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Contents

Federal Register

Vol. 68, No. 200

Thursday, October 16, 2003

Agency for Healthcare Research and Quality
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59616–59618

Agricultural Marketing Service
RULES
Potatoes (Irish) grown in—
Idaho and Oregon, 59524–59527
PROPOSED RULES
Milk marketing orders:
Northeast, et al., 59554–59555

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Food and Nutrition Service
See Forest Service

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59637

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Classical swine fever; disease status change—
East Anglia, 59527–59531
PROPOSED RULES
Plant-related quarantine, domestic:
Plum pox compensation, 59548–59554

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Coast Guard
RULES
Drawbridge operations:
Virginia, 59535–59538
Ports and waterways safety:
Chesapeake Bay—
Cove Point, MD; Liquified Natural Gas Terminal; safety and security zone, 59538–59540
NOTICES
Meetings:
National Boating Safety Advisory Council, 59627
Preparedness for Response Exercise Program:
Triennial exercise schedule (2004—2006 FY), 59627–59630

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See National Telecommunications and Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59580
Senior Executive Service:
Performance Review Board; membership, 59580–59581

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Philippines, 59592

Commodity Credit Corporation
NOTICES
Domestic Sugar Program:
2002-crop sugar marketing allotments and allocations; revisions, 59578–59580

Customs and Border Protection Bureau
NOTICES
IRS interest rates used in calculating interest on overdue accounts and refunds, 59630–59631

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59592–59594
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Research Fellowships Program, 59594–59595

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Advisory Board, 59595–59596
Environmental Management Site-Specific Advisory Board—
National Coal Council Advisory Committees, 59596
Rocky Flats, CO, 59596–59597
Natural gas exportation and importation:
Husky Gas Marketing et al., 59597–59598

Environmental Protection Agency
RULES
Hazardous waste program authorizations:
West Virginia, 59542–59546
PROPOSED RULES
Disadvantaged Business Enterprise Program; participation by businesses in procurement under financial assistance agreements, 59563
Hazardous waste program authorizations:
West Virginia, 59563–59564
NOTICES
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas, 59588
Grants and cooperative agreements; availability, etc.:
National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants, 59611–59613
Pesticide registration, cancellation, etc.:
Interregional Research Project (No. 4), 59613–59615

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Meetings:
Renewable Energy Exports Advisory Committee, 59615

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 59532–59535
Pratt & Whitney Canada, 59531–59532
PROPOSED RULES
Airworthiness directives:
Hartzell Propeller Inc., 59555–59557
NOTICES
Environmental statements; availability, etc.:
Launch and reentry operations; licensing, 59676

Federal Bureau of Investigation
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59638–59639

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 59615

Federal Energy Regulatory Commission
NOTICES
Environmental statements; notice of intent:
Discovery Gas Transmission, LLC, 59604–59605
Williston Basin Interstate Pipeline Co., 59606–59607
Hydroelectric applications, 59607–59610
Preliminary permits surrender:
Symbiotics, LLC, et al., 59610–59611
Applications, hearings, determinations, etc.:
Enbridge Pipelines (KPC), 59598
Florida Gas Transmission Co., 59598–59599
Garden Banks Gas Pipeline, LLC, 59599
Guardian Pipeline, L.L.C., 59599
Iroquois Gas Transmission System, L.P., 59599–59600
Kern River Gas Transmission Co., 59600
MidAmerican Energy Co., 59600
National Fuel Gas Supply Corp., 59600–59601
Natural Gas Pipeline Co. of America, 59601
NRG Energy, Inc., 59601
Panhandle Eastern Pipe Line Co., LCC, 59602
Southwest Gas Storage Co., 59602
Tennessee Gas Pipeline Co., 59602–59603
Viking Gas Transmission Co., 59603
Williston Basin Interstate Pipeline Co., 59603–59604

Federal Maritime Commission
NOTICES
Agreements filed, etc., 59615–59616

Federal Motor Carrier Safety Administration
NOTICES
Motor carrier safety standards:
Exemption applications—
Isuzu Motors America, Inc., 59677–59678

Fish and Wildlife Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59634–59635
Environmental statements; availability, etc.:
Recovery plans—
Hawaiian forest birds, 59635–59636

Food and Nutrition Service
RULES
Food Stamp Program:
Non-discretionary quality control provisions, 59519–59524

Forest Service
NOTICES
Meetings:
Resource Advisory Committees—
Lincoln County, 59580
Siskiyou County, 59580

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Health Resources and Services Administration
See National Institutes of Health
NOTICES
Meetings:
Vital and Health Statistics National Committee, 59616
Organization, functions, and authority delegations:
Administrator, Health Resources and Services Administration, 59616

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59618–59619

Homeland Security Department
See Coast Guard
See Customs and Border Protection Bureau
RULES
Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act); implementation, 59683–59704

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59631–59634

Industry and Security Bureau
NOTICES
Meetings:
President's Export Council, 59581
Strategic and critical materials:
National defense stockpile disposals; potential market impact, 59581–59583

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Procedure and administration:
Information reporting penalties waiver; prompt correction determination
Hearing cancellation, 59557

International Trade Administration
NOTICES
Antidumping:
Brake Rotors from—
China, 59583
Heavy forged hand tools, forged or unfinished, with or without handles, from—
China, 59583–59584

Industrial Nitrocellulose from—
United Kingdom, 59584–59585
Preserved mushrooms from—
China, 59586

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Federal Bureau of Investigation
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59639–59640

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
New Mexico, 59636
Survey plat filings:
New Mexico, 59637

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59640–59642

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59678–59680

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 59619
National Center for Research Resources, 59619–59620
National Heart, Lung, and Blood Institute, 59620
National Institute of Allergy and Infectious Diseases, 59622–59623
National Institute of Child Health and Human Development, 59620–59625
National Institute of Mental Health, 59622–59624
National Institute on Alcohol Abuse and Alcoholism, 59621
National Institute on Deafness and Other Communication Disorders, 59623
Scientific Review Center, 59625–59626
Warrren Grant Magnuson Clinical Center Board of Directors, 59627

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pacific cod, 59546–59547
Atlantic highly migratory species—
Atlantic bluefin tuna, 59546
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Gulf of Alaska groundfish, 59564–59577
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59587–59588
Environmental statements; availability, etc.:
Coastal nonpoint pollution control program—
Minnesota and Texas, 59588
Meetings:
New England Fishery Management Council, 59588–59589
Pacific Fishery Management Council, 59589–59590
South Atlantic Fishery Management Council, 59590–59591
Permits:
Endangered and threatened species, 59591

National Science Foundation
NOTICES
Committees; establishment, renewal, termination, etc.:
Earthscope Science and Education Advisory Committee, 59642
Meetings:
Education and Human Resources Advisory Committee, 59642
Geosciences Advisory Committee, 59642

National Telecommunications and Information Administration
NOTICES
Senior Executive Service:
Performance Review Board; membership, 59592

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 59643–59644
Reactor Safeguards Advisory Committee, 59644–59645
Regulatory guides; issuance, availability, and withdrawal, 59645
Special nuclear material licensing requirements; exemptions:
Envirocare of Utah, Inc., 59645–59647
Applications, hearings, determinations, etc.:
Dominion Nuclear North Anna, LLC, 59642–59643

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 59647

Personnel Management Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59647

Presidential Documents
PROCLAMATIONS
Special observances:
Columbus Day (Proc. 7720), 59515–59516
General Pulaski Memorial Day (Proc. 7721), 59517–59518
National School Lunch Week (Proc. 7719), 59513–59514

Securities and Exchange Commission
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59647–59648
Meetings; Sunshine Act, 59649–59650
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 59650–59656
Chicago Board Options Exchange, Inc., 59656–59659
National Association of Securities Dealers, Inc., 59659–59661
Pacific Exchange, Inc., 59661–59666
Philadelphia Stock Exchange, Inc., 59666–59673
Applications, hearings, determinations, etc.:
JF International Management Inc., et al., 59648–59649

Social Security Administration
NOTICES
Meetings:
Ticket to Work and Work Incentives Advisory Panel, 59673

State Department
NOTICES
Art objects; importation for exhibition:
Verrocchio's David Restored: A Renaissance Bronze from the National Museum of Bargello, Florence, 59673–59674
Grants and cooperative agreements; availability, etc.:
Non-Arab and Muslim World; human rights and democratization initiatives, 59674–59675

Surface Transportation Board
NOTICES
Motor carriers:
Finance transactions—
Niagara Frontier Tariff Bureau, Inc., 59680
Railroad operation, acquisition, construction, etc.:
CSX Transportation, Inc., 59680–59682

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 59675–59676

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Chronic lymphocytic leukemia; presumptive service connection, 59540–59542
PROPOSED RULES
Medical benefits:
Extended care services; computing copayments, 59557–59563
NOTICES
Disciplinary Appeals Board Panel; employee roster availability, 59682

Separate Parts In This Issue

Part II
Homeland Security Department, 59683–59704

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7719 59513
7720 59515
7721 59517

6 CFR

25 59684

7 CFR

272 59519
275 59519
945 59524

Proposed Rules:

301 59548
1000 59554
1001 59554
1005 59554
1006 59554
1007 59554
1030 59554
1032 59554
1033 59554
1124 59554
1126 59554
1131 59554
1135 59554

9 CFR

94 59527

14 CFR

39 (2 documents) 59531, 59532

Proposed Rules:

39 59555

26 CFR

Proposed Rules:

301 59557

33 CFR

117 59535
165 59538

38 CFR

3 59540

Proposed Rules:

17 59557

40 CFR

271 59542

Proposed Rules:

30 59563
31 59563
33 59563
35 59563
40 59563
271 59563

50 CFR

635 59546
679 59546

Proposed Rules:

679 59564

Federal Register
Vol. 68, No. 200
Thursday, October 16, 2003

Presidential Documents

Title 3—

The President

Proclamation 7719 of October 10, 2003

National School Lunch Week, 2003

By the President of the United States of America

A Proclamation

Over the last 57 years, the National School Lunch Program has provided more than 187 billion meals to young people across our country. During National School Lunch Week, we recognize the importance that good nutrition plays in the health of our children and in the development of good eating habits and healthy lifestyles.

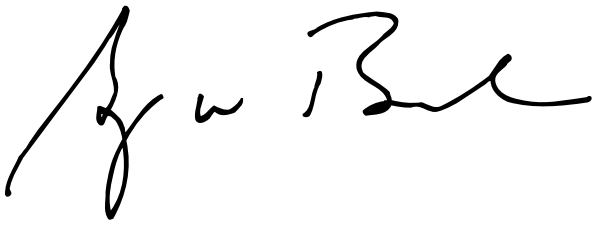
By helping our children make healthy choices not only about food but also about their overall well-being, we can reduce the rates of childhood obesity and diabetes and help prevent heart disease, stroke, and other diseases later in life. Nutritious meals can also improve students' concentration and help them succeed in school.

As part of the National School Lunch Program, the Department of Agriculture's Team Nutrition advises school food service professionals on how to prepare healthy meals for children. Team Nutrition also provides nutrition programs for children, families, and communities to illustrate the link between diet and health. Today, more than 99,000 schools and childcare centers are educating young people about good eating habits. They are also helping to feed our Nation's needy children through the National School Lunch Program. For many students, low-cost or free school meals are sometimes the only nutritious food they eat. Over the years, the dedication of school officials, food service professionals, parents, and community leaders has helped to expand the National School Lunch Program to include breakfast, after-school snacks, milk breaks, and summer food programs.

In recognition of the contributions of the National School Lunch Program to the health, education, and well-being of America's children, the Congress, by joint resolution of October 9, 1962 (Public Law 87–780), as amended, has designated the week beginning on the second Sunday in October of each year as ''National School Lunch Week'' and has requested the President to issue a proclamation in observance of this week.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 12 through October 18, 2003, as National School Lunch Week. I call upon all Americans to join the dedicated individuals who administer the National School Lunch Program at the State and local levels in appropriate activities to promote programs that support the health and well-being of our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–26329
Filed 10–15–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7720 of October 10, 2003

Columbus Day, 2003

By the President of the United States of America

A Proclamation

When Christopher Columbus set out from Spain in August 1492, he launched an era of discovery and exploration that continues today. On Columbus Day, we honor this Italian explorer's courage and vision, and recognize his four journeys to the ''New World.''

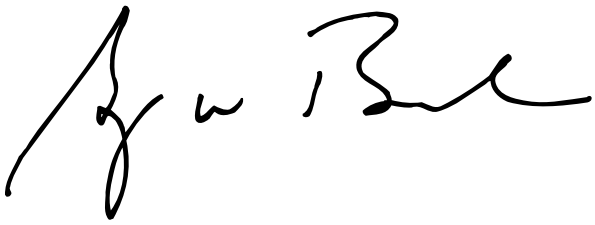
One of the first known celebrations of Christopher Columbus' achievements was in 1792 when a ceremony in New York City celebrated the 300th anniversary of his landing in the Bahamas. Italian Americans began regularly honoring Columbus in the 1860s. In 1892, President Benjamin Harrison issued a Presidential proclamation on the 400th anniversary of Columbus' first voyage, describing Columbus as ''the pioneer of progress and enlightenment.'' The United States now celebrates a national holiday in honor of Columbus.

Columbus' willingness to sacrifice the comfort of his home to pursue the unknown has inspired generations of daring explorers. Through the years, Americans have followed in the spirit of Columbus through exploration of land, sea, and space, and are fulfilling Columbus' great legacy. Since the days of Columbus, millions of Italian immigrants have crossed the ocean and come to the United States. These Italian Americans and their descendants have made America stronger and better.

In commemoration of Columbus' journey, the Congress, by joint resolution of April 30, 1934, and modified in 1968 (36 U.S.C. 107), as amended, has requested that the President proclaim the second Monday of October of each year as ''Columbus Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 13, 2003, as Columbus Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities. I also direct that the flag of the United States be displayed on all public buildings on the appointed day in honor of Christopher Columbus.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 03–26330
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Presidential Documents

Proclamation 7721 of October 10, 2003

General Pulaski Memorial Day, 2003

By the President of the United States of America

A Proclamation

Brigadier General Casimir Pulaski sacrificed his life on October 11, 1779, for America's independence and the universal cause of freedom. His bravery in supporting the American Revolutionary War is an inspiration to individuals around the world who pursue peace and freedom for all.

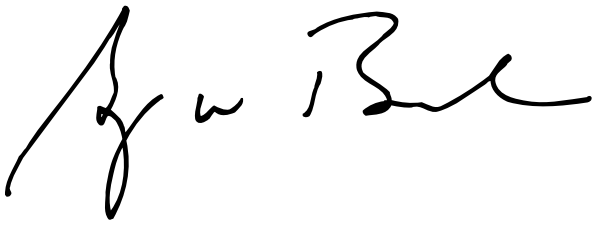
Growing up near Warsaw, Casimir Pulaski knew firsthand the horror of tyranny and oppression. In 1768, he joined his father and fellow compatriots in rising against injustice and fighting for Polish independence. As a commander in the rebellion, the young Pole demonstrated a devotion to freedom and great courage. When the rebellion was quelled, Pulaski was exiled to France, where he continued to pursue freedom with the same spirit and determination that he had shown in Poland.

While in Paris, he met with the American envoy to France, Benjamin Franklin, who discussed with him America's struggle for independence. Pulaski then volunteered his services to General George Washington. In his first letter to General Washington after arriving in America in the summer of 1777, General Pulaski pledged that he ''came here, where freedom is being defended, to serve it, and to live and die for it.'' Impressed with General Pulaski's abilities and battle experience, General Washington commissioned him as a Brigadier General of the American cavalry. In May 1779, General Pulaski's new cavalry division successfully defended the city of Charleston, South Carolina. Several months later, in the siege of Savannah, General Pulaski was mortally wounded while trying to raise morale and rally his troops who were under heavy enemy fire.

General Pulaski's bravery and sacrifice helped lead America to victory, and today, the Polish motto—''for your freedom and ours''—echoes the great spirit of this Polish and American hero. This day, we commemorate General Pulaski's service to our Nation and draw strength from his example. We also honor the sacrifices of the many men and women of Poland and other allied nations who persevere with us in the fight for freedom.

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 October 11, 2003, as General Pulaski Memorial Day. I encourage all Americans to commemorate this occasion with appropriate programs and activities paying tribute to Casimir Pulaski and honoring all those who defend the freedom of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of October, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.



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Rules and Regulations

Federal Register

Vol. 68, No. 200

Thursday, October 16, 2003

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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 275

RIN 0584–AD31

Food Stamp Program: Non-Discretionary Quality Control Provisions of Title IV of Public Law 107–171

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: On May 13, 2002, the President signed the Farm Security and Rural Investment Act of 2002 (the 2002 Act). Title IV of the 2002 Act (the Food Stamp Reauthorization Act of 2002) contains provisions concerning the Food Stamp Program. This rule amends the Food Stamp Program regulations to implement certain provisions concerning the Quality Control system in sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. This interim rule revises the current regulations to reflect the new liability procedures and the new deadlines for completing the Quality Control review process and announcement of error rates. As a result of the change in the statute, a new two-year liability system will be instituted which will result in fewer State agencies being subject to liabilities for excessive payment error rates. There will be new time frames for State agencies to complete the quality control case review process and for the Department to issue error rates.

DATES: This interim rule is effective December 15, 2003. Comments on this rulemaking must be received on or before January 14, 2004 to be assured of consideration.

ADDRESSES: Comments should be submitted to Daniel Wilusz, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Daniel Wilusz at (703) 305–0928 or e-mailed to *Daniel.wilusz@fns.usda.gov.* All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. through 5 p.m.). You may also download an electronic version of this rule at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm.*

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Margaret Werts Batko at the above address or by telephone at (703) 305–2516.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be Significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Public Law 104–4

Unfunded Mandate Reform Act of 1995 (UMRA). Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of sections 202 and 205 of the UMRA.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. FNS has considered this rule's impact on State and local agencies and has determined that it does not have Federalism implications under E.O. 13132. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Civil Rights Impact Analysis

FNS has reviewed this interim rule in accordance with the Department Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify and address any major civil rights impacts the rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, FNS has determined that this rule has no impact on any of the protected classes. These changes affect the quality control review system and not individual recipients' eligibility for or participation in the Food Stamp Program. FNS has no

discretion in implementing these changes. The changes are required to be implemented by law. All data available to FNS indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. FNS specifically prohibits the State and local government agencies that administer the Program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that ''State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the Food Stamp Act of 1977 (the Act), the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, section 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR Part 15.''

Paperwork Reduction Act

This interim rule does not contain changes to the reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Reporting and recordkeeping requirements for quality control are approved under OMB numbers 0584–0074, 0584–0299, 0584–0303, and 0584–0034. There are no changes being made in this rulemaking that will alter the reporting and recordkeeping requirements related to quality control approved under these burdens. The legislative change concerning corrective action planning does not affect the burden in 0584–0010 for reporting and recordkeeping because the change only affects which States would be required to submit corrective action plans and because the number of states required to submit corrective action plans will not change under the new requirement. The burden approved under OMB number 0584–0010 was allowed to expire. The Food and Nutrition Service has initiated action to reinstate the burden under 0584–0010.

Government Paperwork Elimination Act

In compliance with the Government Paperwork Elimination Act, FNS is committed to providing electronic submission as an alternative for information collections associated with this rule. However, we are not able to make the entire process electronic at this time.

Part of the process allows electronic submission. The Quality Control review schedule (approved under OMB #0584–0299) serves as both the data summary entry form that the reviewer completes during each review, and subsequently, as the data input document for direct data entry into the Kansas City Computer Center (KCCC). While the data is manually collected on a paper form from information extracted from a case file, it is electronically submitted to the KCCC for tabulation and analysis. Some States have begun to use computerized versions of the worksheet (OMB number 0584–0074), which provides information collected on the review schedule. In addition, the FNS contractor for the data collection system has developed, at FNS request, a computerized version of the worksheet. States are being given the option to continue to use their own systems, the new computerized version provided by FNS or the paper version. When FNS computerized versions of the worksheet are used, the information is linked to and creates the review schedule.

Under OMB number 0584–0034, the burden for collecting and reporting information related to the review of negative cases and the status of sample selection and completion is approved. The FNS–245 serves as both the data summary entry form that the reviewer completes during each negative case review, and subsequently as the data input document for direct data entry into the KCCC. Therefore, while data is manually collected, it is electronically submitted to the KCCC for tabulation and analysis. The FNS–248 (Status of Sample Selection and Completion) collects information on the status of State reviews. The FNS–248 contains information not produced by the automated system, therefore this report is still necessary. However, we are considering ways that this data could be collected electronically.

The burden under OMB number 0584–0303 encompasses the sampling plan, arbitration, and good cause. At this time, these areas are not substantively electronic submittals. To the extent possible, States may submit documents or portions of documents electronically.

States have the option to maintain in paper or electronic format information compiled for the Performance Reporting System, including Management Evaluation, Data Analysis and Corrective Action information. The State maintains the information on site to be available for FNS review (OMB number 0584–0010).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the ''Effective Date'' paragraph of the final rule. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program the administrative procedures are as follows: (1) For Program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities) or Part 283 (for rules related to QC liabilities); (3) for retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8 and part 279.

Regulatory Impact Analysis

Need for Action: This rule amends the Food Stamp Program regulations to implement certain provisions concerning the Quality Control system in sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. These provisions revise the liability procedures and establish new deadlines for completing the Quality Control review process and announcement of payment error rates. The rule has no Federal Program cost impacts, however, fewer States will be identified as having any potential liability, and any such liabilities will be significantly lower than under the existing system.

Justification of alternatives. The Department has no discretion regarding the legislative mandate to revise the liability and enhanced funding provisions of the QC system. Nor does it have discretion regarding the provision that revises time frames for completing the review and arbitration process and announcing individual State agency payment error rates at the

end of each annual review period. The Department does have discretion in resolving the liabilities established under the new system. The Secretary may: Waive all or a portion of the liability; require the State agency to reinvest up to 50 percent of the liability in activities to improve program administration, which new investment money shall not be matched by Federal funds; designate up to 50 percent of the liability as at-risk for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or assert any combination of these options. Once the Secretary issues the original resolution proposal, only the amounts designated as waived or reinvestment are subject to negotiation between the State agency and the Department.

Effects on Food Stamp Recipients. This action is not anticipated to have any impact on benefit levels or food stamp program participation, as it does not change the program's eligibility requirements or benefit calculation.

Effects on Federal Program Costs. Since this action is not anticipated to have any impact on benefit levels or food stamp participation, we do not anticipate any impact on food stamp benefit costs. There is also no anticipated financial impact in administration costs from the changes in how liabilities are calculated, assessed, or collected.

Effects on Administering State Agencies: This rule affects State agencies by revising the QC sanction system. Under this rule, fewer States will be identified as having any potential liability, and any such liabilities will be significantly lower than under the existing sanction system. State agencies will also have additional time to complete the quality control review process.

Effect on Retailers. This action is not anticipated to have any impact on food stamp retailers.

Justification for Interim Rulemaking

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(A) and (B). The provisions contained in this rule are mandated by sections 4118 and 4119 of the Food Stamp Reauthorization Act of 2002. The Department has no discretion in implementing the specific provisions contained in this rule. These provisions are effective for the Fiscal Year 2003 review period beginning October 1, 2002. The provisions included in this rule are mandated by legislation, and the Department has no discretion in the methodology establishing the national performance measure, or in determining when State agencies develop corrective action plans resulting from payment error rates. Thus, the Department has determined in accordance with 5 U.S.C. 553(b) that a notice of proposed rulemaking and an opportunity for prior public comments is unnecessary. Discretionary regulatory changes that result from sections 4118 and 4119 will be addressed subsequently in one or more proposed rulemakings.

Background

On May 13, 2002, the President signed Public Law 107–171, the Farm Security and Rural Investment Act of 2002. Title IV of Public Law 107–171, the Food Stamp Reauthorization Act of 2002, significantly revised the liability and enhanced funding provisions of the Quality Control (QC) system. In this interim rule, we are addressing the provisions in section 4118 of the Food Stamp Reauthorization Act of 2002 concerning establishment, adjustment, and collection of potential liabilities and the requirement to develop a corrective action plan when a State's payment error rate exceeds six percent. In this interim rule, we are also addressing the provision in Section 4119 that revises time frames for completing the review and arbitration process and announcing individual State agency error rates at the end of each annual review period. All remaining provisions not addressed in this rule will be addressed in one or more subsequent proposed rulemakings.

Establishing Liabilities for Excessive Payment Error Rates

Section 4118 of the Food Stamp Reauthorization Act of 2002 amended Section 16(c) of the Food Stamp Act of 1977, as amended, significantly revising the system for determining liabilities for payment error rates. Under the Food Stamp Act, as amended, prior to enactment of the Food Stamp Reauthorization Act of 2002, liability was determined each fiscal year. As defined in 7 CFR 275.23(e) of the program regulations, the payment error tolerance level was the national performance measure for the fiscal year. The national performance measure is defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. A State agency that exceeded this tolerance level was subject to a liability claim equivalent to the total value of the allotments issued in the fiscal year by the State agency, multiplied by a factor that is the lesser of: (1) The ratio of the amount by which the payment error rate of the State agency for the fiscal year exceeds the national performance measure for the fiscal year, to the national performance measure for the fiscal year, or (2) one. This figure was then multiplied by the amount by which the payment error rate of the State agency for the fiscal year exceeded the national performance measure for the fiscal year.

Section 4118 of the Food Stamp Reauthorization Act of 2002 establishes a new multi-year liability system. The national performance measure continues to be defined as the sum of the products of each State agency's payment error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. However, the method for determining any potential liability has changed. Under this system, Fiscal Year 2003 serves as the initial base year. For Fiscal Year 2004 and subsequent years, liability for payment shall be established whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. For example, if there were a 95 percent statistical probability that a State agency's payment error rate for Fiscal Year 2003 exceeded 105 percent of the Fiscal Year 2003 national performance measure, and again in Fiscal Year 2004, if there was a 95 percent statistical probability that the State's payment error rate exceeded 105 percent of the Fiscal Year 2004 national performance measure, a liability for Fiscal Year 2004 would be established. The amount of the liability shall be equal to the product of: The value of all allotments issued by the State agency in the (second or subsequent consecutive) fiscal year; multiplied by the difference between the State agency's payment error rate and 6 percent; multiplied by 10 percent.

In order to implement this change, we are revising 7 CFR 275.23(e). First, we are deleting subsections (e)(2), (e)(3), and (e)(4) because they address liability determinations for prior fiscal years that have already been resolved. Second, we are redesignating paragraph (e)(5) as paragraph (e)(2) and amending that subsection by deleting the words ''and beyond'' and replacing them with the words ''through Fiscal Year 2002.'' Finally, a new paragraph (e)(3) is being

added that established the liability system for Fiscal Year 2004 and beyond. A conforming amendment is also being made redesignating paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11) as (e)(4), (e)(5), (e)(6), (e)(7), (e)(8), and (e)(9).

Resolving Liabilities

Prior to the passage of the Food Stamp Reauthorization Act of 2002, potential liabilities were established each year. The Secretary had unlimited authority to propose a resolution, including: waiving any or all of the amount; requiring that any or all of the amount be repaid to the Federal government; entering into an agreement to allow some or all of the liability amount to be reinvested in error reduction activities; or combining these options. Once issuing a proposed settlement plan to a State agency, the Secretary could negotiate with the State agency to revise any and all aspects of the proposed liability resolution.

Section 4118 establishes new requirements for resolving State agency liabilities for payment errors. Under the Food Stamp Act, as amended by the Food Stamp Reauthorization Act of 2002, the Secretary has the authority to waive or reduce any liability. The Secretary may require a State agency to reinvest up to 50 percent of the established liability in activities designed to reduce the payment error rate. The Secretary may also designate up to 50 percent of the liability as being ''at-risk.'' A State agency would be required to pay to USDA any money designated as ''at-risk'' if a liability for payment errors is established for the State agency the following fiscal year. The Secretary may combine these three options. In accordance with the Food Stamp Reauthorization Act of 2002, the Department and any State agency found liable for an excessive payment error rate must settle any waiver amount or reinvestment amount before the end of the fiscal year in which the liability is determined. The amount designated as being at-risk in the proposed settlement plan sent to the State agency is not subject to negotiation, in accordance with the provision in the Food Stamp Reauthorization Act of 2002 which provides that the Department shall make its liability resolution determinations and enter into a settlement with the State agency *only with respect to any waiver amount or new investment amount* (emphasis added). When the Department notifies the State agency of its payment error rate and its potential liability, that letter will also designate the amount to be waived, and what amount is designated as at risk and/or subject to reinvestment. Because the Department is authorized to enter into a settlement with a State agency concerning the amount to be waived or reinvested, the Department may opt to enter into negotiations with the State agency to waive any or all of the amount designated for reinvestment. Current regulations specify the requirements for reinvestment. Any reinvestment plan established for the amount designated for reinvestment either in the initial letter or as a result of negotiations much meet the requirements in 7 CFR 275.23(e)(11). However, the law does not allow the Department to negotiate any amount designated as at-risk, once that amount has been designated. Therefore, the Department will not negotiate with the State agency on the amount designated as at-risk once the notification letter has been sent to the State agency. The amount designated as at-risk cannot be reconsidered for waiving or reinvestment in the following year if a liability for payment errors is established for the State agency in the following fiscal year. A new paragraph (e)(10) is being added to § 275.23 establishing the Secretary's authority to resolve the liabilities under these three options.

Appeals

In accordance with the Food Stamp Act, as amended, State agencies may appeal the amount of the liability established as described above. However, State agencies may not appeal the Secretary's decision as to how such liability will be resolved; *i.e.*, waived, at-risk, or reinvestment. Nor is the amount of the national performance measure subject to either administrative or judicial appeal, in accordance with section 4118 of the Food Stamp Reauthorization Act of 2002. The time frames and procedures for appealing were not changed by the Food Stamp Reauthorization Act of 2002 and the procedures in 7 CFR part 283 of the regulations remain in place.

The Secretary is required to initiate collection for any amount owed by the State agency before the end of the fiscal year in which the liability is determined. However, the requirement to resolve all liabilities before the end of the fiscal year shall be suspended if an administrative appeal relating to the liability is pending. The provision suspending collection pending an administrative appeal existed in the Food Stamp Act prior to the passage of the Food Stamp Reauthorization Act of 2002 and was not changed by that Act. Current regulations address this suspension, and accordingly, no changes are being made to the regulations.

Section 4118 provides that if a State agency appeals its liability determination, if the State agency began required reinvestment activities prior to an appeal determination, and if the liability amount is reduced to $0 through the appeal, the Secretary shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to the appeal. If the Secretary wholly prevails on a State agency's appeal, section 4118 provides that the Secretary will require the State agency to invest all or a portion of the amount designated for reinvestment during the appeal to be reinvested or to be repaid to the Federal government. Section 4118 further specifies that if neither party wholly prevails that the remaining liability will be treated pursuant to regulations issued by the Secretary. In this rule, we are incorporating into new § 275.23(e)(10) the provisions in section 4118 concerning either the Secretary or the State wholly prevailing. We will address in a proposed rule how any remaining liability will be handled if neither party wholly prevails on appeal.

Time Frames for Announcing the National Performance Measure and for Completing Quality Control Reviews and Resolving State/Federal Differences

Section 4119 of the Food Stamp Reauthorization Act of 2002 establishes new dates for resolution of the case review and arbitration process and for issuance of the national average payment error rate, the individual State final error rates, and the amounts of any payments claimed or liability amounts established. Under the Food Stamp Act prior to the Food Stamp Reauthorization Act of 2002, all case reviews and arbitration had to be completed not later than 180 days after the end of the fiscal year. FNS was required to announce the national average payment error rate, the individual State final error rates, and the amounts of any liabilities within 30 days following completion of the case reviews and arbitration. Under section 4119, all case reviews and arbitration are required to be completed by May 31 following the end of the fiscal year. The national average payment error rate, the individual State final error rates, and the amounts of any payments claimed or liability amounts established are required to be announced by June 30 following the end of the fiscal year. In accordance with section 4118, this rule also requires that FNS provide a copy of each State agency's notice of payment claimed or liability amount due to the

State's chief executive officer and legislature. In this interim rulemaking, we are revising redesignated paragraph (e)(7) in § 275.23 to establish these new dates. Redesignated paragraph (e)(7) also requires FNS to provide the State chief executive officer and the legislature with a copy of the State's notice of payment claimed or liability amount. At this time we are not revising the time frames for processing individual cases or conducting individual arbitration cases. Implementing guidance was issued on January 22, 2003, providing interim direction to State agencies on completing cases reviews under these new time frames for Fiscal Year 2003. A proposed rule will be issued that addresses these issues.

Corrective Action Planning

Current regulations provide that corrective action planning shall be done by a State agency when it fails to reach the yearly target (§ 275.16(b)(1)), when the State agency is not entitled to enhanced funding (§ 275.16(b)(2)), or when the State agency's negative case error rate exceeds one percent (§ 275.16(b)(3)). Section 4118 of the Food Stamp Reauthorization Act of 2002 requires State agencies to do corrective action planning whenever its payment error rate is six percent or greater. Accordingly, we are revising § 275.16(b)(1) to require corrective action planning whenever a State agency's error rate equals or exceeds six percent. This change will have little real impact on State agencies because current regulations require corrective action planning whenever a State agency is not eligible for enhanced funding. One of the criteria for enhanced funding is that the payment error rate is below 5.90 percent. Therefore, all State agencies with error rates above 5.90 percent are already required to develop corrective action plans.

In addition several technical changes throughout 7 CFR part 275 have been made to correct references to paragraphs changed in this rulemaking and to fix typographical errors.

Implementation

This rule is effective December 15, 2003. Section 4118 of the Food Stamp Reauthorization Act of 2002 was effective October 1, 2002, and section 4119 was effective upon enactment, May 13, 2002. This rule reflects these statutory provisions which impact the establishment of payment error rates, the national performance measure, and sanctions and liabilities for Fiscal Year 2003 and beyond.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, Claims, Food stamps, Grant programs, Social programs, Reporting and recordkeeping requirements, Unemployment compensation, Wages

7 CFR Part 275

Administrative practice and procedure, Food stamps, Reporting and recordkeeping requirements.

■ Accordingly, 7 CFR parts 272 and 275 are amended as follows:

■ 1. The authority citation for parts 272 and 275 continue to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

■ 2. In § 272.1, add paragraph (g)(169) to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(169) *Amendment No. 395.* The provisions of Amendment 395 are effective December 15, 2003.

PART 275—PERFORMANCE REPORTING SYSTEM

§ 275.3 [Amended]

■ 3. In § 275.3, the last sentence of paragraph (c) is amended by removing the reference ''§ 275.23(e)(8)'' and adding in its place the reference ''§ 275.23(e)(6)''.

§ 275.11 [Amended]

■ 4. In § 275.11, the third sentence of paragraph § 275.11(g) is amended by removing the reference ''§ 275.25(e)(8)'' and adding in its place the reference ''§ 275.23(e)(6)''.

■ 5. In § 275.16, paragraph (b)(1) is revised to read as follows:

§ 275.16 Corrective action planning.

* * * * *

(b) * * *

(1) Result from a payment error rate of 6 percent or greater (actions to correct errors in individual cases, however, shall not be submitted as part of the State agency's corrective action plan);

* * * * *

■ 6. In § 275.23:

■ a. Paragraph (d)(1)(iii) is amended by removing the reference ''(e)(8)(iii)'' and adding in its place the reference ''(e)(6)(iii)''.

■ b. Paragraph (e)(1) is amended by removing the reference ''(e)(8)'' and adding in its place the reference ''(e)(6)''.

■ c. Paragraphs (e)(2), (e)(3), and (e)(4) are removed.

■ d. Paragraph (e)(5) is redesignated as paragraph (e)(2) and is further amended by removing the words ''and beyond'' in the paragraph heading and adding in their place the words ''through Fiscal Year 2002''.

■ e. Newly redesignated paragraph (e)(2)(i) is amended by removing the words ''and subsequent years'' and adding in their place the words ''through Fiscal Year 2002''; and further amended by removing the word ''rates'' in the second sentence and adding in its place the word ''rate''.

■ f. A new paragraph (e)(3) is added.

■ g. Paragraphs (e)(6), (e)(7), (e)(8), (e)(9), (e)(10), and (e)(11) are redesignated as paragraphs (e)(4), (e)(5), (e)(6), (e)(7), (e)(8) and (e)(9), respectively.

■ h. Newly redesignated paragraph (e)(5)(i)(B)(*3*) is amended by removing the reference ''(e)(7)(i)(A)'' and adding in its place the reference ''(e)(5)(i)(A)''.

■ i. Newly redesignated paragraph (e)(5)(i)(C)(*3*)(*iii*) is amended by removing the reference ''(e)(5)(i)'' wherever it appears and adding in its place the reference ''(e)(2)(i)''.

■ j. Newly redesignated paragraph (e)(5)(i)(E) is amended by removing the reference ''(e)(7)(i)(A) through (e)(7)(i)(D)'' and adding in its place the reference ''(e)(5)(i)(A) through (e)(5)(i)(D)''.

■ k. Newly redesignated paragraph (e)(5)(i)(E)(2) is amended by removing the reference ''(e)(7)(i)(E)'' and adding in its place the reference ''(e)(5)(i)(E)''.

■ l. Newly redesignated paragraph (e)(5)(ii) is amended by removing the reference ''(e)(7)(i)(A) through (e)(7)(i)(E)'' and adding in its place the reference ''(e)(5)(i)(A) through (e)(5)(i)(E)''.

