this separate proposed rule 2004–006. The Councils' recommended changes include adding paragraphs (iii) through (vi) to subsection 31.201–6(c)(2) to provide specific criteria on the use of sampling as a method to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs.

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.

In response to the proposed FAR rule published under FAR Case 2002–006 in the **Federal Register** (68 FR 28108) on May 22, 2003, nine respondents submitted comments on FAR 31.201–6. The Councils considered all comments and concluded that, since the changes result in a rule that differs significantly from the proposed rule, it should be published as a proposed rule under a new FAR Case 2004–006. Differences between the proposed rule under FAR Case 2002–006 and this proposed rule are discussed in Comments 3, 4, and 7, below.

Public Comments

FAR 31.201–6(c)(1)

1. *Comment*: Requirement to segregate unallowable costs. One respondent recommends removal of FAR 31.201–6(c)(1) from the proposed rule (which is also contained in the current FAR language). The respondent believes that non-CAS covered contractors should not be subject to CAS requirements because of their adherence to the FAR cost principles. The respondent also contends that incorporating such requirements into the FAR by reference results in lowering thresholds for CAS application and is contrary to DoD progressive initiatives such as the DoD Panel on Measurement, Assignment, and Allocability Provisions of FAR Part 31, and by the DFARS Transformation Project.

Another respondent believes that retaining the requirement, for all contracts subject to FAR Part 31 (CAS and non-CAS covered), to comply with the provisions of CAS 405 (Accounting for Unallowable Costs) results in more clearly understood and easily applied criteria for accounting for unallowable costs. This respondent also believes that such requirements create a more level playing field between all contractors.

Councils' response: The Councils agree that the provision should be retained. Prior to the implementation of CAS 405, significant amounts of unallowable costs were often included in proposals and billings which necessitated significant use of Government resources to find such costs. The Councils believe this would occur again if the requirement was removed. In addition, unallowable costs must be segregated to comply with the statutory penalties provisions; thus, this provision serves to implement those statutory requirements.

FAR 31.201–6(c)(2)

2. *Comment*: Use of statistical sampling. The respondent believes that numerous disagreements may result from the proposed language. The respondent supports the use of statistical sampling to project unallowable costs in connection with discrete pools where the number of differing cost elements is limited. However, the respondent concurrently objects to the general application of statistical sampling for the purposes of projecting unallowable costs in connection with a universe of diverse cost elements subject to a significant number of cost principles.

Councils' response: Nonconcur. The Councils recognize the respondent's concern about the potential limitations of statistical sampling. However, the Councils note that contractors are not required to use statistical sampling, i.e., it is an optional technique for segregating unallowable costs.

FAR 31.201–6(c)(2)(iii), (iv), and (v)

3. *Comment*: Statistical sampling verification versus segregation. The respondent disagrees with the proposed amendment to FAR 31.201–6(c)(2). The respondent believes that the use of statistical sampling should not replace accounting policies and procedures for identifying and segregating unallowable costs when the costs are initially incurred and recorded. The respondent asserts that initial identification of unallowable costs is necessary to meet the requirements of 10 U.S.C. 2324, which provides penalties against a contractor if expressly unallowable costs are included in its claims to the Government. Therefore, the respondent recommends adding the following language:

"Statistical sampling is an acceptable practice for verifying that a contractor's accounting practices and procedures for segregating and presenting unallowable costs are operating as intended."

Councils' response: Concur in part. The Councils do not believe that sampling is precluded by 10 U.S.C. 2324. The Councils note that there is no requirement in 10 U.S.C. 2324 to specifically segregate every item of unallowable cost. Statistical sampling, when properly applied, is acceptable for both segregating unallowable costs and verifying that such costs have been properly segregated (either by specific identification or using appropriate sampling techniques). However, the Councils recognize that the sampling must appropriately consider the requirements of 10 U.S.C. 2324 related to the application of penalties on unallowable costs. To avoid potential disputes in this area, a new paragraph (c)(3) has been added at 31.201–6 to explicitly include these appropriate considerations.

FAR 31.201–6(c)(2)(vi)

4. *Comment*: Statistical sampling advance agreements. A respondent states that up-front coordination and agreement between the contractor and the auditor regarding the sampling plan (e.g., sampling method, expense accounts, stratification, precision, confidence, and projection) is essential in order to avoid subsequent disputes over the adequacy of the sampling plan used by the contractor. The respondent asserts that such disputes, as well as differing interpretations of statistical terms and methodologies, could delay a timely settlement of the contractor's incurred cost submissions and adversely impact the contract close-out process. The respondent proposes adding the following language to FAR 31.201–6(c):

(3) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of FAR 31.109.

Councils' response: Concur. The Councils believe it will streamline the review process and avoid potential disputes if the parties agree up-front on the sampling plan. The Councils have added the respondent's proposed language as well as an additional sentence on advance agreements at new paragraph (c)(4) of 31.201–6.

FAR 31.201–6(e)(1)

5. *Comment*: Materiality threshold applied to directly associated unallowable costs. The respondent recommends the Council adopt the "30 percent rule" that was contained in 1976 DoD guidance issued by the then Assistant Secretary of Defense (Installations and Logistics) Mr. Dale Babione. The respondent states that this guidance instructed DoD personnel how to interpret the materiality threshold applied to directly associated unallowable costs. The respondent further states that this 1976 guidance established a threshold of 30 percent of total time, over which salary costs are determined to be unallowable and under which further evaluation is required. The respondent asserts that many contractors and contracting officers have successfully implemented this guidance over the past 25 years.

Councils' response: Nonconcur. The Councils believe that a decision on materiality should be made by the contracting officer on a case-by-case basis after consideration of the three factors listed at 31.201–6(e)(1): the actual dollar amount, the cumulative effect of all directly associated costs in a cost pool, and the ultimate effect on the cost of Government contracts.

The Councils believe that materiality should not be determined based solely on a percentage. For example, 25 percent may have a material impact to the Government for a company in which every employee spends 25 percent of their time on directly associated unallowable costs. Conversely, the impact to the Government may be immaterial if the Government participation in the indirect cost base is small, even if an employee is spending more than 30 percent of his/her time on directly associated unallowable costs. Using a similar analysis, 50 percent may have a material impact to the Government if the total amount involved is large and/or the Government has a large share of the allocation base. Conversely, 50 percent may have an immaterial impact to the Government if the total amount involved is small and/or the Government share of the allocation base is small.

FAR 31.201–6(e)(2)

6. *Comment*: Definition of directly associated cost. Two respondents contend that CAS 405 (Accounting for Unallowable Costs) does not distinguish among types of directly associated costs. They assert that CAS 405 prescribes a general rule of cost recognition, measurement and allocation, which applies to all types of cost, without distinction. They further state that CAS 405 prescribes the following "but for" test: Directly associated cost means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred. The respondents contend that FAR 31.201–6(e) abandons this "but for" test and substitutes a materiality test for recognizing and measuring the "salary expenses of employees who participate in activities that generate unallowable costs." Accordingly, the respondents believe it is confusing as to whether salaries and expenses are governed by the "but for" test or by a new "materiality" test. Therefore, one respondent recommends amending FAR 31.201–6(e) so that it complies with CAS 405 in the application of the "but for" test and delete the "materiality" test. As an alternative, the other respondent recommends that FAR 31.201–6(e) be amended to establish a rebuttable presumption that material amounts of time devoted to unallowable activities would, in the normal course of business, influence the employee's compensation. Under the respondent's proposal, contractors could rebut the presumption by showing that, in any

individual situation, compensation would not have been affected. For example, under the respondent's revision, compensation would not be affected in the unusual situation of a natural disaster requiring salaried personnel to devote material amounts of effort to unallowable charitable activities during a particular accounting period.

Councils' response: Nonconcur. The Councils note that the current language at FAR 31.201–6(e)(2) is not a "new" materiality test. This language, which was promulgated over twenty years ago, provides contracting personnel and contractors with specific information on when to treat salaries and expenses as directly associated costs. The Councils believe this language should be retained. They also believe that the respondent's proposed alternative language would potentially cause significant increases in the number of disputes due to arguments regarding when compensation is and is not affected by unallowable activities.

7. *Comment*: Illustration. The respondent states that it does not object to the inclusion of an illustration in FAR 31.201–6(e)(2), but if an illustration is to be included, it prefers the one included in CAS 405–60(e). The respondent contends that use of a CAS illustration will avoid potential conflicts in determining materiality.

Councils' response: Nonconcur. The proposed language at FAR 31.201–6(e)(2) is not an illustration, but is instead criteria for determining how to treat salary expenses of employees that participate in activities that generate unallowable costs. The Councils believe it is not appropriate for FAR Part 31 to include illustrations such as those contained in CAS because they would be inconsistent with the overall structure of the FAR, which does not include such illustrations in any other part.

FAR 31.201–6(e)(3)

8. *Comment*: Incorrect reference. Two respondents noted that the reference in 31.201–6(e)(3) is incorrect. The reference should be to paragraphs (e)(1) and (e)(2) of that subsection, rather than (f)(1) and (f)(2).

Councils' response: Concur. There is no paragraph (f)(1) or (f)(2) in FAR 31.201–6. The typographical errors have been corrected in paragraphs (e)(2), and (e)(3).

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles and procedures discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–006), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated:September 20, 2004

LAURA AULETTA,

Director,Contract Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31–CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 31.201–6 by—

a. Amending paragraphs (a) and (b) by removing "which" and adding "that" in its place each time it appears;

b. Revising paragraph (c);

c. Revising the first sentence in paragraph (d);

d. Amending paragraph (e)(1)(ii) by removing "or" and adding "and" in its place; and

e. Revising paragraph (e)(3).

The revised text reads as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for accounting for and presenting unallowable costs provided the following criteria are met:

(i) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(ii) All large dollar value and high risk transactions are separately reviewed for unallowable costs and excluded from the sampling process.

(iii) The statistical sampling permits audit verification.

(3) For the purposes of applying the penalty provisions at FAR 42.709, when statistical sampling is used for accounting for and presenting unallowable costs—

(i) The following amounts must be excluded from any final indirect rate proposal or final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract submitted to the Government:

(A) The amounts projected to the sampling universe for any expressly unallowable costs in the sample.

(B) The amounts projected to the sampling universe for any costs in the sample determined to be unallowable for the contractor before proposal submission.

(ii) Any amounts that are not excluded in accordance with paragraph (c)(3)(i) of this subsection are subject to the penalties provisions at FAR 42.709.

(iii) The provisions of paragraph c)(3)(ii) of this subsection do not apply to the following:

(A) Contracts that are $500,000 or less.

(B) Fixed-price contracts without cost incentives.

(C) Firm-fixed-price contracts for the purchase of commercial items.

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of FAR 31.109. The advance agreement should specify the basic characteristics of the sampling process.

(d) If a directly associated cost is included in a cost pool that is allocated over a base that includes the unallowable cost with which it is associated, the directly associated cost shall remain in the cost pool. * * *

(e) * * *

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

[FR Doc. 04–21640 Filed 9–27–04; 8:45 am]

BILLING CODE 6820–EP–S

Federal Register

Tuesday,
September 28, 2004

Part III

Department of Labor

Employee Benefits Security Administration

29 CFR Part 2550

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor; Final Rule

DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2550

RIN 1210–AA92

Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974 Automatic Rollover Safe Harbor

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Final rule.

SUMMARY: This document contains a final regulation that establishes a safe harbor pursuant to which a fiduciary of a pension plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), will be deemed to have satisfied his or her fiduciary responsibilities in connection with automatic rollovers of certain mandatory distributions to individual retirement plans. This final regulation will affect employee pension benefit plans, plan sponsors, administrators and fiduciaries, service providers, and plan participants and beneficiaries.

DATES: Effective Date: This final regulation is effective March 28, 2005.

Applicability Date: This final regulation shall apply to the rollover of mandatory distributions made on or after March 28, 2005.

FOR FURTHER INFORMATION CONTACT: Kristen L. Zarenko, Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N–5669, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–8510. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

A. Background

Under the Internal Revenue Code of 1986, as amended (Code), tax-qualified retirement plans are permitted to incorporate provisions requiring an immediate distribution to a separating participant without the participant's consent if the present value of the participant's vested accrued benefit does not exceed $5,000.[1] A distribution by a plan in compliance with such a provision is termed a mandatory distribution, commonly referred to as a "cash-out". Separating participants may choose to roll the cash-out, which is an eligible rollover distribution,[2] into an eligible retirement plan,[3] or they may retain the cash-out as a taxable distribution. Within a reasonable period of time prior to making a mandatory distribution, plan administrators are required to provide a separating participant with a written notice explaining, among other things, the following: the Code provisions under which the participant may elect to have the cash-out transferred directly to an eligible retirement plan and that if an election is not made, such cash-out is subject to the automatic rollover provisions of Code section 401(a)(31)(B); the provision requiring income tax withholding if the cash-out is not directly transferred to an eligible retirement plan; and the provisions under which the distribution will not be taxed if the participant transfers the account balance to an eligible retirement plan within 60 days of receipt.[4]

As part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA),[5] section 401(a)(31) of the Code was amended to require that, absent an affirmative election by the participant, certain mandatory distributions from a tax-qualified retirement plan be directly transferred to an individual retirement plan[6] of a designated trustee or issuer. Specifically, section 657(a) of EGTRRA added a new section 401(a)(31)(B)(i) to the Code to provide that, in the case of a trust that is part of an eligible plan,[7] the trust will not constitute a qualified trust unless the plan of which the trust is a part provides that if a mandatory distribution of more than $1,000 is to be made and the participant does not elect to have such distribution paid directly to an eligible retirement plan or to receive the distribution directly, the plan administrator must transfer such distribution to an individual retirement plan. Section 657(a) of EGTRRA also added a notice requirement in section 401(a)(31)(B)(i) of the Code requiring the plan administrator to notify the participant in writing, either separately or as part of the notice required under section 402(f) of the Code, that the participant may transfer the distribution to another individual retirement plan.[8]

Section 657(c)(2)(A) of EGTRRA directed the Department of Labor (Department) to issue regulations providing safe harbors under which (1) a plan administrator's designation of an institution to receive the automatic rollover, and (2) the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary responsibility provisions of section 404(a) of ERISA. Section 657(c)(2)(B) of EGTRRA states that the Secretaries of Labor and Treasury may provide, and shall give consideration to providing, special relief with respect to the use of low-cost individual retirement plans for purposes of Code section 401(a)(31)(B) automatic rollovers and for other uses that promote the preservation of assets for retirement income.

Section 657(c)(2)(A) of EGTRRA further provides that the Code provisions requiring automatic rollovers of certain mandatory distributions to individual retirement plans will not become effective until the Department issues safe harbor regulations.

On March 2, 2004, the Department published a notice in the **Federal Register** (69 FR 9900) containing a proposed safe harbor regulation for the automatic rollover of certain mandatory distributions, designated as proposed § 2550.404a–2 of Title 29 (proposal). The standards contained in the proposal, as explained in the preamble, were based in part on comments the Department received in response to a Request for Information (RFI) published on January 7, 2003 in the **Federal Register** (68 FR 991). The Department also published a proposed class exemption in the March 2, 2004 edition of the **Federal Register** (69 FR 9846) to address certain prohibited transactions that may result in connection with automatic rollovers.[9] The Department received 45 comment letters in response to the proposed safe harbor regulation and related class exemption. Copies of

[1] Code sections 411(a)(11) and 417(e). *See* Code section 411(a)(11)(D) for circumstances where the amount of a cash-out may be greater than $5,000, based on a participant's prior rollover contribution into the plan.

[2] *See* Code section 402(f)(2)(A).

[3] *See* Code section 402(f)(2)(B).

[4] Code section 402(f)(1).

[5] Pub. L. 107–16, June 7, 2001, 115 Stat. 38.

[6] Section 401(a)(31)(B)(i) of the Code requires the transfer to be made to an "individual retirement plan", which section 7701(a)(37) of the Code defines to mean an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).

[7] Section 657(a)(1)(B)(ii) of EGTRRA defines an "eligible plan" as a plan which provides for an immediate distribution to a participant of any "nonforfeitable accrued benefit for which the present value (as determined under section 411(a)(11) of the Code) does not exceed $5,000." The staff of Treasury and IRS have advised the Department that the requirements of Code section 401(a)(31)(B) apply to a broad range of retirement plans including plans established under Code sections 401(a), 401(k), 403(a), 403(b) and 457. The Department notes that the safe harbor contained herein applies only to employee benefit pension plans covered under title I of ERISA. *See infra* note 20.

[8] Conforming amendments to Code sections 401(a)(31) and 401(f)(1) were also made by section 657 of EGTRRA.

[9] 69 FR 9846, as corrected at 69 FR 11043. *http://www.dol.gov/ebsa/regs/fedreg/notices/2004004552.htm.*

these comments are posted on the Department's Website.[10]

After careful consideration of the issues raised by the written comments on the proposal, the Department has modified the scope of the regulation and revised some of the conditions requisite to achieving relief under the safe harbor. The Department now is publishing in this notice, in final form, regulation § 2550.404a–2 of Title 29 (regulation), establishing a safe harbor pursuant to which a fiduciary will be deemed to have satisfied his or her fiduciary responsibilities in connection with rollovers of certain mandatory distributions to individual retirement plans. In modifying the regulation, the Department has attempted to strike a balance between preserving retirement assets for participants on whose behalf a rollover is made to an individual retirement plan and the costs attendant to establishing and maintaining such plans on behalf of the participants.

Set forth below is an overview of the regulation, with a discussion of the comments received in response to the proposal and changes made in response to those comments.

B. Overview of Final Safe Harbor Regulation

1. Scope

Like the proposal, paragraph (a)(1) of the regulation provides that the safe harbor applies to the automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code, which limits such distributions to nonforfeitable accrued benefits (generally referred to as vested benefits), the present value of which is in excess of $1,000, but less than or equal to $5,000. For purposes of determining the present value of such benefits, section 401(a)(31)(B) references Code section 411(a)(11). Section 411(a)(11)(A) of the Code provides that, in general, if the present value of any nonforfeitable accrued benefit exceeds $5,000, such benefit may not be immediately distributed without the consent of the participant. Section 411(a)(11)(D) of the Code also provides a special rule that permits plans to disregard that portion of a nonforfeitable accrued benefit that is attributable to amounts rolled over from other plans (and earnings thereon) in determining the $5,000 limit. Inasmuch as section 401(a)(31)(B) of the Code requires the automatic rollover of mandatory distributions, as determined under section 411(a)(11), which may include prior rollover contributions, the regulation provides safe harbor coverage for the automatic rollover of mandatory distributions containing such prior rollover contributions.