■ m. Newly redesignated paragraph (e)(5)(iii) is amended by removing the reference ''(e)(7)'' and adding in its place the reference ''(e)(5)''.

■ n. Newly redesignated paragraph (e)(6)(i)(D) is amended by removing the reference ''(e)(8)(iii)'' and adding in its place the reference ''(e)(6)(iii)''.

■ o. Newly redesignated paragraphs (e)(6)(iii)(A) and (e)(6)(iii)(B) are amended by removing the reference ''(e)(8)(i)(C)'' wherever it appears and adding in its place the reference ''(e)(6)(i)(C)''.

■ p. Newly redesignated paragraph (e)(7) is amended by removing the first and second sentences and adding in their place four new sentences.

■ q. Newly redesignated paragraph (e)(8) is amended by removing the reference ''§ 275.23(e)(5)'' and adding in its place the reference ''paragraphs (e)(2) and (e)(3) of this section''.

■ r. Newly redesignated paragraph (e)(9) is amended by removing the words ''and

subsequent'' in the first sentence and adding in their place the words ''through Fiscal Year 2002''.

■ s. Newly redesignated paragraph (e)(9)(iii) is amended by removing the reference ''(e)(11)(vi)'' and adding in its place the reference ''(e)(9)(vi)''.

■ t. A new paragraph (e)(10) is added.

The additions read as follows:

§ 275.23 Determination of State agency program performance.

* * * * *

(e) * * *

(3) *Establishment of payment error rates and liability.* For Fiscal Year 2003 and subsequent years, FNS shall announce a national performance measure not later than June 30 after the end of the fiscal year. The national performance measure is the sum of the products of each State agency's error rate times that State agency's proportion of the total value of national allotments issued for the fiscal year using the most recent issuance data available at the time the State agency is notified of its payment error rate. Once announced, the national performance measure for a given fiscal year will not be subject to change. The national performance measure announced under this paragraph (e)(3) is not subject to administrative or judicial review. Liability for payment shall be established for Fiscal Year 2004 and beyond whenever there is a 95 percent statistical probability that, for the second or subsequent consecutive fiscal year, a State agency's payment error rate exceeds 105 percent of the national performance measure. The amount of the liability shall be equal to the product of:

(i) The value of all allotments issued by the State agency in the (second or subsequent consecutive) fiscal year; multiplied by

(ii) the difference between the State agency's payment error rate and 6 percent; multiplied by

(iii) 10 percent.

* * * * *

(7) * * * The case review process and the arbitration of all difference cases shall be completed by May 31 following the end of the fiscal year. FNS shall determine and announce the national average payment error rate for the fiscal year by June 30 following the end of the fiscal year. At the same time FNS shall notify all State agencies of their individual payment error rates and payment error rate liabilities, if any. FNS shall provide a copy of each State agency's notice to its respective chief executive officer and legislature. * * *

* * * * *

(10) *Resolution of liabilities for FY 2003 and beyond.* FNS may: waive all or a portion of the liability; require the State agency to reinvest up to 50 percent of the liability in activities to improve program administration, which new investment money shall not be matched by Federal funds; designate up to 50 percent of the liability as ''at-risk'' for repayment if a liability is established based on the State agency's payment error rate for the subsequent fiscal year; or assert any combination of these options. Once FNS establishes its proposed liability resolution plan, the amount assigned as at-risk is not subject to settlement negotiation between FNS and the State agency and may not be reduced unless an appeal decision revises the total dollar liability. FNS and the State shall settle any waiver amount or reinvestment amount before the end of the fiscal year in which the liability amount is determined unless an administrative appeal relating to the claim is pending. If a State agency appeals its liability determination, if the State agency began required reinvestment activities prior to an appeal determination, and if the liability amount is reduced to $0 through the appeal, FNS shall pay to the State agency an amount equal to 50 percent of the new investment amount that was included in the liability amount subject to the appeal. If FNS wholly prevails on a State agency's appeal, FNS will require the State agency to invest all or a portion of the amount designated for reinvestment during the appeal to be reinvested or to be repaid to the Federal government.

Dated: October 3, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 03–26176 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV03–945–1 FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Idaho-Eastern Oregon Potato Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and appropriate to administer the program. The fiscal period began August 1 and ends July 31. The increased assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, 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 E-mail: *Barry.Broadbent@usda.gov*; 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. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, 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, Idaho-Eastern Oregon potato 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 potatoes beginning on August 1, 2003, 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 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled.

Section 945.40 of the order provides authority for the Committee, with the approval of the Secretary, to incur reasonable expenses for its maintenance and functioning. Section 945.41 requires the Committee to formulate an annual budget estimating its income and expenditures for the upcoming fiscal year and to present such budget to the Secretary for approval. Section 945.42(a) authorizes the Committee to assess handlers for their pro rata share of such expenses and § 945.42(b) provides that the rate of assessment be set by the Secretary based on the recommendation of the Committee. The members of the Committee are producers and handlers of potatoes grown in Idaho and Eastern Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate was discussed in a public meeting before the Committee members voted to recommend an increase. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period 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 16, 2003, and unanimously recommended 2003–04 expenditures of $149,417 and an assessment rate of $0.0026 per hundredweight of potatoes handled, the same rate currently in effect. The Committee estimated the 2003–04 potato shipments at 36,500,000 hundredweight, which would generate $94,900 in assessment revenue. At that meeting, the Committee discussed increasing the assessment rate to respond to rising Committee expenses, declining assessment revenue, and shrinking operating reserves. After discussion, the Committee postponed any action until later in the fiscal period, believing that assessment revenue and operating reserves were sufficient to maintain Committee operations through the fiscal period.

The Committee conducted a telephone vote on July 18, 2003, and unanimously recommended a revised budget of $145,317 (down from $149,417) and to raise the assessment rate to $0.0045 per hundredweight of potatoes handled (up from $0.0026). In comparison, last fiscal period's budgeted expenditures were $137,094. The recommended assessment rate is $0.0019 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves.

This major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively. The transportation budget item covers the purchase of a new Committee vehicle and all of the operating and maintenance costs associated with it. The manager uses a Committee vehicle for handler compliance visits throughout the season, and other authorized Committee activities. Travel covers the cost of travel, lodging, and meals for the Committee manager and members when attending Committee meetings and conventions involving Committee authorized business.

The Committee estimates potato shipments for the 2003–04 fiscal period at 36,500,000 hundredweight, which should provide $164,250 in assessment income at the issued assessment rate. This income should be adequate to cover budgeted expenses. The Committee estimated monetary reserves to be approximately $33,000 at the beginning of the 2003–04 fiscal period. The reserves could potentially increase to $51,933 by the fiscal period end. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's budgeted expenses (§ 945.44). Funds held in reserve will be kept within the maximum permitted by the order.

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 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 the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 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 900 producers of potatoes in the production area and approximately 54 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 of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh potato production of 35,448,000 hundredweight as calculated from Committee records, a three-year average of producer prices of $6.10 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately $240,259. It can be concluded, therefore, that most of these producers may be classified as small entities.

In addition, based on Committee records and 2002–03 f.o.b. shipping point prices ranging from $5.00 to $35.00 per hundredweight reported by USDA's Market News Service, many Idaho-Eastern Oregon potato handlers may ship over $5,000,000 worth of potatoes. In view of the foregoing, few of the handlers may be classified as small entities as defined by the SBA.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee unanimously recommended 2003–04 expenditures of $145,317 and an assessment rate of $0.0045 per hundredweight. The proposed assessment rate is $0.0019 per hundredweight higher than the 2002–03 rate. The quantity of assessable potatoes for the 2003–04 fiscal period is estimated to be 36,500,000 hundredweight. Income derived from handler assessments (approximately $164,250) should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves. The Committee estimated the reserve to be $33,000 at the 2002–03 fiscal period end. At the current rate of $0.0026 per hundredweight, and the estimated potato production of 36,500,000 hundredweight for the 2003–04 fiscal period, the projected income for the 2003–04 fiscal period would be $94,900. This amount, along with the projected reserve of $33,000, is approximately $19,417 less than required to fund the proposed 2003–04 budget and $9,194 less than the 2002–03 budgeted amount. Thus, the Committee believes that the projected assessment income at the current assessment rate and funds held in reserve would not be sufficient to fund the Committee's operations without increasing the assessment rate.

At the recommended rate of $0.0045 per hundredweight (assessment income of $164,250) and expenditures of $145,317, the Committee may increase its reserve by up to $18,933. The projected reserve would be approximately $51,933 on July 31, 2004, which the Committee determined to be both appropriate and acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to $0.0045 per hundredweight will allow the Committee to adequately fund operations and replenish the reserve to an acceptable level. The Committee decided that any assessment rate between $0.0026 per hundredweight and $0.0045 per hundredweight would not be sufficient to accomplish the Committee's goals. Prior to arriving at the budget and assessment rate recommendations, the Committee considered information from various sources, including the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–04 fiscal period could range between $4.50 and $6.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue as a percentage of total producer revenue could range between 0.1 and 0.075 percent.

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 Idaho-Eastern Oregon potato 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 16, 2003, 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 Idaho-Eastern Oregon potato 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 28, 2003 (68 FR 51713). Copies of the proposed rule were also mailed or sent via facsimile to all potato handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending September 12, 2003, 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 the 2003–2004 fiscal period began on August 1, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable Idaho-Eastern Oregon potatoes handled during such fiscal period. Further, handlers are aware of this rule which was unanimously recommended by the Committee. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—POTATOS GROWN IN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

■ 1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 945.249 is revised to read as follows:

§ 945.249 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.0045 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: October 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–26177 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 00–080–3]

Change in Disease Status of East Anglia With Regard to Classical Swine Fever

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations governing the importation of certain animals, meat, and other animal products by restoring East Anglia, a region of England that includes the counties of Essex, Norfolk, and Suffolk, to the list of regions considered free of classical swine fever. This final rule follows an interim rule that removed East Anglia from that list due to the detection of classical swine fever in that region. Based on the results of an evaluation of the current classical swine fever situation in East Anglia, we have determined that East Anglia can be restored to the list of regions considered to be free of classical swine fever. This rule relieves certain classical swine fever-related prohibitions and restrictions on the importation of swine and swine products into the United States from East Anglia.

EFFECTIVE DATE: October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Charisse Cleare, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of certain animals and animal products into the United States in order to prevent the introduction of various animal diseases, including rinderpest, foot-and-mouth disease, African swine fever, classical swine fever (CSF), and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine. Section 94.9 of the regulations restricts the importation into the United States of pork and pork products from regions where CSF is known to exist. Section 94.10 of the regulations prohibits, with certain exceptions, the importation of swine that originate in or are shipped from or transit any region in which CSF is known to exist. The regulations in §§ 94.9(a) and 94.10(a) provide that CSF exists in all regions of the world except for certain regions listed in those sections.

In an interim rule effective August 4, 2000, and published in the **Federal Register** on September 20, 2000 (65 FR 56774–56775, Docket No. 00–080–1), we amended the regulations by removing East Anglia (a region of England that includes Essex, Norfolk, and Suffolk counties) from the lists of regions considered to be free of CSF (which, at the time, we referred to as hog cholera). That action was necessary because CSF had been confirmed in East Anglia. The effect of the interim rule was to restrict the importation of pork and pork products and to prohibit the importation of swine into the United States from East Anglia.

Although we removed East Anglia from the list of regions considered to be free of CSF, we recognized that Great Britain's Ministry of Agriculture, Fisheries and Food (now part of the Department for Environment, Food, and Rural Affairs) immediately responded to the detection of CSF by initiating measures to eradicate the disease. In addition, disease spread was contained within East Anglia. Therefore, we limited the effect of our interim rule to East Anglia. We also stated that we intended to reassess the situation in the region at a future date in the context of Office International des Epizooties (OIE) standards, and that as part of that reassessment process, we would consider all comments received regarding the interim rule.

Additionally, we stated in the interim rule that the future reassessment would enable us to determine whether it was necessary to continue to prohibit the importation of swine and to restrict the importation of pork and pork products from East Anglia, or whether we could restore East Anglia to the list of regions in which CSF is not known to exist.

We solicited comments concerning the interim rule for 60 days ending November 20, 2000. We received one comment by that date, from a national pork industry association. This comment is addressed below.

On March 13, 2003, we published a notice in the **Federal Register** (68 FR 11998–11999, Docket No. 00–080–2) in which we advised the public of the availability of an evaluation that we had prepared concerning the CSF status of East Anglia. The evaluation, entitled ''APHIS Evaluation of the Classical Swine Fever Status of East Anglia (counties of Norfolk, Suffolk, and Essex) November 2002,'' assessed the CSF status of East Anglia and the related disease risks associated with importing animals and animal products into the United States from East Anglia.

We solicited comments concerning the evaluation for 60 days ending May 12, 2003, and received one comment by that date. The comment, which was submitted by a national pork industry association, was a resubmission of the comment sent by that organization in response to the September 2000 interim rule. The comment is discussed below.

De Facto Regionalization

Comment: The Animal and Plant Health Inspection Service (APHIS) should have followed its regulations in 9 CFR part 92 in the initial rulemaking to remove East Anglia from the list of regions recognized as free of CSF. In that rulemaking, APHIS established East Anglia, England, as a region affected with CSF, and continued to recognize the rest of Great Britain as free of that disease. There are several specific procedures set forth in part 92 that APHIS should be following. These are: (1) That APHIS will make information submitted in support of a request for regionalization available to the public prior to rulemaking; (2) that APHIS will publish a proposed rule for public comment; and (3) that during the comment period, the public will have access to the information upon which APHIS based its risk analysis, as well as to the methodology used to conduct the analysis.

Response: The regulations in 9 CFR part 92, ''Importation of Animals and Animal Products; Procedures for Requesting Recognition of Regions,'' were published in October 1997 in conjunction with APHIS' policy on regionalization (see Docket No. 94–106–8, 62 FR 56027–56033, October 28,

1997). The regulations set out the process by which a foreign government may apply to have all or part of a country recognized as a region or for approval to export animals or animal products to the United States under conditions based on the risk associated with animals or animal products from that region. Our intention was for these regulations to tell veterinary officials of foreign governments that have different risk levels within the country or extending across national boundaries and that wish to begin exporting animals or animal products to the United States how to request an initial evaluation of animal disease status or conditions for import of commodities. We did not intend for these regulations to apply in circumstances where an outbreak of a disease in a region previously recognized as disease-free, or an increased incidence of disease in a foreign region makes it necessary for the United States to take interim measures to protect its livestock from the foreign animal disease. In these cases, APHIS must take immediate action to prohibit or restrict imports from the region that now presents a disease concern, and the scope of that action may be limited to the portion of the region that presents the disease risk. Such action may include publishing an interim rule to provide an appropriate basis for enforcing prohibitions or restrictions that may initially be announced administratively. In these circumstances, APHIS has a responsibility to take whatever measures appear necessary to prevent the introduction of disease. We believe that publishing a proposed rule for comment would be contrary to the public interest because doing so would delay our taking protective actions. We also believe that making the information upon which we base our decisions for establishing a region via an interim rule available to the public for comment prior to publishing the interim rule would also be contrary to the public interest for the same reason. In the case of East Anglia, we felt that risk considerations justified our regionalization approach. However, we understand the commenter's concerns, and we have taken actions to address them. One of the actions we took in this case was the preparation of a risk assessment on the disease status of East Anglia, which we made available to the public for comment prior to this final rule.

We took action at a regional level in the case of East Anglia because we believed that the disease situation warranted it. We already had extensive information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; the type and extent of disease surveillance conducted in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity. This information provided the basis for our previous recognition of the region as free of the disease. Our obligations under international trade agreements compel us to take no more restrictive actions than necessary to prevent the introduction of disease. Unless we determine that this information is no longer reliable, it should provide a rational basis for believing that the region can effectively control an outbreak within a smaller region.

Unjustified Emergency Action

Comment: While the CSF outbreak in East Anglia presented an emergency situation justifying the issuance of an interim rule in order to protect against the introduction of CSF into the United States, the specific action APHIS took was not justified. The emergency situation only justified an interim rule removing all of Great Britain from the list of CSF-free regions, and any action with respect to regionalizing East Anglia should have been handled according to the procedures in § 92.2.

Response: As explained previously, we believe that it was appropriate to limit the scope of our action to the specific region of East Anglia, given the specific disease situation and the extensive information we already possessed about East Anglia and Great Britain as a whole. Given these factors, we are confident that we had sufficient justification for taking action with respect to East Anglia on an emergency basis to protect against the introduction of CSF into the United States. We believe that any action to remove all of Great Britain from the list of CSF-free regions would have been unnecessary and unjustified.

Veterinary Equivalency Agreement

Comment: The Veterinary Equivalency Agreement (VEA) signed by the United States and the European Union (EU), which includes provisions concerning the recognition of regionalization decisions taken by the parties with respect to certain diseases, does not supercede or change U.S. statutory or regulatory law regarding regionalization. Thus, APHIS should have followed its procedures in part 92 in regionalizing East Anglia for CSF.

Response: The action that we took regarding East Anglia was not related to the VEA. As noted elsewhere in this document, we believe our action was consistent with our regulations and statutory authority, neither of which was affected by the VEA.

Inconsistency With Other Regionalization Requests

Comment: APHIS has received requests from the EU to recognize certain regions in the EU as free of specified animal diseases, but has not yet made any decisions or changes to the regulations based on these requests. How was APHIS able to reach a decision about the disease-free status of Great Britain with the exception of East Anglia while the other regionalization requests it had received from the EU have been under consideration since June 1999?

Response: The request that we received from the EU related to a much larger region that was not already recognized as free of CSF. In addition, that request related to establishing a single region composed of multiple countries, some of which continue to experience outbreaks of CSF. Immediate action at a regional level was not necessary in the case of the EU as it was for East Anglia. The amount of time necessary to reach a decision in these two situations is not comparable because the two situations are not comparable.

One factor that influenced the comparative speed of the evaluation of Great Britain in comparison with the evaluation of other EU regions was that Great Britain was already recognized individually as disease-free. In comparison, other EU regions under consideration were not previously recognized as disease-free, and several of these regions continue to experience periodic outbreaks of CSF. In addition, our long-standing trade relationship with Great Britain provided us with the information necessary to reach a decision about the disease status of the entire country. This particular outbreak was a temporary emergency situation that was ultimately limited to 16 sites in a particular region of the country and was contained and eradicated quickly.

Future Procedures

Comment: Veterinary infrastructure and animal health authorities of the United Kingdom are highly professional and extremely conscientious, and

APHIS confidence in them is well-founded. APHIS was also correct in its decision to take action in order to protect against the introduction of CSF into the United States. However, it is possible that APHIS might take similar action in the future (*i.e.*, prohibit or restrict the movement of animals and animal products from particular regions within a disease-free country rather than from the entire country) with countries whose veterinary infrastructures are not as adequate as that of the United Kingdom. Thus, APHIS should clarify the regionalization procedures it intends to follow in the future. Further, in the interim rule, APHIS stated that it intended to reassess the disease situation in East Anglia in accordance with the standards of the OIE to determine whether it is necessary to continue to prohibit or restrict the importation of animals and animal products from that region. This statement suggests that APHIS intends at some future time to declare these regions free of the specified disease without following the process set forth in § 92.2. Finally, does APHIS' stated intent to reassess the situation in accordance with the standards of the OIE mean that APHIS plans to wait until East Anglia had completed the 6-month disease-free waiting period prescribed by the OIE before it considered the region disease-free?

Response: We wish to note that we have developed a uniform set of procedures to be followed when a region that we recognize as free of disease experiences an outbreak of that disease. These procedures, which are described in a proposed rule published in the **Federal Register** on June 24, 2003 (68 FR 37426–37429, Docket No. 02–001–1), include steps we would take to prevent the introduction of disease from that region or from a portion of that region and steps we would take to further assess the region's animal health status. These procedures include the release of a risk assessment for public comment prior to final rulemaking.

We will continue to implement our thorough and rigorous risk assessment process and will continue to require information about the authority, organization, and infrastructure of the veterinary services organization of each region; the extent to which movements of animals and animal products are controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in each region; diagnostic laboratory capabilities in each region; and each region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity.

We will continue to take immediate action to protect U.S. livestock by prohibiting or restricting imports of animals and animal products from regions that experience outbreaks of specified animal diseases.

We will continue to reassess the disease status of each region in the context of the standards of the OIE and additional relevant information, and will continue to consider all public comments we receive regarding any action that we take. Although we do take international standards such as those of the OIE into consideration, we conduct independent risk assessments using our own stringent criteria. We do not base our decisions about the disease-free status of regions or countries on the decisions of the OIE.

The commenter is correct that our stated intent to reassess situations such as the one in East Anglia in accordance with the standards of the OIE means that we intend to declare regions free of specified diseases without following the process set forth in § 92.2. Rather, we will follow the process described in the previous paragraphs. As stated previously, part 92 was not specifically intended to apply to the type of situation dealt with in the interim rule that removed East Anglia from the list of CSF-free regions. An interim rule of that type is intended to be just that, an ''interim'' or ''temporary'' measure which provides the immediate protection necessary for animal health purposes. Interim rules of this type give APHIS an opportunity to evaluate the effectiveness of emergency response measures taken in the subject region to deal with the outbreak and to determine whether the outbreak is indeed a temporary situation or indicates a fundamental change in the region's disease status. If a region takes immediate and effective steps to control and eradicate the disease, as East Anglia did, we believe it is appropriate for the region to be returned to its previous disease-free status.

Therefore, for the reasons given in this document, and based on our evaluation, we are amending §§ 94.9 and 94.10 in this final rule to add East Anglia to the list of regions considered free of CSF.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. Immediate implementation of this rule is warranted to relieve certain CSF-related prohibitions and restrictions on the importation of swine and other products of swine into the United States from East Anglia that are no longer necessary. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

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

We are amending the regulations governing the importation of certain animals, meat, and other animal products by restoring East Anglia, a region of England that includes the counties of Essex, Norfolk, and Suffolk, to the list of regions considered free of CSF. This final rule follows an interim rule that removed East Anglia from that list due to the detection of CSF in that region. Based on the results of an evaluation of the current CSF situation in East Anglia, we have determined that East Anglia can be restored to the list of regions considered to be free of CSF. This rule relieves certain CSF-related prohibitions and restrictions on the importation of swine and other products of swine into the United States from East Anglia.

The economic effects of this rule on U.S. entities will depend upon the number of swine and the quantity of pork products that will be exported to the United States from East Anglia, and the significance of these exports with respect to overall U.S. swine and pork product imports. Swine and pork producers and pork product wholesalers are the entities we expect will be affected by this rule.

We do not have specific information on the level of swine or pork products imported from East Anglia before that region was removed from the list of regions considered free of CSF in August 2000. However, an indication of the level of imports from East Anglia that may result once the region is again considered CSF-free can be acquired by comparing imports of swine and pork products from the United Kingdom prior to and during the period of East Anglia's restriction. Average annual imports from the United Kingdom including East Anglia for the 3-year period 1997–1999 are compared to average annual imports from the United

Kingdom excluding East Anglia for the 2-year period 2001–2002.[1]

Live swine have been prohibited entry into the United States from East Anglia since August 2000. During 1997–1999, the number of swine imported from the United Kingdom averaged 249 per year, and represented about 0.01 percent of average U.S. imports of 3.8 million swine per year. The average annual value of swine imported from the United Kingdom was about $123,000, or about 0.05 percent of the average annual value of all swine imports ($265 million). The average price of swine imported from the United Kingdom during the period 1997–1999 was much higher than the average price of all swine imports ($567 per animal compared to $72 per animal), reflecting their value as breeding stock rather than slaughter stock.[2]

During 2001–2002, there were no swine imports from the United Kingdom. If all swine imported from the United Kingdom during 1997–1999 came, in fact, from East Anglia, then a similar number, if not more, can be expected to be imported once East Anglia is again considered CSF-free. Total annual imports from all sources in 2001–2002 increased to over 5.5 million swine. While the effect of renewed swine imports from East Anglia will be small in terms of its percentage share of swine imported by the United States, the high average price during 1997–1999 suggests that future imports may again help serve breeding demands of U.S. swine operations.

A similar comparison of pork product imports from the United Kingdom over the two time periods can be used in considering the impact of renewed importation of these commodities from East Anglia. During 1997–1999, the quantity of pork products imported from the United Kingdom averaged about 3.5 million kilograms per year, and represented about 1.55 percent of average U.S. imports of 225 million kilograms per year. Their average annual value was about $13 million, or about 2.76 percent of the average annual value of all product imports of $476 million.

During 2001–2002, there was a significant decline in the quantity of pork products imported from the United Kingdom, to about 509,400 kilograms per year, while total U.S. pork imports increased to 346 million kilograms per year. The United Kingdom's share of total imports fell to 0.15 percent, one-tenth of its share during 1997–1999. The average annual value was about $1.8 million, or about 0.24 percent of the average annual value of all pork product imports of $745 million (again, one-tenth of the United Kingdom's share during 1997–1999). The dramatic increase in annual pork product imports by the United States from the period 1997–1999 to the period 2001–2002—from 225 million kilograms to 346 million kilograms—contributed to the large percentage decline in imports from the United Kingdom.

If the decline in pork product imports from the United Kingdom was caused by the restrictions placed upon imports from East Anglia, then removal of those restrictions can be expected to result in a percentage share of U.S. imports for the United Kingdom similar to that acquired during 1997–1999, about 1.6 percent of total pork product imports by quantity and 2.8 percent by value. Based on the average annual level of total pork product imports during 2001–2002, these percentages represent about 5.4 million kilograms, valued at about $21 million.

Imports of swine and pork products from the United Kingdom are likely to expand once East Anglia is again considered CSF-free. The expansion could be noteworthy for the United Kingdom if exports to the United States return to the levels seen during 1997–1999: Breeding swine exports in the hundreds of animals per year where currently there are none, and an increase in pork product exports by a factor of 10. The economic effects will not be significant for U.S. entities. As a percentage of overall U.S. imports, the United Kingdom's supply of swine and pork products during 1997–1999 was small. Similar export levels can be expected to result from this rule.

Swine and pork producers and pork product wholesalers are the U.S. entities that may be affected by this rule. The Small Business Administration (SBA) has established size standards for determining which entities can be considered small, using the North American Industrial Classification System (NAICS). The SBA defines small hog and pig farms (NAICS 112210, ''Hog and pig farming'') as those earning not more than $750,000 in annual receipts. National Agricultural Statistics Service data on hog farm inventories include farm size categories, among others, with minimums of 2,000 and 5,000 head. Only those swine operations with inventories well in excess of 3,000 animals would likely earn more than $750,000 in annual sales.[3] Over 95 percent of U.S. swine operations hold inventories of fewer than 2,000 head. Thus, most swine and pork producers can be considered small entities based on SBA standards.

In the same way, pork product wholesalers are also primarily small entities. The SBA defines pork product wholesalers (NAICS 424420, ''Packaged frozen food merchant wholesalers,'' and NAICS 424470, ''Meat and meat product merchant wholesalers'') as small if they employ 100 or fewer employees. Information on the size distribution of meat wholesalers is not available, but the 1997 Economic Census indicates that the average number of employees per establishment that year was 14.[4]

Although the industries that may be affected by this final rule are largely composed of small entities, the economic effects of the rule will not be significant. While imports of swine and pork products from the United Kingdom are expected to increase as a result of this rule, their market shares of overall U.S. imports are expected to remain small.

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

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry

[1] All import statistics are from the World Trade Atlas, based on U.S. Census Bureau data.

[2] U.S. Census Bureau statistics indicate that 93 purebred breeding swine were imported from the United Kingdom in 1999, but that none were imported in 1997 or 1998. However, the average price paid for swine imported from the United Kingdom during the period 1997–1999 clearly suggests that animals classified as non-purebred breeding swine were imported for breeding purposes.

[3] Assuming about a 6-month production cycle, one inventory unit would roughly represent two annual sale units. An average price of $102 per head (230 pounds selling weight, at $44.30 per cwt, the average of hog prices in 2001), implies a gross revenue of $204 per head of inventory, yielding $750,000/$204 per head=3,676 head.

[4] As reported in the 1997 Economic Census of the U.S. Census Bureau, there were 3,557 meat and meat product wholesale establishments that had a total of 50,256 paid employees.

and poultry products, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

■ 1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

§ 94.9 [Amended]

■ 2. In § 94.9, paragraph (a) is amended by removing the words '',except for East Anglia (Essex, Norfolk, and Suffolk counties)''.

§ 94.10 [Amended]

■ 3. In § 94.10, paragraph (a) is amended by removing the words '',except for East Anglia (Essex Norfolk, and Suffolk counties)''.

Done in Washington, DC, this 9th day of October 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–26042 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–11–AD; Amendment 39–13338; AD 2003–21–03]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Models PW118, PW120, PW120A, and PW121 Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney Canada (PWC) models PW118, PW120, PW120A, and PW121 turboprop engines. This AD requires replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case. This AD is prompted by a report of an internal oil fire in the engine intercompressor case (ICC). A fire in the ICC could cause the existing tubes to disengage due to melted brazing on the tubes. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity. We are issuing this AD to prevent fire in the engine nacelle cavity, in-flight engine shutdown, and airplane damage.

DATES: This AD becomes effective November 20, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 20, 2003.

ADDRESSES: You can get the service information identified in this AD from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed airworthiness directive (AD). The proposed AD applies to PWC models PW118, PW120, PW120A, and PW121 turboprop engines. We published the proposed AD in the **Federal Register** on June 6, 2003 (68 FR 33885). That action proposed to require replacing the low pressure rotor speed (NL) sensor port sealing tube and reworking or replacing the external air tube connecting the P2.5/P3 switching valve to the rear inlet case.

Corrections to Accomplishment Paragraph References in the Compliance

Since the issuance of the notice of proposed rulemaking (NPRM), we found that the Accomplishment paragraphs referenced in compliance paragraphs (g), (h), (h)(1), and (h)(2) of the proposed rule are incorrect because of a change in service bulletin revisions. This AD corrects those Accomplishment paragraph references.

Comments

We provided the public with the opportunity to participate in the development of this AD. We have considered the comments received.

Request Credit for Compliance With Earlier Versions of Service Bulletin

Two commenters state that there is no reference in the NPRM to the original service bulletin (SB) or any earlier revisions. The commenters have received confirmation from the manufacturer that the original SB and earlier revisions are technically equivalent to PWC SB No. 20914, Revision 4, dated December 14, 2001. Therefore, they are requesting that compliance with the original SB or any earlier revisions be permitted as full compliance with the intent of the AD and that no further action be required.

The FAA agrees. The AD is revised to add new compliance paragraph (f). The regulatory section of this AD is renumbered from (e), (f), (g), (h), (i), and (j) to (e), (f), (g), (h), (i), (j), and (k).

Conclusion

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

Changes to 14 CFR Part 39—Effect on the AD

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

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–11–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 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):

2003–21–03 Pratt & Whitney Canada: Amendment 39–13338. Docket No. 2003–NE–11–AD.

Effective Date

(a) This AD becomes effective November 20, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney Canada (PWC) models PW118, PW120, PW120A, and PW121 turboprop engines. These engines are installed on, but not limited to, Empresa Brasileira de Aeronautica (EMBRAER) EMB–120RT, 120ER, and 120FC, Bombardier Inc. (formerly Dehavilland of Canada) DHC–8–100 series, and Aerospatiale ATR 42–200, –300, and –320 airplanes.

Unsafe Condition

(d) This AD is prompted by a report of an internal oil fire in the engine intercompressor case (ICC). A fire in the ICC could cause the existing tubes to disengage due to melted brazing on the tubes. Once these tubes disengage, the ICC fire then develops into an external fire within the engine nacelle cavity. We are issuing this AD to prevent fire in the engine nacelle cavity, in-flight engine shutdown, and airplane damage.

Compliance

(e) Compliance with this AD is required at the next engine shop visit, or within 90 days after the effective date of this AD, whichever occurs first, unless already done.

Credit for Previous Replacements and Rework

(f) Replacements and rework performed before the effective date of this AD, using PWC Service Bulletin (SB) No. 20914, Revision 4, dated December 14, 2001, the original issue, or Revision 1, 2, or 3, satisfy the requirements of paragraphs (g) through (h) of this AD.

Low Pressure Rotor Speed (NL) Sensor Port Sealing Tube

(g) Replace the low pressure rotor speed (NL) sensor port sealing tube with an improved durability tube, in accordance with paragraphs 3.A.(1) and 3.A.(2), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001.

Switching Valve-to-Rear Inlet Case Sealing Air Tube Assembly

(h) Remove the switching valve-to-rear inlet case sealing air tube assembly, in accordance with paragraph 3.B.(1), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001, and do the following:

(1) Either install an improved durability switching valve-to-rear inlet case sealing air tube assembly, in accordance with paragraph 3.B.(9), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001; or

(2) Rework the switching valve-to-rear inlet case sealing air tube assembly and install tube assembly, in accordance with paragraphs 3.B.(2), 3.B.(4), and 3.B.(9), Accomplishment Instructions of PWC SB No. 20914, Revision 4, dated December 14, 2001.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(j) You must use Pratt & Whitney Canada Service Bulletin No. 20914, Revision 4, dated December 14, 2001 to perform the actions required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney Canada, Technical Publications Department, 1000 Marie Victorin, Longueuil, Quebec J4G 1A1. You can review copies at FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(k) Transport Canada airworthiness directive No. CF–2002–10, dated January 28, 2002, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on October 6, 2003.

Francis A. Favara,

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

[FR Doc. 03–25865 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–184–AD; Amendment 39–13336; AD 2003–21–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas transport category airplanes, that requires an inspection to determine the material composition of the lower inboard auxiliary spar cap of the left and right wings. For certain airplanes, this AD also requires repetitive detailed and dye penetrant inspections for cracking of the spar cap, and corrective actions if necessary. This action is necessary to detect and correct stress corrosion cracking of the auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG. This action is intended to address the identified unsafe condition.

DATES: Effective November 20, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 20, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation

Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes was published in the **Federal Register** on April 16, 2003 (68 FR 18567). That action proposed to require an inspection to determine the material composition of the auxiliary spar cap of the lower inboard of the left and right wings. For certain airplanes, that action also proposed to require repetitive detailed and dye penetrant inspections for cracking of the spar cap, and corrective actions if necessary.

Changes to the Notice of Proposed Rulemaking (NPRM)

The FAA has reviewed the descriptive phrase, ''auxiliary spar cap of the lower inboard of the left and right wings,'' as specified in the NPRM, and has determined that the phrase, ''the lower inboard auxiliary spar cap of the left and right wing,'' is more consistent with the wording of McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991 (the service bulletin specified in the NPRM). Therefore, we have revised that phrase where it appears in this final rule.

We also have revised paragraph (b) of this final rule to more accurately reflect the intent of the referenced service bulletin by specifying that the detailed inspection and a dye penetrant inspection for cracking be performed on both the lower inboard auxiliary spar caps.

Additionally, we have revised paragraph (b) of the final rule, added new paragraphs (c) and (d) of the final rule, and renumbered subsequent paragraphs accordingly to clarify the follow-on actions required for any cracking that is found.

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 Clarify Compliance Time

One commenter requests that the FAA clarify the compliance time in paragraph (b) of the Notice of Proposed Rulemaking (NPRM). The commenter suggests that adding the words, ''whichever occurs later'' would clarify the intention of ''Within 2 years or 2,000 flight cycles.''

The FAA agrees that clarification is needed. We inadvertently omitted the qualifying phrase after the words, ''Within 2 years or 2,000 flight cycles.'' However, our intention was not to permit the operator to choose whichever compliance time occurred later. We have determined that a compliance time of within 2 years or 2,000 flight cycles, whichever occurs first, is sufficient and adequate time to perform the detailed inspection and dye penetrant inspections required by paragraph (b) of the AD. We point out that the inspections required by paragraph (b) of the AD are required within 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the inspection required by paragraph (a) of the AD. Paragraph (a) of the AD has a compliance time of within 24 months or 2,000 flight cycles after the effective date of the AD, whichever occurs later. Considering the ample lead time to plan for these inspections, we have determined that a compliance time of 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the compliance time of paragraph (a) of the AD, is reasonable and provides an adequate level of safety of the affected fleet. We have revised paragraph (b) of the AD to clarify that the qualifying phrase for the compliance time is, ''Within 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the compliance time of paragraph (a).'' However, under the provisions of paragraph (e) of the AD, we may approve requests for adjustments to the compliance time if data are submitted to substantiate that such adjustments would provide an acceptable level of safety.

Request To Extend the Repetitive Inspections Intervals

The same commenter also requests that the repetitive inspection interval specified in paragraph (b)(2) of the NPRM be increased from 1,600 flight cycles to 1,800 flight cycles. The commenter explains that such an extension of the repetitive inspection interval would coincide with the ''C'' check interval for its fleet. In addition, the commenter points out that the FAA has an obligation to consider many factors, such as other AD requirements and compliance times, when developing an appropriate compliance time. The commenter considers that the proposed repetitive inspection interval also would require scheduling special times to accomplish the inspections—at considerable additional expense.

We do not concur that the repetitive inspection interval should be extended. In developing an appropriate inspection interval for this AD, we considered the manufacturer's recommendation, the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections. In light of all of these factors, we find that a repetitive inspection interval of 1,600 flight cycles represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety. No change is necessary to the final rule in this regard. However, under the provisions of paragraph (e) of the AD, we may approve requests for adjustments to the repetitive inspection interval if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Conclusion

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

Changes to 14 CFR part 39/Effect on the AD

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

Change to Labor Rate Estimate

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

information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 264 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $31,720, or $130 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2003–21–02 McDonnell Douglas: Amendment 39–13336. Docket 2001–NM–184–AD.