Several commenters recommended that the safe harbor be expanded to include mandatory distribution amounts of $1,000 or less, which tax-qualified retirement plans are permitted to distribute to a separating participant without the participant's consent if the present value of the participant's vested accrued benefit does not exceed $5,000.[11] A number of commenters also suggested that the safe harbor extend to distributions of amounts greater than $5,000 (amounts beyond those otherwise permitted under section 411(a)(11) of the Code).

Taking into account the purpose and provisions of the safe harbor regulation, the Department is persuaded that application of the safe harbor to rollovers of mandatory distributions of $1,000 or less is appropriate. In this regard, the Department believes that the availability of the safe harbor for such distributions may increase the likelihood that such amounts will be rolled over to individual retirement plans and thereby may promote the preservation of retirement assets, without compromising the interests of the participants on whose behalf such rollovers are made. Therefore, paragraph (a)(1) of the regulation has been modified to provide that the safe harbor in § 2550.404a–2 extends to certain other mandatory distributions not described in section 401(a)(31)(B) of the Code. A new paragraph (d) has been added to the regulation to address mandatory distributions of $1,000 or less. With regard to distributions greater than $5,000, the Department is not prepared to conclude that the framework for safe harbor relief, specifically the prescribed investment products, is appropriate for distributions in excess of the amounts otherwise subject to the automatic rollover requirements of section 401(a)(31)(B) of the Code. Accordingly, no modifications have been made to the regulation concerning such amounts.

Paragraph (b) of the regulation, like the proposal, provides that, if the conditions of the safe harbor are met, fiduciaries will be deemed to have satisfied their fiduciary duties under section 404(a) of ERISA with respect to both the selection of an individual retirement plan provider and the investment of funds in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code to an individual retirement plan, within the meaning of section 7701(a)(37) of the Code.

The regulation continues to make clear that the standards set forth in the proposed regulation apply solely for purposes of determining compliance with the safe harbor and that such standards are not intended to represent the exclusive means by which a fiduciary might satisfy his or her duties under ERISA with respect to automatic rollovers of mandatory distributions described in section 401(a)(31)(B) of the Code.

As noted above, section 657(c)(2)(B) of EGTRRA provides that the Secretary of the Treasury and the Secretary of Labor shall consider and may provide special relief with respect to the use of low-cost individual retirement plans. The Department considered the provision of such special relief and believes that the framework of the safe harbor encourages the use of low-cost individual retirement plans for purposes of rollovers under section 401(a)(31)(B) of the Code. The Department specifically invited public comment on whether, given the conditions of the proposal, further relief was necessary in this regard. While the Department did not receive comments specifically addressing the necessity of further relief regarding the use of low-cost individual retirement plans, a substantial number of comments concerned the fee and expense limitations, which relate directly to the cost of establishing and maintaining automatic rollover individual retirement plans. As discussed below, the regulation has been modified to reflect comments made concerning fees and expenses assessed in connection with distribution and maintenance of rolled-over funds into an individual retirement plan.

2. Conditions

The proposal provided that safe harbor relief is dependent on a fiduciary satisfying six conditions. These conditions related to the amount of distributions, the qualifications of retirement plan providers, permissible investment products, limits on fees and expenses, disclosure of information to participants and prohibited transactions. Except as discussed below, this regulation, while structured somewhat differently, generally retains the conditions of the proposal. Each of the conditions is discussed below.

Amount of Mandatory Distributions

The first condition, described in paragraph (c)(1) of the regulation,

[10] *http://www.dol.gov/ebsa/regs/cmt_autorollover.html* (for the proposed safe harbor regulation); *http://www.dol.gov/ebsa/regs/cmt_autorolloverexe.html* (for the proposed class exemption).

[11] *See supra* note 1.

requires that, for the automatic rollover of mandatory distributions, the present value of the nonforfeitable accrued benefit, as determined under section 411(a)(11) of the Code, does not exceed the maximum amount permitted under section 401(a)(31)(B) of the Code. Although this condition is generally the same as the proposal, paragraph (d) has been added to provide safe harbor relief for mandatory distributions of $1,000 or less that are directly rolled over.

One commenter requested clarification as to whether the amount of a participant loan would constitute a portion of the present value of the nonforfeitable accrued benefit for purposes of the safe harbor. This question involves an interpretation of sections 401(a)(31)(B) and 411(a)(11) of the Code and, therefore, is beyond the jurisdiction of the Department. Accordingly, this question has been referred to the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) for consideration.

Rollover Distribution to an Individual Retirement Plan

The second condition of the regulation, described in paragraph (c)(2), requires that the mandatory distribution be directed to an individual retirement plan within the meaning of section 7701(a)(37) of the Code. Section 7701(a)(37) defines the term "individual retirement plan" to mean an individual retirement account described in section 408(a) of the Code and an individual retirement annuity described in section 408(b) of the Code. Accordingly, a bank, insurance company, financial institution or other provider of an individual retirement plan under the safe harbor is required to satisfy the requirements of the Code and regulations issued thereunder.[12]

The Department is adopting this condition without modification. No commenters objected to this condition or identified any problems in the existing Code or regulatory standards for individual retirement plans. However, a number of commenters did raise questions concerning the application of this provision. These questions included whether fiduciaries can select multiple individual retirement plan providers at the same time or only use one, and whether multiple plans of the same employer may designate the same provider as the recipient for all automatic rollovers. The safe harbor regulation establishes neither minimums nor maximums in terms of the number of individual retirement plan providers to a plan or multiple plans of an employer. The regulation merely requires, without regard to whether there are one or more individual retirement plan providers, that mandatory distributions be directed to an individual retirement plan within the meaning of section 7701(a)(37) of the Code. One commenter requested clarification regarding the status of brokerage firms that qualify as non-bank trustee individual retirement plan providers under section 408 of the Code. In the Department's view, any individual retirement plan provider offering individual retirement plans as defined in section 7701(a)(37) of the Code is a qualified provider for purposes of the safe harbor.

Agreements With Individual Retirement Plan Providers

Several commenters urged the Department to clarify the obligations of plan fiduciaries in terms of reliance on representations of individual retirement plan providers concerning satisfaction of the conditions of the safe harbor regulation and monitoring compliance with the conditions of the regulation following the initial selection and distribution of funds to the individual retirement plan provider. In response to these and other issues, the Department restructured paragraph (c) to establish an explicit requirement for a written agreement on which the plan fiduciary may rely in making rollover distributions under the safe harbor regulation. As modified, paragraph (c)(3) now provides, as a condition for relief under the regulation, that a fiduciary enter into a written agreement with an individual retirement plan provider that specifically addresses, among other things, the investment of rolled-over funds and the fees and expenses attendant to the individual retirement plan. The Department anticipates that such information would be addressed in documents currently utilized by individual retirement plan providers in the normal course of their business and that special documents would not have to be prepared for purposes of the safe harbor.

To the extent that the terms and conditions of the agreement comport with the conditions of the safe harbor regulation with respect to rollover distributions, the fiduciary will be able to evidence compliance with the regulation. In this regard, the fiduciary can rely on commitments of the individual retirement plan provider as reflected in the agreement(s) and is not required to monitor the provider's compliance with the terms of the agreement beyond the point in time funds are rolled over in accordance with the terms of the agreement. In other words, the plan fiduciary's responsibility with respect to mandatory rollovers ends at such time as the funds are placed with the individual retirement plan provider pursuant to an agreement that satisfies the conditions of the safe harbor. This position is consistent with the Department's view expressed in a footnote to Revenue Ruling 2000–36 relating to mandatory distributions.[13]

Inasmuch as the agreement is being entered into on behalf of a plan participant, the regulation further provides, at subparagraph (c)(3)(v), that the terms of the agreement are enforceable by the participant on whose behalf the fiduciary makes an automatic rollover to an individual retirement plan. Such a provision is consistent with the view that the obligations of the plan fiduciary end, and the rights of the former participant as the account holder begin, with the distribution of funds to the individual retirement plan provider.

Investment Products

Paragraph (c)(3)(i), (ii) and (iii) address the types of investments that are permitted under the safe harbor. While, as discussed below, a number of commenters suggested expanding the types of investments that would be permitted under the regulation, the Department has concluded that the limited approach of the proposal is more appropriate for safe harbor relief. This regulation, therefore, provides that the agreement entered into by the plan fiduciary must provide, with respect to investment of individual retirement plan funds, that (i) the rolled-over funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity; (ii) for purposes of (i), the investment product selected for the rolled-over funds shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan; and (iii) the investment product selected for the rolled-over funds shall

[12] For example, with respect to individual retirement accounts, 26 CFR 1.408–2(b)(2)(i) provides that the trustee of an individual retirement account must be a bank (as defined in section 408(n) of the Code and regulations thereunder) or another person who demonstrates, in the manner described in paragraph (e) of the regulation, to the satisfaction of the IRS, that the manner in which the trust will be administered will be consistent with section 408 of the Code and regulations thereunder. With respect to individual retirement annuities, 26 CFR 1.408–3 describes, among other things, requirements that must be met in order to maintain the tax-qualified status of such annuity arrangements.