Applicability: Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; Model DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; Model DC–8F–54 and DC–8F–55 airplanes; Model DC–8–61, DC–8–62, and DC–8–63 airplanes; Model DC–8–61F, DC–8–62F, and DC–8–63F airplanes; Model DC–8–71, DC–8–72, and DC–8–73 airplanes; as listed in McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991; certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the lower inboard auxiliary spar cap, which could cause excessive loads to the structure attaching the support fitting of the main landing gear (MLG) to the wing, and result in loss of the MLG; accomplish the following:

Inspection To Determine the Material of the Auxiliary Spar Cap

(a) Within 24 months or 2,000 flight cycles after the effective date of this AD, whichever occurs later, inspect to determine the material composition of the lower inboard auxiliary spar cap (part numbers 5615058–1 through –506 inclusive) of the left and right wings, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or by performing an eddy current test of the auxiliary spar cap per the Non-Destructive Testing Standard Practice Manual MDC–93K0393 (NDTSPM) 06–10–01.006. If the material of the spar cap is 7075–T73 aluminum, no further action is required by this paragraph.

Inspections for Cracking and Follow-on Corrective Actions

(b) If the material of the lower inboard auxiliary spar cap found during the inspection required by paragraph (a) of this AD is 7075–T6 aluminum: Within 2 years or 2,000 flight cycles, whichever occurs first, after accomplishing the inspection required by paragraph (a) of this AD, perform a detailed inspection and a dye penetrant inspection for cracking of both of the lower inboard auxiliary spar caps; per McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991. If no cracking is detected, repeat the inspection at intervals not to exceed 6,400 flight hours, until both auxiliary spar caps are replaced with spar caps made with 7075–T73 aluminum, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

Follow-on Corrective Actions for Certain Cracking

(c) For any cracking detected that is described in Conditions II through IV of the Accomplishment Instructions of McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991: Before further flight, accomplish the applicable corrective actions (rework, repair, apply corrosion inhibiting compound, or replace fittings) per the service bulletin. For Conditions II through IV, repeat the inspection for cracking at intervals specified in paragraph 1.D of the service bulletin not to exceed 1,600 flight cycles. Replacement of both spar caps with 7075–T73 aluminum is terminating action for the requirements of this AD.

Follow-on Corrective Actions for Certain Other Cracking

(d) If any cracking is detected that is described in Condition V or VI of the Accomplishment Instructions of McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991: Before further flight, replace the auxiliary spar cap with a cap composed of 7075–T73 aluminum, in accordance with the service bulletin, or repair by a method approved by the Manager, Los Angeles ACO. For a repair method to be approved by the Manager, Los Angeles ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

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

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with McDonnell Douglas DC–8 Service Bulletin 57–85, Revision 1, dated July 5, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on November 20, 2003.

Issued in Renton, Washington, on October 7, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–25869 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05–02–108]

RIN 1625–AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Jordan (S337) bridge, the Gilmerton (US 13/460) bridge, and the Dominion Boulevard (US 17) bridge that all span the Southern Branch of the Elizabeth River, and the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal. The changes are necessary in order to relieve increased vehicular traffic congestion during weekday rush hours and to reduce traffic delays while still providing for the reasonable needs of navigation. The change will extend the morning and evening rush hour closure periods between one hour and one-half hour for the Jordan, Gilmerton and Dominion bridges and add rush hour schedule openings for the Centerville Turnpike bridge.

DATES: This rule is effective November 17, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05–02–108) and are available for inspection or copying at the Commander (oan-b), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23703–5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Linda Bonenberger, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6227.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 12, 2003, we published a notice of proposed rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal, Chesapeake, VA'' in the **Federal Register** (68 FR 7087). We received 84 written comments and two petitions on the proposed rule. No public hearing was requested nor held.

Background and Purpose

The Virginia Cut of the Atlantic Intracoastal Waterway (AICW) extends approximately 28 statute miles from the Southern Branch of the Elizabeth River to the North Landing River. General regulations governing the operation of bridges are set out in 33 CFR 117.1 through 117.49. Specific drawbridge regulations, which supplement the general regulations for certain AICW bridges, are set out in 33 CFR 117.997.

The City of Chesapeake (the City), through a Resolution submitted by the Chesapeake City Council, requested changes to the existing regulations for the Jordan, Gilmerton, Dominion Boulevard and Centerville Turnpike bridges crossing the AICW, in order to balance the needs of mariners and motorists transiting in and around Chesapeake. Bridge openings at peak traffic hours during the weekdays cause considerable backups. The City is seeking to reduce the amount of vehicular traffic congestion during the weekday morning and evening rush hours. The City requested an additional change for the Dominion Boulevard bridge, from opening on signal to opening on the hour and half hour between peak traffic hours.

Recreational, public, and commercial vessels use the AICW. During the spring and fall months, the flow of recreational vessels is constant due to vessel owners that are referred to as ''snowbirds''. Owners of these recreational vessels are either transiting north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring and this can result in excessive bridge openings during the rush hour due to their numbers.

On February 12, 2003, a NPRM was published in the **Federal Register** (68 FR 7087) proposing changes to the Jordan, Gilmerton, and Dominion Boulevard bridges that all span the Southern Branch of the Elizabeth River and the Centerville Turnpike bridges across the Albemarle and Chesapeake Canal. As a result of this proposal, 84 comments and two petitions were received on the proposed changes. Based on all the information received, we have made no changes from the proposed schedules for the Jordan, Gilmerton and Centerville Turnpike Bridges. However, we have made changes to the final rule for the Dominion Boulevard Bridge.

Discussion of Comments and Changes

Jordan Bridge

The Coast Guard received 12 comments on the NPRM for the Jordan Bridge. Seven of the comments requested a change in the start of the morning rush hour closure period by a half-hour from 6:30 a.m. to 6 a.m. The Coast Guard reviewed the City's weekday road traffic counts that were conducted in 1996 and again in 2001. The rush hour traffic count for these years revealed that vehicular traffic starts around 6:30 a.m. during the weekday. The remaining five comments requested mid-point bridge openings for vessels at 7:30 a.m., during the morning closure period from 6:30 a.m. to 8:30 a.m., and 4:30 p.m., during the evening

closure period from 3:30 p.m. to 5:30 p.m. Based on the increased frequency of weekday vehicular traffic, as discussed in the NPRM, providing a mid-point bridge opening would undo the intent for reducing traffic congestion. The Coast Guard considered the comments, but has not changed the final rule.

Gilmerton Bridge

The Coast Guard received 10 comments on the NPRM for the Gilmerton Bridge. Two comments requested that vessel openings be provided only on the hour or half-hour between the morning and evening rush hours. The remaining eight comments requested an extension of the evening closure period. The Coast Guard reviewed the draw logs and believes the proposal is designed to balance the competing needs of vehicular and vessel traffic. The Coast Guard considered the comments, but has not changed the final rule.

Dominion Boulevard Bridge

The Coast Guard received 48 comments and two petitions on the NPRM for the Dominion Boulevard Bridge. Thirty-four comments requested changing the proposed opening schedule on the hour and half-hour between 8:30 a.m. and 5 p.m., Monday through Friday, except Federal holidays, to open every hour on the half-hour during this period.

The Great Bridge (S168) Bridge across the Albermarle and Chesapeake Canal at mile 12.0 located just south of the Dominion Boulevard Bridge provides drawbridge openings on the hour between 6 a.m. to 7 p.m., seven days a week, year round. The Great Bridge Locks, (the Locks) owned and operated by the U. S. Army Corps of Engineers, (the Army Corps) is located between the Dominion Boulevard and the Great Bridge (S168) Bridges. The Locks opens for vessels traveling south on demand between 7 a.m. to 6 p.m., seven days a week. In practice, the Locks close their gates near the quarter of the hour at which time the water level is raised. However, according to the Army Corps if a boater reaches the gates after they have been closed, the Army Corps will open the gates to allow the boater inside in order to avoid missing the hourly opening of the Great Bridge (S168) Bridge. After attaining the required water level, the gates are opened so boaters can continue their transit with the hourly opening schedule of the Great Bridge (S168) Bridge.

A study conducted on March 3, 1999, determined an average transiting time of mariners at each location along the AICW between the Dominion Boulevard and the Great Bridge (S168) Bridges. A 41-foot Coast Guard (CG) Search and Rescue vessel assisted in the study. The Coast Guard vessel traveling at an average speed of 10 knots, determined to be the average speed of most AICW boaters, started at the Dominion Boulevard Bridge at approximately 10:13 a.m. Proceeding south of the Dominion Boulevard Bridge, the CG vessel arrived at the Locks at approximately 10:30 a.m. The Locks released the CG vessel at approximately 10:50 a.m. At 10:54 a.m., the CG vessel arrived in time for the scheduled hour opening of the Great Bridge (S168) Bridge. The CG vessel transiting time between the Dominion Boulevard and Great Bridge (S168) Bridges totaled 41 minutes. This total transit time included the 20 minutes the CG vessel waited for the Locks to open.

Based on the transit times, we have determined changing the regulations that govern the operation of the Dominion Boulevard Bridge to open every hour on the half-hour to coincide with the Great Bridge (S168) Bridge and the Locks will enable transient craft to reduce delays in navigating the AICW while also helping to ease vehicular traffic congestion. The bridge will open on signal for commercial vessels that provide a 2-hour advance notice and will open on demand at all times for commercial vessels carrying liquefied flammable gas or other hazardous materials. The final rule was changed to reflect these modifications.

The remaining 14 comments requested no vessel openings of the Dominion Boulevard Bridge during the morning and evening closure periods. The Coast Guard considered these comments, but has not changed the final rule.

Two petitions offered by local marinas requested a change to the proposed schedule between 8:30 a.m. and 5 p.m. Monday through Friday, except Federal holidays, from year-round to Memorial Day through Labor Day. The local marina owners also suggested that due to the high volume of ''snowbirds'' transiting the AICW, openings should be provided on signal before Memorial Day and after Labor Day for the safety of navigation.

The remaining comments indicate that road congestion starts at 4 p.m. versus 5 p.m. The final rule will maintain the current evening closure period from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

The Coast Guard considered these changes to be more efficient and safer to navigation and the final rule was changed to reflect these modifications.

Centerville Turnpike Bridge

The Coast Guard received 17 comments on the NPRM for the Centerville Turnpike bridge. The comments varied to change the half-hour opening proposal for recreational vessels between 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays to provide one and two hour openings. Based on the draw logs and traffic counts provided by the City, an additional restriction is unfair to the boating public and would be potentially hazardous to boaters. The Coast Guard considered the comments, but has not changed the final rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We reached this conclusion based on the fact that this rule will have only a minimal impact on maritime traffic transiting the bridges. Mariners can plan their transits in accordance with the scheduled bridge openings, to further minimize delay.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less that 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation, and mariners can plan their transits in accordance with the schedule bridge openings to minimize delay.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1966 (Pub. L. 104–121), we offered to assist small entities in

understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or options for compliance.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1 paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. In § 117.997 paragraphs (b)(1), (b)(2) introductory text, (b)(2)(i), (d)(1), (d)(2) introductory text, (d)(2)(i), (f) and (i) are revised to read as follows:

§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to Albemarle and Chesapeake Canal.

* * * * *

(b) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (b)(2)(ii) of this section.

* * * * *

(d) * * *

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (d)(2)(ii) of this section.

* * * * *

(f) The draw of the Dominion Boulevard (US 17) bridge, mile 8.8 in Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (f)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Dominion Boulevard bridge at (757) 547–0521.

(3) From Memorial Day to Labor Day, from 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need be opened only every hour on the half-hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the half hour, the drawtender may delay the opening up to ten minutes past the half hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(5) Shall open on signal at all other times.

* * * * *

(i) The draw of the Centerville Turnpike (SR170) bridge across the Albemarle and Chesapeake Canal, mile 15.2, at Chesapeake:

(1) Shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials.

(2) From 6:30 a.m. to 8:30 a.m. and from 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays:

(i) Need not open for the passage of recreational or commercial vessels that do not qualify under paragraph (i)(2)(ii) of this section.

(ii) Need not open for commercial cargo vessels, including tugs, and tugs with tows, unless 2 hours advance notice has been given to the Centerville Turnpike bridge at (757) 547–3632.

(3) From 8:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays, the draw need only be opened on the hour and half hour.

(4) If any vessel is approaching the bridge and cannot reach the draw exactly on the hour or half hour, the drawtender may delay the opening ten minutes past the hour or half hour for the passage of the approaching vessel and any other vessels that are waiting to pass.

(5) Shall open on signal at all other times.

Dated: October 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U. S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 03–26131 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–153]

RIN 1625–AA00

Safety/Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety/security zone at the Cove Point Liquefied Natural Gas (LNG) Terminal under 33 CFR 165.502. This is in response to the re-opening of the terminal by Dominion Power in July 2003. This safety and security zone is necessary to help ensure public safety and security. The zone will prohibit vessels and persons from entering a well-defined area of 500 yards in all directions around the Cove Point LNG Terminal.

DATES: This rule is effective from September 26, 2003, through January 5, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CG05–03–153] and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Dulani Woods, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2513.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2003, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled ''Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland'' (68 FR 13647). In it we proposed a permanent safety and security zone. We received six letters commenting on the proposed rule. And in response to a request for a public meeting, we announced a June 5, 2003 public meeting and reopened the comment period to June 12, 2003. (68 FR 26247, May 15, 2003).

On August 1, 2003, we published a temporary final rule (TFR) entitled ''Safety and Security Zone; Cove Point Natural Gas Terminal, Chesapeake Bay, Maryland, to provide temporary protection while the rulemaking for the permanent rule was underway (68 FR 45165). That TFR expired September 26, 2003.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard is currently reviewing the additional comments received during the re-opened comment period and public meeting and requires more time to develop the final rule based on these additional comments. The Coast Guard believes it is in the best interest of public safety to establish this temporary safety and security zone while it continues to consider comments that may affect the final rule.

Background and Purpose

In preparation for the re-opening of the LNG terminal at Cove Point, MD, the Coast Guard is evaluating the current safety zone established in 33 CFR 165.502. This safety zone was established during the initial operation of the terminal in 1979 and includes both the terminal and associated vessels. To better manage the safety and security of the LNG terminal, this rule incorporates necessary security provisions and changes the size of the zone. This rule establishes a 500 yard combined safety zone and security zone in all directions around the LNG terminal at Cove Point.

Based on the September 11, 2001 terrorist attacks on the World Trade Center buildings in New York, NY and the Pentagon building in Arlington, VA, there is an increased risk that subversive activity could be launched by vessels or persons in close proximity to the Cove Point LNG Terminal. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Espionage Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) (''Magnuson Act''), section 104 of the Maritime Transportation Security Act of November 25, 2002, and by implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

Discussion of This Rule

This temporary final rule is identical to the previous TFR published in the **Federal Register** (68 FR 45165) on August 1, 2003. The Coast Guard was unable to publish an extension to that rule, but the practical effect of this new TFR is the same—to continue to provide a temporary safety and security zone in this area.

The Coast Guard is establishing a temporary safety and security zone on specified waters of the Chesapeake Bay near the Cove Point Liquefied Natural Gas Terminal to reduce the potential threat that may be posed by vessels or persons that approach the terminal. The zone will extend 500 yards in all directions from the terminal. The effect will be to prohibit vessels or persons entry into the safety and security zone, unless specifically authorized by the Captain of the Port, Baltimore, Maryland. Federal, state and local agencies may assist the Coast Guard in the enforcement of this rule.

Regulatory Evaluation

This rule is not a ''significant regulatory action'' under section 3(f) of

Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). This regulation is of limited size, and vessels may transit around the zone.

There may be some adverse effects on the local maritime community that has been using the area as a fishing ground. Since the terminal has not been in operation, the Coast Guard has not enforced the current zone under 33 CFR 165.502. Commercial vessel operators have been using the area on a regular basis for commercial fishing, passenger tours, and fishing parties. Enforcement of the proposed zone or the current zone will prohibit these commercial vessel operators from using this area.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chesapeake Bay near the Cove Point LNG Terminal.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that will limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a security zone. A final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From September 26, 2003, through January 5, 2004, add § 165.T05–153 to read as follows:

§ 165.T05–153 Safety and Security Zone; Cove Point Liquefied Natural Gas Terminal, Chesapeake Bay, Maryland.

(a) *Location.* The following area is a safety and security zone: All waters of the Chesapeake Bay, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°24′27″ N, 076°23′42″ W, thence to 38°24′44″ N, 076°23′11″ W, thence to 38°22′55″ N, 076°22′27″ W, thence to 38°23′37″ N, 076°22′58″ W, thence to beginning at 38°24′27″ N, 076°23′42″ W. These coordinates are based upon North American Datum (NAD) 1983. This area is 500 yards in all directions from the Cove Point LNG terminal structure.

(b) *Regulations.* (1) In accordance with the general regulations in §§ 165.23 and 165.33 of this part, entry into or movement within this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland or his designated representative. Designated representatives include any Coast Guard commissioned, warrant, or petty officer.

(2) Persons desiring to transit the area of the zone may contact the Captain of the Port at telephone number (410) 576–2693 or via VHF Marine Band Radio channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

(c) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, local, and private agencies.

Dated: September 26, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–26128 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERAN AFFAIRS

38 CFR Part 3

RIN 2900–AL55

Disease Associated With Exposure to Certain Herbicide Agents: Chronic Lymphocytic Leukemia

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection for certain diseases for which there is no record during service. This amendment is necessary to implement the decision of the Secretary of Veterans Affairs that there is a positive association between exposure to herbicides used in the Republic of Vietnam during the Vietnam era and the subsequent development of chronic lymphocytic leukemia (CLL). The effect of this amendment is to establish presumptive service connection for that condition based on herbicide exposure.

DATES: *Effective Date:* October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Konieczny, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–6779.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on March 26, 2003 (68 FR 14567–14570), VA proposed to amend its adjudication regulations to provide for a presumption of service connection for CLL based on herbicide exposure. VA provided a 60-day comment period which ended on May 27, 2003. We received a written comment from Vietnam Veterans of America (VVA) and a joint written comment from two individuals.

Comments Supporting the Proposed Rule

The joint comment from two individuals expressed support for the proposed rule.

Outreach Mechanisms

One commenter urged that the final rule specifically state that VA will develop and implement outreach mechanisms by which attempts will be made to contact all in-country Vietnam veterans who are eligible for this benefit.

VA has already initiated a number of outreach activities. In January 2003, VA issued a news release concerning the Secretary's decision regarding CLL. This news release has also been distributed at health fairs, health care conferences, and on the National Mall in conjunction with Public Service Recognition Week. An article conveying this information can currently be found on VA's Web site. The lead article of the July issue of the Agent Orange Review, which will be sent to hundreds of thousands of Vietnam veterans, is about the Secretary's decision regarding CLL. Further, outreach efforts are procedural in nature, and are outside the scope of this rulemaking; therefore, no change is made based on this comment.

Establish a Retroactive Effective Date

The same commenter urged that the final rule state that compensation for CLL will be retroactive for those eligible in-country Vietnam veterans who had previously applied for benefits based on CLL and were denied. We will make no change based on this comment because VA does not have authority to award such retroactive benefits. As explained below, existing statutes make clear that VA may not award retroactive benefits based on this final rule for any period before the date this final rule is published in the **Federal Register**. Those statutes prohibit VA from granting benefits retroactive to the date of a previously denied claim. No statute or judicial decision authorizes VA to ignore those statutory requirements for purposes of this final rule.

Title 38 U.S.C. 1116(c)(2) clearly and unambiguously requires that regulations promulgated as a result of a decision of the Secretary of Veterans Affairs that a positive association exists between exposure to herbicides and a specified condition or disease ''shall be effective on the date of issuance.'' The effective date established by this rule is in accordance with 38 U.S.C. 1116(c)(2). Under 38 U.S.C. 5110(g), when benefits are awarded based on a new regulation, the effective date of the award may not be earlier than the effective date of the regulation. In view of 38 U.S.C. 1116(c)(2) and 5110(g), VA does not have authority to provide in this rule for assignment of an effective date earlier than the date on which this rule is issued.

We note that a series of orders from the United States District Court for the Northern District of California in the class-action litigation in *Nehmer* v. *U.S. Veterans' Administration* requires VA to pay retroactive benefits for certain diseases associated with herbicide exposure, in certain circumstances, in a manner that would otherwise be prohibited by 38 U.S.C. 1116(c)(2) and 5110(g). We conclude, however, that those orders do not apply to benefits based on a disease for which the Secretary of Veterans Affairs establishes a presumption of service connection after September 30, 2002.

The *Nehmer* court orders rely upon a May 1991 Final Stipulation and Order between the parties to that litigation. The 1991 stipulation and order required VA to accord retroactive effect to presumptions of service connection established by VA pursuant to the Agent Orange Act of 1991, Public Law 102–4. The Agent Orange Act of 1991, Public Law 102–4, established a sunset date of September 30, 2002, for the Secretary to establish such presumptions. Accordingly, the *Nehmer* stipulation and order applies only to awards based on presumptions established within the

time frame specified in the Agent Orange Act of 1991, Public Law 102–4.

The Agent Orange Act of 1991, Public Law 102–4, added section 1116 to title 38, United States Code. Section 1116(b) authorized the Secretary of Veterans Affairs to issue regulatory presumptions of service connection for diseases associated with herbicide exposure. Section 1116(e), as added by the Act, stated that section 1116(b) would cease to be effective 10 years after the first day of the fiscal year in which the NAS transmitted its first report to VA. The first NAS report was transmitted in June 1993, during the fiscal year that began on October 1, 1992. Accordingly, under the Act, VA's authority to issue regulatory presumptions as specified in section 1116(b) would have expired on September 30, 2002.

In December 2001, Congress enacted the Veterans Education and Benefits Expansion Act of 2001 (Benefits Expansion Act), Public Law 107–103, section 201(d) of which extended VA's authority under section 1116(b) through September 30, 2015. Pursuant to this statute, VA may issue new regulations between October 1, 2002, and September 30, 2015, establishing additional presumptions of service connection for diseases that are found to be associated with herbicide exposure based on evidence contained in future NAS reports. Because presumptions established pursuant to the authority of the Benefits Expansion Act, Public Law 107–103 are beyond the scope of the *Nehmer* stipulation and order, the effective-date provisions of the stipulation and order would not apply to benefit awards based on those presumptions.

The United States District Court for the Northern District of California and the United States Court of Appeals for the Ninth Circuit stated that the *Nehmer* stipulation and order applies only to awards based on presumptions issued within the time period established by the Agent Orange Act of 1991, Public Law 102–4. The district court noted that the retroactive payment provisions of the stipulation and order are ''expressly tied'' to the Agent Orange Act of 1991, Public Law 102–4, and that ''the Stip. & Order is not therefore boundless.'' *Nehmer* v. *United States Department of Veterans Affairs,* No. CV–86–6160 TEH (N.D. Cal. Dec. 12, 2000). The Ninth Circuit stated that ''the district court was careful to prescribe temporal limits on the effect of the consent decree, with which we agree.'' *Nehmer* v. *Veterans' Administration,* 284 F.3d 1158, 1162 n.3 (9th Cir. 2002).

In its December 12, 2000, order, the district court held that the 1991 stipulation and order must be interpreted in accordance with general principles of contract law. It is well established that, unless the parties provide otherwise, a contract is presumed to incorporate the law that existed at the time the contract was made. See *Norfolk & Western Ry. Co.* v. *American Train Dispatchers' Ass'n,* 499 U.S. 117, 129–30 (1991). The terms of a contract ''do not change with the enactment of subsequent legislation, absent a specific contractual provision providing for such a change.'' *Winstar Corp.* v. *United States,* 64 F.3d 1531, 1547 (Fed. Cir. 1995), *aff'd*, 518 U.S. 839 (1996). A subsequent change in the law cannot retrospectively alter the terms of the agreement. See *Florida East Coast Ry. Co.* v. *CSX Transportation, Inc.,* 42 F.3d 1125, 1129–30 (7th Cir. 1994). Accordingly, the enactment of the Benefits Expansion Act of 2001 cannot expand the Government's authority under the May 1991 stipulation and order.

VA is required to give effect to the clear statutory requirements in 38 U.S.C. 1116(c)(2) and 5110(g), in the absence of authority to the contrary. To the extent the *Nehmer* court orders require action seemingly at odds with those statutes, we believe they are most reasonably viewed as creating a non-statutory exception to the requirements of 38 U.S.C. 1116(c)(2) and 5110(g). We believe it would be inappropriate, however, to disregard the clear requirements of section 1116(c)(2) and 5110(g) in cases that are not within the scope of the *Nehmer* court orders. The United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for Veterans Claims have held that 38 U.S.C. 5110(g) governs the effective date of awards made pursuant to regulatory presumptions of service connection for diseases associated with herbicide exposure, at least in cases that are not clearly within the scope of the *Nehmer* court orders. See *Williams* v. *Principi,* 15 Vet. App. 189 (2001) (en banc); *aff'd,* 310 F.3d 1374 (Fed. Cir. 2002). Accordingly, the district court orders in the *Nehmer* case do not permit VA to ignore the clear requirements of 38 U.S.C. 1116(c)(2) and 5110(g) as they apply to this final rule or to grant retroactive benefits in a manner prohibited by those statutes. We therefore make no change based on this comment.

Eligibility of Widows

The commenter urged that the final rule state that widows of in-country Vietnam veterans who died as a result of CLL are eligible for dependency and indemnity compensation (DIC). This rule is not intended to define the criteria governing eligibility for DIC or any other benefit. Several existing statutes and regulations already provide that veterans and their survivors are entitled to benefits for disability or death due to a service-connected disease or injury. This rule would establish a presumption that CLL is service connected in veterans who were exposed to certain herbicide agents used in Vietnam and who subsequently developed that disease. That presumption will assist claimants in establishing entitlement to specific benefits under the statutes and regulations authorizing such benefits, and will apply whether the claimant is a veteran seeking compensation or a survivor seeking service-connected death benefits. We therefore make no change based on this comment, because the suggested change is beyond the scope of this rule and is unnecessary.

Extend Eligibility to Those Who Served on Naval Vessels

The commenter urged that we extend eligibility to service connection for CLL to all Vietnam veterans who served within the geographical boundaries of the Republic of Vietnam and those who served on naval vessels within the territorial waters of the Republic of Vietnam. As revised by this final rule, 38 CFR 3.309(e) will expressly provide that CLL will be presumed service connected in any veteran who was exposed to certain herbicide agents during service. Veterans who served in the Republic of Vietnam between January 9, 1962, and May 7, 1975, are presumed to have been exposed to such herbicide agents. Veterans who served only in other locations or at other times, including those who served on naval vessels in the territorial waters of Vietnam but never set foot within the Republic of Vietnam, would need to establish that they were exposed to herbicide agents during service.

Title 38 U.S.C. 1116 requires that a veteran have served ''in the Republic of Vietnam'' to be eligible for the presumption of exposure to herbicides. 38 CFR 3.307(a)(6)(iii) provides that ''Service in the Republic of Vietnam'' includes service in offshore waters or other locations only if the conditions of service involved duty or visitation within the Republic of Vietnam. In interpreting similar language in 38 U.S.C. 101(29)(A), VA's General Counsel has concluded that service in a deep-water vessel in waters offshore the Republic of Vietnam does not constitute service ''in the Republic of Vietnam.'' (*See* VAOPGCPREC 27–97.) VA's regulatory definition of ''Service in the Republic of Vietnam'' predates the

enactment of section 1116(a)(3) (see former 38 CFR 3.311a(a)(1)(1990)), and we find no basis to conclude that Congress intended to broaden that definition. The commenter cited no authority for concluding that individuals who served in the waters offshore of the Republic of Vietnam were subject to the same risk of herbicide exposure as those who served within the geographic boundaries of the Republic of Vietnam, or for concluding that offshore service is within the meaning of the statutory phrase ''Service in the Republic of Vietnam.'' We therefore make no change based on this comment.

CLL and Non-Hodgkin's Lymphoma

The commenter stated that because of the common etiology and shared symptoms between CLL and non-Hodgkin's lymphoma (NHL), all in-country Vietnam veterans who are eligible for compensation because of NHL should also be eligible for CLL diagnoses, treatment plans, and compensation.

We disagree. While CLL and NHL may share certain traits and symptomatology, they are, nonetheless, distinct diagnostic entities, both of which VA presumes to result from herbicide exposure. We believe the responsibilities of diagnosing disease and establishing treatment plans must rest with health care professionals. Further, it would be improper and contrary to current statutes to provide for automatic compensation for a disease that the claimant may not even have. Whether a veteran has one of these conditions, or which one, must be established by competent medical evidence. Therefore, no changes have been made based on this comment.

Based on the rationale set forth in the proposed rule document and this document, we are adopting the provisions of the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Executive Order 12866

This final rule has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: August 27, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A ''Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. In § 3.309, paragraph (e), the listing of diseases is amended by adding ''Chronic lymphocytic leukemia'' between ''Hodgkin's disease'' and ''Multiple myeloma'' to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(e) * * *

Chronic lymphocytic leukemia

* * * * *

[FR Doc. 03–26252 Filed 10–15–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7575–1]

West Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: West Virginia has applied to EPA for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing West Virginia's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize West Virginia's changes to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize changes to West Virginia's program that were the subject of adverse comment.

DATES: This final authorization will become effective on December 15, 2003, unless EPA receives adverse written comments by November 17, 2003. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Comments may also be submitted electronically to *ellerbe.lillie@epa.gov* or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. You may inspect and copy West Virginia's application from 8 a.m. to 4:30 p.m., at the following addresses: West Virginia Department of Environmental Protection

(WVDEP), Division of Water and Waste Management, 1356 Hansford Street, Charleston, WV 25301–1401, Phone number: (304) 558–2505, attn: Carroll Cather, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes to become more stringent or broader in scope, States must change their programs and apply to EPA to authorize the changes. Authorization of changes to State 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 Decisions Has EPA Made in This Rule?

EPA concludes that West Virginia's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant West Virginia final authorization to operate its hazardous waste program with the changes described in its application for program revisions, subject to the procedures described in Section E, below. West Virginia has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which West Virginia has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision serves to authorize revisions to West Virginia's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which West Virginia is being authorized by today's action are already effective and are not changed by today's action. West Virginia has enforcement responsibilities under its State hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether West Virginia has taken its own actions.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize West Virginia's program changes. If EPA receives comments which oppose this authorization, or portions thereof, that document will serve as a proposal to authorize the changes to West Virginia's program that were the subject of adverse comment.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, or portions thereof, we will withdraw this rule, or portions thereof, as appropriate, by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of West Virginia's program changes on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose the authorization of a particular change to the State's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has West Virginia Previously Been Authorized for?

Initially, West Virginia received final authorization to implement its hazardous waste management program effective May 29, 1986 (51 FR 17739). EPA granted authorization for changes to West Virginia's regulatory program on May 10, 2000, effective July 10, 2000 (65 FR 29973).

G. What Changes Are We Authorizing With Today's Action?

On June 4, 2003, West Virginia submitted a program revision application, seeking authorization of additional changes to its program in accordance with 40 CFR 271.21. West Virginia's revision application includes various regulations which are equivalent to, and no less stringent than, changes to the Federal hazardous waste program, as published in the **Federal Register** through March 8, 2000. We now make an immediate final decision, subject to receipt of written comments that oppose this action, the West Virginia's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants West Virginia final authorization for the following program changes:

West Virginia seeks authority to administer the Federal requirements that are listed in Table 1. This Table lists the State analogs that are being recognized as so less stringent than the appropriate Federal requirements. Unless otherwise stated, the State's statutory references are to the West Virginia Code (W. Va. Code), 1994 Cumulative Supplement, Chapter 22–Environmental Resources, Article 1 (Division of Environmental Protection), Article 5 (Air Pollution Control), and Article 18 (Hazardous Waste Management Act). The regulatory references are to the following Legislative Rules: Title 33, Series 20, Code of State Regulations (33CSR20), ''Hazardous Waste Management Rule'', effective July 1, 2001; 45CSR25, ''To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities,'' effective July 1, 2001; and 47CSR13 Underground Injection Control'' effective June 1, 2002.

In particular, West Virginia is seeking authority for the Federal Corrective Action Program under HSWA as addressed in Revision Checklists 17L, 44A, B, C, and 121; Federal delisting requirements at 40 CFR 260.22, Revision Checklist 17B; post closure permit requirement and closure process regulations (alternative to post-closure rule), Revision Checklist 174; the radioactive mixed waste requirements, and Project XL rulemaking for Osi Specialities, Inc., Sisterville, WV (aka Crompton Corporation).

Description of Federal Requirement (Revision Checklists[1])	Analogous West Virginia Authority
Early Checklists	
Consolidated Delisting Checklist, Hazardous Waste Management System: General 40 CFR 260.20 and 260.22 as of June 30, 1999 (Incluides Revision Checklist 17B).	West Virgina Code (W. Va. Code) 1994 Cumulative Supplement §§22–18–6(a)(12), 22–1–3(c), 22–18–5(a), 22–18–6(a) and 22–18–23, Hazardous Waste Management Regulations (HWMR) §§33–20–1.6, 33–20–2.1 and 33–20–2.4.
Corrective Action, 50 FR 28702–28755, 7/15/85, Revision Checklist 17L.	W. Va. Code §§22–18–9(a) and 22–1–3(c), 22–18–9(b)(1)–(2), 22–18–6(a)(4)(C), (F), (G), 22–18–7(e), 22–8–9(b)(2) HWMR §§33–20–1.6, 33–20–7.2, 33–20–11.1 and 33–20–11.23.
Non-HSWA IV/HSWA Cluster II[2]	
Permit Application Requirements Regarding Corrective Action, 52 FR 45788–45799, 12/1/87, Revision Checklist 44A.	W. Va. Code §§22–1–3(c), 22–18–8(a), 22–18–9(a) and 22–18–23, HWMR §§33–20–1.6, 33–20–11.1.
Corrective Action Beyond the Facility Boundary, 52 FR 45788–45799, 12/1/87, Revision Checklist 44B.	W. Va. Code §§22–18–9(b) and 22–1–3(c), HWMR §§33–20–1.6, 33–20–7.2.
Corrective Action for Injection Wells, 52 FR 45788–45799, 12/1/87, Revision Checklist 44C.	W. Va. Code §§22–18–9(a), 22–18–8(a) and 22–18–9(a), 22–18–23, 47 CSR 13, §Interim Status for Class I RCRA Injection wells (47 CSR 13 §7.3 (a–h), 47 CSR 13, §Class I RCRA Injection wells prohibited without a permit (47 CSR 13 §13.3), HWMR §§33–20–1.6 and 33–20–11.23.
RCRA Cluster III	
Corrective Action Management Units and Temporary Units, 52 FR 8658–8685, 2/16/93, Revision Checklist 121.	W. Va. Code §§22–18–9, 22–1–3(c), 22–18–5(a) 22–18–6(a) and 22–18–23, HWMR §§33–20–1.6, 33–20–2.1, 33–20–7.2, 33–20–8.1, 33–20–10.1, and 33–20–11.1.
RCRA Cluster VIII	
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment, 62 FR 37694–37699, 7/14/97, Revision Checklist 160.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1.
Emergency Revision of the Carbamate Land Disposal Restrictions, 62 FR 45568, 8/28/97, Revision Checklist 161.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1.
Kraft Mill Stream Stripper Condensate Exclusion, 63 FR 18504–18751, 4/15/98, Revision Checklist 164.	W. Va. Code §§22–18–6(a), (a)(2)&(12), 22–1–3(c), 22–18–5(a), and 22–18–23, HWMR §§33–20–1.6, and 33–20–3.1, 45 CSR 25 §45–25–1.5a (Table 25–A, Item 20).
Recycled Used Oil Management Standards; Technical Correction and Clarification 63 FR 24963–24969, 5/5/98 as amended 7/14/98, at 63 FR 37780–37782, Revision Checklist 166.	W. Va. Code §§22–18–6(a)(14), 22–18–6(a)(15) and 22–1–3(c), HWMR §§33–20–1.6, 33–20–3.1 and 33–20–14.1.
Petroleum Refining Process Wastes, 63 FR 42110–42189, 8/6/98, Revision Checklist 169.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–1–3(c), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 33–20–10.1, 33–20–3.1a through 3.1.a.3, 33–20–9, 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 20).
RCRA Cluster IX	
Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment 63 FR 46332–46334, 8/31/98, Revision Checklist 170.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1.
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Wastes from Carbamate Production, 63 FR 47410–47418, 9/4/98, Revision Checklist 171.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23, and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1.
Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, 63 FR 48124–48127, 9/9/98, Revision Checklist 172.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B), (D), 22–18–23, and 22–1–3(c), HWMR §§33–20–1.6 and 33–20–10.1.
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule, 63 FR 51254–51267, 9/24/98, Revision Checklist 173.	W. Va. Code §§22–18–5(a), 22–18–6(a), (a)(12)(A), (B) & (D), 22–18–23 and 22–1–3(c), HWMR §§33–20–1.6, 33–20–10.1.
Post-Closure Permit Requirements and Closure Process, 63 FR 56710–56735, 10/22/98, Revision Checklist 174.	W. Va. Code §§22–18–6(a) & (a)(5), 22–1–3(c), 22–18–5(a), 22–18–23, 22–18–14(f), 22–18–15 and 22–18–17(c), HWMR §§33–20–1.6, 33–20–7.2, 33–20–8.1, 33–20–11.1.
HWIR-Media, 63 FR 65874–65947, 11/30/98, Revision Checklist 175 ...	W. Va. Code §§22–18–6(a), (a)(2), (a)(5)&(12), 22–1–3(c), 22–18–5(a), 22–18–23, 22–18–9, 22–18–20 HWMR §§33–20–1.6, 33–20–2.1 33–20–3.1, 33–20–7.2, 33–20–8.1, 33–20–10–1, 33–20–11.1, 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 20).
Universal Waste Rule—Technical Amendments, 63 FR 71225–71230, 12/24/98, Revision Checklist 176.	W. Va. Code §§22–1–3(c), 22–18–5(a), 22–18–6(a), 22–18–23 HWMR §§33–20–1.6, 33–20–13.1, 33–20–9.

Description of Federal Requirement (Revision Checklists[1])	Analogous West Virginia Authority
Organic Air Emission Standards: Clarification and Technical Amendments, 64 FR 3382, 1/21/99, Revision Checklist 177.	W. Va. Code §§22–1–3(c), 22–5.1, 22–18–6(a), 22–18–6(a)(13)(A)&(B), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1. 33–20–5.1, 33–20–7.2, 33–20–7.8, 33–20–8.1, 33–20–8.6, 33–20–11.1, 45 CSR 25, §§45–25–1.1.a, 45–25–1.1.b, 45–25–1.5a (Table 25–A, Items 6, 7, 8, 9, 10, 11 and 21).
Petroleum Refining Process Wastes—Leachate Exemption, 64 FR 6806, 2/11/99, Revision Checklist 178.	W. Va. Code §§22–18–6(a), (a)(2)&(12) 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 20).
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, 64 FR 25408–25417, 5/11/99, Revision Checklist 179.	W. Va. Code §§22–18–6(a), (a)(2)&(12)(A), (B), (D), 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 33–20–5.1, 33–20–10.1, 45 CSR 25, 45–25–1.5.a (Table 25–A, Item 20).
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, 64 FR 26315–26327, 5/14/99. Revision Checklist 180.	W. Va. Code §§22–1–3(c), 22–18–5(a), 22–18–6(a), 22–18–23, HWMR §§33–20–1.6, 33–20–2.1.
RCRA Cluster X	
Hazardous Air Pollutant Standards for Combustors, 64 FR 52828–53077, 9/30/99, as amended 11/19/99, at 64 FR 63209–63213, Revision Checklist 182.	W. Va. Code §§22–18–6(a), (a)(2) (5), (12), (13), 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §§33–20–1.6, 33–20–3.1, 33–20–1.10, 45 CSR 25, §45–25–1.5a (Table 25–A, Item 20) and 1.5.c.
Accumulation Time for Waste Water Treatment Sludges, 65 FR 12378–12398, 3/8/00, Revision Checklist 184.	W. Va. Code §§22–18–6(a)&(a)(3), 22–1–3(c), 22–18–5(a), 22–18–23, HWMR §33–20–5.5.
Radioactive Mixed Waste	
Hazardous Components of Radioactive Mixed Wastes, 51 FR 24504, 7/3/86.	W. Va. Code §§22–18–3(16) 22–18–6(a)(2), HWMR §§33–20–1.6, and 33–20–3.1.
Project XL	
Project XL Site-Specific Rulemaking for Osi Specialities, Inc., Sisterville, WV, 63 FR 49384, as amended 9/15/98 and 63 FR 53844, 10/7/98.	W. Va. Code §§22–1–3(c), 22–5–1, 22–18–6(a), (a)(12), and (a)(13)(A)&(B), 45 CSR 25, §45–25–1.5.a (Table 25–A, Item 10).

[1] A Revision Checklist is a document that addresses the specific changes made to the Federal regulations by one or more related final rules published in the **Federal Register**. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization Web page at *http://www.epa.gov/epaoswer/hazwaste/state.*

[2] A RCRA ''Cluster'' is a set of Revision Checklists for Federal rules, typically promulgated between July 1 and June 30 of the following year.

H. Where Are the Revised West Virginia Rules Different From the Federal Rules?

The West Virginia hazardous waste program contains certain provisions which are beyond the scope of the Federal program. These broader in scope provisions are not part of the program being authorized by today's action. EPA cannot enforce requirements which are broader in scope, although compliance with such provisions is required by West Virginia law. Examples of broader in scope provisions of West Virginia's program include, but are not limited to, the following:

1. At HWMR § 33–20–2.4.c, West Virginia provides for the acceptance of an EPA determination granting a petition to exclude hazardous waste, provided that certain conditions are met. If such conditions are not met, and West Virginia does not accept EPA's delisting of the hazardous waste, the waste would still be considered a hazardous waste under West Virginia's regulations, even though such waste would not be considered a hazardous waste by EPA. In this respect, West Virginia's program would be beyond the scope of the Federal program.

2. At HWMR § 33–20–2.4.b West Virginia regulations require a petitioner for a delisting to pay an initial non-refundable application fee of $1000 and allow the Director to recover all reasonable costs attributable to the review and investigation of such petition in excess of the initial fee. Since the Federal program does not require application fees to be submitted with a delisting petition, the collection of such fees is beyond the scope of the Federal program.

I. Who Handles Permits After This Authorization Takes Effect?

After authorization, West Virginia will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which it issued prior to the effective date of this authorization. Until such time as formal transfer of EPA permit responsibility to West Virginia occurs and EPA terminates its permit, EPA and West Virginia agree to coordinate the administration of permits in order to maintain consistency. EPA will not issue any additional new permits or new portions of permits for the provisions listed in Section G after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which West Virginia is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in West Virginia?

West Virginia is not seeking authorization to protect the program on Indian lands, since there are no Federally-recognized Indian Lands in West Virginia.

K. What Is Codification and Is EPA Codifying West Virginia's Hazardous Waste Program as Authorized in This Rule?

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. EPA does this by referencing the authorized State rules in 40 CFR part 272. EPA reserves the amendment of 40 CFR part 272, subpart

XX, for this authorization of West Virginia's program changes until a later date.

L. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law (*see* **SUPPLEMENTARY INFORMATION:** Section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows:

1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order (EO) 12866. *2. Paperwork Reduction Act*—This rules does not impose an information collection burden under the Paperwork Reduction Act. *3. Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. *4. Unfunded Mandates Reform Act*—Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. *5. Executive Order 13132: Federalism*—EO 12132 does not apply to this rule because it will not have federalism implications (*i.e.*, 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). *6. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—EO 13175 does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). *7. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks*—This rule is not subject to EO 13045 because it is not economically significant and it is not based on health or safety risks. *8. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to EO 13211 because it is not a significant regulatory action is defined in EO 12866. *9. National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advance Act does not apply to this rule. *10. Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) 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 by 5 U.S.C. 804(2). This action will be effective on December 15, 2003.

List of Subjects in 40 CFR Part 271

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

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 7, 2003.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 03–26047 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 030613152-3235-02; I.D. 051903B]

RIN 0648–AQ38

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quota Specification, General Category Effort Controls, and Permit Revisions; Correction

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

ACTION: Final rule; correction

SUMMARY: NMFS published a final rule in the Federal Register on October 2, 2003, concerning the final initial 2003 fishing year specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas for each of the established fishing categories, to set General category effort controls, to allocate 25 metric tons (mt) of BFT to account for incidental catch of BFT by pelagic longline vessels ''in the vicinity of the management boundary area,'' to define the management boundary area and applicable restrictions, and to revise permit requirements to allow General category vessels to participate in registered recreational Highly Migratory Species (HMS) fishing tournaments and to allow permit applicants a 10-calendar day period to make permit category changes to correct potential errors. The document contained an error in the **DATES** section.

FOR FURTHER INFORMATION CONTACT: Brad McHale at (978) 281–9260.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of October 2, 2003, in FR Vol. 68, No. 191, page 56783, in the third column, correct the **DATES** caption to read:

DATES: This rule is effective November 3, 2003. The final initial quota specifications and General category effort controls are effective November 3, 2003, through May 31, 2004.

Dated: October 10, 2003.

Rebecca J. Lent,

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

[FR Doc. 03–26201 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 101003A]

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

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is reopening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the Gulf of Alaska (GOA) for 48 hours. This action is necessary to fully use the total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 12, 2003, through 1200 hrs, A.l.t., October 14, 2003.

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

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

NMFS closed the directed fishery for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA at 2400 hrs, October 1, 2003 (68 FR 57636, October 6, 2003).

NMFS has determined that, approximately 560 mt of Pacific cod remain in the directed fishing allowance. Therefore, in accordance with §§ 679.25(a)(1)(i) and (a)(2)(iii)(D), and to fully utilize the Pacific cod apportioned to vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area, NMFS is terminating the previous closure and is reopening directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will be reached after 48 hours. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the offshore component in the Central Regulatory Area of the GOA effective 1200 hrs, A.l.t., October 14, 2003.

Classification

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

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: October 10, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–26193 Filed 10–10–03; 3:10 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 200
Thursday, October 16, 2003

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 00–035–2]

RIN 0579–AB19

Plum Pox Compensation

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing to provide additional compensation to growers who have already been paid under the existing regulations, which provide for payments based on a 3-year fallow period, but who are prohibited from replanting regulated articles for a total of more than 3 years due to additional detections of plum pox in areas already under quarantine. Such growers would be paid compensation for up to 2 additional years. We are also proposing to provide additional compensation to growers who are direct marketers of their fruit, and to provide compensation for growers who have had trees that were less than 1 year old destroyed. We are proposing these actions in response to issues that have surfaced during our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. These proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

DATES: We will consider all comments that we receive on or before December 15, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–035–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–035–2. If you use e-mail, address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 00–035–2'' on the subject line.

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

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Program Support Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

Plum pox is an extremely serious viral disease of plants that can affect many *Prunus* (stone fruit) species, including plum, peach, apricot, almond, nectarine, and sweet and tart cherry. A number of wild and ornamental *Prunus* species may also be susceptible to this disease. Infection eventually results in severely reduced fruit production, and the fruit that is produced is often misshapen and blemished. In Europe, plum pox has been present for a number of years and is considered to be the most serious disease affecting susceptible *Prunus* varieties. Plum pox virus is transmitted locally by a variety of aphid species, as well as by budding and grafting with infected plant material, and spreads over longer distances through movement of infected budwood, nursery stock, and other plant parts.

There are no known effective methods for treating trees or other plant material infected with plum pox, nor are there any known effective prophylactic treatments to prevent the disease from occurring in trees exposed to the disease due to their proximity to infected trees or other plant material. Without effective treatments, the only option for preventing the spread of the disease is the destruction of infected and exposed trees and other plant material.

On March 2, 2000, as a result of the detection of plum pox in Adams County, PA, the Secretary of Agriculture published in the **Federal Register** (65 FR 11280–11281, Docket No. 00–001–1) a declaration of extraordinary emergency regarding plum pox that was effective on January 20, 2000. The declaration of extraordinary emergency was followed by an interim rule published in the **Federal Register** on June 2, 2000 (65 FR 35261–35265, Docket No. 00–034–1), that established regulations quarantining a portion of Adams County, PA, due to the detection of plum pox in that region [1] and restricting the interstate movement of certain articles from the quarantined area that present a risk of transmitting plum pox (*e.g.*, trees, seedlings, root stock, budwood, branches, twigs, and leaves of susceptible *Prunus* spp.). That interim rule, which established a new ''Subpart-Plum Pox'' (7 CFR 301.74 through 301.74–4), was promulgated on an emergency basis to prevent the spread of plum pox to noninfested areas of the United States.

On September 14, 2000, we published in the **Federal Register** (65 FR 55431–55436, Docket No. 00–035–1) another interim rule that established regulations to provide for the payment of compensation to owners of commercial stone fruit orchards and fruit tree nurseries who had stone fruit trees or nursery stock destroyed in order to control plum pox. Those compensation provisions, which were added to ''Subpart-Plum Pox'' as a new § 301.74–5, were necessary to reduce the economic effect of the plum pox quarantine on affected commercial growers and nursery owners, thus ensuring the continued cooperation of growers and nursery owners with the

[1] The particular strain of plum pox found in the quarantined area in Adams County, PA—the ''D'' strain—is not known to be transmitted by seed or fruit, and is not known to infect cherry.

survey and eradication activities being conducted by the U.S. Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) and the Pennsylvania Department of Agriculture (PDA).

Existing Compensation Regulations

Under the regulations in § 301.74–5 (referred to below as the regulations), owners of commercial stone fruit orchards and owners of fruit tree nurseries are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox and the prohibition on the movement or sale of nursery stock, respectively, if the losses result from an action performed pursuant to an emergency action notification (EAN) issued by APHIS.

The regulations provide, among other things, that owners of commercial stone fruit orchards will be compensated on a per-acre basis at a rate based on the age of the trees destroyed and a 3-year prohibition on the replanting of host trees. The compensation to be paid by USDA is based on the loss in value of the destroyed orchard. The loss in value is calculated as the difference between the net present value (NPV) of the original (destroyed) orchard over a 25-year life cycle minus the NPV of the replanted orchard for its entire productive life of 25 years. To calculate the NPV of an orchard (both original and replanted orchards), we used discounted cash flow analysis, which takes into account the quantity, variability, and duration of the forecasted income stream over a specified income projection period. Each year's net income is discounted back to a present worth figure at the appropriate, market-derived discount rate. The valuation model can be expressed in the following equation form, where Y = net income, r = discount rate, and n = number of years in the discount period:

$$NPV = \frac{Y_1}{(1+r)^1} + \frac{Y_2}{(1+r)^2} + \frac{Y_3}{(1+r)^3} + \ldots + \frac{Y_n}{(1+r)^n}$$

To calculate NPV using the above equation, we had to determine net income, discount rate, and the number of years in the discount period. Each of these inputs is discussed below.

The rate of compensation to be paid by USDA is set at up to 85 percent of the difference in value between the destroyed and replacement orchards as described above. The State of Pennsylvania has indicated that State funds will be used to make up the remaining difference in value. In no case will total USDA plus State compensation exceed 100 percent of the difference in value.

Net income. To determine per-acre net income, we multiplied the yield (number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on the 1995–1998 average Pennsylvania peach production, price, and yield data from the Pennsylvania Agricultural Statistics Service.

Year	Peach price ($/bushel)	Yield (bushel/acre)	Income ($ per acre)
1995	13.65	275.9	3,766
1996	16.50	254.5	4,199
1997	16.85	254.5	4,288
1998	15.85	236.4	3,747
1995–98 average	15.71	255.3	4,010

The calculation of the variable costs of production is based on the following estimates:

Type of cost	Year incurred	Costs
Land preparation	Year 0	$395 per acre.
Planting	Year 1	$1,303 per acre.
Orchard maintenance during preproductive year	Year 2	$222 per acre.
Orchard maintenance during productive years	Years 3–25	$899/year per acre.
Harvest cost	Years 4–25	$1.75 per bushel.

Discount rate. The discount rate used in the present value calculation is 12.5 percent, which is the risk-adjusted rate estimated to be appropriate in this situation.

Number of years in discount period. The NPV was calculated using a life cycle approach. The revenues and costs were calculated over a period equal to the expected productive life of a replanted orchard, which, as noted previously, is 25 years.

Using the information and methodology set forth in the preceding paragraphs, we arrived at the per-acre compensation rates set forth in § 301.74–5(b)(1) of the current regulations. The amounts of compensation for destroyed trees range from $3,713 per acre for a 25-year-old block of trees to $15,000 per acre for a 7-year-old block of trees. Finally, because compensation programs are intended, in part, to encourage the prompt execution of measures deemed necessary to control or eradicate plant pests, § 301.74–5(b)(1) of the regulations provides that compensation payments will be reduced by 10 percent, plus any tree removal costs incurred by the State or USDA, if the trees subject to an EAN were not destroyed by the date specified on that order.

The existing regulations also: (1) Provide that owners of fruit tree nurseries will be compensated for up to

85 percent of the net revenues lost from their first and second year crops as the result of the issuance of an EAN, and (2) stipulate procedures for applying for compensation and require that premises on which trees have been destroyed because of plum pox pursuant to an EAN issued by APHIS may not be replanted with susceptible *Prunus* species (*Prunus* species identified as regulated articles) for 3 years.

Proposed Changes to the Compensation Regulations

Extension of Prohibition of Replanting

In December 2001, a science panel [2] concluded that the prohibition on replanting host material at locations where orchards had been destroyed due to the presence of plum pox should be extended due to recent detections of plum pox-positive trees during the second year. As a result of these detections, replanting cannot occur at affected sites for an additional 3 years. Since the existing regulations in § 301.74–5(d) do not make it clear that replanting should be banned in a regulated area until 3 years after the most recent detection of plum pox in that area, we are proposing to amend the regulations to clarify that fact.

As explained earlier in this document, the calculations on which the currently authorized rates of compensation are based were designed to account for a 3-year period during which growers could not replant *Prunus* species in quarantined areas. Given the detections of additional plum pox-positive trees, we believe it is necessary to provide additional compensation to growers since they will not be able to plant host species for additional years. The amount of additional compensation has been determined to be $828 per acre for a fourth fallow year and $736 per acre for a fifth fallow year. These amounts are based on extending the same formula we used to calculate the original 3-year compensation rate to apply to fourth and fifth fallow years.

We are proposing to provide additional payments in those amounts to growers who have already received compensation payments, and to provide those same amounts to growers who are due compensation in the future.

Note: APHIS does not intend to propose additional compensation in the future if additional plum pox positive trees are found and the ban on replanting must be extended further. The maximum amount of compensation per acre that a grower could receive under any circumstances would be the total payment due for 5 fallow years according to the age of the trees.

The revised compensation rates are shown in proposed § 301.74–5(b)(1)(ii) in the rule portion of this document.

New Provisions for Direct Market Growers

The current compensation regulations contain no provisions for ''direct market growers.'' Direct market growers are growers who produce fruit and sell the fruit themselves for premium prices at farmers markets. Typically, the acreage involved in production for these purposes is small, and all of the fruit produced is for sale directly to consumers as tree-ripened fruit. None of the fruit produced on acreage devoted to direct market production is sold for processing or to packing houses, nor is it marketed wholesale.

Direct market growers usually produce a wide variety of fruit (both species and varieties) to enable them to satisfy the needs of their customers through an extended marketing season. In the event these growers are not able to use their own fruit (*e.g.*, as a result of their orchards being destroyed due to the presence of plum pox) they are normally precluded from obtaining fruit from other sources. The conditions under which these growers are eligible to sell their products at farmers markets usually require that sellers be the producers of the fruits and vegetables they are selling.

We have reviewed information on production costs and revenues for direct market growers, and believe it is necessary to increase the rates of payment to these growers in order to fairly compensate them. The formulas used to calculate the original amount of compensation due to such growers would remain the same, and the discount rates would not be changed. The difference in payments for direct marketers versus other growers would be due primarily to the high value of sales by direct marketers, despite the fact that they bear additional costs that other growers do not. The net income for direct marketers are based on the income and cost figures presented in tables 1 and 2:

TABLE 1.—CALCULATION OF INCOME PER ACRE FOR DIRECT MARKETERS

Year	Price ($ per pound)	Peach price ($ per bushel)	Yield (bushel per acre)	Income ($ per acre)
1998	$1.69	81.13	273.1	$22,156
1999	1.66	79.92	321.3	25,678
2000	1.65	79.03	378.0	29,873
3-year average	1.67	80.02	324.1	25,902

TABLE 2.—VARIABLE COSTS OF PRODUCTION FOR DIRECT MARKETERS

Type of cost	Year incurred	Costs
Land preparation	Year 0	$395 per acre.
Planting	Year 1	1,303 per acre.
Maintenance (pre-productive years)	Year 2	222 per acre.
Maintenance (productive years)	Years 3–25	1,376 per year, per acre.
Harvest	Years 4–25	1.75 per bushel, per year.
Marketing costs	Years 4–25	21,304 per year.

[2] The science panel was composed of representatives of APHIS, PDA, USDA's Agricultural Research Service, and university scientists.

As with per-acre net income for all other growers, to determine per-acre net income for direct marketers, we multiplied the yield (number of bushels) per acre by the price per bushel, then subtracted production costs. The estimation of net income is based on data provided by a direct marketer for the 1998, 1999, and 2000 production seasons.

Given the difference in net income between other growers and direct marketers, we are proposing to compensate direct marketers at the rates shown in proposed § 301.74–5(b)(1)(i) in the rule portion of this document. Like the rates for other growers discussed earlier in this document, the rates for direct marketers would also include provisions to pay compensation for fourth and fifth fallow years if necessary.

We propose to pay growers direct market rates of compensation only if the orchard owner grows fruit exclusively for sale in farmers markets or similar outlets as described in the proposed regulations. We would not pay compensation at direct marketer rates to growers who sell any portion of their harvest to wholesale markets, nor would we pay direct marketer compensation rates to growers who sell most of their fruit wholesale and who sell some of their fruit at roadside fruit stands or similar venues.

Additional Compensation for Destruction of Trees Less Than 1 Year Old

The current regulations do not contain provisions for compensation for the destruction of trees less than 1 year old (known as ''0 year trees''). However, we have concluded that growers who have such trees destroyed because of plum pox deserve to be compensated for the loss of those trees and the revenue that might be expected from them. This is based on our determination that growers incur costs in ground preparation, the cost of nursery stock, and the expense of planting and maintaining these trees.

After examining the economic information obtained from the Pennsylvania State University and the Pennsylvania State Adams County Cooperative Extension Service, we have concluded that a fair rate of compensation for these trees is $2,403 per acre for all growers, including direct marketers. This amount represents the 85 percent Federal share, and is the same for all growers because all growers, including direct marketers, incur similar costs for 0 year trees. Growers of 0 year trees would also be compensated for fourth and fifth fallow years, where applicable, at rates of $828 per acre for a fourth fallow year and $736 per acre for a fifth fallow year.

Compensation will be paid using funds transferred to APHIS by the Commodity Credit Corporation of USDA. For any acres that are added to the plum pox quarantine program after September 30, 2004, the Federal share of compensation to be paid may change.

Benefits of Compensation

The benefit of providing compensation is the increased likelihood that growers with infected orchards will participate in the plum pox eradication program. The use of compensation complements and supports the regulatory goal of preventing disease spread. More so than in other pest eradication programs, the specific characteristics of plum pox necessitate the use of compensation to obtain growers' cooperation in the control of the immediate disease outbreak and the ensuing national survey.

Because the manner in which PPV spreads is not predictable, the eradication strategy necessarily calls for the destruction of trees that are asymptomatic. Growers, on their own, would not have the incentive to cut down trees that appear uninfected as would be necessary in an eradication program.

Without government intervention, growers would opt to keep producing as long as trees remain symptom-free. The eradication strategy calling for the swift destruction of both diseased and exposed trees causes economic losses in addition to that resulting from the disease. For these reasons, the payment of compensation would reflect the incremental burdens of complying with regulatory requirements insofar as market forces would not otherwise impose similar costs.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

We have prepared an economic analysis for this proposed rule. The economic analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or may be viewed on the Internet at *http://www.aphis.usda.gov/ppd/rad/plumpox.pdf.*

Summary of Economic Analysis

We are proposing to amend the plum pox compensation regulations to provide additional compensation to affected growers, under certain conditions. We are proposing to provide additional compensation to growers who have already been paid under the existing regulations, which provide for payments based on a 3-year fallow period, but who are prohibited from replanting regulated articles for a total of more than 3 years due to additional detections of plum pox in areas already under quarantine. Such growers would be paid compensation for up to 2 additional years. We are also proposing to provide additional compensation to growers who are direct marketers of their fruit, and to provide compensation for growers who have had trees that were less than 1 year old destroyed. We are proposing these actions in response to issues that have surfaced during our 2 years of experience in managing the plum pox quarantine and paying compensation to affected growers. These proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine.

This proposed rule would amend the regulations to provide additional compensation in the event a quarantine period is extended according to an EAN issued by APHIS. The fallow period may be increased by 1 or 2 years depending on the proximity of the land to recent finds of the plum pox virus. By delaying the time at which growers can replant, the longer fallow period increases the loss to growers. We are proposing to increase the amount of compensation to account for the longer fallow period.

Plum pox has been detected in some areas near orchards that were removed in the initial year of the eradication program. This has led to a need for additional fallow years for those acres. A fallow period of 3 years from the last find is needed to conclude that plum pox has been eradicated. The maximum amount of compensation to be paid would be for 5 fallow years. For orchards removed in 2002, we anticipate that only a 3-year fallow period will be needed if no further plum pox is discovered.

Compensation payments are based on calculating the difference between the amount a grower could earn from the original orchard minus the amount that the grower could earn from a replanted orchard after a fallow period. A longer fallow period results in higher compensation payments because of the

additional time it takes until growers have productive trees.

The payment to commercial growers for 2 additional fallow years would be $828 per acre for the fourth year and $736 per acre for the fifth year ($1,564 total per acre). The total number of acres that would currently be eligible for additional payments because of the added fallow years is 1,400. The estimated cost if all acres are eligible for 2 additional years is $2,189,600.

Total additional payments for direct marketers range from $264,472 to $348,452 depending on the number of fallow years a direct marketer would be required to wait before replanting. Table 7, page 15 summarizes the range of payments. Payments to direct marketers for the first three fallow years would increase by $10,172 per acre from the base amount that growers receive. Direct marketers were eligible to receive the same payments as other growers so the $10,172 represents the additional payment. Because they are among the last trees that have been removed, a three year fallow period should be sufficient to demonstrate that plum pox has been eradicated. However, in the event that additional fallow years are necessary due new detections of plum pox, direct marketers would be compensated for up to 5 (total) fallow years. They would receive $1,710 per acre for a fourth year and $1,520 per acre for a fifth year. There are approximately 26 acres of trees used for direct marketing that have been removed as part of the plum pox eradication program; total payments to direct marketers would increase by $264,472, assuming the fallow period does not need to be extended. A four year fallow period for direct marketers would result in payments of $11,882 per acre ($10,172 + $1,710). Total payments for 26 acres would be $308,932. A five year fallow period for direct marketers would result in payments of $13,402 per acre ($10,172+$1,710+$1,520). Total payments for 26 acres would be $348,452.

This proposed rule also addresses the issue of trees less than one year old. Some growers have received destruction orders for trees that had been planted the same year. These trees did not go through one harvest season and are sometimes referred to as zero year trees. The original compensation program made no provision for these trees. However, growers that have had trees less than one year old destroyed have incurred costs. Based on input from cooperative extension agents and Pennsylvania State University, we have concluded that a fair rate of compensation for these trees is $2,403 per acre for a three year fallow period. There are at least 43 acres of zero year trees that have been removed as part of the plum pox eradication program; total payments to growers of zero year trees would increase by $103,329.

As stated earlier in this document, these proposed changes are necessary to provide adequate compensation to persons affected by the plum pox quarantine and eradication efforts associated with the quarantine. Persons affected by the quarantine would, in all cases, benefit from adoption of this proposed rule.

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

Executive Order 12372

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–035–2. Please send a copy of your comments to: (1) Docket No. 00–035–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as 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).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.6667 hours per response.

Respondents: Owners of stone fruit orchards and fruit tree nurseries in Pennsylvania.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 3.

Estimated total annual burden on respondents: 2 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

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

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

2. In § 301.74–5, paragraphs (a)(1), (b)(1), (c)(1), (c)(2) and (d) would be revised and a new paragraph (c)(3) would be added to read as follows:

§ 301.74–5 Compensation.

(a) * * *

(1) *Owners of commercial stone fruit orchards.* Owners of commercial stone fruit orchards are eligible to receive compensation for losses associated with the destruction of trees in order to control plum pox pursuant to an emergency action notification issued by the Animal and Plant Health Inspection Service (APHIS).

(i) *Direct marketers.* Orchard owners eligible for compensation under this paragraph who market all fruit they produce under the conditions described in this paragraph may receive compensation at the rates specified in paragraph (b)(1)(i) of this section. In order to be eligible to receive compensation at the rates specified in paragraph (b)(1)(i) of this section, orchard owners must have marketed fruit produced in orchards subsequently destroyed because of plum pox under the following conditions:

(A) The fruit must have been sold exclusively at farmers markets or similar outlets that require orchard owners to sell only fruit that they produce;

(B) The fruit must not have been marketed wholesale or at reduced prices in bulk to supermarkets or other retail outlets;

(C) The fruit must have been marketed directly to consumers; and

(D) Orchard owners must have records documenting that they have met the requirements of this section, and must submit those records to APHIS as part of their application submitted in accordance with paragraph (c) of this section.

(ii) *All other orchard owners.* Orchard owners eligible for compensation under this paragraph who do not meet the requirements of paragraph (a)(1)(i) of this section are eligible for compensation only in accordance with paragraph (b)(1)(ii) of this section.

* * * * *

(b) * * *

(1) *Owners of commercial stone fruit orchards.*—(i) *Direct marketers.* Owners of commercial stone fruit orchards who APHIS has determined meet the eligibility requirements of paragraph (a)(1)(i) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	$2,403	$828	$736
1	9,584	1,710	1,520
2	13,761	1,710	1,520
3	17,585	1,710	1,520
4	21,888	1,710	1,520
5	25,150	1,710	1,520
6	25,747	1,710	1,520
7	25,859	1,710	1,520
8	25,426	1,710	1,520
9	24,938	1,710	1,520
10	24,390	1,710	1,520
11	23,774	1,710	1,520
12	23,080	1,710	1,520
13	22,300	1,710	1,520
14	21,422	1,710	1,520
15	20,434	1,710	1,520
16	19,323	1,710	1,520
17	18,185	1,710	1,520
18	17,017	1,710	1,520
19	15,814	1,710	1,520
20	14,572	1,710	1,520
21	13,287	1,710	1,520
22	12,066	1,710	1,520
23	10,915	1,710	1,520
24	9,620	1,710	1,520
25	8,163	1,710	1,520

(ii) *All other orchard owners.* Owners of commercial stone fruit orchards who meet the eligibility requirements of paragraph (a)(1)(ii) of this section will be compensated according to the following table on a per-acre basis at a rate based on the age of the trees destroyed. If the trees were not destroyed by the date specified on the emergency action notification, the compensation payment will be reduced by 10 percent and by any tree removal costs incurred by the State or the U.S. Department of Agriculture (USDA). The maximum USDA compensation rate is 85 percent of the loss in value, adjusted for any State-provided compensation to ensure total compensation from all sources does not exceed 100 percent of the loss in value.

Age of trees (years)	Maximum compensation rate ($/acre, equal to 85% of loss in value) based on 3-year fallow period	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 4th fallow year	Maximum additional compensation ($/acre, equal to 85% of loss in value) for 5th fallow year
Less than 1	$2,403	$828	$736
1	4,805	828	736
2	7,394	828	736
3	9,429	828	736
4	12,268	828	736
5	14,505	828	736
6	14,918	828	736
7	15,000	828	736
8	14,709	828	736
9	14,383	828	736
10	14,015	828	736
11	13,601	828	736
12	13,136	828	736
13	12,613	828	736
14	12,024	828	736
15	11,361	828	736
16	10,616	828	736
17	9,854	828	736
18	9,073	828	736
19	8,272	828	736
20	7,446	828	736
21	6,594	828	736
22	5,789	828	736
23	5,035	828	736
24	4,341	828	736
25	3,713	828	736

* * * * *

(c) * * *

(1) *Claims by owners of stone fruit orchards who are direct marketers.* The completed application must be accompanied by:

(i) A copy of the emergency action notification ordering the destruction of the trees and its accompanying inventory that describes the acreage and ages of trees removed;

(ii) Documentation verifying that the destruction of trees has been completed and the date of that destruction; and

(iii) Records documenting that the grower meets the eligibility requirements of paragraph (a)(1)(i) of this section.

(2) *Claims by owners of commercial stone fruit orchards who are not direct marketers.* The completed application must be accompanied by a copy of the emergency action notification ordering the destruction of the trees, its accompanying inventory that describes the acreage and ages of trees removed, and documentation verifying that the destruction of trees has been completed and the date of that destruction.

(3) *Claims by owners of fruit tree nurseries.* The completed application must be accompanied by a copy of the order prohibiting the sale or movement of the nursery stock, its accompanying inventory that describes the total number of trees and the age and variety, and documentation describing the final disposition of the nursery stock.

(d) *Replanting.* Trees of susceptible *Prunus* species (*i.e., Prunus* species identified as regulated articles) may not be replanted on premises within a contiguous quarantined area until 3 years from the date the last trees within that area were destroyed because of plum pox pursuant to an emergency action notification issued by APHIS.

* * * * *

Done in Washington, DC, this 10th day of October 2003.

Bill Hawks,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. 03–26174 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

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

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders; Correction

7 CFR Part	Marketing Area	AO Nos.
1001	Northeast	AO–14–A72

7 CFR Part	Marketing Area	AO Nos.
1005	Appalachian	AO–388–A13
1006	Florida	AO–356–A36
1007	Southeast	AO–366–A42
1030	Upper Midwest	AO–361–A37
1032	Central	AO–313–A46
1033	Mideast	AO–166–A70
1124	Pacific Northwest	AO–368–A33
1126	Southwest	AO–231–A66
1131	Arizona-Las Vegas	AO–271–A38
1135	Western	AO–380–A20

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the proposed rule that appeared in the **Federal Register** on September 8, 2003 (68 FR 52860), which gave notice of a public hearing to be held to consider proposals to amend the Northeast and other Federal milk marketing orders. The document was published with errors in the regulatory text of proposed amendments to § 1000.40 that would reclassify milk used to produce evaporated or sweetened condensed milk in a consumer-type package from Class III to Class IV. This docket corrects these errors.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971—Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Antoinette.Carter@usda.gov.*

SUPPLEMENTARY INFORMATION: A notice of hearing was published in the **Federal Register** on September 8, 2003 (68 FR 52860), containing four proposals to be considered at a public hearing scheduled to begin on October 21, 2003. As published, the regulatory text included in proposals one and two of the notice of hearing does not reflect amendments that became effective April 1, 2003, in all 11 Federal milk marketing orders revising the Class III and Class IV pricing formulas. Accordingly, the errors contained in proposals one and two of the notice of hearing are misleading and need clarification.

1. On page 52862 under ''Proposal No. 1'', first column, § 1000.40, paragraph (d)(1)(i) is corrected to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(d) * * *

(1) * * *

(i) Butter;

* * * * *

2. On page 52862 under ''Proposal No. 2'', first column, § 1000.40, paragraph (d)(1)(i) is corrected to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(d) * * *

(1) * * *

(i) Butter;

* * * * *

Authority: 7 U.S.C. 601–674.

Dated: October 9, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–26178 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–44–AD]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K Propellers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for Hartzell Propeller Inc. Model HC–B5MP–3C/M10876K propellers, installed on Short Brothers Model SD3–60 airplanes. That AD currently requires initial and repetitive removal, disassembly, inspection, and rework if necessary of Hartzell Propeller Inc. Model HC–B5MP–3C/M10876K propellers until blades are replaced with new design blades, no later than March 31, 1988. This proposed AD would require installation of new design blades before further flight, on Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K propellers. This proposed AD is prompted by a review of all currently effective ADs. That review determined that AD 87–16–02 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original AD. We are proposing this AD to prevent propeller blade separation near the hub, which could result in engine separation from the airplane.

DATES: We must receive any comments on this proposed AD by December 15, 2003.

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

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–44–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Melissa Bradley, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone: (847) 294–8110; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–44–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic,

environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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 may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

On July 31, 1987, the FAA issued Priority Letter AD 87–16–02. That AD requires initial and repetitive removal, disassembly, inspection, and, if necessary, rework of Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K propellers until the existing blades are replaced with new design blades. That AD requires replacement of the existing blades with new design blades by March 31, 1988. That action was prompted by reports of fatigue cracks and corrosion in propeller blades. That condition, if not corrected, could result in propeller blade separation near the hub, which could result in separation of the engine from the airplane.

Actions Since AD 87–16–02 Was Issued

Since that AD was issued, we have reviewed all currently effective ADs. We found that Priority Letter AD 87–16–02 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received the original AD. We anticipate that all affected propellers have the new design blades installed. However, we are issuing this proposed rule to ensure that all affected propellers are updated with new design propeller blades.

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 products of this same type design. Therefore, we are proposing this AD, which would require installation of new design blades before further flight, on Hartzell Propeller Inc. Models HC–B5MP–3C/M10876K propellers.

Changes to 14 CFR Part 39—Effect on the Proposed AD

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

Costs of Compliance

We anticipate that all affected propellers have complied with Priority Letter AD 87–16–02 and have the new design blades installed. Therefore, we estimate the total cost of the proposed AD to U.S. operators to be $0. However, if replacement of the blades is necessary, we estimate that it would take about 25 work hours per propeller to perform the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost about $4,300 per propeller blade. Based on these figures, we estimate the total cost of the proposed AD per propeller would be $23,125.

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

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''AD Docket No. 2003–NE–44–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding a new airworthiness directive, to read as follows:

Hartzell Propeller Inc.: Docket No. 2003–NE–44–AD. Supersedes Priority Letter AD 87–16–02.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 15, 2003.

Affected ADs

(b) This AD supersedes Priority Letter AD 87–16–02.

Applicability

(c) This AD applies to Hartzell Propeller Inc. Model HC–B5MP–3C/M10876K propellers. These propellers are installed on, but not limited to, Short Brothers Model SD3–60 airplanes.