[13] Rev. Rul. 2000–36, 2000–2 C.B. 140.

be offered by a State or federally regulated financial institution, which shall be: a bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by state guaranty associations; or an investment company registered under the Investment Company Act of 1940.

As with the proposal, the standards in subparagraphs (c)(3)(i)-(iii) reflect the Department's view that, given the nature and amount of automatic rollovers, investments under the safe harbor should be designed to minimize risk, preserve assets for retirement and maintain liquidity. Such safe harbor investment products would typically include money market funds maintained by registered investment companies,[14] and interest-bearing savings accounts and certificates of deposit of a bank or a similar financial institution. In addition, safe harbor investment products would include "stable value products" issued by a regulated financial institution that are fully benefit-responsive to the individual retirement plan account holder. Such stable value products provide a liquidity guarantee of principal by a financially responsible third party and previously accrued interest for liquidations or transfers initiated by the individual retirement plan account holder exercising his or her right to withdraw or transfer funds under the terms of an arrangement that does not include substantial restrictions on the account holder's access to the assets of the individual retirement plan.

Several commenters endorsed the Department's view that safe harbor investment products should favor the retention of income and principal over growth. However, some commenters suggested expanding the types of permissible investment products. They suggested that the safe harbor should include investment products identical or similar to those in which the participant had directed his or her investments prior to the mandatory distribution. Some commenters recommended that the default investment options selected by fiduciaries for account balances under the plan for which participants fail to provide investment direction should be included as permissible safe harbor investments. Other commenters urged the inclusion of balanced or diversified funds, because the necessarily low returns on the approved safe harbor investments, would not help retirement savings grow over time.

The Department continues to believe that an investment strategy adopted by a participant while in a defined contribution plan or a default investment chosen by a plan fiduciary at a particular point in time would not necessarily continue to be appropriate for the separating participant in the context of an automatic rollover, particularly given the relatively small account balances typically covered by the safe harbor. Further, the Department believes that, consistent with Congress' intent to preserve retirement assets for participants, the investment products in which mandatory distributions can be invested under the safe harbor should be limited to investment products that are consistent with this goal of preservation. In the Department's view, this would be limited to the class of investment products designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity. For these reasons, the Department retained the proposal's standards without modification in subparagraphs (c)(3)(i) and (ii) of the regulation.

One commenter requested clarification that the investment of rolled-over funds in safe harbor investment products offered by Puerto Rican financial institutions would satisfy the safe harbor's requirement. The Department believes that as long as the Puerto Rican financial institution offering the investment product meets the regulation's definition of "regulated financial institution", the investment of rolled-over funds in investment products offered by such Puerto Rican financial institution would not be precluded.

Several commenters appeared to confuse the terms "regulated financial institutions" and "individual retirement plan providers". These terms are defined for separate and distinct purposes by the regulation. An individual retirement plan provider is an entity that offers individual retirement plans to which a mandatory distribution must be transferred, while a regulated financial institution is an entity that offers the types of investment products in which a mandatory distribution must be invested. While it is conceivable that one entity may meet both definitions, it is equally plausible that two entities will be involved. For example, a plan fiduciary may select a bank that qualifies as an individual retirement plan provider to receive a mandatory distribution and may also select certificates of deposit as a safe harbor investment that are offered by this same entity as a regulated financial institution. On the other hand, a plan fiduciary may select a financial institution that qualifies as an individual retirement plan provider to receive a mandatory distribution and may then select a safe harbor investment made available by this institution to its customers, such as a money market mutual fund, which is actually offered by a different entity, an investment company registered under the Investment Company Act of 1940, which qualifies as a regulated financial institution.

Fees and Expenses

Subparagraph (c)(3)(iv) of the regulation addresses the extent to which fees and expenses can be assessed against an individual retirement plan, including investments of such plan (*e.g.*, establishment charges, maintenance fees, investment expenses, termination costs and surrender charges). Under the proposal, fees and expenses could not exceed amounts charged by the individual retirement plan provider for comparable individual retirement plans established for rollover distributions other than automatic rollovers. The proposal further provided that fees and expenses, other than those attributable to establishment of the individual retirement plan, could be charged only against the income earned by the individual retirement plan.

Most commenters objected to the provision limiting fees and expenses to income earned by the individual retirement plan. They argued, among other things, that the income to be generated by the investments permitted by the safe harbor against which expenses may be assessed would be very limited, while the costs attendant to maintaining such individual retirement plans would tend to be higher than individual retirement plans with respect to which the account holder contributes and maintains contact with the institution. Such constraints, it was argued, would limit the number of individual retirement plan providers available for rollover distributions in accordance with the safe harbor regulation. These commenters further argued that the comparability standard of the proposal provides adequate protection to

[14] Regarding money market mutual funds, prospectuses for such funds generally state that "an investment in the [money market mutual] Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your [the investor's] investment at $1.00 per share, it is possible to lose money by investing in the Fund."

individual retirement plan account holders in both the setting of fees and expenses and services provided, given the competitive nature of the individual retirement plan marketplace generally.[15]

After careful consideration, the Department is persuaded that a comparability standard, without further limit, is sufficient to protect individual retirement plans from being assessed unreasonable fees, while avoiding the imposition of financial disincentives for individual retirement plan providers to offer plans for mandatory rollover distributions under the safe harbor. The Department has modified the regulation accordingly in subparagraph (c)(3)(iv).

Notice to Participants

The fourth condition for safe harbor relief, described in paragraph (c)(4) of the regulation, requires, like the proposal, that, prior to an automatic rollover, participants must be furnished a summary plan description (SPD) or summary of material modifications (SMM) that includes an explanation of the nature of the investment product in which the mandatory distribution will be invested, and an explanation of how fees and expenses attendant to the individual retirement plan will be allocated (*i.e.*, the extent to which expenses will be borne by the account holder alone or shared with the distributing plan or plan sponsor). In addition, the disclosure must identify a plan contact for further information concerning the plan's procedures, individual retirement plan providers, and the fees and expenses attendant to the individual retirement plan. For purposes of this condition, the plan contact can be identified by reference to a person, position or office, along with an address and phone number of the contact. It is anticipated that the contact, in response to requests from separated participants on whose behalf distributions have been made to an individual retirement plan, would be able to identify the individual retirement plan provider to whom a distribution was made for the particular participant.

Several commenters supported the disclosure provision as proposed, and others requested clarification on issues such as the timing of SPD or SMM revisions and the provision of electronic notice. Some commenters requested that the Department broaden the proposed disclosure condition to require that separating participants be notified of automatic rollover procedures at the time a distribution is made in order to provide more timely information. One commenter recommended this approach as a permitted alternative to SPD or SMM disclosure, while another advocated for this approach in lieu of the SPD or SMM disclosure. Another commenter asserted that, in addition to SPD or SMM disclosure, a plan sponsor should be required to provide an individualized notice to separating participants before any rollover distribution is made, including all of the information required to be contained in the SPD or SMM, the participant's benefit amount, and generic tax information on direct transfers, rollovers, and distributions.

The Department continues to believe that information concerning automatic rollover procedures must be included in a plan's SPD or SMM.[16] The Department also believes that the SPD or SMM that is provided to participants before mandatory distributions are made, in conjunction with the notice required under Code section 402(f) that is provided on an individual basis within a specified period before a mandatory distribution is made, as well as the notice expressly added by EGTRRA under the Code,[17] ensure that participants and beneficiaries will be provided, and have access to, sufficient information about automatic rollovers. The Department is not persuaded that the benefits to participants that might be obtained by additional disclosures will, given the existing required disclosures, outweigh the costs and burdens attendant to such disclosure.

Prohibited Transactions

The fifth condition, described in paragraph (c)(5) of the regulation, conditions safe harbor relief on the plan fiduciary not engaging in prohibited transactions in connection with the selection of an individual retirement plan provider or investment products, unless such actions are covered by a statutory or administrative exemption issued under section 408(a) of ERISA; for example, a plan fiduciary that received consideration from a financial institution in exchange for selecting that financial institution as the individual plan provider would have engaged in a prohibited transaction under ERISA section 406 that is not covered by either the statutory service provider exemption under ERISA section 408(b)(2) or an administrative exemption. This condition remains unchanged from the proposal, in part, because commenters did not request any changes.

As noted in "Background" above, the Department also published a proposed class exemption in the **Federal Register** that was intended to deal with prohibited transactions resulting from an individual retirement plan provider's selection of itself as the provider of an individual retirement plan and/or issuer of an initial investment held by such plan in connection with mandatory distributions from the provider's own pension plan. The Department received four comment letters that specifically addressed the proposed class exemption's conditions; these comments are discussed in the final class exemption, referenced below.

Simultaneously with publication of the regulation, the Department is publishing a final class exemption in today's **Federal Register**. Specifically, the exemption permits a bank or other financial institution to (1) select itself or an affiliate as the individual retirement plan provider to receive automatic rollovers from its own plan, (2) select its own funds or investment products for automatic rollovers from its own plan and (3) receive fees therefor. In the absence of this exemption, a bank or other financial institution would be required to direct automatic rollovers from its own plan for its own employees to a competitor as the individual retirement plan provider.