Unsafe Condition

(d) This AD is prompted a review of all currently effective ADs. That review determined that AD 87–16–02 was not published in the **Federal Register** to make it effective to all operators, as opposed to just the operators who received actual notice of the original AD. We are issuing this AD to prevent propeller blade separation near the hub, which could result in engine separation from 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.

Required Actions

(f) Before further flight, replace propeller blades Model M10876K with blades Model M10876ASK.

(g) After the effective date of this AD, do not install propeller blades Model M10876K on any airplane.

Alternative Methods of Compliance

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

Material Incorporated by Reference

(i) None.

Related Information

(j) None.

Issued in Burlington, Massachusetts, on October 8, 2003.

Francis A. Favara,

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

[FR Doc. 03–26118 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–141669–02]

RIN 1545–BB41

Waiver of Information Reporting Penalties-Determining Whether Correction Is Prompt

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations providing guidance on the requirement of prompt correction of the failure to file or file correctly.

DATES: The public hearing originally scheduled for Tuesday, October 21, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622–3401 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, July 9, 2003, (68 FR 40857), announced that a public hearing was scheduled for Tuesday, October 21, 2003, at 10 a.m. in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under sections 6721 and 6724 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, October 7, 2003. Outlines of oral comments were due on Tuesday, September 30, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Friday, October 10, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, October 21, 2003, is cancelled.

LaNita Van Dyke,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–26216 Filed 10–15–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AL49

Copayments for Extended Care Services

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to amend VA's medical regulations by modifying provisions regarding the methodology of computing copayments for extended care services provided to veterans. This proposal enhances the protection of veterans' spouses by not counting certain assets as available resources for computing these copayments. Other non-substantive changes are proposed for purposes of clarification.

DATES: Comments must be received on or before December 15, 2003.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or fax comments to (202) 273–9026; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AL49.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: Donna Canada, Chief Business Office (161), at (202) 254–0324 and Daniel Schoeps, Geriatrics and Extended Care (114), at (202) 273–8540. Both are officials in the Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION: We propose to amend VA's medical regulations at 38 CFR 17.111 concerning the computation of copayments for extended care services provided to veterans either directly by VA or obtained by contract. These copayments were established under the Veterans Millennium Health Care and Benefits Act (Pub. L. 106–117) and codified at 38 U.S.C. 1710B(c).

This proposed rule enhances and clarifies the mechanism for calculating the copayment amount. The statute set forth at 38 U.S.C. 1710B(d)(2) provides:

> The Secretary shall develop a methodology for establishing the amount of the copayment for which a veteran [receiving extended care services] is liable. That methodology shall provide for—
>
> (A) establishing a maximum monthly copayment (based on all income and assets of the veteran and the spouse of such veteran);
>
> (B) protecting the spouse of a veteran from financial hardship by not counting all of the income and assets of the veteran and spouse (in the case of a spouse who resides in the community) as available for determining the copayment obligation; and
>
> (C) allowing the veteran to retain a monthly personal allowance.

Under the current rule, a veteran is obligated to pay the copayment only if the veteran and the veteran's spouse have available resources. Available resources means the sum of the value of the liquid assets, fixed assets, and income of the veteran and the veteran's spouse minus the sum of the veteran allowance and the spousal allowance. Liquid assets and fixed assets are included in the calculations only if the veteran has been receiving extended care services for 181 days or more. Expenses are included in the veterans allowance calculations only if the veteran has been receiving extended care services for 180 days or less, the veteran is receiving only adult day health care or other noninstitutional care, or the veteran has a spouse or dependent residing in the community who is not institutionalized. These formulas are designed to allow the veteran, the veteran's spouse, and the veteran's dependents minimum amenities while allowing them to retain some of their possessions to help them maintain, to a degree, their standard of living. Also, these formulas are intended to help ensure that veterans institutionalized for 180 days or less would have the means to return home if their medical condition permits.

The current regulation has different provisions on what is included in ''available resources'' depending on whether or not the veteran has been receiving extended care services for more than 180 days. We propose to clarify the provisions by which we

compute ''available resources.'' So, for veterans who have been receiving extended care services for 180 days or less, we propose to determine their available resources by adding their income and the income of their spouse and then subtracting from that the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, we propose to determine their available resources by adding the value of their liquid assets, their fixed assets, and their income and the income of their spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran is receiving noninstitutional care or the veteran has a spouse or a dependent residing in the community who is not institutionalized) expenses. We believe this will clarify what resources veterans have available for purposes of determining the appropriate copayment.

We also propose to clarify in the definition of ''expenses'' that expenses include (1) insurance premiums of the veteran and the veteran's spouse and dependents, and (2) personal property taxes, not just income taxes.

Further, in the definition of ''liquid assets,'' we propose to exclude household and personal items such as furniture, clothing, and jewelry when the veteran's spouse or the veteran's dependents are living in the community or the veteran is receiving noninstitutional extended care services. Currently, household and personal items are included in liquid assets even if the veteran's spouse or dependents are living in the community or the veteran is receiving noninstitutional extended care services. This will further protect the veteran, spouse and dependents from financial hardship if they are living in the community.

VA Form 10–10EC, set forth in 38 CFR 17.111(g), currently requires including art, rare coins, stamp collections, and collectibles in liquid assets. We propose to refer to this requirement in the definition also.

Third, we propose to add at paragraph (d)(2)(vi) of § 17.111 a definition of ''spousal resource protection amount'' to permit a spouse to maintain some liquid assets while she lives in the community. This amount would equal the total value of the veteran and spouse's liquid assets up to $89,280 if the spouse resides in the community (*i.e.*, is not institutionalized). We propose using this amount because at least 23 State Medicaid Programs use it to protect spouses' assets for Medicaid purposes. This amount would be deducted from ''available resources'' if the veteran has been receiving extended care services for more than 180 days. This amount would not be deducted from ''available resources'' if the veteran has been receiving extended care services for 180 days or less because ''liquid assets'' are not included in ''available resources'' in that case.

Fourth, we propose to remove from the definition of ''veterans allowance'' the inclusion of expenses in certain situations because, as discussed above, we propose to include expenses in the computation of ''available resources'' contained in paragraph (d)(1) of § 17.111. We propose this change to simplify the methodology in determining ''available resources.''

Further, we propose to clarify in paragraph (d)(1) of § 17.111 that the income, assets, expenses and allowance of legally separated spouses are excluded from ''available resources.''

The current rule provides that, unless exempted, a veteran must report changes to the veteran or spouse's situation that would change the copayment obligation (*i.e.*, changes regarding fixed assets, liquid assets, expenses, income, or whether the veteran has a spouse or dependents residing in the community) to a VA medical facility within 10 days of the change. We propose to add a change in marital status to the list of items, which, if changed, would require the veteran to report to VA the change. A change in marital status might affect the copayment obligation and thus must be reported.

Paperwork Reduction Act

The Office of Management and Budget have approved the collections of information requirements related to this rulemaking proceeding under OMB control number 2900–0629.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This amendment would not affect any small entities. Only individuals could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance numbers for the programs affected by this document are 64.005, 64.007, 64.008, 64.009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: July 9, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to amend 38 CFR part 17 as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, unless otherwise noted.

2. In § 17.111, paragraphs (d) through (g) and the authority citation at the end of the section are revised to read as follows:

§ 17.111 Copayments for extended care services.

* * * * *

(d) *Effect of the veteran's financial resources on obligation to pay copayment.* (1) A veteran is obligated to pay the copayment to the extent the veteran and the veteran's spouse have available resources. For veterans who have been receiving extended care services for 180 days or less, their

available resources are the sum of the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, and expenses. For veterans who have been receiving extended care services for 181 days or more, their available resources are the sum of the value of the liquid assets, the fixed assets, and the income of the veteran and the veteran's spouse, minus the sum of the veterans allowance, the spousal allowance, the spousal resource protection amount, and (but only if the veteran is receiving noninstitutional care or the veteran has a spouse or a dependent residing in the community who is not institutionalized) expenses. When a veteran is legally separated from a spouse, available resources do not include spousal income, expenses, and assets or a spousal allowance.

(2) For purposes of determining available resources under this section:

(i) *Income* means current income (including, but not limited to, wages and income from a business (minus business expenses), bonuses, tips, severance pay, accrued benefits, cash gifts, inheritance amounts, interest income, standard dividend income from non tax deferred annuities, retirement income, pension income, unemployment payments, worker's compensation payments, black lung payments, tort settlement payments, social security payments, court mandated payments, payments from VA or any other Federal programs, and any other income). The amount of current income will be stated in frequency of receipt, *e.g.*, per week, per month.

(ii) *Expenses* means basic subsistence expenses, including current expenses for the following: rent/mortgage for primary residence; vehicle payment for one vehicle; food for veteran, veteran's spouse, and veteran's dependents; education for veteran, veteran's spouse, and veteran's dependents; court-ordered payments of veteran or veteran's spouse (*e.g.*, alimony, child-support); and including the average monthly expenses during the past year for the following: utilities and insurance for the primary residence; out-of-pocket medical care costs not otherwise covered by health insurance; health insurance premiums for the veteran, veteran's spouse, and veteran's dependents; and taxes paid on income and personal property.

(iii) *Fixed Assets* means:

(A) Real property and other non-liquid assets; except that this does not include—

(*1*) Burial plots;

(*2*) A residence if the residence is:

(*i*) The primary residence of the veteran and the veteran is receiving only noninstitutional extended care service; or

(*ii*) The primary residence of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(*3*) A vehicle if the vehicle is:

(*i*) The vehicle of the veteran and the veteran is receiving only noninstitutional extended care service; or

(*ii*) The vehicle of the veteran's spouse or the veteran's dependents (if the veteran does not have a spouse) if the veteran is receiving institutional extended care service.

(iv) *Liquid assets* means cash, stocks, dividends received from IRA, 401K's and other tax deferred annuities, bonds, mutual funds, retirement accounts (*e.g.*, IRA, 401Ks, annuities), art, rare coins, stamp collections, and collectibles of the veteran, spouse, and dependents. This includes household and personal items (*e.g.*, furniture, clothing, and jewelry) except when the veteran's spouse or dependents are living in the community.

(v) *Spousal allowance* is an allowance of $20 per day that is included only if the spouse resides in the community (not institutionalized).

(vi) *Spousal resource protection* amount means the value of liquid assets but not to exceed $89,280 if the spouse is residing in the community (not institutionalized).

(vii) *Veterans allowance* is an allowance of $20 per day.

(3) The maximum amount of a copayment for any month equals the copayment amount specified in paragraph (b)(1) of this section multiplied by the number of days in the month. The copayment for any month may be less than the amount specified in paragraph (b)(1) of this section if the veteran provides information in accordance with this section to establish that the copayment should be reduced or eliminated.

(e) *Requirement to submit information.* (1) Unless exempted under paragraph (f) of this section, a veteran must submit to a VA medical facility a completed VA Form 10–10EC and documentation requested by the Form at the following times:

(i) At the time of initial request for an episode of extended care services;

(ii) At the time of request for extended care services after a break in provision of extended care services for more than 30 days; and

(iii) Each year at the time of submission to VA of VA Form 10–10EZ.

(2) When there are changes that might change the copayment obligation (*i.e.,* changes regarding marital status, fixed assets, liquid assets, expenses, income (when received), or whether the veteran has a spouse or dependents residing in the community), the veteran must report those changes to a VA medical facility within 10 days of the change.

(f) *Veterans and care that are not subject to the copayment requirements.* The following veterans and care are not subject to the copayment requirements of this section:

(1) A veteran with a compensable service-connected disability;

(2) A veteran whose annual income (determined under 38 U.S.C. 1503) is less than the amount in effect under 38 U.S.C. 1521(b);

(3) Care for a veteran's noncompensable zero percent service-connected disability;

(4) An episode of extended care services that began on or before November 30, 1999;

(5) Care authorized under 38 U.S.C. 1710(e) for Vietnam-era herbicide-exposed veterans, radiation-exposed veterans, Persian Gulf War veterans, or post-Persian Gulf War combat-exposed veterans;

(6) Care for treatment of sexual trauma as authorized under 38 U.S.C. 1720D; or

(7) Care or services authorized under 38 U.S.C. 1720E for certain veterans regarding cancer of the head or neck.

(g) VA *Form 10–10EC.*

OMB Number: 2900-0629
Estimated Burden: 90 min.

Department of Veterans Affairs

APPLICATION FOR EXTENDED CARE SERVICES

SECTION I - GENERAL INFORMATION

1. VETERAN'S NAME *(Last, First, MI)*	2. SOCIAL SECURITY NUMBER

SECTION II - INSURANCE INFORMATION

ANSWER YES OR NO WHERE APPLICABLE *(OTHERWISE PROVIDE THE REQUESTED INFORMATION)*

3. ARE YOU ELIGIBLE FOR MEDICAID?	3A. ARE YOU ENROLLED IN MEDICARE PART A *(Hospital Insurance)*	3B. EFFECTIVE DATE *(If "Yes")*
☐ YES ☐ NO	☐ YES ☐ NO	

4. ARE YOU ENROLLED IN MEDICARE PART B *(Medical Insurance)*	4A. EFFECTIVE DATE *(If "Yes")*	4B. MEDICARE CLAIM NUMBER *(If applicable)*
☐ YES ☐ NO		

5. ARE YOU COVERED BY HEALTH INSURANCE *(including coverage through a spouse)? (If "YES", provide the following information for all insurance company(s) providing coverage to you.)*

☐ YES ☐ NO

6. NAME OF INSURANCE COMPANY	6A. ADDRESS OF INSURANCE COMPANY	6B. PHONE NUMBER OF INSURANCE COMPANY

6C. NAME OF POLICY HOLDER	6D. RELATIONSHIP OF POLICY HOLDER	6E. POLICY NUMBER	6F. GROUP NAME AND/OR NUMBER

7. NAME OF INSURANCE COMPANY	7A. ADDRESS OF INSURANCE COMPANY	7B. PHONE NUMBER OF INSURANCE COMPANY

7C. NAME OF POLICY HOLDER	7D. RELATIONSHIP OF POLICY HOLDER	7E. POLICY NUMBER	7F. GROUP NAME AND/OR NUMBER

8. NAME OF INSURANCE COMPANY	8A. ADDRESS OF INSURANCE COMPANY	8B. PHONE NUMBER OF INSURANCE COMPANY

8C. NAME OF POLICY HOLDER	8D. RELATIONSHIP OF POLICY HOLDER	8E. POLICY NUMBER	8F. GROUP NAME AND/OR NUMBER

SECTION III - SPOUSE/DEPENDENT INFORMATION

9. CURRENT MARITAL STATUS *(Check one)*	9A. SPOUSE'S NAME *(Last, First, MI)*
☐ MARRIED ☐ NEVER MARRIED ☐ LEGALLY SEPARATED ☐ WIDOWED ☐ DIVORCED	

9B. SPOUSE RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)*	9C. SPOUSE'S SOCIAL SECURITY NUMBER
☐ YES ☐ NO *(If "No", explain)*	

10. DEPENDENT'S NAME *(Last, First, MI)*	10A. DEPENDENT'S DATE OF BIRTH	10B. DEPENDENT'S SOCIAL SECURITY

10C. DEPENDENT RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)*

☐ YES ☐ NO *(If "No", explain)*

11. DEPENDENT'S NAME *(Last, First, MI)*	11A. DEPENDENT'S DATE OF BIRTH	11B. DEPENDENT'S SOCIAL SECURITY

11C. DEPENDENT RESIDING IN THE COMMUNITY? *(Provide address and phone number if different from veteran)*

☐ YES ☐ NO *(If "No", explain)*

We need to collect information regarding income, assets and expenses for you and your spouse. If you do not wish to provide this information you must sign agreeing to make copayments and will be charged the maximum copayment amount for all services. See the top of page 2, read, sign and date.

APPLICATION FOR EXTENDED CARE SERVICES, Continued	VETERAN'S NAME	SOCIAL SECURITY NUMBER

I do not wish to provide my detailed financial information. I understand that I will be assessed the maximum copayment amount for extended care services and agree to pay the applicable VA copayment as required by law.

SIGNATURE	DATE

SECTION IV - FIXED ASSETS *(VETERAN AND SPOUSE))*	VETERAN	SPOUSE
1. Primary Residence *(Market value minus mortgages or liens. Exclude if veteran receiving only non-institutional extended care services or spouse or dependent residing in the community). If the veteran and spouse maintain separate residences, and the veteran is receiving institutional (inpatient) extended care services, include value of the veteran's primary residence.)*	$	$
2. Other Residences/Land/Farm or Ranch *(Market value minus mortgages or liens. This would include a second home, vacation home, rental property.)*	$	$
3. Vehicle(s) *(Value minus any outstanding lien. Exclude primary vehicle if veteran receiving only non-institutional extended care services or spouse or dependent residing in community. If the veteran and spouse maintain separate residences and vehicles, and the veteran is receiving institutional (inpatient) extended care services, include value of the veteran's primary vehicle.)*	$	$
SECTION V - LIQUID ASSETS *(VETERAN AND SPOUSE)*		
1. Cash, Amount in Bank Accounts *(e.g., checking and savings accounts, certificates of deposit, individual retirement accounts, stocks and bonds).*	$	$
2. Value of Other Liquid Assets *(e.g., art, rare coins, stamp collections, collectibles)* Minus the amount you owe on these items. *Exclude household effects, clothing, jewelry, and personal items if veteran receiving only non-institutional extended care services or spouse or dependent residing in the community.*	$	$
SUM OF ALL LINES FIXED AND LIQUID ASSETS — **TOTAL ASSETS**	$	$

SECTION VI - CURRENT GROSS INCOME OF VETERAN AND SPOUSE

CATEGORY	VETERAN		SPOUSE	
	HOW MUCH	HOW OFTEN	HOW MUCH	HOW OFTEN
1. Gross annual income from employment *(e.g., wages, bonuses, tips, severances pay, accrued benefits)*	$		$	
2. Net income from your farm/ranch, property or business.	$		$	
3. List other income amounts *(e.g., social security, Retirement and pension, interest, dividends)* Refer to instructions.	$		$	

SECTION VII - DEDUCTIBLE EXPENSES

ITEMS	AMOUNT
1. Educational expenses of veteran, spouse or dependent *(e.g., tuition, books, fees, material, etc.)*	$
2. Funeral and Burial *(spouse or child, amount you paid for funeral and burial expenses, including prepaid arrangements)*	$
3. Rent/Mortgage *(monthly amount or annual amount)*	$
4. Utilities *(calculate by average monthly amounts over the past 12 months)*	$
5. Car Payment for one vehicle only *(exclude gas, automobile insurance, parking fees, repairs)*	$
6. Food *(for veteran, spouse and dependent)*	$
7. Non-reimbursed medical expenses paid by you or spouse *(e.g., copayments for physicians, dentists, medications, Medicare, health insurance, hospital and nursing home expenses)*	$
8. Court-ordered payments *(e.g., alimony, child support)*	$
9. Insurance *(e.g., automobile insurance, homeowners insurance) Exclude Life Insurance*	$
10. Taxes *(e.g., personal property for home, automobile) Include average monthly expense for taxes paid on income over the past 12 months.*	$
TOTALS	$

SECTION VIII - CONSENT FOR ASSIGNMENT OF BENEFITS

I hereby authorize the Department of Veterans Affairs to disclose any such history, diagnostic and treatment information from my medical records to the contractor of any health plan contract under which I am apparently eligible for medical care or payment of the expense of care or to any other party against whom liability is asserted. I understand that I may revoke this authorization at any time, except to the extent that action has already been taken in reliance on it. Without my express revocation, this consent will automatically expire when all action arising from VA's claim for reimbursement for my medical care has been completed. I authorize payment of medical benefits to VA for any services for which payment is accepted.

SIGNATURE	DATE

APPLICATION FOR EXTENDED CARE SERVICES, Continued	VETERANS NAME	SOCIAL SECURITY NUMBER

SECTION IX - CONSENT TO AGREEMENT TO MAKE COPAYMENTS

Completion of this form with signature of the Veteran or veteran's representative is certification that the veteran/representative has received a copy of the Privacy Act Statement and agrees to make appropriate copayments.

I certify the foregoing statement(s) are true and correct to the best of my knowledge and belief and agree to make the applicable copayment for extended care services as required by law.

SIGNATURE	DATE

SECTION X- PAPERWORK PRIVACY ACT INFORMATION

The Paperwork Reduction Act of 1995 requires us to notify you that this information collection is in accordance with the clearance requirements of section 3507 of the Paperwork Reduction Act of 1995. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a valid OMB number. We anticipate that the time expended by all individuals who must complete this form will average 90 minutes. This includes the time it will take to read instructions, gather the necessary facts and fill out the form. If you have comments regarding this burden estimate or any other aspect of this collection, call 202.273.8247 for mailing information on where to send your comments.

Privacy Act Information: The VA is asking you to provide the information on this form under Title 38, United States Code, sections 1710, 1712, 1722 and 1729 in order for VA to determine your eligibility for extended care benefits and to establish financial eligibility, if applicable, when placed in extended care services. The information you supply may be verified through a computer-matching program. VA may disclose the information that you put on the form as permitted by law. VA may make a "routine use" disclosure of the information as outlined in the Privacy Act systems of records notices and in accordance with the VHA Notice of Privacy Practices. You do not have to provide the information to VA, but if you don't, VA will be unable to process your request and serve your medical needs. Failure to furnish the information will not have any affect on any other benefits to which you may be entitled. If you provide VA your Social Security Number, VA will use it to administer your VA benefits. VA may also use this information to identify veterans and persons claiming or receiving VA benefits and their records, and for other purposes authorized or required by law.

ADDITIONAL COMMENTS:

* * * * *

(Authority: 38 U.S.C. 101(28), 501, 1701(7), 1710, 1710B, 1720B, 1720D, 1722A)

BILLING CODE 8320–01–P

[FR Doc. 03–26184 Filed 10–15–03; 8:45 am]

BILLING CODE 8320–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 30, 31, 33, 35 and 40

[Docket ID No. OA–2002–0001; FRL–7575–4]

RIN 2020–AA39

Public Hearings on Participation by Disadvantaged Business Enterprises in Procurement Under Environmental Protection Agency Financial Assistance Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; public hearings.

SUMMARY: This document announces the dates and locations of Tribal and other public hearings wherein EPA will take comments on its proposed rule for ''Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency Financial Assistance Agreements,'' published on July 24, 2003, at 68 FR 43824. These Tribal and other public hearings will be held during the 180-day public comment period for the proposed rule, which ends on January 20, 2004. EPA will publish information concerning additional Tribal hearings during the comment period when that information becomes available.

DATES: The hearings are scheduled as follows:

1. October 23, 2003, 1:15 p.m. to 3:30 p.m., Temecula, CA
2. October 28, 2003, 9:30 a.m. to 5 p.m., San Juan, PR
3. October 30, 2003, 8:30 a.m. to 5 p.m., St. Thomas, VI

ADDRESSES: The hearings will be held at the following locations:

1. Pechanga Resort and Casino, 45000 Pechanga Parkway, Temecula, California 92592.
2. Inter American University of PR, Central Office of the System, 399 Galileo Street—End, Jardines Metropolitanos, Rio Piedras, San Juan, PR 00927.
3. Ron De Lugo Federal Building, 5500 Veteran's Drive, St. Thomas, VI 00802.

FOR FURTHER INFORMATION CONTACT: Mark Gordon, Attorney Advisor, at (202) 564–5951, Kimberly Patrick, Attorney Advisor, at (202) 564–5386, or David Sutton, Deputy Director, at (202) 564–4444, Office of Small and Disadvantaged Business Utilization, U.S. Environmental Protection Agency, Mail Code 1230A, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: EPA published its proposed rule for Participation by Disadvantaged Business Enterprises in Procurement under Environmental Protection Agency (EPA) Financial Assistance Agreements on July 24, 2003 at 68 FR 43824. EPA has established an official public docket for this action under Docket ID No. OA–2002–0001. The proposed rule and supporting materials are available for public viewing at the Office of Environmental Information 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 Office of Environmental Information is (202) 566–1752. An electronic version of the public docket is available through EPA's electronic public docket and comment systems, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' and then key in docket identification number OA–2002–0001. You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr.*

Dated: October 10, 2003.

Thomas J. Gibson,

Chief of Staff.

[FR Doc. 03–26190 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7574–9]

West Virginia: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: West Virginia has applied to EPA for final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to West Virginia. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. However, if we receive comments that oppose this action, or portions thereof, we will withdraw the relevant portions of the immediate final rule, and they will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by November 14, 2003.

ADDRESSES: Send written comments to Lillie Ellerbe, Mailcode 3WC21, RCRA State programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5454. Comments may also be submitted electronically to *ellerbe.lillie@epa.gov*, or by facsimile at (215) 814–3163. Comments in electronic format should identify this specific notice. You may inspect and copy West Virginia's's application from 8 a.m. to 4:30 p.m. at the following locations: West Virginia Department of Environmental Protection, Division of Water and Waste Management, 1356 Hansford Street, Charleston, WV 25301–1401, Phone number: (304) 558–4253, attn: Carroll Cather or EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–5254.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone Number: (215) 814–5454.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: October 7, 2003.

Donald S. Welsh,

Regional Administrator, EPA Region III.

[FR Doc. 03–26048 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030922237–3237–01; I.D. 082503D]

RIN 0648–AQ98

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program; Community Purchase

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

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule to implement Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), and an amendment to the Pacific halibut commercial fishery regulations for waters in and off of Alaska. Amendment 66 to the FMP and the regulatory amendment would modify the Individual Fishing Quota (IFQ) Program by revising the definition of an eligible quota share holder to allow eligible communities in the Gulf of Alaska (GOA) to establish non-profit entities to purchase and hold halibut and sablefish quota share (QS) for lease to, and use by, community residents as defined by specific elements of the proposed action. This action is intended to improve the effectiveness of the IFQ Program and is necessary to promote the objectives of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the Northern Pacific Halibut Act of 1982 (Halibut Act) with respect to the IFQ fisheries.

DATES: Comments on the proposed rule must be received on or before December 1, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Durall. Comments also may be delivered by hand to NMFS, Room 420, 709 West 9th Street, Juneau, AK 99801. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), via facsimile (202–395–7285; Attn: NOAA Desk Officer) or email at *David__Rostker@omb.eop.gov*. Comments also may be sent via facsimile (fax) to 907–586–7557. Comments will not be accepted if submitted by email or the Internet. Copies of Amendment 66 and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for Amendment 66 may be obtained from the North Pacific Fishery Management Council at 605 West 4th, Suite 306, Anchorage, AK 99501–2252, Phone: (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, 907–586–7228 or email at *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The groundfish fisheries in the Exclusive Economic Zone of the GOA are managed under the FMP. The FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Act (Public Law 94–265, 16 U.S.C. 1801). The FMP was approved by the Secretary of Commerce and became effective in 1978. Fishing for Pacific halibut (*Hippoglossus stenolepis*) is managed by the International Pacific Halibut Commission (IPHC) and the Council under the Halibut Act. The IFQ Program, a limited access management system for the fixed gear Pacific halibut and sablefish (*Anoplopoma fimbria*) fisheries off Alaska, was recommended by the Council in 1992, approved by NMFS in January 1993, and initial implementing rules were published on November 9, 1993 (58 FR 59375). Fishing under the IFQ program began on March 15, 1995. The IFQ Program limits access to the halibut and sablefish fisheries to those persons holding QS in specific management areas. The IFQ Program for the sablefish fishery is implemented by the FMP and Federal regulations at 50 CFR part 679 under authority of the Magnuson-Stevens Act. The IFQ Program for the halibut fishery is implemented by Federal regulations at 50 CFR part 679 under the authority of the Halibut Act.

The IFQ Program originally was designed to resolve conservation and management problems that are endemic to open access fisheries. The background issues leading to the Council's initial action recommending the adoption of IFQs are described in the preamble to the proposed rule establishing the IFQ Program published December 3, 1992 (57 FR 57130).

A central concern of the Council in developing the IFQ Program was that QS, from which IFQ is derived, would become increasingly held by corporate entities instead of independent fishermen who typically own and operate their own vessels. To prevent this outcome, the Council designed the IFQ Program such that QS could, in most cases, be held only by individuals or natural persons, and not by corporate entities. The Council provided limited exemptions to this basic approach to accommodate existing corporate ownership of vessels at the time of implementation and to recognize the participation by corporately owned freezer vessels. However, the overall intent of the IFQ Program was for catcher vessel QS eventually to be held only by individual fishermen. The IFQ Program is designed to limit corporate holding of QS and increase holdings of QS by individual fishermen as corporate owners divest themselves of QS. The rationale for this owner-operator structure was that it would maintain a robust QS market and reasonable entry costs for new fishermen. This provision is implemented through the QS and IFQ transfer regulations at 50 CFR 679.41.

The purpose of this proposed rule is to revise existing IFQ Program regulations and policy to explicitly allow a new group of non-profit entities to hold QS on behalf of residents of specific rural communities located adjacent to the coast of the GOA. This change would allow a non-profit corporate entity that meets specific criteria to receive transferred halibut or sablefish QS on behalf of an eligible community and to lease the resulting IFQ to fishermen who are residents of the eligible community. This change is intended to provide additional opportunities to these fishermen, and may indirectly address concerns about the economic viability of those communities.

A Notice of Availability (NOA) of the FMP amendment was published on September 2, 2003 (68 FR 52173), with comments on the FMP amendment invited through November 3, 2003. Written comments may address the FMP amendment, the proposed rule, or both, but must be received by November 3, 2003, to be considered in the decision to approve or disapprove the FMP amendment.

Since initial issuance of QS, and as a result of voluntary transfers of QS, the amount of QS and the number of resident QS holders has substantially declined in most of the GOA communities that would be affected by

this action. This trend may have had an effect on employment and may have reduced the diversity of fisheries to which fishermen in rural communities have access.

The ability of fishermen in small rural communities to purchase QS or maintain existing QS may be limited by a variety of factors unique to those communities. In particular, many fishermen in small rural communities may be limited in their ability to obtain access to financing due to the remote nature of the communities and their dependence on a limited range of economic opportunities. Many small rural communities are isolated from other communities and this isolation limits access to a wider variety of markets for fishery product that are available to communities with better transportation infrastructure. In addition, fishermen in these rural communities tend to have smaller vessels and fishing operations relative to fishermen in larger ports. These fishermen may have received less QS during initial issuance and may have chosen to divest themselves of QS that was not economically viable. Although the specific causes for decreasing QS holdings in rural communities may vary, the net effect is overall lower participation by residents of these communities in the halibut and sablefish IFQ fisheries.

In June 2000, representatives of several GOA communities presented the Council with a proposal to allow communities to purchase QS. The Council approved several alternatives for analysis in June 2001, reviewed an initial analysis in December 2001, and took final action in April 2002. The Council formally adopted a problem statement in June 2001 for this proposed action that recognized the fact that a number of small coastal communities ''are struggling to remain economically viable.'' The Council stated that ''[a]llowing qualifying communities to purchase halibut and sablefish quota share for use by community residents will help minimize adverse economic impacts on these small, remote, coastal communities in Southeast and Southcentral Alaska, and help provide for the sustained participation of these communities in the halibut and sablefish IFQ fisheries.''

The proposed action developed by the Council would address these concerns by modifying the IFQ Program to allow non-profit entities that represent small rural communities in the GOA with a historic participation in the halibut and sablefish fisheries to hold QS. The Council's recommendations also reflect the most recent amendments to the Magnuson-Stevens Act, and IFQ policy recommendations by the National Research Council (NRC).

The 1996 amendments to the Magnuson-Stevens Act established a new national standard for fishery conservation and management (National Standard 8) that requires management programs to ''take into the account the importance of fishery resources to fishing communities in order to (A) provide for the sustained participation of such communities, and (B) to the extent practicable, minimize adverse economic impacts on such communities'' (16 U.S.C. 1851). The Halibut Act requires consideration of the effect of halibut allocations to fishing communities by reference to section 303(b)(6) of the Magnuson-Stevens Act. This reference requires, among other things, that the effects of halibut allocations be considered as is described under the directives of National Standard 8 of the Magnuson-Stevens Act.

The 1996 Magnuson-Stevens Act amendments also directed the NRC to submit a report to Congress on existing IFQ Programs and provide recommendations on the implementation of existing and future programs. The NRC published its report ''Sharing the Fish: Toward a National Policy on Individual Fishing Quotas'' in 1999. In this report, the NRC recommends that NMFS and the Regional Councils consider including fishing communities as stakeholders in fishery management programs. The NRC recommends that Regional Councils should be permitted to authorize the purchase, holding, management, and sale of QS/IFQs by communities. This action proposes to implement provisions that would address the NRC recommendations on the use of QS by communities.

The Council considered the range of comments from the public, NMFS, and the State of Alaska (State), and incorporated various suggestions in developing its proposed community QS policy. The basic provisions of this proposed policy are described as follows.

Community QS Provisions

1. Community Quota Entities

Community quota entities (CQEs), incorporated under the laws of the State to represent eligible communities, would obtain QS by transfer and hold the QS and lease the resulting annual IFQ to individual community residents. Unless otherwise specified, the restrictions that apply to any current QS holder would apply to a CQE. CQEs, however, would be subject to additional regulatory requirements beyond those applying to existing QS holders.

A CQE could represent more than one eligible community. However, no community could be represented by more than one CQE. This provision would minimize confusion and ensure effective and efficient administration of the program.

During Council deliberations, a new non-profit entity was selected as the appropriate QS holder for these communities based on recommendations from GOA communities. These recommendations indicated that a non-profit entity could be more flexible and cost-effective than either a for-profit corporation or an existing governmental body. To be considered eligible to hold QS on behalf of a community, a CQE would be required to be incorporated after April 10, 2002, the date of final Council action.

The Council stated that the purpose of designating a new non-profit entity to hold QS is that existing administrative structures such as municipal governments, tribal councils, or other community organizations may be focused on other priorities. The Council considered that a new non-profit entity may be better suited to represent an entire community with the express purpose of purchasing and managing QS. Additionally, the EA/RIR/IRFA noted that a number of communities considered as eligible for this program are unincorporated, do not have local tribal governments, or other community organizations, and therefore lack an existing governmental body that could manage the QS.

The Council also recommended that a non-profit organization provide proof of support from the community that it is seeking to represent. This support must be demonstrated in the application by a non-profit organization to become eligible as a CQE. The specific mechanism for the community to demonstrate its support for a CQE is described in the Administrative Oversight section of the preamble.

Once an application to become a CQE has been approved, then that CQE would be eligible to hold and receive QS, and lease IFQ to eligible community residents under the mechanisms established by this proposed rule. If a CQE does not remain in compliance, (e.g., by failing to submit a complete annual report), then NMFS could initiate administrative proceedings to deny the transfer of QS or IFQ to or from the CQE. As with other administrative determinations under the IFQ Program, any such determination could be

appealed under the procedures set forth in regulations (50 CFR 679.43). The Council recommended regulatory measures, described below, as a means to monitor the ability of the non-profit entities to meet the goals of distributing IFQ among residents in these GOA communities.

2. Eligible Communities

Communities eligible to participate in this program would need to meet all the following criteria: (a) have a population of less than 1,500 persons based on the 2000 United States Census; (b) have direct saltwater access; (c) lack direct road access to communities with a population greater than 1,500 persons; (d) have historic participation in the halibut and sablefish fisheries; and (e) be specifically designated on a list adopted by the Council and included in this proposed rule (see Table 21 to Part 679).

If a community appears to meet the eligibility criteria but is not specifically designated on the list of communities adopted by the Council, then that community would have to apply directly to the Council to be included. In this event, the Council may modify the list of eligible communities adopted by the Council through a regulatory amendment. Under the criteria established in this proposed rule, a total of 42 communities in the GOA would qualify as eligible to purchase QS. These eligible communities may designate a new non-profit entity to hold QS on behalf of that community.

The specific criteria for community eligibility were developed through Council deliberations. Generally, the Council chose criteria that were intended to define a set of communities that have experienced a similar decline in their participation in the halibut and sablefish IFQ fisheries. Analysis in the EA/RIR/IRFA indicates that all but 2 of the 42 communities designated in Table 21 to part 679 have experienced a net loss in QS held by residents of those communities since initial allocation.

(a) Population of Less than 1,500 persons

The Council considered a range of population criteria and chose to limit eligibility to communities less than 1,500 persons based on an analysis of QS distribution. This analysis indicated that several communities larger than 1,500, specifically Wrangell and Cordova, did not have the same decline in participation in the halibut and sablefish fisheries as the communities that this action proposes to address. The 2000 United States Census was chosen as the standard for measuring total population. This standard would be used to determine eligibility for community participation in this program because it is considered to be a more accurate measure of population than annual estimates conducted by the State. Additionally, at the time that final action to modify the IFQ Program was taken by the Council to accommodate communities, the 2000 Census was the best available demographic data.

This proposed rule establishes that a community with not less than 20 persons and not more than 1,500 persons that is defined as a Census Designated Place under the U.S. Census fulfills the requirement for the definition of a community for the purposes of this program. If communities seek inclusion as an eligible community in the future, then NMFS would review those communities using the definitions of a community as defined by this proposed rule.

The reason for using a minimum of a 20–person standard, is that two communities specifically designated by the Council for eligibility for this program have populations slightly higher than 20 persons. Specifically, Meyers Chuck and Ivanof Bay have populations of 21 and 22 persons, respectively. If a higher minimum population standard were used, neither of these communities would be eligible to participate in this program. Excluding these two communities that have experienced a loss of QS since the implementation of the IFQ program would undermine the intent of this action, which is to provide an additional opportunity for residents of those communities to receive access to halibut and sablefish resources.