C. Miscellaneous Issues

In response to the Department's proposal, a number of commenters identified possible impediments that fiduciaries, banks and other financial institutions might encounter in connection with automatic rollovers. These commenters requested clarification on a number of issues, including perceived conflicts with state laws on signature requirements and escheat, Code and regulatory requirements, requirements under the USA PATRIOT Act,[18] section 404(c)(3) of ERISA, missing participant issues, and beneficiary designations under the distributing employee benefit plan. Issues raised by commenters concerning the possible application of state laws

[15] The Department notes that individual retirement plan providers are subject to section 4975 of the Code including the requirement that the fees and expenses may not exceed reasonable compensation within the meaning of section 4975(d)(2) of the Code.

[16] This condition is consistent with the Department's statement in a footnote to Revenue Ruling 2000–36, 2000–2 C.B. 140 requiring that plan provisions governing the default direct rollover of distributions, including the participant's ability to affirmatively opt out of the arrangement, must be described in the plan's SPD furnished to participants.

[17] Section 657(a) of EGTRRA added a notice requirement to section 401(a)(31)(B)(i) of the Code requiring the plan administrator to notify a participant in writing, either separately or as part of the required Code section 402(f) notice, that the participant may transfer the distribution to another individual retirement plan. *See supra* note 8.

[18] Pub. L. 107–56, October 26, 2001, 115 Stat. 272.

including signature and escheat requirements are beyond the scope of the regulation.

Code Requirements

In response to the RFI and the proposal, some commenters raised concerns with regard to Code requirements that may conflict with the establishment of individual retirement plans for purposes of automatic rollovers of mandatory distributions under section 401(a)(31)(B) of the Code. For example, one commenter raised issues concerning the application of the safe harbor to employer-sponsored plans in Puerto Rico, not all of which are governed by the Code. These Code issues are beyond the Department's jurisdiction and have been referred to Treasury and IRS for consideration. The Department has been informed that the staffs of Treasury and IRS are reviewing the current rules and regulations affecting distributions covered by the regulation and that guidance addressing the application of these rules to the automatic rollover of mandatory distributions is anticipated prior to the effective date of this regulation.

USA PATRIOT Act

A few commenters continued to express concern over the application of the customer identification and verification (CIP) procedures of the USA PATRIOT Act (the Act). These commenters' concerns mirrored those previously expressed in response to the Department's RFI. Generally, the perceived difficulties concern situations where a fiduciary is required to make an automatic rollover to an individual retirement plan, but the participant cannot be located or is otherwise not communicating with the plan concerning the distribution of plan benefits. If the CIP provisions of the Act were construed to require active participant involvement at the time an individual retirement plan is established on his or her behalf, fiduciaries would be unable to comply with the automatic rollover requirements of the Code and utilize this safe harbor.

In response to these concerns, the Department reiterates that it has been advised by Treasury staff, along with staff of other Federal functional regulators,[19] that they interpret the CIP requirements of section 326 of the Act and implementing regulations to require that banks and other financial institutions implement their CIP compliance program with respect to an account, including an individual retirement plan established by an employee benefit plan in the name of a former participant (or beneficiary) of such plan, only at the time the former participant or beneficiary first contacts such institution to assert ownership or exercise control over the account. CIP compliance will not be required at the time an employee benefit plan establishes an account and transfers the funds to a bank or other financial institution for purposes of a distribution of benefits from the plan to a separated employee.[20] In January 2004, Treasury staff, along with staff of the other Federal functional regulators, issued guidance on this matter in the form of a question and answer, published in a set of "FAQs: Final CIP Rule," on the regulators" Web sites.[21]

ERISA Section 404(c)(3)

Several commenters requested that the Department clarify the relationship between ERISA section 404(c)(3), as added by EGTRRA section 657(c) and the safe harbor relief provided in the regulation under ERISA section 404(a). ERISA section 404(c)(3) provides that, in the case of a pension plan that makes a transfer to an individual retirement account or annuity under Code section 401(a)(31)(B), the participant will be treated as exercising control over the assets of the individual retirement account or annuity upon (A) the earlier of (i) a rollover of all or a portion of the account or annuity to another account or annuity or (ii) one year after the transfer is made; or (B) a transfer that is made in a manner consistent with guidance provided by the Secretary.

The Department confirms that this regulation is the guidance referred to in ERISA section 404(c)(3)(B). Consequently, a fiduciary's rollover of a mandatory distribution to an individual retirement plan under this regulation will be treated as "a transfer that is made in a manner consistent with guidance provided by the Secretary" under ERISA section 404(c)(3)(B). Immediately following such rollover, the Department will view the participant as exercising control over the assets of the individual retirement plan for purposes of ERISA section 404(c)(3).

Missing Participants

Some commenters requested that the Department provide additional guidance in the regulation to plan fiduciaries of terminated defined contribution plans concerning missing participants. For example, one commenter suggested expanding the safe harbor beyond the automatic rollover context to handle missing participant issues. Although the Department is aware of the problems faced by plan fiduciaries in handling missing participants' accounts, the Department believes that these issues are beyond the scope of this safe harbor initiative on mandatory rollover distributions.

Beneficiary Designations

One commenter questioned whether an existing beneficiary designation under the distributing plan, whether made by a participant or a default designation under the terms of the plan, would transfer to the individual retirement plan into which the participant's benefit is rolled over. As stated above, in the Department's view, the rollover distribution of the entire pension plan benefit to which a participant is entitled into an individual retirement plan ends his or her status as a plan participant, and the distributed assets cease to be plan assets under Title I of ERISA. As a corollary to this view, a beneficiary designation under the distributing plan would cease to control the distribution of the rolled-over funds upon the death of the individual retirement plan account holder. Further, nothing in the regulation precludes an individual retirement plan provider from applying its own default beneficiary provisions under the terms of the individual retirement plan until an individual retirement plan account holder makes an affirmative designation under the terms of the individual retirement plan.

D. Effective Date

Section 657(c)(2)(A) of EGTRRA provides that the requirements of section 401(a)(31)(B) of the Code requiring automatic rollovers of mandatory distributions to individual retirement plans do not become effective until the Department prescribes a final regulation. Inasmuch as it appears clear that Congress did not intend fiduciaries to be subject to the automatic rollover requirements under the Code in the absence of a safe harbor, the Department as well as Treasury and IRS believe that the effective date of the Code's rollover requirement must be determined by reference to the effective date of this regulation, which is the

[19] The term "other Federal functional regulators" refers to the other agencies responsible for administration and regulations under the Act.

[20] It is the Department's understanding that this interpretation applies to a broad spectrum of employee benefit plans including those covered by title I of ERISA and those established under Code provisions.

[21] *See* FAQs: Final CIP Rule at: *http://www.occ.treas.gov/10.pdf; http://www.fincen.gov/finalciprule.pdf; http://www.fdic.gov/news/news/financial/2004/FIL0404a.html.*

point in time when plan fiduciaries may first avail themselves of the relief provided by the safe harbor. In this regard, the Department proposed to make the regulation effective 6 months after the date of its publication in the **Federal Register** in order to afford plan fiduciaries adequate time to amend their plans, distribute required disclosures and identify institutions and products that would afford relief under the final safe harbor regulation.

A few commenters suggested that the effective date of the regulation should be delayed for one year following its publication to provide sufficient time for fiduciaries to comply with the conditions of the safe harbor and individual retirement plan providers to develop individual retirement plans for the automatic rollover market. Other commenters requested a one year delay based on the many outstanding issues that require clarification from Treasury and IRS.

After careful consideration of the comments, the Department, in consultation with the staffs of Treasury and IRS, has concluded that delaying the effective date for 6 months following publication in the **Federal Register** will provide most plans adequate time to implement processes necessary to take advantage of the safe harbor relief provided by the regulation. In particular, the Department notes that the regulation will not require the comprehensive systems changes required under the proposal's earnings limitation on fees and expenses. Accordingly, paragraph (e) of the regulation provides that the regulation shall be effective and shall apply to any rollover of a mandatory distribution made on or after the date 6 months following publication in the **Federal Register**.

The Department notes that fiduciaries may rely in good faith on the regulation for purposes of satisfying their fiduciary responsibilities under section 404(a) of ERISA with regard to the selection of an institution to receive a rollover of a mandatory distribution and the initial investment choice for the rolled-over funds made before the effective date of this regulation.[22]

E. Regulatory Impact Analysis

Summary

This regulation establishes conditions under which a fiduciary will be deemed to satisfy the fiduciary obligations under section 404(a) of ERISA in connection with the automatic rollover of a mandatory distribution of between $1,001 and $5,000, as described in amended Code section 401(a)(31)(B), and certain other distributions described in section 411(a)(11) of the Code and not described in section 401(a)(31)(B). The savings arising from this safe harbor will substantially outweigh its costs. Benefits will accrue to fiduciaries through greater certainty and reduced exposure to risk, and to former plan participants through regulatory standards concerning individual retirement plan providers, investment products, preservation of principal, rates of return, liquidity, fees and expenses, and disclosure. The safe harbor will help preserve the principal amounts of automatic rollovers of mandatory distributions by ensuring that the various fees and expenses applicable to the individual retirement plans established for mandatory distributions are not larger than those charged by the provider to individual retirement plans established for reasons other than the receipt of a rollover distribution subject to Code section 401(a)(31)(B). It is assumed, for purposes of cost estimates presented here, that all fees, to the extent that they meet the condition related to comparability, will be charged to the individual retirement plan.

Individual retirement plan establishment and maintenance fees for participants are estimated, at the upper bound at $21.6 million, $7.2 million of which are costs associated with changes to the regulation. Automatic rollovers of mandatory distributions may give rise to other costs as well, such as investment expenses, termination charges, and surrender charges. The magnitude of some of those expenses will relate to the actual investment products selected. The range of possible costs that relate to investment products is considered too broad to support meaningful estimates.