The limitation on minimum population size would reduce the potential for future petitions for inclusion into the program by a small group of individuals living in a place solely for the purpose of participating in this program. Additionally, there are a number of communities that are no longer populated that could be qualified under the historic participation criteria. The Council did not intend this program to provide an opportunity for communities which do not exist to receive the ability to form non-profit entities and purchase QS. The limitation on population size would prevent this possibility and also reflects existing definitions of a community as established by the State of Alaska for purposes of revenue sharing agreements. The State defines a community as a group of not less than 25 people living in a geographic location as a social unit. Without a minimum population standard established in this proposed rule, the goals of the Council and this action to provide additional opportunities for coastal residents in established communities is undermined. All of the communities designated by the Council on the list of eligible communities meet these requirements based on the analysis of these eligibility criteria in the EA/RIR/IRFA prepared for this proposed rule.

(b) Have Direct Saltwater Access

A community would be defined as adjacent to saltwater if it is located on the GOA coast of the North Pacific Ocean.

(c) Lack of Direct Road Access

The Council recommended limiting eligibility to communities without direct road access to communities larger than 1,500 persons because such communities may lack access to markets for fishery products and could be disadvantaged relative to other communities with better transportation infrastructure. Communities that do have road access to larger communities would be expected to have access to larger markets, better access to capital, and are not likely to face the same economic conditions that this program is trying to address by providing additional harvest opportunities for community residents.

(d) Have Historic Participation in the Halibut and Sablefish Fisheries

Historic participation would be defined as communities for which a resident has recorded a commercial landing of either halibut or sablefish between 1980–2000 according to Commercial Fisheries Entry Commission (CFEC) data for permit and fishing activity. This definition would provide a means for the Council to consider those communities for which halibut or sablefish has some historic commercial importance. A broad range of years was chosen to accommodate the shifting patterns of halibut and sablefish harvests within these communities over the past twenty years. The year 1980 was chosen because it represents the first year of widely collected and reliable data from the CFEC , and the year 2000 was chosen because it was the last year of data available prior to the Council's decision to recommend this program.

(e) Be Specifically Designated on a List Adopted by the Council

The Council adopted a specific list of eligible communities to limit the entry of new communities into the Community QS Program (see Table 21 to Part 679). The Council expressed a

desire to review the addition of any communities not listed. Council review is ensured by listing eligible communities in the regulations. Any change to the list of eligible communities would first require Council action to recommend such a change. The Council desired this review to ensure that communities that were not originally considered under this proposed rule provide adequate evidence of their eligibility to participate in this program. This review would reduce potential disruption in administration of the Community QS Program due to a sudden and unanticipated increase in competition for QS among eligible communities. This Council review also would provide an additional public review process before modifying the Community QS Program.

3. Use Caps for Individual Communities

Each eligible community as represented by a CQE would be subject to the same use limitations on QS and IFQ currently established for QS holders as described under 50 CFR 679.42(e) for sablefish and 50 CFR 679.42(f) for halibut. Therefore, for each community it represents, a CQE would be limited to using:

No more than: 599,799 units of halibut QS	in IFQ regulatory area 2C.
No more than: 1,502,823 units of halibut QS combined	in IFQ regulatory areas 2C, 3A, and 3B.
No more than: 688,485 sablefish QS units	in the IFQ regulatory Area East of 140° W. long. (Southeast Outside District).
No more than 3,229,721 sablefish QS units combined	in the Southeast Outside District West Yakutat, Central Gulf Regulatory Area, and Western Gulf Regulatory Area.

A CQE representing an eligible community located within Areas 3A or 3B would be prohibited from purchasing QS in Area 2C (Southeast Alaska) on behalf of that community. The Council recommended this provision because 21 of the 42 eligible communities are located in Area 2C. Allowing additional CQEs representing communities located in Areas 3A and 3B to purchase QS in Area 2C would increase competition, and possibly result in higher QS prices, for 2C communities. This increased competition could affect both prospective community QS buyers and new individual entrants to the fishery.

Likewise, a CQE representing an eligible community within Area 2C would be prohibited from purchasing and using QS in Area 3B (Western GOA) on behalf of that community. The Council recommended this limitation because residents from communities located in Area 2C traditionally did not fish in Area 3B, and one of the principal goals of the community QS program is to improve the access of residents of the eligible communities to local resources.

Although the Council recommended limiting the use of halibut QS to those areas that are adjacent to the eligible communities, a similar provision was not recommended for sablefish. The sablefish fishery occurs in deeper waters than much of the halibut fishery and typically requires larger vessels that can travel longer distances for harvesting fish.

As noted above, the Council recommended limiting QS holdings by CQEs on behalf of communities to the levels established in the current IFQ program. The Council noted that this limit would provide an adequate opportunity for communities to purchase and hold sufficient QS for leasing the resulting IFQ among community residents. This level was considered not to be so restrictive as to discourage communities from purchasing and holding quota. The Council also considered the potential effects on existing QS holders in recommending use caps for individual communities. The use caps accommodate existing QS holders who are concerned that shifting potential QS holdings to communities could disadvantage individual fishermen by reducing the amount of QS available to them in the QS market.

4. Cumulative Use Caps for All Communities

Communities represented by CQEs cumulatively would be limited to holding a maximum of 3 percent of the total halibut and sablefish QS in each area in the first year after implementation of this program. In each subsequent year, the percentage would be increased by an additional 3 percent until, after 7 years, a maximum of 21 percent of the total halibut and sablefish QS could be held in each area in which CQEs are eligible to hold QS.

The Council recommended limiting cumulative community ownership of QS in each area as an additional measure to reduce the potential increase in QS price that could result if CQEs sought to purchase QS up to their respective communities' use cap(s) in each area. The Council recommended this step-up cumulative use cap to balance potential QS market competition between communities and individuals, and to accommodate the desire of GOA community representatives to have adequate access to QS as CQEs enter the program on behalf of eligible communities.

5. Transfer and Use Restrictions

(a) Block Limits

The purchase of blocked QS by CQEs would be restricted. During Council deliberations, numerous industry representatives and fishermen indicated that allowing unrestricted purchasing of QS could disadvantage new entrants, particularly those individuals in the market for ''blocked QS.'' Blocked QS are aggregates of small units of QS that were designated as blocks when they were initially issued and that cannot be subdivided upon transfer. The number of blocks that may be held by a person is limited under the IFQ Program. These limits were established to limit the consolidation of blocked QS and to ensure that smaller aggregate units would be available on the market. Blocked QS typically is less expensive and more attractive to new-entrants.

This proposed rule would modify the consolidation limits for blocked QS for communities represented by CQEs. The Council is recommending this change to provide additional opportunities for CQEs (on behalf of the communities they represent) to access the typically less expensive blocked QS. The Council also considered the potential effects on new entrants by allowing each community represented by a CQE to hold more QS blocks than can other types of QS holders. Each community represented by a CQEs would be limited to holding, at any point in time, a maximum of 10 blocks of halibut QS and 5 blocks of sablefish QS in each IFQ regulatory area for halibut and sablefish. The CQE could not subdivide blocked QS.

Existing regulations at 50 CFR 679.42(g) limit QS holders to a maximum of two blocks for either species in any area if a person holds only blocked QS, and no more than one

block for a species in an area if a person holds any unblocked QS for that species-area combination. Allowing CQEs to hold more blocks than existing QS holders on behalf of their constituent communities would expand the potential QS market available to these communities. The Council recommended this provision because in most areas of the GOA large portions of the QS are available only in blocked shares. Limiting communities to existing unblocked QS would effectively limit the QS available to communities to a small portion of the total QS that is typically higher priced than the more available blocked QS. The proposed limits would provide additional opportunities for eligible communities represented by CQEs to purchase QS beyond those that constrain current QS holders. In recommending this modification to the existing regulations, the Council balanced the objectives of this new program with concerns about protecting the interests of individual new entrants to the fishery.

To accommodate the interests of prospective new entrants, the Council recommended prohibiting CQEs from purchasing:

Halibut QS blocks less than or equal to 19,992 units. (e.g., 2,850 lb (1,292.8 kg) of IFQ in 2003)	in Area 2C.
Halibut QS blocks 27,912 units. (e.g., 3,416 lb (1,549.5 kg) of IFQ in 2003).	in Area 3A.
Sablefish QS blocks less than or equal to 33,270 units. (e.g., 4,003 lb (1,815.8 kg) of IFQ in 2003)	in the Southeast Outside District.
Sablefish QS blocks less than or equal to 43,390 units. (e.g., 3,638 lb (1,650.2 kg) of IFQ in 2003)	in the West Yakutat District.
Sablefish QS blocks less than or equal to 46,055 units. (e.g., 4,684 lb (2,124.7 kg) of IFQ in 2003)	in the Central GOA regulatory area.
Sablefish QS blocks less than or equal to 48,410 units. (e.g., 6,090 lb (2,762.4 kg) of IFQ in 2003	in the Western GOA regulatory area.

These QS limits are specified in 50 CFR 679.41(e) as the ''sweep up'' limit, or the number of QS units initially issued as blocks that could be combined to form a single block.

The Council recommended that communities not be eligible to purchase or hold these smaller ''sweep-up'' blocks because these smaller QS blocks typically are purchased by individuals entering the IFQ fisheries. The Council recommended this measure to minimize potentially unfair competition in the QS market between CQEs and individuals for these small QS blocks. The Council did not recommend similar restrictions on QS in the halibut fishery for Area 3B because fewer ''sweep-up'' blocks exist in Area 3B and few new entrants in Area 3B have sought these ''sweep-up'' blocks.

(b) Transfer and IFQ Leasing

CQEs could only receive and use halibut QS assigned to vessel category B (greater than 60 feet length overall) and vessel category C (greater than 35 feet and less than or equal to 60 feet length overall) in Areas 2C and 3A.

This provision would prohibit CQEs from holding QS assigned to vessel category D (less than or equal to 35 feet (10.7 m) length overall) in Areas 2C and 3A. Category D QS typically is purchased by individuals seeking entry to the halibut IFQ fisheries. The Council recommended this provision to reduce potential competition in the halibut QS market between individuals and CQEs.

The Council did not recommend prohibiting CQEs from holding D category halibut QS in Area 3B. A relatively small amount of D category QS exists in Area 3B, and traditionally few prospective buyers exist for this category of QS. Existing D category QS holders in Area 3B indicated that allowing CQEs to purchase D category QS in Area 3B would increase the marketability of their QS.

The Council did not recommend catcher vessel category restrictions for CQEs holding sablefish QS. Only B and C vessel categories exist for sablefish QS and sablefish are typically harvested from larger vessels.

So that the annual IFQ derived from the QS held on behalf of a community could be fished, a CQE would lease (i.e., transfer the annual IFQ) to one or more residents of the community, or communities, it represents. Each IFQ lease would be made on annual basis, as is currently the requirement in existing regulations. IFQ so transferred could be fished from a vessel of any size regardless of the QS vessel category from which the IFQ was derived. This provision would apply only while the QS is held by the CQE. The vessel category requirements for use of the QS would apply once again after the QS is transferred from a CQE to a qualified recipient that was not a CQE.

The Council recommended this provision to facilitate the use of the IFQ on the wide range of vessel types that is present in many rural communities. Limiting CQEs to purchase only certain vessel category QS could increase demand and price competition among CQEs and other QS holders, particularly for category C QS because many vessels in the eligible communities tend to be within this size range. Broadening the use of IFQ from community-held QS could reduce this potential competition.

The amount of IFQ that may be leased annually to an eligible community resident would be limited so that no such lessee could hold IFQ permits authorizing the harvest of more than 50,000 lb (22.7 mt) of halibut and 50,000 lb (22.7 mt) of sablefish IFQ, inclusive of any IFQ derived from any source.

This limitation is intended to ensure a broad distribution of IFQ among community residents and to limit the amount of IFQ that may be leased to those residents who already hold QS or lease IFQ from another source. The Council noted that one of the principal goals of this program was to provide access to halibut and sablefish resources to community residents that do not currently have access to these resources.

Similarly, during any fishing year, no vessel participating in the community QS program could be used to harvest an amount of IFQ greater than 50,000 lb (22.7 mt) of halibut and 50,000 lb (22.7 mt) of sablefish, inclusive of all IFQ fished aboard that vessel. Currently, vessels are limited to 1 percent of the Area 2C IFQ TAC for halibut (e.g., 85,000 net pounds (38 mt) in 2003), or, outside of Area 2C, 0.5 percent of the entire IFQ TAC (e.g., 295,050 net pounds (134 mt) in 2003), and 1 percent of the Southeast IFQ TAC for sablefish (e.g. 78,484 round pounds (36 mt) in 2003), or, outside of Southeast, 1 percent of the entire sablefish TAC (e.g. 348,635 round pounds (158 mt) in 2003).

This limitation on the amount of IFQ that could be fished on any one vessel using community-held QS is intended

to encourage use of a broad distribution of community-held IFQ on vessels that may otherwise have limited or no participation in the IFQ Program.

Eligibility to lease IFQ derived from community-held QS would be limited to permanent residents of the community represented by the CQE. The Council recommended this provision to explicitly tie the potential benefits of QS held by a CQE on behalf of a community to the residents of that community. Such a resident who wishes to lease IFQ would be required to state that he or she maintains a permanent domicile in that specific community and is qualified to receive QS and IFQ by transfer under the existing regulations (i.e., that he or she holds a Transfer Eligibility Certificate issued by NMFS).

Existing regulations at 50 CFR 679.41 require that, for an individual to be eligible to receive QS/IFQ by transfer, such an individual must be a U.S. citizen and must either have received QS upon initial issuance or have 150 days of experience onboard a vessel working as part of the harvesting crew in a U.S. commercial fishery. Upon having demonstrated that he or she has satisfied those requirements, such an individual is issued a Transfer Eligibility Certificate (TEC). These requirements would remain in place for individuals seeking to lease IFQ derived from community QS. Individuals receiving IFQ must meet these qualifications and attest that they are permanently domiciled within that community when receiving IFQ by transfer from a CQE. For purposes of this program, an individual would need to affirm that he or she maintained a domicile in the community from which the IFQ is leased for 12 consecutive months immediately preceding the time when the assertion of residence is made, and had not claimed residency in another community, state, territory, or country.

An individual who receives IFQ derived from QS held by a CQE may not designate a skipper to fish the community IFQ, instead that individual must be onboard the vessel when the IFQ is being fished. The Council recommended this requirement to help ensure that the potential benefits of QS held by communities would be realized by resident fishermen of those communities and not leased outside the communities.

Individuals who hold leases of IFQ from communities would be considered to be IFQ permit holders and would be subject to the regulations that govern other permit holders, including the payment of annual fees as required under 50 CFR 679.45, unless noted otherwise in this proposed rule.

(c) Sale Restrictions

Certain restrictions would apply to the transfer of QS held by a CQE on behalf of a community. A CQE is restricted to sell its QS to generate revenues to improve, sustain, or expand the opportunities for community residents to participate in the IFQ halibut and sablefish fisheries. These restrictions are designed to ensure that the goals of the program are met. NMFS would approve the transfer of QS held by a CQE on behalf of a community only if the community for which the CQE holds the QS authorizes that transfer. This authorization may be in the form of a signature from a authorized representative of the governing body of the eligible community for QS transfers on the Approval of Transfer form. The purpose of this authorization is to ensure that the community is fully aware of the transfer because certain restrictions apply to future transfers if the transfer of QS is for a reason other than to sustain, improve, or expand the program (i.e., the CQE would be prohibited from holding QS on behalf of that community for a period of three years and the CQE must divest itself of all QS held on behalf of that community).

This proposed action would also provide an opportunity for a CQE to transfer QS to dissolve the CQE; or as a result of a court order, operation of law, or as part of a security agreement. These provisions are allowed to account for those cases in which a CQE is no longer capable of representing an eligible community and seeks to divest itself of QS holdings in order to provide an opportunity for another non-profit to form and seek approval as a CQE for a community. Transfers that are required as a result of a court order, operation of law, or as part of a security requirement would be authorized under this proposed action. These forms of transfers are authorized under the existing IFQ program.

During Council deliberations, NMFS indicated that the enforcement and monitoring mechanism for these transfer provisions would be limited. The EA/RIR/IRFA prepared by the Council (see **ADDRESSES**) notes these concerns. Rather than requiring an extensive monitoring and auditing program for each transfer of QS, NMFS would rely on the declaration by the CQE about the purpose of the transfer of any QS held on behalf of a community and the authorization by the governing body of that community to transfer that QS. If subsequent information is made available to NMFS that confirms that the transfer of QS is made for reasons other than to sustain, improve, or expand the opportunities for community residents, then NMFS would withhold annual IFQ permits on any remaining QS held by the CQE on behalf of that community and would disqualify that CQE from holding QS on behalf of that community for 3 calendar years following the year in which final agency action adopting that determination is made.

NMFS would not impose this restriction until the CQE had received full administrative due process, including notice of the potential action and the opportunity to be heard. An initial administrative determination (IAD) proposing an adverse action would only become final agency action if the CQE failed to appeal the IAD within 60 days, or upon the effective date of the decision issued by the Office of Administrative Appeals. The procedures for appeal are provided at 50 CFR 679.43.

The 3–year restriction was recommended by the Council because the Council did not intend for this program to provide a mechanism for speculating in the QS market or using potential assets to fund other unrelated projects but intended to encourage the long-term participation of fishery dependent communities in the IFQ Program. The public is encouraged to comment specifically on these transfer restrictions, the administrative process that would be established to monitor these requirements, and the enforcement of these restrictions.

6. Joint and Several Liability for Violations

Both the CQE and the individual fisherman to whom the CQE leases its IFQ will be considered jointly and severally liable for any IFQ fishery violation committed while the individual fisherman is in the process of fishing the leased IFQ. This joint and several liability is analogous to the joint and several liability currently imposed on IFQ permit holders and any hired skippers fishing the permit holders' IFQ.

7. Administrative Oversight

Implementing this proposal would require that NMFS: (1) review applications of eligibility for non-profit entities seeking to be qualified as a CQE for a particular community and certify eligible CQEs; and (2) review an annual report detailing the use of QS and IFQ by the CQE and community residents. These reviews ensure that the CQEs are adequately representing the communities and that the program is meeting the goals established by the

Council. If a CQE fails to provide a completed annual report to NMFS for each community that it represents, then that CQE would be deemed ineligible to use the IFQ resulting from that QS on behalf of that community until a complete annual report is received. Before becoming a Final Agency Action, any such determination by NMFS may be appealed through the administrative appeals process described under the IFQ Program (50 CFR 679.43).

Each non-profit entity applying to become a CQE would have to provide NMFS with the following:

(1) Its articles of incorporation as a non-profit entity under the laws of the State;

(2) A statement designating the community, or communities, represented by that CQE;

(3) Management organization;

(4) A detailed statement describing the procedures that will be used to determine the distribution of IFQ to residents of each community represented by that CQE; and

(5) A statement of support and accountability of the non-profit entity to that community from a governing body representing each community represented by the CQE.

During Council deliberations, the State noted that it would like to have an opportunity to provide NMFS with comments on applications by non-profit entities seeking to become CQEs. NMFS will provide the State with a copy of the applications. The State will have a period of 30 days to provide comments to NMFS after they are received. NMFS will consider these comments before certifying a non-profit entity as a CQE. This opportunity for comment does not diminish the authority of NMFS to administer these regulations and certify CQEs, but does provide an opportunity for the State to provide comments on the applications. NMFS will review all applications for completeness. Those applications that are not complete would be returned to the applicant for revision. This proposed action does not establish a limit on the amount of time that a non-profit would have to correct deficiencies in an application.

To minimize potential conflicts that may exist among non-profit entities seeking qualification as a CQE, NMFS would not consider a recommendation from a community governing body supporting more than one non-profit entity to hold QS on behalf of that community. The specific community governing body that would be relied on to make a recommendation would recommend a non-profit entity would vary depending on the governance structure of the particular community.

The Council intended that any CQE establish that it is accountable to the community that it would seek to represent. By establishing a requirement that a specific governing body within a community provide a recommendation supporting a CQE, this proposed rule would establish a clear link between the governing body that represents that community and the CQE. Allowing multiple non-profits to apply as CQEs for a singly community would require additional review by NMFS to ensure accountability. Additionally, it would be difficult to establish specific criteria that would establish a clear accountability or lack of accountability. The Council did not intend that this proposed action would serve the interests of a small number of individuals within a given community who may choose to form a corporate entity to narrowly represent their interests. The specific linkage to specific recognized governing bodies within a community minimized the need for additional administrative oversight to ensure accountability to a community and provides a clear nexus between the CQE and the community members it is intended to represent by holding QS on behalf of that community.

Communities incorporated as municipalities. For a community that is incorporated as a municipality under State statutes, the City Council would recommend the non-profit entity to serve as the CQE.

Communities represented by tribal governments. For those communities that are not incorporated as municipalities but that are represented by a tribal government recognized by the Secretary of the Interior, the tribal governing body would recommend the non-profit entity to serve as the CQE.

Communities represented by a non-profit association. For those communities that are not incorporated as a municipality, and that are not represented by a tribal government, the community non-profit association that has an established relationship as the governmental body recognized by the State for purposes of governmental functions would recommend the non-profit entity to serve as the CQE for that community.

Communities without governing bodies. Those communities that are not incorporated as a municipality, or represented by a tribal government recognized by the Bureau of Indian Affairs, and that do not have a community non-profit association recognized by the State for purposes of governmental functions, would not be eligible to recommend a non-profit entity to hold QS on its behalf until a representative governing entity was formed (e.g., the community incorporated as a municipality, was represented by a tribal government recognized by the Bureau of Indian Affairs, or a community non-profit association was formed and recognized by the Alaska Department of Community and Economic Development). NMFS would consult with the State to determine if a community non-profit association is formed, and that it adequately represents the interests of the community before that community non-profit association could recommend a CQE to hold QS on behalf of that community.

This requirement would ensure that any communities that do not have a governmental structure form such a structure prior to being allowed to recommend a specific non-profit entity as a CQE. This requirement is expected to affect only two of the 42 eligible communities recommended by the Council: Halibut Cove and Meyers Chuck. Neither of these communities possess any of the governmental bodies described above. These communities could establish community non-profit associations and have those entities reviewed by the State prior to recommending a CQE. This requirement is determined to be adequate to ensure that any non-profit designated as a CQE for these communities represents the interests of the residents of those communities. The public is encouraged to comment on this particular aspect of this proposed rule.

Establishing that only one CQE to represent the interests in a given community would reduce potential conflicts and reduce administrative burdens. This requirement would not undermine a community's ability to access QS and would ensure that an entity seeking authorization to hold QS on behalf of a community is reviewed by the appropriate governing body within that community before it is certified by NMFS. The definition for ''eligible community'' is revised by redesignating the existing paragraph as paragraph (1) for purposes of the CDQ Program and by adding a new paragraph (2) for purposes of the IFQ Program.

(a) Annual Report.

NMFS would require each CQE to submit an annual report by January 31 to NMFS and to the governing body for each community represented by the CQE, detailing the use of QS and IFQ by the CQE and community residents during the previous year's fishing season. That annual report would

contain the following information for the preceding fishing season:

(1) Identification of the eligible community, or communities, represented by the CQE ;

(2) Total amount of halibut QS and sablefish QS held by the CQE at the start of the calendar year and at the end of the calendar year;

(3) Total amount of halibut and sablefish IFQ leased from the CQE;

(4) Names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ;

(5) The name, ADF&G vessel registration number, USCG documentation number, length overall, and home port of each vessel from which the IFQ leased from community owned QS was fished;

(6) The names, and business addresses of those individuals employed as crew members when fishing the IFQ derived from the QS held by the CQE.

(7) A detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents;

(8) A description of efforts made to employ crew members who are eligible community residents of the eligible community aboard vessels on which IFQ derived from QS held by a CQE is being fished;

(9) A description of the process used to solicit lease applications from eligible community residents of the eligible community on whose behalf the CQE is holding QS;

(10) The names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE;

(11) Any changes in the bylaws of the CQE, board of directors, or other key management personnel;

(12) Copies of minutes and other relevant decision making documents from CQE board meetings; and

(13) The number of vessels that fished for IFQ derived from QS held by a CQE.

The purpose of the annual report is to assist NMFS and the Council to assess the performance of the CQEs in meeting the objectives of providing for community-held QS. The Council expressed its intent that the use of community QS would be reviewed 5 years after the effective date of implementing the regulations. The Council may use the annual reports in this review. In particular, the Council wished to evaluate the distribution of IFQ leases within a community, the use of IFQ by local crew members, and the percentage of IFQ resulting from community-held QS that is fished on an annual basis. This annual report would also be provided to the governing body of each community represented by the CQE. This would assist the governing body and residents of that community in reviewing the activities of the CQE relative to that community.

Submitting the annual report by January 31 would provide NMFS adequate time to review the annual report before issuing annual IFQ to the CQE at the beginning of the IFQ fishing season and would provide an opportunity for NMFS to indicate to the CQE any deficiencies that may exist in the annual report and allow that CQE time to make corrections.

The Council also requested that the communities provide information on the location of landings and other biological data to assess the distribution of landings that occur. These data are routinely reported on the State Fish Ticket and IFQ landing reports and can be summarized by NMFS. CQEs would not be expected to have access to these records. NMFS routinely collects specific information on the transfer of QS as part of transfer applications. Therefore, NMFS can collect several components of the annual report and provide them to the Council and the communities as requested. Specifically, NMFS can provide directly to the Council or any of the CQEs items 1 through 4 and item 13, as described above. The CQEs may wish to incorporate this information in the annual report provided to the Council and the community governing body. This proposed rule does not require that the CQEs collect this information separately.

If a CQE fails to submit a timely and complete annual report, or if other information indicates that the CQE is not adhering to the procedures for distributing or managing QS and IFQ on behalf of a community as established under its application and these regulations, then NMFS would initiate an administrative action to suspend the ability of that CQE to transfer QS and IFQ, and to receive additional QS by transfer. This action would be implemented consistent with the administrative review procedures provided at 50 CFR 679.43. Also, a CQE would be subject to enforcement actions for violating regulations. Because of the significant impacts these restrictions can impose on a community for which the CQE holds QS, communities are encouraged to carefully monitor the actions of a CQE and to provide a mechanism to ensure that the CQE acts in the best interest of that community and fulfills all the requirements established in its application for eligibility and the regulations for this program.

Effect of this Action

Assuming that CQEs are formed and enter the QS market, this action could affect the distribution of halibut and sablefish QS and the associated IFQ throughout the GOA. Specifically, by enabling non-profit entities to hold QS, some QS may shift from existing QS holders to these new eligible non-profit entities. No data exist to predict the source of the QS that would be purchased by CQEs, the amount that would be purchased by CQEs, or the specific fishing activities of those individuals that lease IFQ from the CQEs. Because the potential effects of this proposed rule are unknown, the Council proposed limits on the amount of QS that each community may hold individually and in the aggregate.

This action would not increase the overall harvests of either the halibut or sablefish resource. The amount of halibut and sablefish available for harvest would not be affected by this proposed rule and would remain limited by the annual catch limit established for halibut by the IPHC and the annual TAC for sablefish established by the Council.

Although this action may affect the distribution of harvests within the sablefish and halibut management areas, the potential effect of this redistribution of effort is unknown.

Some effect on the price of QS could be expected. Authorizing new entities to enter the QS market could increase the competition for QS and could result in elevated prices. However, the effect of this potential competition on the market value of QS is unknown.

Nothing in this proposed rule is expected to undermine existing management measures designed to prevent overfishing or increase the bycatch of non-target species. The intent of this proposal is to expand the opportunity for fishermen in remote fishing communities to harvest commercial halibut and sablefish. Any possible effect on local stock abundance would depend on the amount of QS purchased and the actual fishing locations of the IFQ lessees, as compared to the current distribution of fishing effort. No effect on the overall stock abundance would be expected.

Classification

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council and NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that describes the impact this

proposed rule, if adopted, would have on small entities. The IRFA considered two alternatives. The first alternative is the status quo alternative in which only qualified persons, as defined under current Federal regulations, would be eligible to hold QS. The second alternative would allow eligible communities in the GOA, as defined in this proposed action, to hold halibut and sablefish QS for use by residents of those eligible communities. The second alternative would address concerns noted in the IRFA regarding the lack of initially issued QS and the loss of QS in remote, fishery-dependent GOA communities and thus, address negative impacts sustained by these communities through loss of participation in the IFQ fisheries that would continue under the status quo. This action proposes to implement the second alternative considered in the IRFA.

As of December 31, 2001, the most recent year for which data are available for analysis, NMFS records show 1,534 halibut QS holders in Area 2C, 2,047 QS holders in 3A, and 585 QS holders in Area 3B. Similarly, as of December 31, 2001, NMFS data indicate 486 sablefish QS holders in the Southeast Area, 300 QS holders in the West Yakutat Area, 442 QS holders in the Central Gulf Area, and 177 QS holders in the Western Gulf Area. All of these QS holders could be considered small entities for purposes of the Regulatory Flexibility Act (RFA). The proposed rule could impact the estimated 860 registered commercial halibut buyers participating in the commercial halibut and sablefish IFQ program, many of which are small entities. Also classified as small entities under the RFA are the 42 communities that would qualify as eligible to participate in the IFQ Program as small government jurisdictions with fewer than 50,000 residents.

Analysis of the proposed action indicates no adverse impact on small entities from this action. This action does not reallocate QS away from existing QS holders. The potential adverse effects of this proposed action would be limited to the potential increase in competition which may exist between CQEs, existing QS holders, and new entrants in the QS market. This competition could increase the market price of QS for all persons seeking to purchase QS. No data exist to determine if this potential increase in QS price would occur, or if it would disadvantage existing QS holders or new entrants relative to CQEs.

The ability of CQEs to compete in the QS market is limited by 3 factors: Their access to capital, the amount of QS available on the market, and the cumulative use cap. The cap limits CQEs to holding a maximum of 3 percent of the total halibut and sablefish QS in each IFQ regulatory area per year, for a total of 21 percent of the total halibut and sablefish QS in each IFQ regulatory area in the GOA. Limiting the amount of QS that communities can purchase each year would mitigate the effects of expanding the universe of potential new participants in the QS market.

This action may have an economic benefit for small entities, to the extent that this action provides additional fishing opportunities to rural fishermen. The benefit is largely due to the redistribution of fishing opportunities, and is primarily a social benefit, not a strictly economic benefit. However, the potential economic benefits of this possibility can not now be measured or estimated.

Net benefits cannot be quantified because of the importance of non-market social costs and benefits in the proposed action. The sale of QS to the CQEs will increase the revenues of some community members who may wish to exit the fishery, or redirect capital into other industries within the larger communities incurring a net loss of QS. To the extent that residents within larger communities currently hold proportionally more quota shares, these residents, and presumably the communities where they live, will benefit from the compensation received by the sale of quota, otherwise they would not voluntarily choose to sell. Although the Council and NMFS do not anticipate that this rule would have a significant impact on a substantial number of small entities, they are unable to state this with certainty and therefore prepared an IRFA.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following requirement and estimated response time has been approved by OMB under control number 0648–0272: 2 hours for Application for Transfer Eligibility Certificate (TEC).

The following requirements have been submitted to OMB for approval: 200 hours for the Application to Become a CQE; and 40 hours for the CQE annual report; 2 hours for an Application for Transfer of QS or IFQ; 30 minutes for Approval of Transfer of QS from Governing Body; and 10 hours for a community petition for, and State comments on, forming a governing body.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, and sending the initial application to NMFS to become a CQE, and sending the annual report to NMFS and the community governing body of the community that the CQE represents.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, at the **ADDRESSES** above, and to the Office of Information and Regulatory Affairs, OMB facsimile or email at the **ADDRESSES** above.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

There are no duplicative, overlapping, or conflicting Federal rules associated with this proposed rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: October 8, 2003.

Rebecca Lent,

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

For the reasons discussed in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 et seq, 1801 *et seq.*, 3631 *et seq.*, Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57; 16 U.S.C. 1540(f).

2. In § 679.2, the definition for ''Eligible community'' is revised and new definitions for ''Community quota entity (CQE)'' and ''Eligible community resident'' are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Community quota entity (CQE): (for purposes of the IFQ Program) means a non-profit organization that:

(1) Did not exist prior to April 10, 2002;

(2) Represents at least one eligible community that is listed in Table 21 of this part; and,

(3) Has been approved by the Regional Administrator to obtain by transfer and hold QS, and to lease IFQ resulting from the QS on behalf of an eligible community.

* * * * *

Eligible community means:

(1) *For purposes of the CDQ program*, a community that is listed in Table 7 to this part or that meets all of the following requirements:

(i) The community is located within 50 nm from the baseline from which the breadth of the territorial sea is measured along the Bering Sea coast from the Bering Strait to the most western of the Aleutian Islands, or on an island within the Bering Sea. A community is not eligible if it is located on the GOA coast of the North Pacific Ocean, even if it is within 50 nm of the baseline of the Bering Sea.

(ii) That is certified by the Secretary of the Interior pursuant to the Native Claims Settlement Act (Public Law 92–203) to be a native village.

(iii) Whose residents conduct more than half of their current commercial or subsistence fishing effort in the waters of the BSAI.

(iv) That has not previously deployed harvesting or processing capability sufficient to support substantial groundfish fisheries participation in the BSAI, unless the community can show that benefits form an approved CDP would be the only way to realize a return from previous investment. The community of Unalaska is excluded under this provision.

(2) *For purposes of the IFQ program*, a community that is listed in Table 21 to this part, and that:

(i) Is a municipality or census designated place as defined in the 2000 United States Census located on the GOA coast of the North Pacific Ocean;

(ii) Has a population of not less than 20 and not more than 1,500 persons based on the 2000 United States Census;

(iii) Has had a resident of that community with at least one commercial landing of halibut or sablefish made during the period from 1980 through 2000, as documented by the State of Alaska Commercial Fisheries Entry Commission; and

(iv) Is not accessible by road to a community larger than 1,500 persons based on the 2000 United States Census.

* * * * *

Eligible community resident means, for purposes of the IFQ Program, any individual who:

(1) Is a citizen of the United States;

(2) Has maintained a domicile in a rural community listed in Table 21 to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country; and

(3) is an IFQ crew member.

* * * * *

3. In § 679.5, paragraph (l)(8) is added to read as follows:

§ 679.5 Recordkeeping and reporting (R&R).

* * * * *

(l) * * *

(8) *CQE Annual Report for an Eligible Community.* By January 31, the CQE shall submit a complete annual report on halibut and sablefish IFQ activity for the prior fishing year, for each community represented by the CQE to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, AK 99802, and to the governing body of those communities identified in Table 21 to this part.

(i) A complete annual report contains the following information:

(A) Name, ADF&G vessel registration number, USCG documentation number, length overall, and home port of each vessel from which the IFQ leased from QS held by a CQE was fished;

(B) Name and business addresses of individuals employed as crew members when fishing the IFQ derived from the QS held by the CQE;

(C) Detailed description of the criteria used by the CQE to distribute IFQ leases among eligible community residents;

(D) Description of efforts made to employ crew members who are eligible community residents of the eligible community aboard vessels on which IFQ derived from QS held by a CQE is being fished;

(E) Description of the process used to solicit lease applications from eligible community residents of the eligible community on whose behalf the CQE is holding QS;

(F) Names and business addresses and amount of IFQ requested by each individual applying to receive IFQ from the CQE;

(G) Any changes in the bylaws of the CQE, board of directors, or other key management personnel;

(H) Copies of minutes and other relevant decision making documents from CQE board meetings.

(ii) Additional information may be submitted as part of the annual report based on data available through NMFS. This includes:

(A) Identification of the eligible community, or communities, represented by the CQE;

(B) Total amount of halibut QS and sablefish QS held by the CQE at the start of the calendar year and at the end of the calendar year;

(C) Total amount of halibut and sablefish IFQ leased from the CQE;

(D) Names, business addresses, and amount of halibut and sablefish IFQ received by each individual to whom the CQE leased IFQ;

(E) Number of vessels that fished for IFQ derived from QS held by a CQE.

* * * * *

4. In § 679.7, paragraphs (f)(16) and (f)(17) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(f) * * *

(16) Hire a master to fish for IFQ halibut or IFQ sablefish that is derived from QS held by a CQE.

(17) Process IFQ halibut or IFQ sablefish onboard a vessel on which a person is using IFQ derived from QS held by a CQE.

* * * * *

5. In § 679.41, paragraphs (d)(1) and (g)(1) are revised, and paragraphs (c)(10), (e)(4), (e)(5), (g)(5) through (g)(8), and (l) are added to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(10) If the person applying to transfer or receive QS or IFQ is a CQE, the following determinations are required for each eligible community represented by that CQE:

(i) An individual applying to receive IFQ from QS held by a CQE is an eligible community resident of the eligible community in whose name the CQE is holding QS;

(ii) The CQE applying to receive or transfer QS, has submitted a complete annual report(s) required by 679.5 (l)(8) of this section;

(iii) The CQE applying to transfer QS has provided information on the reasons for the transfer as described in paragraph (g)(7) of this section;

(iv) The CQE applying to receive QS is eligible to hold QS on behalf of the eligible community in the halibut or sablefish regulatory area designated for that eligible community in Table 21 to this part; and

(v) The CQE applying to receive QS has received notification of approval of eligibility to receive QS/IFQ for that community as described in paragraph (d)(1) of this section.