The EGTRRA amendment will generate one-time administrative compliance costs to plans of an estimated $139 million. Cost to plans associated with modifying a summary plan description or summary of material modifications to satisfy the safe harbor conditions are estimated at $13 million.

Annually, on aggregate, the EGTRRA amendment and the regulation are expected to affect 361,000 former participants, preserving retirement savings of an estimated $270 million and creating tax savings of approximately $77 million. The guidance provided by the regulation will result in a savings of administrative compliance costs for plans of about $92 million by lessening the time required to select an individual retirement plan provider, investment product, and fee structure that are consistent with the provisions of Code section 401(a)(31)(B) and ERISA section 404(a) with respect to automatic rollovers of mandatory distributions. Finally, a small number of defined benefit plans will benefit annually from reduced premiums to the Pension Benefit Guaranty Corporation (PBGC) of approximately $202,200.

Further discussion of costs and benefits of the EGTRRA amendment and the regulation, and the data and assumptions underlying these estimates, will be found below.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether a regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f) of the Executive Order, a "significant regulatory action" is an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has determined that this action is significant under section 3(f)(4) because it raises novel legal or policy issues arising from the President's priorities. Accordingly, the Department has undertaken an analysis of the costs and benefits of the regulation. OMB has reviewed this regulatory action.

1. Costs of the EGTRRA Amendment and the Regulation

The Census Bureau's 1996 Survey of Program Participation (SIPP), Wave 7 Pension Benefits Module collected information as to the number, uses, and values of lump sum distributions from private pension plans in 1997. The survey responses show whether a distribution was mandatory or voluntary, and whether the amount involved was "Rolled over into another

[22] The Department notes, however, that the related final class exemption published today in the **Federal Register** cannot be relied upon for prohibited transaction relief prior to the effective date of the regulation.

plan, an IRA, or an individual retirement annuity" ("rolled over"). The number of lump sum distributions that are less than $5,000 and that were characterized as mandatory and put to other specific uses enumerated in the survey instrument ("lump sums") has been used for the purpose of this analysis to approximate the number of participants in plans with mandatory distribution provisions that might fail to make an affirmative election. The number of automatic rollovers of mandatory distributions that will occur because of the Code amendment and the regulation may be smaller than the number of lump sums because some of these participants may have made an affirmative election. It seems reasonable to assume that distributions rolled over would have involved an affirmative election, and that the number of participants making affirmative elections will be largely unchanged. The number of mandatory lump sum distributions of $1,001 to $5,000, approximately 143,000 distributions, is assumed to represent an upper bound of the number of participants potentially affected by the automatic rollover provisions of Code section 401(a)(31)(B).

The cost of automatic rollovers has been adjusted to account for additional costs associated with rollovers of mandatory distributions of $1,000 or less by eligible plans. Specifically, new section 2550.404a–2(d) of the regulation permits plans with a mandatory distribution provision that includes individual retirement accounts valued at $1,000 or less, as described in section 411(a)(11) of the Code, to roll over the accounts into an individual retirement plan. Unlike the mandatory rollover provisions of EGTRRA, the decision to roll over smaller accounts under new paragraph (d) of the regulation is a voluntary one. The Department has conservatively assumed, for purposes of this analysis, that all eligible plans will take advantage of the option to roll over smaller accounts and has analyzed the costs and benefits of the regulation separately from those of the amendment. Using data from SIPP, Wave 7 Pension Benefits Module, the Department estimates that approximately 85,000 participants might fail to make an affirmative election for a mandatory distribution of $1,000 or less. The total number of participants that might fail to make an affirmative election to roll over a mandatory distribution is 228,000 participants.

Finally, during 1997, the account balances with present values of accrued benefits ("accounts") of between $1 and $5,000 of an additional 133,000 participants were left in plans for reasons that are not known. Although there is some uncertainty with respect to this assumption, this number has been used here as a proxy for a number of participants that did not receive mandatory distributions because they were passive or non-responsive.

In the aggregate, the amount of automatic rollovers of mandatory distributions to individual retirement plans for 361,000 participants is approximately $722 million per year, or an average of $2,000 per participant. Only $456 million of this total represents retirement savings that would not otherwise have been preserved, given that the $266 million was already maintained in retirement plans for the 133,000 former participants that were unavailable or unresponsive.

Costs and fees will be incurred by pension plans in connection with automatic rollovers and the investments for individual retirement plans.

After the effective date of the amendment, plans that currently mandate immediate distributions for amounts not to exceed $5,000 will, absent an affirmative election of a different alternative, make direct transfers of these distributions to an individual retirement plan. To implement this change, fiduciaries and their professional service providers will need to review the new requirements and select individual retirement plan providers and investment products. The amount of time required for this activity will vary, but based on 680,000 retirement plans and an assumed hourly rate of $68, the aggregate cost of each hour is over $46 million. An effort involving an average of 3 hours would result in an aggregate one-time cost of $139 million. For this estimate we have conservatively assumed that all plans provide for such mandatory distributions and will need to take action to implement procedures for automatic rollovers to individual retirement plans. The proportion of pension plans that provide for such mandatory distributions is not known, but is believed, based on anecdotal evidence, to be very high. This total cost may be lessened to the extent that fewer plans will need to address the automatic rollover requirement, or that the assistance of service providers to multiple plans results in greater efficiency.

Finally, plans will incur costs in connection with the final safe harbor to modify summary plan descriptions (SPD) or provide a summary of material modifications (SMM). This cost is estimated to be about $13 million. Two commenters suggested that the cost of disclosing information about a plan's automatic rollover provisions in an SPD or SMM was higher than the Department had estimated. The Department's estimate includes the costs of a one-time modification to the SPD or preparation of an SMM, and mailing and materials. The estimate also takes into consideration the fact that plan administrators report making routine distributions of revised SPDs or SMMs on a regular basis. The Department believes that many plans will make the required disclosure along with disclosures made for other reasons. This is expected to have the effect of reducing distribution costs that would otherwise be associated with the disclosure requirement for the safe harbor. As such, the Department continues to believe that its original estimate of $13 million is appropriate.

The amount of some mandatory distributions subject to the automatic rollover requirements of section 401(a)(31)(B) of the Code may be more than $5,000. This can occur where the present value of the nonforfeitable accrued benefits immediately distributable includes additional funds attributable to prior rollover contributions (and the earnings thereon).

A large majority of 401(k) plan participants are in plans that accept rollover contributions, according to the Bureau of Labor Statistics. There is some evidence, however, that rollovers into qualified plans are infrequent, which suggests that the number of participants whose accounts include amounts attributable to prior rollover contributions may be small. The number of such participants that will eventually become the owners of an automatic rollover individual retirement plan will be further limited by a number of factors, on which no data are available. Some plans will not mandate distribution of accounts that include prior rollover contributions and therefore exceed $5,000. Some accounts of participants with prior rollover contributions will accumulate more than $5,000 of additional contributions, thereby becoming ineligible for mandatory distributions. Some participants whose accounts do not accumulate more than $5,000 will affirmatively direct, upon leaving employment, the disposition of their accounts. Compared with other participants, those with prior rollover contributions may be more likely to accumulate more than $5,000 from new contributions and more likely to affirmatively direct the disposition of their accounts.

The Department did not attempt to estimate the number or dollar amount of mandatory distributions eligible for relief under the final safe harbor regulation that may exceed $5,000. Adequate data to support such estimates are not currently available. The Department believes it is probable that the number of mandatory distributions containing prior rollover contributions that will be subject to the automatic rollover requirement of section 401(a)(31)(B) of the Code will be small but the number of plans affected and the dollar amount of some of these mandatory distributions might be large.

The establishment and maintenance of individual retirement plans for automatic rollovers of mandatory distributions will generate costs to participants whose accounts have been rolled over. At the time of the proposal, it was assumed that, in the absence of guidance, most fees would be charged against individual retirement plans. Based on a range of typical establishment fees for comparable individual retirement plans, $0 to $10 per account, the annual establishment fees for rollovers arising from the regulation each year are estimated to range from a negligible amount to $3.6 million, with a mid point of $1.8 million per year. Annual maintenance fees, which typically range from $7 to $50, are estimated to range from $2.5 million to $18 million, with a mid-point estimate of $10.3 million for individual retirement plans established in the first year. A comparison of the upper bounds for maintenance fees yields an additional $6 million increase in fees for participants, also attributable to the additional 120,000 rollovers newly included in the regulation. Assuming that individual retirement plans would continue to be established at a constant rate of 361,000 plans per year and that no account holders assume control of their plans, at the midpoint, maintenance fees would continue to grow at a rate of $10.3 million annually.

Although establishment and maintenance fees are relatively predictable based on comparable individual retirement plans available in the marketplace, the types of investment products available and the actual choices that may be made by fiduciaries are considered to be too variable to support a meaningful estimate of investment fees, termination charges, and surrender fees. However, with this interpretive guidance, fiduciaries and the regulated financial institutions will have increased certainty regarding costs, fees, and charges for individual retirement plans.

The total one-time cost to plans for the amendment to the Code is $139 million. The upper bounds of ranges for establishment and maintenance costs under the regulation are estimated at $21.6 million.

2. Benefits of the EGTRRA and the Regulation

The regulation will benefit fiduciaries by affording them greater assurance of compliance and reduced exposure to risk. Specificity as to the types of entities that may receive the rollovers, the investment choices, and the limitations on fees will lessen the time required to comply with the EGTRRA amendment. The substantive conditions of the safe harbor will benefit former participants by directing their retirement savings to individual retirement plans, providers, regulated financial institutions, and investment products that minimize risk and offer preservation of principal and liquidity. Certain regulated financial institutions will receive additional deposits having earnings potential.

Plans will benefit from administrative cost savings for those 133,000 accounts that previously remained in pension plans because participants were passive or non-responsive but are assumed to be rolled over under the amendment to the Code and the regulation. Ordinary administrative costs that typically range from $45 to $150 per participant will be saved when accounts are rolled over, reducing plan expenses under the amendment to the Code and the regulation by about $6 million to $20 million, or at a mid point, $13 million per year, $3.5 million of which is attributable to the regulation only. The cost savings realized in each year will continue to accumulate through the future years that the accounts would otherwise have remained in the pension plan.

The benefits of greater certainty for fiduciaries and protection of participants cannot be specifically quantified. By providing a safe harbor for plan fiduciaries that choose to roll over accounts, the Department has increased certainty concerning compliance with ERISA section 404(a) for fiduciaries that designate institutions and investment funds for rolled over accounts and expanded the opportunity for retirement savings for plan participants.

The regulation is, however, expected to reduce one-time startup administrative compliance costs to plans by as much as $92 million by narrowing the range of individual retirement plan providers and investment products fiduciaries might otherwise consider, assuming a savings of 2 of the 3 hours that compliance would otherwise require.

At the time of the proposal, the Department estimated that the EGTRRA amendment would provide 143,000 former participants with preserved retirement savings of about $415 million and immediate tax savings of about $112 million on an annual basis. (The additional 98,000 former participants who did not receive mandatory distributions because they were passive or non-responsive were not counted for purposes of estimates of preserved retirement savings and tax savings because their accounts were not distributed.) These estimates were considerably higher than those included in the Joint Committee on Taxation's (JCT) May 26, 2001 estimates of the budget effects for this provision of EGTRRA, which projected a revenue loss of about $30 million per year. This revenue loss implied an aggregate preservation of retirement savings of about $83 million per year. Because the reasons for this difference were unknown, the Department interpreted the JCT estimates and its own estimates as the endpoints of ranges, and presented the midpoints as estimates of ordinary income tax and penalty savings, and preserved retirement savings. These midpoints amounted to $71 million and $249 million, respectively.

The Department estimates that paragraph (d) of the regulation will provide an additional 85,000 former plan participants with tax savings and preserved retirement savings, such that the aggregate estimate of tax savings of the amendment and the regulation is $123 million, and the aggregate estimate of preserved retirement savings is $456 million. Because the regulation includes the provision for mandatory distributions of $1,000 or less, the JCT estimates and Department's estimates for these values are no longer exactly comparable. However, in spite of the substantial differences in the two sets of estimates, the Department has continued to present midpoints between the two to illustrate the potential benefits of tax savings and preserved retirement savings. The benefits, expressed as midpoints, amount to $77 million in tax savings, and $270 million in preserved retirement savings. These savings for former participants and distributions of amounts previously retained in plans also represent increased deposits to regulated financial institutions.

For the estimated 8 percent of these accounts that were in defined benefit plans, a savings of approximately

$202,000 would be realized from reduced funding risk and corresponding premium payments to the PBGC. This includes an additional $53,200 that arises from the change to the regulation with respect to mandatory distributions of $1,000 or less.

Paperwork Reduction Act

This Notice of Final Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3). It is expected that this final rule will result in a modification of retirement plan Summary Plan Descriptions, an information collection request approved separately under OMB control number 1210–0039. However, this modification is not considered to be substantive or material in the context of that information collection request as a whole. In addition, the methodology for calculating burden under the Paperwork Reduction Act for the Summary Plan Description takes into account a steady rate of change in Summary Plan Descriptions that is estimated to accommodate the change that would be made by this final rulemaking.

The Department has clarified section (c)(3) of the regulation by inserting that the agreement between a fiduciary and an individual retirement plan provider that provides for the distribution of rolled over funds must be in writing. The agreement, as previously stated in the proposal, must include a description of the rollover investment product, fees, and participants' rights. The Department understands that it is customary business practice for agreements related to the establishment of individual retirement plans to be set forth in writing and that no new burden is created by this requirement. As a result, the Department has not made a submission for OMB approval in connection with the regulation.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and which are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires that the agency present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of analysis under the RFA, the Employee Benefits Security Administration (EBSA) proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for exemptions or simplified annual reporting and disclosure for welfare benefit plans. Pursuant to the authority of section 104(a)(3), the Department has previously issued at 29 CFR 2520.104–20, 2520.104–21, 2520.104–41, 2520.104–46 and 2520.104b–10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

Further, while some large employers may have small plans, in general, small employers maintain most small plans. Thus, EBSA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). EBSA therefore requested comments on the appropriateness of the size standard used in evaluating the impact of the proposal on small entities, but received none.

EBSA has determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, EBSA has prepared the following final regulatory flexibility analysis.

Section 657(c)(2)(A) of EGTRRA directed the Department to issue regulations providing safe harbors under which a plan administrator's designation of an institution to receive automatic rollovers of mandatory distributions pursuant to section 401(a)(31)(B) of the Code and the initial investment choice for the rolled-over funds would be deemed to satisfy the fiduciary responsibility provisions of section 404(a) of ERISA. This EGTRRA provision further provided that the Code provisions requiring automatic rollovers of certain mandatory distributions to individual retirement plans would not become effective until the Department issued safe harbor regulations. Before issuing a proposed regulation, the Department requested comments on the potential design of the safe harbor.

The conditions set forth in this regulation are intended to satisfy the EGTRRA requirement that the Department prescribe regulations providing for safe harbors, while meeting the objectives of offering greater certainty to fiduciaries concerning their compliance with the requirements of ERISA section 404(a), and of preserving assets of former plan participants for retirement income purposes. In describing the financial institutions, investment products, and fee arrangements that fall within the safe harbor, the Department has attempted to strike a balance between the interests of fiduciaries, individual retirement plan providers, and the investment goal of preserving principal.

The regulation will impact small plans that include provisions for the mandatory distribution of accounts with a value not greater than $5,000. It has been assumed for the purposes of this analysis that all plans include such provisions, although some may not. On this basis, it is expected that the proposal will affect 611,800 small plans. The proportion of the total of 361,000 participants estimated to be affected annually by the amendment to Code section 401(a)(31)(B) and paragraph (d) of the regulation that are in small plans is not known. Similarly, there are no available data on the number of participants that will separate from employment with account balances of more than $5,000 (because of prior rollover contributions) that may be, depending on the provisions of the distributing plans, automatically rolled over under EGTRRA. It is assumed that all 611,800 small plans will need to address compliance with the Code amendment and will choose to comply with new § 2550.404a–2(d).

As described above, the costs and benefits of the Code amendment and safe harbor proposal are distinguishable, and have been estimated separately. As also noted, the regulation is expected to substantially reduce the cost of compliance with the Code amendment. The initial cost of the Code amendment for small plans is expected to be about $124 million. The one-time savings from

the final regulation is estimated at about $83 million for small plans compared with $9 million for large plans, due to the significantly larger number of small plans. The condition of the safe harbor requiring disclosure of specific information in a summary plan description or summary of material modification is expected to result in costs to small plans of about $11 million. Preparation of this information is in most cases accomplished by professionals that provide services to employee benefit plans. Where fiduciaries prepare these materials themselves, it is assumed that persons at the professional level of budget analysts or financial managers will complete the necessary work.

The benefits of greater certainty afforded fiduciaries by the safe harbor are substantial but cannot be specifically quantified.

Prior to publication of this regulation, the Department published an RFI requesting comments and suggestions from the general public on developing guidelines to assist fiduciaries in selecting institutions and investment products for individual retirement plans. The Department specifically requested in the RFI that commenters, "address the anticipated annual impact of any proposals on small businesses and small plans (plans with fewer than 100 participants)." The Department received three comments that pertained specifically to small plans, the first of which cautioned that plan sponsors would be deterred from sponsoring plans with a mandatory distribution provision by placement of any additional burdens on them. Another comment indicated that, because of technological improvements, the burden on small plans would be manageable. Finally, a third commenter noted that annual costs would not be any higher for small plans. The Department received no specific comments on the impact of the proposal on small plans.

To the Department's knowledge, there are no Federal regulations that might duplicate, overlap, or conflict with the regulation for safe harbors under section 404(a) of ERISA.

Congressional Review Act

The notice of final rulemaking being issued here is subject to the provisions of the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to the Congress and the Comptroller General for review.

Unfunded Mandates Reform Act

Pursuant to provisions of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), this rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, or the private sector, which may impose an annual burden of $100 or more.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This final rule would not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated that are not pertinent here, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The requirements implemented in this final rule do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications for the States or the relationship or distribution of power between the national government and the States.

List of Subjects in 29 CFR Part 2550

Employee benefit plans, Employee Retirement Income Security Act, Employee stock ownership plans, Exemptions, Fiduciaries, Investments, Investments foreign, Party in interest, Pensions, Pension and Welfare Benefit Programs Office, Prohibited transactions, Real estate, Securities, Surety bonds, Trusts and Trustees.