(d) *Eligibility to receive QS or IFQ by transfer*—(1) *Application for Eligibility.*

All persons applying to receive QS or IFQ must submit an Application for Eligibility to Receive QS/IFQ (Application for Eligibility), containing accurate information, to the Regional Administrator, except that an Application for Eligibility to Receive QS/IFQ (Application for Eligibility) is not required if a complete application to become a CQE, as described in paragraph (l)(3) of this section, has been approved by the Regional Administrator on behalf of an eligible community. The Regional Administrator will not approve a transfer of IFQ or QS to a person until the Application for Eligibility for that person is approved by the Regional Administrator. The Regional Administrator shall provide an Application for Eligibility form to any person on request.

* * * * *

(e) * * *

(4) A CQE may not purchase or use sablefish QS blocks less than or equal to the number of QS units specified in (e)(2)(i) through (e)(2)(iv) of this section.

(5) A CQE may not purchase or use halibut QS blocks less than or equal to the number of QS units specified in (e)(3)(i) and (e)(3)(ii) of this section.

* * * * *

(g) * * *

(1) Except as provided in paragraph (f), paragraph (g)(2), or paragraph (l) of this section, only persons who are IFQ crew members, or who were initially issued QS assigned to vessel categories B, C, or D, and meet the eligibility requirements in this section, may receive by transfer QS assigned to vessel categories B, C, or D, or the IFQ resulting from it.

* * * * *

(5) a CQE may not hold QS in halibut IFQ regulatory areas 2C or 3A that is assigned to vessel category D.

(6) Except as provided by paragraph (f) of this section, QS held by a CQE on behalf of an eligible community may be used only by an eligible community resident of that eligible community.

(7) A CQE may transfer QS:

(i) To generate revenues to provide funds to meet administrative costs for managing the community QS holdings:

(ii) To generate revenue to improve the ability of residents within the community to participate in the halibut and sablefish IFQ fisheries;

(iii) To generate revenue to purchase QS for use by community residents;

(iv) To dissolve the CQE; or

(v) As a result of a court order, operation of law, or as part of a security agreement.

(8) If the Regional Administrator determines that a CQE transferred QS for purposes other than those specified in paragraph (g)(7) of this section, then:

(i) The CQE must divest itself of any remaining QS holdings and will not be eligible to receive QS by transfer for a period of three years after the date of the Regional Administrator's determination; and

(ii) The Regional Administrator will not approve a CQE to represent the eligible community in whose name the CQE transferred quota for a period of three years after the date of the Regional Administrator's determination.

* * * * *

(l) *Transfer of QS to CQEs.*—(1) Each eligible community must designate a CQE to transfer and hold QS on behalf of that community.

(2) Each eligible community may designate only one CQE to hold QS on behalf of that community at any one time.

(3) Prior to initially receiving QS by transfer on behalf of a specific eligible community, a non-profit entity that intends to represent that eligible community as a CQE must submit a complete application to become a CQE to the Regional Administrator, National Marine Fisheries Service, Post Office Box 21668, Juneau, AK 99802. The Regional Administrator, will provide a copy to the Alaska Department of Community and Economic Development, Commissioner, P.O. Box 110809, Juneau, AK 99811–0809. Comments by the State of Alaska on an application to become a CQE must be submitted to the NMFS, P.O. Box 21668, Juneau, AK 99802 within 30 days of the application being received by the State. NMFS will consider comments received by the Alaska Department of Community and Economic Development, when reviewing applications for a non-profit entity to become a CQE. A complete application to become a CQE consists of:

(i) The articles of incorporation for that non-profit entity in the State of Alaska;

(ii) A statement designating the eligible community, or communities, represented by that non-profit entity for purposes of holding QS;

(iii) Management organization information, including:

(A) The bylaws of the non-profit entity;

(B) A list of key personnel of the managing organization including but not limited to: the board of directors, officers, representatives, and any managers;

(C) A description of the organizational management structure of the non-profit including resumes of management personnel, including the name, address, fax number, telephone, email, and any other contact information for the non-profit entity;

(D) A description of how the non-profit entity is qualified to manage QS on behalf of the eligible community, or communities, it is designated to represent, and a demonstration that the non-profit entity has the management, technical expertise, and ability to manage QS and IFQ; and

(E) The name of the non-profit organization, taxpayer ID number, NMFS person number, permanent business mailing addresses, name of contact persons and additional contact information of the managing personnel for the non-profit entity, name of community represented by the CQE, name of contact for the governing body of the community represented, date, name and notarized signature of applicant, Notary Public signature and date when commission expires.

(iv) A statement describing the procedures that will be used to determine the distribution of IFQ to residents of the community represented by that CQE, including:

(A) Procedures used to solicit requests from residents to lease IFQ; and

(B) Criteria used to determine the distribution of IFQ leases among qualified community residents and the relative weighting of those criteria;

(v) A statement of support from the governing body of the eligible community as that governing body is identified in Table 21 to this part. That statement of support is:

(A) A resolution from the City Council or other official governing body for those eligible communities incorporated as first or second class cities in the State of Alaska;

(B) A resolution from the tribal government authority recognized by the Bureau of Indian Affairs for those eligible communities that are not incorporated as first or second class cities in the State of Alaska; but are represented by a tribal government authority recognized by the Secretary of the Interior;

(C) A resolution from a non-profit community association, homeowner association, community council, or other non-profit entity for those eligible communities that are not incorporated as first or second class cities in the State of Alaska, and is not represented by a tribal government authority recognized

by the Bureau of Indian Affairs. The non-profit entity that provides a statement of support must:

(*1*) Have articles of incorporation as a non-profit community association, homeowner association, community council, or other non-profit entity;

(*2*) Have an established relationship with the State of Alaska Department of Community and Economic Development for purposes of representing that community for governmental functions.

(D) If an eligible community is not incorporated as a first or second class city in the State of Alaska, is not represented by a tribal government authority recognized by the Secretary of the Interior, and does not have a non-profit community association, homeowner association, community council, or other non-profit entity within that community with an established relationship with the Alaska Department of Community and Economic Development for purposes of representing that community for purposes of governmental functions, then NMFS will not consider any statement from a non-profit entity representing that community until that community:

(*1*) Is incorporated as a first or second class city in the State of Alaska;

(*2*) Establishes a tribal government authority recognized by the Secretary of the Interior; or

(*3*) Establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community that meets the requirements established in paragraph (l)(3)(v)(E) of this section.

(E) If a community described under paragraph (l)(3)(v)(D) of this section establishes a non-profit community association, homeowner association, community council, or other non-profit entity within that community, then NMFS will consider any recommendations from this entity to support a particular applicant after reviewing:

(*1*) Petitions from residents affirming that the non-profit community association, homeowner association, community council, or other non-profit entity within that community represents the residents within that community; and

(*2*) Comments from the State of Alaska Department of Community and Economic Development on the articles of incorporation for that non-profit entity and the ability of that non-profit entity to adequately represent the interests of that community for purposes of governmental functions.

(*3*) The governing body of an eligible community as that governing body is identified in Table 21 to this part, must provide authorization for any transfer of QS by the CQE that holds QS on behalf of that eligible community prior to that transfer of QS being approved by NMFS. This authorization must be submitted as part of the Application for Transfer. That authorization consists of a signature on the Application for Transfer by a representative of the governing body that has been designated by that governing body to provide such authorization to approve the transfer of QS.

6. In § 679.42, paragraphs (a), (f), (g)(1), and (h) are revised, and paragraphs (e)(3) through (e)(8), and (i)(4) are added to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

(a) *IFQ regulatory area and vessel category.* (1) The QS or IFQ specified for one IFQ regulatory area must not be used in a different IFQ regulatory area.

(2) The QS or IFQ assigned to one vessel category must not be used to harvest IFQ species on a vessel of a different vessel category, except:

(i) As provided in paragraph (k) of this section (processing fish other than IFQ halibut and IFQ sablefish);

(ii) As provided in § 679.41(i)(1) of this part (CDQ compensation QS exemption);

(iii) IFQ derived from QS held by a CQE may be used to harvest IFQ species from a vessel of any length.

(3) Notwithstanding § 679.40(a)(5)(ii) of this part, IFQ assigned to vessel Category B must not be used on any vessel less than or equal to 60 ft (18.3 m) LOA to harvest IFQ halibut in IFQ regulatory area 2C or IFQ sablefish in the regulatory area east of 140 degrees W. long. unless such IFQ derives from blocked QS units that result in IFQ of less than 5,000 lb (2.3 mt), based on the 1996 TAC for fixed gear specified for the IFQ halibut fishery and the IFQ sablefish fishery in each of these two regulatory areas.

* * * * *

(e) * * *

* * * * *

(3) No CQE may hold sablefish QS in the IFQ regulatory areas of the Bering Sea subarea and the Aleutian Islands subareas.

(4) No CQE may hold more than 3,229,721 units of sablefish QS on behalf of any single eligible community.

(5) In the IFQ regulatory area east of 140 degrees W. long., no CQE may hold more than 688,485 units of sablefish QS for this area on behalf of any single eligible community.

(6) In the aggregate, all CQEs are limited to holding a maximum of 3 percent of the total QS in those IFQ regulatory areas specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all CQEs shall increase by an additional 3 percent in each IFQ regulatory area specified in § 679.41(e)(2)(i) through (e)(2)(iv) of this part up to a maximum limit of 21 percent of the total QS in each regulatory area specified in Section 679.41(e)(2)(i) through (e)(2)(iv) of this part for sablefish.

(7) No individual that receives IFQ derived from sablefish QS held by a CQE may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ sablefish derived from any sablefish QS source.

(8) A CQE receiving category B, or C sablefish QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community on whose behalf the QS is held.

(f) *Halibut QS use.* (1) Unless the amount in excess of the following limits was received in the initial allocation of halibut QS, no person, individually or collectively, may use more than:

(i) *IFQ Regulatory area 2C.* 599,799 units of halibut QS.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(iii) *IFQ regulatory area 4A, 4B, 4C, 4D, and 4E.* 495,044 units of halibut QS.

(2) No CQE may receive an amount of halibut QS on behalf of any single eligible community which is more than:

(i) *IFQ Regulatory area 2C.* 599,799 units of halibut QS.

(ii) *IFQ regulatory area 2C, 3A, and 3B.* 1,502,823 units of halibut QS.

(3) No CQE may hold halibut QS in the IFQ regulatory areas 4A, 4B, 4C, 4D, and 4E.

(4) A CQE representing an eligible community may receive by transfer or use QS only in the IFQ regulatory areas designated for that species and for that eligible community as described in Table 21 to this part.

(5) In the aggregate, all CQEs are limited to holding a maximum of 3 percent of the total QS in those IFQ regulatory areas specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this part for halibut in the first calendar year implementing the regulation in this section. In each subsequent calendar year, this aggregate limit on all community quota entities shall increase by an additional 3 percent in each IFQ regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) of this

part. This limit shall increase up to a maximum limit of 21 percent of the total QS in each regulatory area specified in § 679.41(e)(3)(i) through (e)(3)(iii) to this part for halibut.

(6) No individual that receives IFQ derived from halibut QS held by a CQE may hold, individually or collectively, more than 50,000 pounds (22.7 mt) of IFQ halibut derived from any halibut QS source.

(7) A CQE receiving category B, or C halibut QS through transfer may lease the IFQ resulting from that QS only to an eligible community resident of the eligible community represented by the CQE.

(g) * * *

(1) *Number of blocks per species.* Except as provided in paragraphs (g)(1)(i) and (g)(1)(ii) of this section, no person, individually or collectively, may hold more than two blocks of each species in any IFQ regulatory area.

(i) A person, individually or collectively, who holds unblocked QS for a species in an IFQ regulatory area, may hold only one QS block for that species in that regulatory area; and

(ii) A CQE may hold no more than ten blocks of halibut QS in any IFQ regulatory area and no more than five blocks of sablefish QS in any IFQ regulatory area on behalf of any eligible community.

* * * * *

(h) *Vessel limitations.* (1) *Halibut.* No vessel may be used, during any fishing year, to harvest more than one-half percent of the combined total catch limits of halibut for IFQ regulatory areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E, except that:

(i) In IFQ regulatory area 2C, no vessel may be used to harvest more than 1 percent of the halibut catch limit for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 pounds (22.7 mt) of IFQ halibut from any halibut QS source if that vessel is used to harvest IFQ halibut derived from halibut QS held by a CQE.

(2) *Sablefish.* No vessel may be used, during any fishing year, to harvest more than one percent of the combined fixed gear TAC of sablefish for the GOA and BSAI IFQ regulatory areas, except that:

(i) In the IFQ regulatory area east of 140 degrees W. long., no vessel may be used to harvest more than 1 percent of the fixed gear TAC of sablefish for this area.

(ii) No vessel may be used, during any fishing year, to harvest more than 50,000 pounds (22.7 mt) of IFQ sablefish from any sablefish QS source if that vessel is used to harvest IFQ sablefish derived from sablefish QS held by a CQE.

(3) A person who receives an approved IFQ allocation of halibut or sablefish in excess of these limitations may nevertheless catch and retain all of that IFQ with a single vessel, except that this provision does not apply if that IFQ allocation includes IFQ derived from QS held by a CQE. However, two or more persons may not catch and retain their IFQ in excess of these limitations.

* * * * *

(i) * * *

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(4) IFQ derived from QS held by a CQE must be used only by the individual whose IFQ permit account contains the resulting IFQ.

7. In 50 CFR part 679, Table 21 is added to read as follows:

TABLE 21 TO PART 679—ELIGIBLE GOA COMMUNITIES, HALIBUT IFQ REGULATORY USE AREAS, AND COMMUNITY GOVERNING BODY THAT RECOMMENDS THE COMMUNITY QUOTA ENTITY

Eligible GOA Community	Community Governing Body that recommends the CQE
May use halibut QS only in halibut IFQ regulatory areas 2C, 3A	
Angoon	City of Angoon.
Coffman Cove	City of Coffman Cove.
Craig	City of Craig.
Edna Bay	Edna Bay Community Association.
Elfin Cove	Community of Elfin Cove.
Gustavus	Gustavus Community Association.
Hollis	Hollis Community Council.
Hoonah	City of Hoonah.
Hydaburg	City of Hydaburg.
Kake	City of Kake.
Kasaan	City of Kasaan.
Klawock	City of Klawock.
Metlakatla	Metlakatla Indian Village.
Meyers Chuck	N/A.
Pelican	City of Pelican.
Point Baker	Point Baker Community.
Port Alexander	City of Port Alexander.
Port Protection	Port Protection Community Association.
Tenakee Springs	City of Tenakee Springs.
Thorne Bay	City of Thorne Bay.
Whale Pass	Whale Pass Community Association.
May use halibut QS only in halibut IFQ regulatory areas 3A, 3B	
Akhiok	City of Akhiok.
Chenega Bay	Chenega IRA Village.
Chignik	City of Chignik.
Chignik Lagoon	Chignik Lagoon Village Council.
Chignik Lake	Chignik Lake Traditional Council.
Halibut Cove	N/A.
Ivanof Bay	Ivanof Bay Village Council.
Karluk	Native Village of Karluk.
King Cove	City of King Cove.
Larsen Bay	City of Larsen Bay.

TABLE 21 TO PART 679—ELIGIBLE GOA COMMUNITIES, HALIBUT IFQ REGULATORY USE AREAS, AND COMMUNITY GOVERNING BODY THAT RECOMMENDS THE COMMUNITY QUOTA ENTITY—Continued

Eligible GOA Community	Community Governing Body that recommends the CQE
May use halibut QS only in halibut IFQ regulatory areas 3A, 3B	
Nanwalek	Nanwalek IRA Council.
Old Harbor	City of Old Harbor.
Ouzinkie	City of Ouzinkie.
Perryville	Native Village of Perryville.
Port Graham	Port Graham Village Council.
Port Lyons	City of Port Lyons.
Sand Point	City of Sand Point.
Seldovia	City of Seldovia.
Tatitlek	Native Village of Tatitlek.
Tyonek	Native Village of Tyonek.
Yakutat	City of Yakutat.

[FR Doc. 03–26074 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 68, No. 200

Thursday, October 16, 2003

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

Commodity Credit Corporation

Domestic Sugar Program—Revisions of 2002-Crop Sugar Marketing Allotments and Allocations

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: This notice is to announce that the Commodity Credit Corporation (CCC) has reassigned the unused 2002-crop (Fiscal Year 2003) allocations among cane and beet sugar processors. This announcement lists the final revised 2002-crop sugar marketing allotments and allocations. This reassignment is effective September 26, 2003, and applies to all domestic cane and beet sugar marketed for human consumption in the United States from October 1, 2002, through September 30, 2003.

ADDRESSES: Barbara Fecso, Dairy and Sweeteners Analysis Group, Economic Policy and Analysis Staff, Farm Service Agency, USDA, 1400 Independence Avenue, SW., STOP 0516, Washington, DC 20250–0516; telephone (202) 720–4146; FAX (202) 690–1480; e-mail: *barbara.fecso@usda.gov*

FOR FURTHER INFORMATION CONTACT: Barbara Fecso at (202) 720–4146.

SUPPLEMENTARY INFORMATION: Section 359e(a) of the Agricultural Adjustment Act of 1938, as amended by the Farm Security and Rural Investment Act of 2002, requires a periodic review to determine (in view of current sugar inventories, estimated sugar production, expected marketings and other pertinent factors) whether (1) any sugarcane processor will be unable to market the sugar covered by the portion of the State cane sugar allotment allocated to the processor; and (2) any sugar beet processor will be unable to market its allocation. Section 359e(b)(1)(B) further provides for the reassignment of the estimated quantity of a State deficit proportionately to the allotments for other cane sugar States (depending on each State's capacity to market) when a State does not have the capacity to fulfill its allotment among its own processors.

In September 2003, sugarcane and sugar beet processors submitted revisions of their 2002-crop production and ending stocks estimates to CCC for the purpose of calculating a final reassignment. The allotments/allocations were calculated for the cane and beet sectors as follows:

Cane Sector:

- First, 14,878 short tons, raw value (STRV) of allocation were taken from Louisiana processors with surplus allocation and reassigned to processors with surplus supply within Louisiana (attached table, column C). This amount was insufficient to cover Louisiana's overall shortfall.
- Then, the excess allotment of 11,100 STRV for Hawaii was redistributed to the remaining cane states (attached table, column D).

Beet Sector:

- Using August survey data for the current year, it was determined that three beet sugar processors had 2002-crop allocation that would not be used while three processors showed an allocation shortfall. The surplus allocation of 8,679 STRV from the first three was surrendered and reassigned to other three (attached table, column D).

Two organizational changes are recognized in this **Federal Register** announcement:

1. The merger of M.A. Patout & Sons, Raceland Sugars and Sterling Sugars into M.A. Patout & Sons—a Louisiana cane processor with a single allocation.

2. The September 8, 2003, sale of all assets of the Pacific Northwest Sugar Company (PNS) to the American Crystal Sugar Company (ACS). In accordance with section 359d (b)(2)(F) of the Agriculture Adjustment Act of 1938, as amended, CCC permanently transferred the beet sugar allocation of PNS to ACS.

The final revised 2002-crop sugar marketing allotments and allocations are listed in the following table:

FISCAL YEAR 2003 SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS

[Revised September, 2003]

	B Last allotment/ allocation	C New—cane reassignments within States	D New—reassignments across all processors by sector	E New allotment/ allocation
	(short tons, raw value)			
Overall Beet/Cane Allotments:				
Beet Sugar	4,708,341	0	0	4,708,341
Cane Sugar (includes P. Rico)	3,954,660	0	0	3,954,660
Total OAQ	8,663,000			8,663,000
Beet Reassignment to CCC	174,000			174,000
Allotment Available to Beet	4,534,341			4,534,341
Allotment Available to Cane	3,954,660			3,954,660
Beet Processors' Marketing Allocations:				
Amalgamated Sugar Co.	976,021		0	976,021

FISCAL YEAR 2003 SUGAR MARKETING ALLOTMENTS AND ALLOCATIONS—Continued

[Revised September, 2003]

	B Last allotment/ allocation	C New—cane reassignments within States	D New— reassignments across all processors by sector	E New allotment/ allocation
American Crystal Sugar Co.	1,654,335		7,411	1,661,746
Holly Sugar Corp.	299,100		0	299,100
Michigan Sugar Co.	340,509		0	340,509
Minn-Dak Farmers Co-op.	305,067		36	305,103
Monitor Sugar Co.	174,268		−1,554	172,714
So. Minn Beet Sugar Co-op.	300,785		1,232	302,018
Western Sugar Co.	446,772		−4,853	441,919
Wyoming Sugar Co.	37,483		−2,272	35,211
Total Beet Sugar	4,534,341		0	4,534,341
State Cane Sugar Allotments:				
Florida	2,104,337		6,201	2,110,538
Louisiana	1,381,212		4,366	1,385,578
Texas	178,326		534	178,860
Hawaii	290,784		−11,100	279,684
Puerto Rico	0	0	0	
Total Cane Sugar	3,954,660		0	3,954,660
Cane Processors' Marketing Allocations:				
Atlantic Sugar Assoc.	163,777		0	163,777
Growers Co-op. of FL	389,088		1,219	390,307
Okeelanta Corp.	448,274		3,568	451,842
Osceola Farms Co.	268,661		1,414	270,076
U.S. Sugar Corp.	834,536		0	834,536
Total	2,104,337		6,201	2,110,538
Alma Plantation	77,257	4,847	1,422	83,526
Caire & Graugnard	6,091	474	139	6,704
Cajun Sugar Co-op.	106,711	0	0	106,711
Cora-Texas Mfg. Co.	121,906	1,799	528	124,232
Harry Laws & Co.	61,992	2,330	684	65,006
Iberia Sugar Co-op.	64,543	−3,087	0	61,456
Jeanerette Sugar Co.	63,626	0	0	63,626
Lafourche Sugars Corp.	64,470	0	0	64,470
Louisiana Sugarcane Co-op.	81,471	740	217	82,429
Lula Westfield, LLC	147,840	4,688	1,376	153,904
M.A. Patout & Sons	387,454	−2,060	0	385,394
St. Mary Sugar Co-op.	89,485	−3,600	0	85,885
So. Louisiana Sugars Co-op.	108,366	−6,131	0	102,235
Total	1,381,212	0	4,366	1,385,578
Texas:				
Rio Grande Valley	178,326		534	178,860
Hawaii:				
Gay & Robinson, Inc.	64,298		−3,600	60,698
Hawaiian Commercial & Sugar Company	226,486		−7,500	218,986
Total	290,784		−11,100	279,684
Puerto Rico:				
Agraso	0		0	0
Roig	0		0	0
Total	0		0	0

Signed in Washington, DC on October 3, 2003.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 03–26175 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–05–U

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Lincoln County Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393) the Kootenai National Forests' Lincoln County Resource Advisory Committee will meet on October 28, 2003 at 6 p.m. in Libby, Montana for business meetings. The meetings are open to the public.

DATES: October 28, 2003.

ADDRESSES: The meeting will be held at the Forest Supervisor's Office, 1101 US Highway 2 West, Libby.

FOR FURTHER INFORMATION CONTACT: Barbara Edgmon, Committee Coordinator, Kootenai National Forest at (406) 293–6211, or e-mail *bedgmon@fs.fed.us*.

SUPPLEMENTARY INFORMATION: Agenda topics include discussion on field trips for 2004, revision of the project proposal form and accepting project proposals earlier in the year. If the meeting date or location is changed, notice will be posted in the local newspapers, including the Daily Interlake based in Kalispell, MT.

Dated: October 9, 2003.

Bob Castaneda,

Forest Supervisor.

[FR Doc. 03–26110 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, October 20, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

DATES: The meeting will be held October 20, 2003, from 4 p.m. until 6 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us*.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. A public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 8, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–26111 Filed 10–15–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 101003C]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0204.

Type of Request: Regular submission.

Burden Hours: 248.

Number of Respondents: 369.

Average Hours Per Response: 30 minutes for a permit application or permit transfer (unless otherwise noted below); 1 hour for additional permit information (when requested) for the coastal pelagic fishery of the Pacific coast; 1 hour for a limited entry permit application for bottomfish in the NWHI Ho'omalu Zone or the Mau Zone; 2 hours for a permit appeal; 2 hours for an application for an exemption or experimental fishing permit; and 1 hour for a waiver for NWHI Ho'omalu Zone or Mau Zone bottomfish permit renewal requirements.

Needs and Uses: Permits are required for persons to participate in Federally-managed fisheries in the western Pacific region and off the West Coast. The permit application forms provide basic information about permit holders and the vessels and gear being used. This information is important for understanding the nature of the fisheries and provides a link to participants. It also aids enforcement of regulations.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: Annually, biennially, on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David__Rostker@omb.eop.gov*.

Dated: October 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26202 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Membership of the Departmental Performance Review Board

AGENCY: Department of Commerce

ACTION: Notice of membership of Departmental Performance Review Board.

SUMMARY: In accordance with 5 U.S.C., 4313(c)(4), DOC announces the appointment of persons to serve as members of the Office of the Secretary (OS) Performance Review Board (PRB). The OS/PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members. The appointment of these members to the OS/PRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the Office of the Secretary Performance Review Board is upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Janet C. Hoffheins, Deputy Director, Office of Executive Resources, Office of Human Resources Management, Office of the Director, 14th and Constitution

Avenue, NW., Washington, DC. 20230, (202) 482–4807.

SUPPLEMENTARY INFORMATION: The names, position titles, and type of appointment of the members of the OS/PRB are set forth below by organization:

U.S. Department of Commerce

Office of the Secretary, Performance Review Board Membership

The following individuals are eligible to serve on the Performance Review Board in accordance with the Senior Executive Service Performance Management System of the Office of the Secretary.

Kathleen J. Taylor
Linda Moye-Cheatham
Thomas N. Pyke, Jr.
Miriam Cohen
Fred L. Schwien
David S. Bohigian
Denise L. Wells
James L. Taylor

Janet C. Hoffheins,

Deputy Director, Office for Human Resources Management.

[FR Doc. 03–26086 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Export Administration (PECSEA) will meet on November 5, 2003, 10 a.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

Public Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Bureau of Industry and Security (BIS) and Export Administration update.
4. Export Enforcement update.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved on October 8, 2003, in accordance with the Federal Advisory Committee Act.

For more information, call Ms. Carpenter on (202) 482–2583.

Dated: October 10, 2003.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 03–26125 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 030930242–3242–01]

National Defense Stockpile Market Impact Committee Request for Public Comments on the Potential Market Impact of Proposed Stockpile Disposals in FY 2004 and FY 2005

AGENCY: U.S. Department of Commerce.

ACTION: Notice of inquiry.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comments on the potential market impact of proposed changes in the disposal levels of excess materials under the Fiscal Year 2004 Annual Materials Plan and proposed disposal levels under the Fiscal Year 2005 Annual Materials Plan.

DATES: Comments must be received by November 17, 2003.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; FAX (202) 482–5650; E-mail: *rmeyers@bis.doc.gov.*

FOR FURTHER INFORMATION CONTACT: The co-chairs of the National Defense Stockpile Market Impact Committee. Contact either Richard V. Meyers, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, (202) 482–3634; or James Steele, Office of Bilateral Trade Affairs, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–2690.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (''DOD''), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. Section 3314 of the Fiscal Year (''FY'') 1993 National Defense Authorization Act (''NDAA'') (50 U.S.C. 98h–1) formally established a Market Impact Committee (''the Committee'') to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Department of Homeland Security, and is co-chaired by the Departments of Commerce and State. The FY 1993 NDAA directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The National Defense Stockpile Administrator is proposing (1) revision of the previously approved FY 2004 Annual Materials Plan (''AMP'') quantities for four materials, and (2) the new FY 2005 AMP, as set forth in Attachment 1. The Committee is seeking public comments on the potential market impact of the sale of these materials as proposed in the revision of

the FY 2004 AMP and the FY 2005 AMP.

The AMP quantities are not targets for either sale or disposal. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering as well as on the quantity of each material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by November 17, 2003 to ensure full consideration by the Committee, interested parties are encouraged to submit comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comments are an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. The Committee will seek to protect such information to the extent permitted by law.

The records related to this Notice will be made accessible in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1, *et seq.*). Specifically, the Bureau of Industry and Security's Freedom of Information Act (''FOIA'') reading room is located on its Web page, which can be found at *http://www.bis.doc.gov,* and copies of the public comments received will be maintained at that location (see Freedom of Information Act (FOIA) heading). If requesters cannot access the web site, they may call (202) 482–2165 for assistance.

Dated: October 9, 2003.

Matthew S. Borman,

Acting Assistant Secretary for Industry and Security, Bureau of Industry and Security, Department of Commerce.

ATTACHMENT 1—PROPOSED REVISION TO FY 2004 ANNUAL MATERIAL PLAN (AMP) AND PROPOSED FY 2005 AMP

Material	Units	Current FY 2004 quantity	Revised FY 2004 quantity	Proposed FY 2005 quantity
Aluminum Oxide, Abrasive	ST	6,000		[1] 6,000
Bauxite, Refractory	LCT	[1] 43,000		[1] 43,000
Beryl Ore	ST	[1] 4,000		[1] 4,000
Beryllium Metal	ST	40		40
Beryllium Copper Master Alloy	ST	[1] 1,200		[1] 1,200
Cadmium	LB	[1] 400,000		0
Celestite	SDT	[1] 12,794		[1] 6,000
Chromite, Chemical	SDT	[1] 100,000		[1] 100,000
Chromite, Refractory	SDT	[1] 100,000		[1] 100,000
Chromium, Ferro	ST	150,000	110,000	110,000
Chromium, Metal	ST	500		500
Cobalt	LB Co	6,000,000		6,000,000
Columbium Concentrates (Minerals)	LB Cb	560,000		560,000
Columbium Metal Ingots	LB Cb	20,000		20,000
Diamond Stone	ct	[1] 600,000		[1] 400,000
Fluorspar, Acid Grade	SDT	[1] 12,000		[1] 12,000
Fluorspar, Metallurgical Grade	SDT	[1] 60,000		[1] 60,000
Germanium	KG	8,000		8,000
Graphite	ST	[1] 2,000		0
Iodine	LB	1,000,000		1,000,000
Jewel Bearings	PC	[1] 82,051,558		[1] 82,051,558
Kyanite	SDT	0	50	0
Lead	ST	60,000		[1] 60,000
Manganese, Battery Grade Natural	SDT	30,000		30,000
Manganese, Battery Grade Synthetic	SDT [1] 3,011		[1] 3,011	
Manganese, Chemical Grade	SDT	40,000		[1] 40,000
Manganese, Ferro	ST	50,000		50,000
Manganese, Metal Electrolytic	ST	2,000		[1] 2,000
Manganese, Metallurgical Grade	SDT	[1] 250,000		[1] 250,000
Mica (All Types)	LB	[1] 5,000,000		[1] 1,000,000
Palladium	Tr Oz	[1 3] 200,000		[1 3] 100,000
Platinum	Tr Oz	[1] 25,000		[1] 25,000
Platinum—Iridium	Tr Oz	6,000		6,000
Quartz Crystals	LB	[1] 150,000		[1] 25,000
Quinidine	Oz	[1] 2,211,122		0
Sebacic Acid	LB	600,000		[1] 600,000
Talc	ST	[1] 1,000		[1] 1,000
Tantalum Carbide Powder	LB Ta	[1] 4,000	[1] 4,000	
Tantalum Metal Ingots	LB Ta	[1] 40,000		[1] 40,000
Tantalum Metal Powder	LB Ta	[1] 40,000		[1] 40,000
Tantalum Minerals	LB Ta	500,000		[1] 500,000
Tantalum Oxide	LB Ta	20,000		20,0001
Thorium Nitrate	LB	[1 2] 7,100,000	.....	[1 2] 7,100,000
Tin	MT	12,000		12,000
Titanium Sponge	ST	7,000		[1] 7,000
Tungsten, Ferro	LB W	300,000		300,000

ATTACHMENT 1—PROPOSED REVISION TO FY 2004 ANNUAL MATERIAL PLAN (AMP) AND PROPOSED FY 2005 AMP—Continued

Material	Units	Current FY 2004 quantity	Revised FY 2004 quantity	Proposed FY 2005 quantity
Tungsten, Metal Powder	LB W	300,000		300,000
Tungsten Ores & Concentrates	LB W	4,000,000		4,000,000
Vegetable Tannin Extract, Chestnut	LT	0	250	[1] 250
Vegetable Tannin Extract, Quebracho	LT	50,000		[1] 50,000
Vegetable Tannin Extract, Wattle	LT	0	6,500	[1] 6,500
Zinc	ST	50,000		50,000

Notes:
[1] Actual quantity will be limited to remaining sales authority or inventory.
[2] The radioactive nature of this material may restrict sales or disposal options. Efforts are underway to determine the environmentally and economically feasible disposition of the material.
[3] Pending legislative authority.

[FR Doc. 03–26106 Filed 10–15–03; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International trade Adminstration

[A-570–846]

Brake Rotors from The People's Republic of China: Notice of Extension of Time Limit for Preliminary Results in Antidumping Duty Administrative and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith at (202) 482–1766, Sophie Castro at (202) 482–0588, or Margarita Panayi at (202) 482–0049, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the sixth administrative and ninth new shipper reviews of the antidumping duty order on brake rotors from the People's Republic of China (PRC), which cover the period April 1, 2002, through March 31, 2003.

SUPPLEMENTARY INFORMATION: In accordance with section 751(a)(3)(A) of the Tariff Act of 1930 (the Act), as amended, the Department shall make a preliminary determination in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

Pursuant to 751(a)(2)(B)(iv) of the Act, the Department shall make a preliminary determination in a new shipper review within 180 days after the date on which the review is initiated. However, if the case is extraordinarily complicated, it may extend the 180 day period for the preliminary results to 300 days.

The Department initiated the sixth administrative review[1] of the antidumping duty order on brake rotors from the PRC (68 FR 27781) on May 21, 2003 and the ninth new shipper review[2] of the antidumping duty order on brake rotors from the PRC (68 FR 33675) on June 5, 2003. Pursuant to section 351.214(j)(3) of its regulations, and with the agreement of Laizhou City Luqi Machinery Co., Ltd. (Luqi) and Qingdao Rotec Autoparts Co., Ltd (Rotec), the Department is conducting these reviews concurrently. The current deadline for the preliminary results in these reviews is December 31, 2003.

The Department finds that it is not practicable to complete the preliminary results in the administrative review within the above specified time limit because we must request additional information and clarifications of submitted data from multiple respondents as well as conduct verifications prior to issuing our preliminary results. In addition, we determine that it would be extraordinarily complicated to complete the preliminary results in the new shipper review under the current schedule as we need additional time to conduct verifications and to analyze issues raised in that review.

Therefore, in accordance with sections 751(a)(3)(A) and 751(a)(2)(B)(iv) of the Act, the Department is extending the time for completion of the preliminary results of these reviews until February 2, 2004.

Dated: October 8, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–26210 Filed 10–15–03; 8:45 am]
BILLING CODE 3510–DS–S

[1] The administrative review respondents are China National Machinery Import & Export Company; Laizhou Hongda Auto Replacement Parts, Co. Ltd.; Qingdao Gren Co.; Yantai Winhere Auto Part Manufacturing Co., Ltd.; Longkou Haimeng Machinery Co., Ltd.; Zibo Luzhou Automobile Parts Co., Ltd.; Hongfa Machinery (Dalian) Co., Ltd.; Qingdao Meita Automotive Industry Co., Ltd.; Shandong Laizhou Huanri Group General; Laizhou Auto Brake Equipment Company, Ltd.; and Longkou TLC Machinery Co., Ltd.

[2] The new shipper respondents are Qingdao Rotec Autoparts Co., Ltd. and Laizhou City Luqi Machinery Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Adminstration

[A-570–803]

Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review.

EFFECTIVE DATE: October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Jeff Pedersen, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5253 or (202) 482–2769, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On March 25, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on heavy forged hand tools, finished or unfinished, with or without handles from the People's Republic of China, covering the period February 1, 2002 through January 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 68 FR 14394. The preliminary results are currently due no later than October 31, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit because of the time needed to consider certain factual issues in the case. This extension results in the due date for the preliminary results falling on February 28, 2004, which is a Saturday. Therefore, the preliminary results will be due on the next business day, which is March 1, 2004. *See* Decision Memorandum from Thomas F. Futtner, Acting Office Director, to Holly A. Kuga, Acting Deputy Assistant Secretary, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: October 9, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–26212 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-412–803]

Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: On May 8, 2003, the Department of Commerce (the Department) initiated a changed circumstances review of the antidumping duty order on industrial nitrocellulose (INC) from the United Kingdom in order to determine whether Troon Investments Limited (TIL) is the successor-in-interest to Imperial Chemical Industries, PLC (ICI). *See Notice of Initiation of Antidumping Duty Changed Circumstances Review: Industrial Nitrocellulose from the United Kingdom*, 68 FR 27015 (May 19, 2003). TIL purchased Nobel's Explosives Company, Ltd.'s (NEC) INC business. NEC is a wholly-owned subsidiary of ICI. We preliminarily determine that TIL is the successor-in-interest to ICI for purposes of determining antidumping duty liability. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Michele Mire or Howard Smith, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4711 and (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28270) the antidumping duty order on INC from the United Kingdom. On March 28, 2003, TIL requested that the Department conduct a changed circumstances review of the antidumping duty order on INC from the United Kingdom claiming that it is the successor-in-interest to ICI, and, as such, it is entitled to receive the same antidumping treatment accorded to ICI. On April 11, 2003, Green Tree Chemical Technologies, Inc., the sole U.S. producer of INC and the petitioner in this proceeding, notified the Department that it opposes TIL's request to be considered the successor-in-interest to ICI. On July 18, 2003, and August 14, 2003, at the request of the Department, TIL submitted additional information and documentation pertaining to its changed circumstances request.