■ For the reasons set forth in the preamble, the Department amends subchapter F, part 2550 of Title 29 of the Code of Federal Regulations as follows:

Subchapter F—Fiduciary Responsibility Under the Employee Retirement Income Security Act of 1974

PART 2550—RULES AND REGULATIONS FOR FIDUCIARY RESPONSIBILITY

■ 1. The authority citation for part 2550 is revised to read as follows:

Authority: 29 U.S.C. 1135; and Secretary of Labor's Order No. 1–2003, 68 FR 5374 (Feb. 3, 2003). Sec. 2550.401b–1 also issued under sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp. p. 275. Sec. 2550.401c–1 also issued under 29 U.S.C. 1101. Sec. 2550.404c–1 also issued under 29 U.S.C. 1104. Sec. 2550.407c–3 also issued under 29 U.S.C. 1107. Sec. 2550.404a–2 also issued under 26 U.S.C. 401 note (sec. 657, Pub. L. 107–16, 115 Stat. 38). Sec. 2550.408b–1 also issued under 29 U.S.C. 1108(b)(1) and sec. 102, Reorganization Plan No. 4 of 1978, 43 FR 47713, 3 CFR, 1978 Comp. p. 332, effective Dec. 31, 1978, E.O. 12108, 44 FR 1065, 3 CFR, 1978 Comp. p. 275. Sec. 2550.412–1 also issued under 29 U.S.C. 1112.

■ 2. The following new section is added to part 2550 to read as follows:

§ 2550.404a–2 Safe harbor for automatic rollovers to individual retirement plans.

(a) *In general.* (1) Pursuant to section 657(c) of the Economic Growth and Tax Relief Reconciliation Act of 2001, Public Law 107–16, June 7, 2001, 115 Stat. 38, this section provides a safe harbor under which a fiduciary of an employee pension benefit plan subject to Title I of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001 *et seq.*, will be deemed to have satisfied his or her fiduciary duties under section 404(a) of the Act in connection with an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Internal Revenue Code of 1986, as amended (the Code). This section also provides a safe harbor for certain other mandatory distributions not described in section 401(a)(31)(B) of the Code.

(2) The standards set forth in this section apply solely for purposes of determining whether a fiduciary meets the requirements of this safe harbor. Such standards are not intended to be the exclusive means by which a fiduciary might satisfy his or her responsibilities under the Act with respect to rollovers of mandatory distributions described in paragraphs (c) and (d) of this section.

(b) *Safe harbor.* A fiduciary that meets the conditions of paragraph (c) or paragraph (d) of this section is deemed to have satisfied his or her duties under section 404(a) of the Act with respect to

both the selection of an individual retirement plan provider and the investment of funds in connection with the rollover of mandatory distributions described in those paragraphs to an individual retirement plan, within the meaning of section 7701(a)(37) of the Code.

(c) *Conditions.* With respect to an automatic rollover of a mandatory distribution described in section 401(a)(31)(B) of the Code, a fiduciary shall qualify for the safe harbor described in paragraph (b) of this section if:

(1) The present value of the nonforfeitable accrued benefit, as determined under section 411(a)(11) of the Code, does not exceed the maximum amount under section 401(a)(31)(B) of the Code;

(2) The mandatory distribution is to an individual retirement plan within the meaning of section 7701(a)(37) of the Code;

(3) In connection with the distribution of rolled-over funds to an individual retirement plan, the fiduciary enters into a written agreement with an individual retirement plan provider that provides:

(i) The rolled-over funds shall be invested in an investment product designed to preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with liquidity;

(ii) For purposes of paragraph (c)(3)(i) of this section, the investment product selected for the rolled-over funds shall seek to maintain, over the term of the investment, the dollar value that is equal to the amount invested in the product by the individual retirement plan;

(iii) The investment product selected for the rolled-over funds shall be offered by a state or federally regulated financial institution, which shall be: A bank or savings association, the deposits of which are insured by the Federal Deposit Insurance Corporation; a credit union, the member accounts of which are insured within the meaning of section 101(7) of the Federal Credit Union Act; an insurance company, the products of which are protected by State guaranty associations; or an investment company registered under the Investment Company Act of 1940;

(iv) All fees and expenses attendant to an individual retirement plan, including investments of such plan, (*e.g.,* establishment charges, maintenance fees, investment expenses, termination costs and surrender charges) shall not exceed the fees and expenses charged by the individual retirement plan provider for comparable individual retirement plans established for reasons other than the receipt of a rollover distribution subject to the provisions of section 401(a)(31)(B) of the Code; and

(v) The participant on whose behalf the fiduciary makes an automatic rollover shall have the right to enforce the terms of the contractual agreement establishing the individual retirement plan, with regard to his or her rolled-over funds, against the individual retirement plan provider.

(4) Participants have been furnished a summary plan description, or a summary of material modifications, that describes the plan's automatic rollover provisions effectuating the requirements of section 401(a)(31)(B) of the Code, including an explanation that the mandatory distribution will be invested in an investment product designed to preserve principal and provide a reasonable rate of return and liquidity, a statement indicating how fees and expenses attendant to the individual retirement plan will be allocated (*i.e.,* the extent to which expenses will be borne by the account holder alone or shared with the distributing plan or plan sponsor), and the name, address and phone number of a plan contact (to the extent not otherwise provided in the summary plan description or summary of material modifications) for further information concerning the plan's automatic rollover provisions, the individual retirement plan provider and the fees and expenses attendant to the individual retirement plan; and

(5) Both the fiduciary's selection of an individual retirement plan and the investment of funds would not result in a prohibited transaction under section 406 of the Act, unless such actions are exempted from the prohibited transaction provisions by a prohibited transaction exemption issued pursuant to section 408(a) of the Act.

(d) *Mandatory distributions of $1,000 or less.* A fiduciary shall qualify for the protection afforded by the safe harbor described in paragraph (b) of this section with respect to a mandatory distribution of one thousand dollars ($1,000) or less described in section 411(a)(11) of the Code, provided there is no affirmative distribution election by the participant and the fiduciary makes a rollover distribution of such amount into an individual retirement plan on behalf of such participant in accordance with the conditions described in paragraph (c) of this section, without regard to the fact that such rollover is not described in section 401(a)(31)(B) of the Code.

(e) *Effective date.* This section shall be effective and shall apply to any rollover of a mandatory distribution made on or after March 28, 2005.

Signed at Washington, DC, this 20th day of September, 2004.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

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Federal Register

Tuesday,
September 28, 2004

Part IV

The President

Proclamation 7820—Family Day, 2004

Federal Register
Vol. 69, No. 187
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Presidential Documents

Title 3—

The President

Proclamation 7820 of September 24, 2004

Family Day, 2004

By the President of the United States of America

A Proclamation

During this time of great change in our Nation, we remain dedicated to the fundamental American values of courage and compassion, reverence and integrity, and respect for others. On Family Day, we affirm our commitment to strengthening America's families and supporting them as they work to raise healthy and responsible children.

Strong families help young people take responsibility, understand the consequences of their actions, and recognize that the decisions they make today could affect the rest of their lives. By spending time with their children, parents prepare them to realize a bright future.

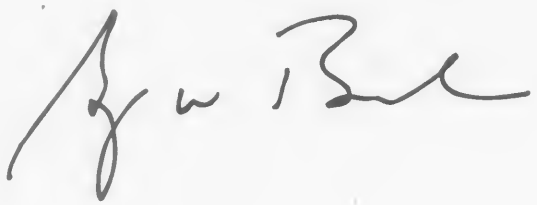
It should always be a goal of government to encourage marriage and strengthen families. My 2005 budget proposal includes more than $290 million in funding for programs that support healthy marriages, research and demonstration projects on family formation, and initiatives to promote responsible fatherhood.

We have made significant progress over the past decade in helping our young people make the right choices. Smoking and illicit drug use have declined among youth, teen birth rates have fallen to the lowest levels ever recorded, and violent crime among teenagers has decreased dramatically. My Administration is also supporting families by encouraging character education in schools to help children develop a sense of responsibility to their communities. We are advancing abstinence-only education programs to help reduce the number of teen pregnancies and teenagers contracting sexually transmitted diseases, and we are promoting school drug testing to identify kids who need help. When parents, schools, and government work together, we can counter the negative influences in today's culture and send a positive message to our youth.

Families instill the essential values we live by. By supporting them, we make America a better and more hopeful place.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 27, 2004, as Family Day. I call on the people of the United States to observe this day by engaging in activities that honor the relationship between parents and children and help keep our young people healthy and safe.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of September, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



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LIST OF PUBLIC LAWS

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H.R. 361/P.L. 108–304
Sports Agent Responsibility and Trust Act (Sept. 24, 2004; 118 Stat. 1125)

H.R. 3908/P.L. 108–305
To provide for the conveyance of the real property located at 1081 West Main Street in Ravenna, Ohio. (Sept. 24, 2004; 118 Stat. 1130)

H.R. 5008/P.L. 108–306
To provide an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958 through September 30, 2004, and for other purposes. (Sept. 24, 2004; 118 Stat. 1131)

S. 1576/P.L. 108–307
Harpers Ferry National Historical Park Boundary Revision Act of 2004 (Sept. 24, 2004; 118 Stat. 1133)

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