Scope of Review

Imports covered by this review are shipments of INC from the United Kingdom. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item number 3912.20.0000. While the HTSUS classification is provided for convenience and customs purposes, the written description remains dispositive as to the scope of the product coverage.

Preliminary Results of Changed Circumstances Review

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no one single factor, or combination of factors, will necessarily prove to be dispositive, the Department will generally consider a new company to be the successor-in-interest to its predecessor company if its resulting operations are essentially the same as those of its predecessor. *See, e.g., Canadian Brass* at 20460, and *Final Results of Changed Circumstances Antidumping Duty Administrative Review: Industrial Nitrocellulose From Korea*, 65 FR 2115, 2116 (January 13, 2000). Therefore, if there is evidence demonstrating that, with respect to the production and sale of subject

merchandise, a new company essentially operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

In its March 28, 2003, request for a changed circumstances review, TIL advised the Department that, on December 31, 2002, it purchased NEC's (a wholly owned subsidiary of ICI) INC and energetic technologies businesses. TIL notes that the energetic technologies business is unrelated to INC. NEC was the sole producer of INC in the United Kingdom, and therefore, the only respondent in prior administrative reviews. TIL was formed to acquire NEC's INC and energetic technologies businesses.

According to TIL, the transfer of ownership of the INC business resulted in no material changes in the management, production facilities, suppliers of raw materials, or customers of NEC's former INC business. While the managing director of NEC's INC business has been replaced, TIL states that all of the other management personnel of the former entity are now employed by TIL. *See* TIL's March 28, 2003 submission to the Department at 5. Also, TIL notes that it operates the factory formerly operated by NEC using the same equipment and production process used by NEC. Furthermore, TIL reports that it uses the suppliers of raw materials used by NEC (and currently plans no changes to those suppliers) and sells to the former customers of NEC, in the United States and the United Kingdom, on the same basis as NEC sold to these customers. *See* TIL's July 18, 2003 questionnaire response at 4–5. TIL notes that there have been no changes in the customer base since the acquisition and none are currently anticipated. *See* TIL's March 28, 2003 submission to the Department at 7. Moreover, TIL points out that since the acquisition, there have been no changes in INC sales personnel, no material changes in the marketing of INC in the United States and the United Kingdom, and no systemic modifications in INC selling prices in either the U.S. or U.K. market. *See id.*

In its April 11, 2003, submission, the petitioner contends that the change in ownership of the INC business has resulted in a change in the business' cost of capital (which affects the Department's interest expense calculation), management, and sales distribution channels. Specifically, the petitioner points out that, recently, in addressing whether NEC's cost of production should include its interest expenses or those of its parent, the Department found that NEC's parent, ICI, ''determined the capital structure of its group companies involved in the production of the subject merchandise.'' *See Industrial Nitrocellulose From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 67 FR 77747 (December 19, 2002) and accompanying Issues and Decision Memorandum. Thus, the petitioner concludes that the cost of capital for the new entity will differ from that of its predecessor. In addition to different capital costs, the petitioner points out that, under TIL, the managing director of the INC business is not the managing director formerly employed by NEC. The petitioner finds this significant because it is the managing director who has decision-making authority. Further, the petitioner states that with new ownership and senior management, there can be no assurance that pricing will have the same objectives or follow the same pattern as when NEC was owned by ICI. Finally, the petitioner claims that the sales structure changed after TIL acquired the INC business. Specifically, the petitioner notes that NEC's U.S. affiliate, ICI Americas, Inc., carried out many sales functions for NEC. Based on the foregoing, the petitioner contends that TIL should not be allowed to take advantage of ICI's current cash deposit rate.

As noted above, in determining whether a new company's operations are essentially the same as those of its predecessor, the Department examines whether there have been changes in management, production facilities, supplier relationships, or the customer base. Our review of the record indicates that the change in ownership of the INC business has not resulted in changes to the production facilities or production processes used to manufacture INC, nor has it resulted in material changes in supplier relationships or customer base. Although TIL replaced the managing director of the INC business, there is no indication that this action resulted in significant changes to the INC operations. Furthermore, while the petitioner expressed concern over a possible difference between the cost of capital for the new entity and its predecessor, the record indicates that many of the significant factors that affect costs, with the possible exception of those that affect capital costs, have not changed (*e.g.*, no changes in production process, suppliers of raw materials, and management and sales personnel). Finally, even though there has been a change in the legal entity performing U.S. selling functions (i.e., ICI Americas Inc. has ceased performing selling functions), with respect to U.S. sales of INC, the record indicates that there have been no significant changes in the order process, movement of INC from the United Kingdom, customer base, or sales terms, and no systematic price changes. See TIL's July 18, 2003 submission at 6. Thus, the record shows that TIL's operations are essentially the same as those of its predecessor. Therefore, we preliminarily determine that TIL is the successor-in-interest to ICI and should receive the same antidumping duty cash deposit rate as ICI, *i.e.*, 3.06 percent. As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct the U.S. Bureau of Customs and Border Protection to suspend shipments of subject merchandise made by TIL at ICI's cash deposit rate (*i.e.*, 3.06 percent). Until that time, the cash deposit rate assigned to TIL's entries is the rate in effect at the time of entry (*i.e.*, the ''all others'' rate).

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of this notice. *See* 19 CFR 351.309(c)(ii). Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication of this notice. *See* 19 CFR 351.309(d). Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated. We are issuing and publishing this determination and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and 19 CFR 351.216.

Dated: October 9, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–26209 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Adminstration

[A-570–851]

Certain Preserved Mushrooms from the People's Republic of China: Notice of Partial Rescission of Sixth New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Sixth New Shipper Review.

EFFECTIVE DATE: October 16, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Jim Mathews, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–2778, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 28, 2003, Primera Harvest (Xiangfan) Co., Ltd. (Primera Harvest) and Xiamen International Trade & Industrial Co., Ltd. (XITIC) requested a new shipper review of their sales. On March 28, 2003, the Department published a notice of initiation of an antidumping duty new shipper review on certain preserved mushrooms from the People's Republic of China with respect to these companies. *See Certain Preserved Mushrooms from the People's Republic of China: Initiation of Antidumping Duty New Shipper Review*, 68 FR 15152.

After analyzing XITIC's May 23, 2003, questionnaire responses, the Department determined that XITIC did not produce the subject merchandise that it exported. Rather, XITIC exported subject merchandise that was produced by Inter-Foods D.S. Co., Ltd. Therefore, pursuant to CFR 351.214(b)(ii)(B), XITIC failed to provide the proper new shipper certification. (*See* Memorandum to the File from Brian Smith and Jim Mathews, International Trade Compliance Analysts, dated August 7, 2003). On August 7, 2003, the Department sent copies of this memorandum to the interested parties. The memorandum stated that the parties had two weeks from the date of receipt to comment on the Department's decision to rescind this new shipper review. No party filed comments during the period stipulated the memorandum. Accordingly, we are rescinding the new shipper review with respect to XITIC.

Scope of the Order

The products covered by this order are certain preserved mushrooms whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus* and *Agaricus bitorquis*. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including, but not limited to, cans or glass jars in a suitable liquid medium, including, but not limited to, water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are ''brined'' mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) all other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including ''refrigerated'' or ''quick blanched mushrooms''; (3) dried mushrooms; (4) frozen mushrooms; and (5) ''marinated,'' ''acidified'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.[1]

The merchandise subject to this order is classifiable under subheadings: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153 and 0711.51.0000 of the Harmonized Tariff Schedule of the United States[2] (''HTS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Period of Review

The period of review is February 1, 2002, through January 31, 2003.

Partial Recission of Review

Section 351.214(b)(ii)(B) states that a request for a new shipper review must contain a certification from the person that produced or supplied the subject merchandise to the person requesting the review that that producer or supplier did not export the subject merchandise to the United States during the period of investigation. Due to XITIC's failure to provide the necessary certification from the producer or supplier of the subject merchandise and its misleading statements in the submitted certification that suggested that it was both the exporter and producer of subject merchandise, we are rescinding, in part, this new shipper review on certain preserved mushrooms from the People's Republic of China as to XITIC. This review will continue with respect to Primera Harvest.

Notification

Bonding will no longer be permitted to fulfill security requirements for shipments from XITIC of certain preserved mushrooms from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these determinations and notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act, as amended, and 19 CFR 351.214(f)(3).

Dated: October 9, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–26211 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] On June 19, 2000, the Department affirmed that ''marinated,'' ''acidified,'' or ''pickled'' mushrooms containing less than 0.5 percent acetic acid are within the scope of the antidumping duty order. *See* ''Recommendation Memorandum-Final Ruling of Request by Tak Fat, *et al.* for Exclusion of Certain Marinated, Acidified Mushrooms from the Scope of the Antidumping Duty Order on Certain Preserved Mushrooms from the People's Republic of China,'' dated June 19, 2000.

[2] Prior to January 1, 2002, the HTS subheadings were as follows: 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101003D]

Proposed Information Collection; Comment Request; Natural Resource Damage Assessment Restoration Project Information Sheet

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 15, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to John Rapp, National Oceanic and Atmospheric Administration, P.O. Box 25092, Baton Rouge, LA 70894–5092 (or via the Internet at *john.rapp@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Natural Resource Damage Assessment (NRDA) Restoration Project Information Sheet is designed to facilitate the collection of information on existing, planned, or proposed restoration projects. This information will be used by the Natural Resource Trustees to develop potential restoration alternatives for natural resource injuries and service losses requiring restoration during the restoration planning phase of the Natural Resource Damage Assessment (NRDA) process.

II. Method of Collection

Project information can be submitted to the Natural Resource Trustees by either completing the NRDA Restoration Project Information Sheet or submitting project information directly to the Natural Resource Trustees without the form. The NRDA Restoration Project Information Sheet will be made available to the general public on the Internet or by requesting a hard copy or digital copy from the Natural Resource Trustees. All project information submitted to the Natural Resource Trustees with or without the NRDA Restoration Project Information Sheet will be compiled and considered for potential implementation.

III. Data

OMB Number: None.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; farms; Federal government; and State, Local, or Tribal government.

Estimated Number of Respondents: 165.

Estimated Time Per Response: 20 minutes.

Estimated Total Annual Burden Hours: 55.

Estimated Total Annual Cost to Public: $65.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26203 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101003E]

Proposed Information Collection; Comment Request; NOAA's Teacher-At-Sea Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before December 15, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jennifer Hammond at 1315 East West Highway, Rm 12746, Silver Spring, MD 20910; at 301–713–3418, ext. 138; or at *jennifer.hammond@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Teacher-At-Sea Program provides educators with the opportunity to participate in research projects aboard NOAA vessels and other vessels that conduct NOAA Research. The respondents are educators who provide information about themselves and their teaching situation. They also submit a follow-up report with ideas for classroom applications. Recommendations are also required.

II. Method of Collection

Application forms must be submitted. On-line forms can be filled-in, printed, and mailed. Persons with full Adobe Acrobat software can save the on-line form and submit it electronically.

III. Data

OMB Number: 0648–0283.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 375.

Estimated Time Per Response: 45 minutes to read an complete application; 15 minutes to complete a Health Services Questionnaire; 15 minutes to deliver and discuss recommendation forms to persons who will fill them out; 15 minutes to complete a recommendation form; and 2 hours for a follow-up report.

Estimated Total Annual Burden Hours: 309.

Estimated Total Annual Cost to Public: $536.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: October 8, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–26204 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–12–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Minnesota and Texas Coastal Nonpoint Pollution Control Programs: Conditional Approvals, Final Findings Documents and Records of Decision

AGENCY: National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, and the U.S. Environmental Protection Agency (EPA).

ACTION: Notice of conditional approval of Coastal Nonpoint Programs and availability of Final Findings Documents and Records of Decision for Minnesota and Texas.

SUMMARY: Notice is hereby given of the conditional approval of the Coastal Nonpoint Pollution Control Programs (coastal nonpoint programs) and of the availability of the Final Findings Documents and Records of Decision for Minnesota and Texas. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA) requires States and Territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs.

NOAA and EPA have approved, with conditions, the coastal nonpoint programs submitted by Minnesota and Texas. In order to receive final approval of their programs, Minnesota and Texas will need to meet the conditions within the associated timeframes as indicated in the Final Findings Documents.

DATES: The conditional approval of the coastal nonpoint pollution control programs for Minnesota and Texas is effective upon the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Copies of the Final Findings Documents are available on the NOAA Web site at *http://www.ocrm.nos.noaa.gov/czm*. Copies of the Final Findings and Records of Decision also may be obtained upon request from: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, phone (301) 713–3155, x150, e-mail *helen.farr@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Helen Farr, NOAA, (301) 713–3155, x150; or Don Waye, EPA (202) 566–1170.

SUPPLEMENTARY INFORMATION: NOAA and EPA have prepared a Findings Document for each coastal nonpoint program submitted for approval. The Findings Documents were prepared by NOAA and EPA to provide the rationale for the agencies' decision to approve each State and Territory coastal nonpoint program. Proposed Findings documents, Environmental Assessments, and Findings of No Significant Impact prepared for the coastal nonpoint programs submitted by Minnesota and Texas were made available for public comment in the Federal Register on March 17, 2003 (68 FR 12675) and April 7, 2003 (68 FR 16787), respectively. No public comments were received on the programs.

In accordance with the National Environmental Policy Act (NEPA), NOAA has also prepared a Record of Decision on each program. The Record of Decision: (1) States what the decision was; (2) identifies all alternatives considered, specifying the alternative considered to be environmentally preferable; and (3) states whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted.

In March 1996, NOAA published a programmatic environmental impact statement (PEIS) that assessed the environmental impacts associated with the approval of State and Territory coastal nonpoint programs. The PEIS forms the basis for the environmental assessments NOAA has prepared for each State and Territorial coastal nonpoint program submitted to NOAA and EPA for approval. In the PEIS, NOAA determined that the approval and conditional approval of coastal nonpoint programs will not result in any significant adverse environmental impacts and that these actions will have an overall beneficial effect on the environment. Because the PEIS served only as a ''framework for decision'' on individual State and Territorial coastal nonpoint programs, and no actual decision was made following its publication, NOAA has prepared a NEPA Record of Decision on each individual State and Territorial program submitted for review.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration).

Dated: October 9, 2003.

Alan Neuschatz,

Associate Assistant Administrator, Management and Budget Office, National Ocean Service, National Oceanic and Atmospheric Administration.

G. Tracy Mehan, III,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 03–26087 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100903D]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in October 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, October 30, 2003 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Peabody Marriott Hotel, 8A Centennial Drive, Peabody, MA 01960; telephone: (978) 977–6478.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The agenda will include an update on projects funded through NOAA Fisheries Cooperative Research Partners Initiative, further deliberations on a process to incorporate the results of cooperative research projects into the Council management process, and planning for 2004initiatives.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 9, 2003.

Richard W. Surdi,

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

[FR Doc. 03–26198 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100903E]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee in November, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, November 3, 2003 at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, One Newbury Street, Peabody, MA 01960; telephone: (978) 535–4600.

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: The Social Science Advisory Committee will review timelines for Council actions that extend into 2004 and decide which actions are appropriate for providing the Council guidance on social and economic analysis. The Committee will also discuss progress on developing a clearinghouse for social and economic data and a workshop to further the development of social and economic analyses of fishery management action.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: October 9, 2003.

Richard W. Surdi,

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

[FR Doc. 03–26199 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100903C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

DATES: The Council and its advisory bodies will meet November 2–7, 2003. The Council meeting will begin on Monday, November 3, at 3:30 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held at 3:30 p.m. on Monday, November 3 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the Hilton San Diego Del Mar, 15575 Jimmy Duranto Blvd., Del Mar, CA 92014; telephone: (858) 792–5200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 820–2280 or (866) 806–7204.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

A. Call to Order

1. Opening Remarks, Introductions
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Marine Protected Areas

1. Jurisdiction and Authority Issues for Marine Protected Areas

2. Update on West Coast Marine Protected Areas Issues

C. Habitat

Current Habitat Issues

D. Groundfish Management

1. NMFS Report on Groundfish Management
2. Makah Rockfish Enhancement Proposal
3. Feasibility of Using Real-time Electronic Logbook Data in Groundfish Fishery Management
4. Observer Data Flow for Fishery Years 2004–06
5. Status of Groundfish Fisheries and Inseason Adjustments
6. Cabezon and Lingcod Stock Assessments and Lingcod Rebuilding Analysis for 2005–06
7. Update on RecFin Data Improvements
8. Preliminary Optimum Yield (OY), Acceptable Biological Catch (ABC), Management Measures, and Preseason Management Schedule (November-June) for 2005–06 Fisheries
9. Planning of ''Off-year'' Non-regulatory Science Activities (e.g., Stock Assessment Models, B0 and BMSY Workshops)
10. Vessel Monitoring System (VMS): Transiting Requirements for Fixed-Gear Limited Entry Vessels and Expansion of the Program
11. Groundfish Bycatch Program Environmental Impact Statement
12. Development of Groundfish Trawl Individual Quotas (IQ) and Control Date
13. Final Approval of Exempted Fishing Permits (EFPs) for 2004
14. Groundfish Fishery Management Plan Amendment 16–3: Rebuilding Plans for Bocaccio, Cowcod, and Widow and Yelloweye Rockfish
15. Open Access Limitation Discussion and Planning

E. Salmon Management

1. Salmon Fishery Update
2. Inseason Consideration of Scheduled 2004 Commercial and Recreational Openings South of Cape Falcon
3. Preseason Planning for 2004 Management
4. Salmon Methodology Review

F. Pacific Halibut Management

1. Status of 2003 Pacific Halibut Fisheries
2. Proposed Changes to the Catch Sharing Plan and Annual Regulations

G. Highly Migratory Species Management

1. NMFS Report on Highly Migratory Species Management
2. Fishery Management Plan (FMP) Amendment Update: High Seas Longline Limited Entry and Other Issues

H. Coastal Pelagic Species Management

1. NMFS Report
2. Pacific Sardine Stock Assessment and Harvest Guideline for 2004

I. Administrative and Other Matters

1. Legislative Matters
2. Fiscal Matters
3. Appointments to Advisory Bodies, Standing Committees, and Other Forums for the 2004–06 Term
4. Staff Work Load Priorities and Draft March 2004 Council Meeting Agenda

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, November 2, 2003	
Scoping Sessions:	
Groundfish Management Specifications for 2005–2006	1 p.m.
Groundfish Fishery Management Plan Amendment 16–3	3 p.m.
MONDAY, November 3, 2003	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Joint Sessions:	8:30–12 p.m.
1. Cabezon and Lingcod Stock Assessments	
2. Real-time Electronic Logbook Presentation	
3. Makah Rockfish Enhancement	
ProposalHabitat Committee	10 a.m.
Legislative Committee	11 a.m.
Budget Committee	1 p.m.
TUESDAY, November 4, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Highly Migratory Species Advisory Subpanel	8 a.m.
Scientific and Statistical Committee	8 a.m.
Enforcement Consultants	Immediately following Council Session
WEDNESDAY, November 5, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
THURSDAY, November 6, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
FRIDAY, November 7, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens 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 Ms. Carolyn Porter at (503) 820–2280 or (866) 806–7204 at least 5 days prior to the meeting date.

Dated: October 9, 2003.

Richard W. Surdi,

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

[FR Doc. 03–26197 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100703F]

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public workshop.

SUMMARY: The South Atlantic Fishery Management Council will hold a Deepwater Snapper Grouper Data Workshop as part of the Southeastern Data, Assessment, and Review (SEDAR) process. The SEDAR assessment of the South Atlantic and Caribbean deepwater snapper and grouper complex will begin with a Data Workshop in Charleston, SC.

DATES: The SEDAR Deepwater Data Workshop will be held November 3, 2003 beginning at 1:30 p.m. through November 7, 2003, ending by 4 p.m.

ADDRESSES: The workshop will be held at the Hampton Inn Charleston/West Ashley, 678 Citadel Haven Drive, Charleston, SC 29414; telephone: (843) 573-1200; fax: (843) 556-6078.

Council address: One Southpark Circle, Suite 306, Charleston, SC 29407.

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.

SUPPLEMENTARY INFORMATION: An assessment data set will be developed during the workshop for 8 species in the South Atlantic snapper grouper management complex: snowy grouper, golden tilefish, speckled hind, Warsaw grouper, blueline tilefish, queen snapper, misty grouper and yellowedge grouper. The data set will also include the following four species from the Caribbean: queen snapper, silk snapper, sand tilefish and blackline tilefish. The assessment data set for these species will include catch statistics, fishery sampling, independent monitoring, life history and logbook information.

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 30, 2003.

Dated: October 9, 2003.

Richard W. Surdi,

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

[FR Doc. 03–26200 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.100603F]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of enhancement of survival permit (1425).

SUMMARY: On August 7, 2003, NMFS' Northwest Region issued permit 1425 (described in the SUPPLEMENTARY INFORMATION section below) under the Endangered Species Act (ESA) allowing take of threatened species for enhancement of survival actions.

ADDRESSES: The applications and related documents are available for review during business hours by appointment at NMFS' Washington State Branch Office, Habitat Conservation Division, 510 Desmond Drive SE, Suite 103, Lacy, WA 98503 (phone: 360–753–9530).

FOR FURTHER INFORMATION CONTACT: Stephanie Ehinger, Lacey, WA, *Telephone*: (360) 534–9341, fax: (360) 753–9517, e-mail: *stephanie.ehinger@noaa.gov*; or Dan Guy at the same office, *Telephone:* 360–534–9342, email: *dan.guy@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and/or enhancement permits are issued under Section 10(a)(1)(A) of the ESA in accordance with and subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226). Authority to take listed species is subject to conditions set forth in the permits.

Species Covered in this Notice

The following ESA-listed species and evolutionary significant units (ESUs) are covered in this notice:

Threatened Lower Columbia River (LCR) Chinook salmon (*Oncorhynchus tshawytscha*)

Threatened Columbia River (CR) Chum salmon (*O. keta*).

Threatened LCR Steelhead (*O. mykiss*)

Take Summary

For the benefit of 29 restoration projects over a five year period, a maximum number of 48 juvenile steelhead and two juvenile spring chinook are expected to be killed. That equates to an annual take of 10 juvenile steelhead resulting from six projects. Conservatively estimating take in several instances involved intentionally inflated numbers. The number of dead juveniles could be much lower. Still, 48 dead juveniles (and 10 per year) is a small number as a portion of the total Lewis River steelhead outmigration. Steelhead smolt production for Cedar Creek, where most of the North Fork production occurs, averages 3600. Data for the East Fork were not available. Even if steelhead production in the Lewis River was limited to the average 3,600 from Cedar Creek, 10 steelhead would be 0.3 percent of the run. The effect on the entire LCR evolutionary significant unit (ESU) is smaller yet. NMFS does not have data available to calculate the percentage of summer rearing chinook smolts that may be killed. But, NMFS expects the effect to be even smaller, because the vast majority of the chinook will not be in the system during construction. Thus, the percentage of the smolts that are likely to be taken is much lower than the 0.3 percent for the Lewis River steelhead run.

Notice was published on April 2, 2003 (68 FR 15996), that Fish First, a non-profit organization based in southwest Washington State, applied for an enhancement of survival permit under section 10(a)(1)(A) of the ESA. NMFS issued permit 1425 on August 7, 2003, authorizing annual takes of the threatened salmonids listed above in the Lewis River basin. Permit 1425 expires on August 10, 2008.

Dated: October 9, 2003.

Phil Williams,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–26196 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Announcement of Performance Review Board Members

AGENCY: National Telecommunications and Information Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: 5 CFR 430.310 requires agencies to publish notice of Performance Review Board appointees in the **Federal Register** before their service begins. This notice announces the names of new and existing members of the National Telecommunications and Information Administration's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Darlene Haywood, International Trade Administration, Office of Human Resources Management, at (202) 482–2850, Room 7060, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: The purpose of the Performance Review Board is to review and make recommendations to the appointing authority on performance management issues such as appraisals, bonuses, pay level increases, and Presidential Rank Awards for members of the Senior Executive Service. The Acting Assistant Secretary for Communications and Information, Michael D. Gallagher, has named the following members of the National Telecommunications and Information Administration Performance Review Board:

1. Frederick R. Wentland, Associate Administrator for Spectrum Management (Chairperson).

2. Bernadette McGuire-Rivera, Associate Administrator for Telecommunications and Information Applications.

3. Alan W. Vincent, Associate Administrator for Telecommunication Sciences and Director, Institute for Telecommunication Sciences (new).

4. Robin R. Layton, Associate Administrator for International Affairs (new).

5. Ronald P. Hack, Deputy Chief Information Officer for Information Technology Services, Patent and Trademark office (outside reviewer).

6. Darlene F. Haywood, Executive Secretary, ITA Office of Human Resources Management at (202) 482–2850.

Dated: October 9, 2003.

Doris W. Brown,

Human Resources Officer.

[FR Doc. 03–26124 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–25–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

October 10, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at *http://www.customs.gov*. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at *http://otexa.ita.doc.gov*.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the *Correlation*: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (*see* **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63632, published on October 15, 2002.

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 10, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on October 17, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
335	316,668 dozen.
338/339	3,533,517 dozen.
347/348	3,540,738 dozen.
635	428,602 dozen.
638/639	3,195,642 dozen.
647/648	1,947,480 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–26213 Filed 10–15–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 17, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires

that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: October 10, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Grants Under the Strengthening Institutions Program, American Indian Tribally Controlled Colleges and Universities Program, and Alaska Native and Hawaiian Serving Institutions Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 415.

Burden Hours: 19,250.

Abstract: The information is required of institutions of higher education that apply for grants under the Strengthening Institutions Program, the American Indian Tribally Controlled Colleges and Universities Program, and the Alaska Native and Native Hawaiian Serving Institutions Program, authorized under Title III, Part A of the Higher Education Act of 1995, as amended. This information will be used in the peer review and in making funding recommendations.

This collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2362. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to (202) 708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26141 Filed 10–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before December 15, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: October 10, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: American Indian Supplement to the National Assessment of Educational Progress (NAEP), Field Test 2004.

Frequency: One time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 1,300.

Burden Hours: 325.

Abstract: This study is a field test for a planned supplement to the National Assessment of Educational Progress. The study will determine the feasibility of oversampling the American Indian and Alaska Native student population. In addition to a standard assessment and it includes special background questionnaires for student, teacher, and school components. A 3-year clearance is requested.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2363. When you access the information collection, click on ''Download Attachments ''to view. Written requests for information should

be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Katrina Ingalls at her e-mail address *Katrina.Ingalls@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–26142 Filed 10–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services

[CFDA No.: 84.133F]

National Institute on Disability and Rehabilitation Research—Research Fellowships Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The purpose of the Research Fellowships Program is to build research capacity by providing support to highly qualified individuals, including those who are individuals with disabilities, to conduct research about the rehabilitation of individuals with disabilities. Fellows may conduct original research in an area authorized by section 204 of the Rehabilitation Act of 1973, as amended. Fellows must address problems encountered by individuals in their daily lives that are due to the presence of a disabling condition, problems associated with the provision of rehabilitation services to individuals with disabilities, and problems connected with the conduct of disability research.

The program provides two categories of Fellowships: Merit Fellowships and Distinguished Fellowships.

(a) To be eligible for a Distinguished Fellowship, an individual must have seven or more years of research experience in subject areas, methods, or techniques relevant to rehabilitation research and must have a doctorate, other terminal degree, or comparable academic qualifications.

(b) To be eligible for a Merit Fellowship, an individual must have either advanced professional training or independent study experience in an area that is directly pertinent to disability and rehabilitation. In the most recent competitions, recipients of a Merit Fellowship had research experience at the doctoral level.

Applicants are not required to submit a budget with their proposal. These are one Full Time Equivalent (FTE) awards. The Fellow must work principally on the fellowship during the year. We define one FTE as equal to 40 hours per week. The Fellow cannot receive support through any other Federal Government grants during this period.

Eligible applicants: Only individuals who have advanced rehabilitation research training and experience in conducting scientific research related to the solution of rehabilitation problems of individuals with disabilities are eligible.

Note: Institutions are not eligible to be recipients of Fellowships.

Applications available: October 16, 2003.

Deadline for transmittal of applications: December 15, 2003.

Estimated available funds: The Administration has requested $500,000 for this program for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: Merit: $45,000; Distinguished: $55,000.

Note: Applicants must indicate whether they are applying for the Merit Fellowship: $45,000, or the Distinguished Fellowship: $55,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 24 pages using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if you apply these standards and exceed the page limit.

Note: Applicants must place their Social Security Number in Block #2 on the ED 424 form in place of the D–U–N–S Number.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 75, 77, 81, 82, 85, and 97; and 34 CFR part 356, Disability and Rehabilitation Research Fellowships.

SUPPLEMENTARY INFORMATION:

Note: NIDRR supports the goals of President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at the following site: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The Research Fellowships Program is in concert with NIDRR's Long-Range Plan (Plan). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/rschstat/research/pubs/index.html.*

Selection Criteria: In evaluating an application for a Fellowship under this competition, we use selection criteria chosen from the selection criteria in 34 CFR 356.30–32. The selection criteria to be used for this competition will be provided in the application package for this competition.

Application Procedures:

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In FY 2004, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Research Fellowships Program—CFDA

#84.133F is one of the programs included in the pilot project. If you are an applicant under the Research Fellowships Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424) and all necessary assurances and certifications. The Budget Information—Non-Construction Programs (ED 524) is not required by the Research Fellowships Program—CFDA #84.133F.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424.
2. The applicant must sign this form under the Research Fellowships Program—CFDA #84.133F.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Research Fellowships Program—CFDA #84.133F and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 p.m. and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Research Fellowships Program—CFDA #84.133F at: *http://e-grants.ed.gov.*

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs via its Web site: *http://www.ed.gov/pubs/edpubs.html.*

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA #84.133F.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Services (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880 or via Internet: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

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Program Authority: 29 U.S.C. 762(e).

Dated: October 9, 2003.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–26208 Filed 10–15–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental

Management Advisory Board. The Federal Advisory Committee Act (Public law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, November 21, 2003.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., (Room 1E–245), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW., (Room 5B–171), Washington, DC 20585. The telephone number is (202) 586–4400. The Internet address is *james.melillo@em.doe.gov*.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* To provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

Tentative Agenda:

Friday, November 21, 2003.

9 p.m. Public Meeting Open.

—Welcome
—Opening Remarks
—EM Overview
—EM Program Update
—Board Briefing
—Board Business

5 p.m—Public Comment and Adjournment.

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at (202) 586–4400, and we will reserve time for you on the agenda. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in an orderly manner.

Minutes: We will make the minutes of the meeting available for public review and copying by February 22, 2004. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Room is open Monday through Friday from 9 a.m.–4 p.m. except on Federal holidays.

Issued in Washington, DC, on October 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–26168 Filed 10–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the National Coal Council. Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, December 4, 2003, 9 a.m. to 12 Noon.

ADDRESSES: Fairmont Hotel, 2401 M Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Estelle W. Hebron, U.S. Department of Energy, Office of Fossil Energy, Washington, DC 20585. Phone: 202/586–6837.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The purpose of the National Coal Council is to provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues. The purpose of this meeting is to provide updates on several of these issues, which are summarized in the following agenda.

Tentative Agenda:

- Call to Order by Mr. Wes M. Taylor, Chairman.
- Remarks of Secretary of Energy, Spencer Abraham (invited).
- Council Business.
- Presentation by Mr. James Roewer, Exec. Director, Utility Solid Waste Activities Group, on New Source Review rulemaking.
- Presentation by Ms. Sharon Glacken, TXU Corporation, on Mercury rulemaking for coal-based generating plants.
- Presentation by (TBD), on Northeast blackout of August 14, 2003.
- Presentation by (DOE Representative), on Clean Coal Power Initiative.
- Other Business.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the NCC will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would to like to make oral statements regarding any of the items on the agenda, you should contact Estelle W. Hebron at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Transcripts: The transcript will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on October 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–26169 Filed 10–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 03–33–NG, et al.]

Husky Gas Marketing, Inc., et al.; Orders Granting and Vacating Authority To Import and Export Natural Gas, and Import of Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during August 2003, it issued Orders granting and vacating authority to import and export natural gas, and import of liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import &

Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on September 16, 2003.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

APPENDIX—ORDERS GRANTING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

[DOE/FE Authority]

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
1882	8–5–03	Husky Gas Marketing, Inc.; 03–33–NG.	250 Bcf		Import and export up to a combined total of natural gas from and to Canada, beginning on August 10, 2003, and extending through August 9, 2005.
1883	8–5–03	Weyerhaeuser Company; 03–36–NG.	24 Bcf		Import natural gas from Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1884	8–6–03	NSTAR Gas Company; 03–39–NG.	20 Bcf		Import and export up to a combined total of natural gas from and to Canada, beginning on November 1, 2003, and extending through October 31, 2005.
1885	8–18–03	Padre Valencia Energy Corporation; 03–38–LNG.	107 Mcf		Import LNG from other sources beginning on October 1, 2003, and extending through September 30, 2005.
1886	8–18–03	Chevron U.S.A. Inc.; 03–41–NG.	55 Bcf		Import natural gas from Canada, beginning on August 18, 2003, and extending through August 17, 2005.
1785–A	8–18–03	Chevron U.S.A. Inc.; 02–38–NG.			Vacate blanket authority.
1887	8–18–03	OXY Energy Canada, LLC; 03–40–NG.	400 Bcf		Import and export up to a combined total of natural gas from and to Canada, beginning on September 1, 2003, and extending through August 31, 2005.
1888	8–19–03	Sierra Pacific Power Company; 03–43–NG.	100 Bcf		Import natural gas from Canada, beginning on January 1, 2004, and extending through December 31, 2005.
1889	8–25–03	ConocoPhillips Company; 03–44–NG.	300 Bcf		Import and export up to a combined total of natural gas from and to Canada and Mexico, beginning on August 27, 2003, and extending through August 26, 2005.
1801–A	8–26–03	Emera Energy Services, Inc.; 02–53–NG.			Vacate blanket authority.
1890	8–26–03	Emera Energy Services, Inc.; 03–37–NG.	400 Bcf		Import and export up to a combined total of natural gas from and to Canada, beginning on September 1, 2003, and extending through August 31, 2005.
1891	8–26–03	EnCana Marketing (USA) Inc.; 03–45–NG.	500 Bcf		Import and export up to a combined total of natural gas from and to Canada and Mexico, and import LNG from other sources, beginning on June 30, 2003, and extending through June 29, 2005.
1892	8–28–03	TXU Portfolio Management Company LP; 03–47–NG.	240 Bcf	240 Bcf	Import and export up to a combined total of natural gas from and to Canada, and import and export up to a combined total of natural gas from and to Mexico, beginning on July 27, 2003, and extending through July 26, 2005.

[FR Doc. 03–26170 Filed 10–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Thursday, November 6, 2003, 6 p.m. to 9 p.m.

ADDRESSES: College Hill Library, Room L211, Front Range Community College, 3705 West 112th Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO, 80403; telephone (303) 966–7855; fax (303) 966–7856.

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Discussion and Approval of recommendations and comments on the draft Interim Measure/Interim Remedial Action document for the Present Landfill.
2. Discussion with Ray Plieness, Grand Junction Project Office, on long-term stewardship at Rocky Flats.
3. Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the office of the Rocky Flats Citizens Advisory Board, 10808 Highway 93, Unit B, Building 60, Room 107B, Golden, CO 80403; telephone (303) 966–7855. Hours of operations are 7:30 a.m. to 4 p.m., Monday through Friday. Minutes will also be made available by writing or calling Ken Korkia at the address or telephone number listed above. Board meeting minutes are posted on RFCAB's Web site within one month following each meeting at: *http://www.rfcab.org/Minutes.HTML.*

Issued at Washington, DC, on October 10, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–26171 Filed 10–15–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–6–000]

Enbridge Pipelines (KPC); Notice of Proposed Changes in Ferc Gas Tariff

October 3, 2003.

Take notice that on September 29, 2003, Enbridge Pipelines (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to be made effective November 1, 2003:

Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 21
Fourth Revised Sheet No. 26
Fourth Revised Sheet No. 28
Fourth Revised Sheet No. 30
Fourth Revised Sheet No. 31A
Third Revised Sheet No. 31C

KPC states that the purpose of the filing is to reflect an overall decrease in its Fuel Reimbursement Percentages pursuant to Section 23 of the General Terms and Conditions of its FERC Gas Tariff.

KPC states that copies of its transmittal letter and appendices have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00064 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–12–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Florida Gas Transmission Company (FGT) tendered for filing, as part of its FERC Gas Tariff, Third Revised Volume No. 1, revised tariff sheets listed in Appendix A to the filing, proposed to become effective on November 1, 2003.

FGT states that this rate filing is made to effectuate changes in the rates and terms applicable to FGT's services under Rate Schedules FTS–1, FTS–2, FTS–WD, SFTS, NNTS, ITS–1, ITS–WD, and PNR. FGT states that based on Test Period reservation and usage determinants, the proposed rate increase under all Rate Schedules, excluding the impact of rate caps, negotiated rates, and discounts, would generate approximately $56 million in additional annual transportation revenues for FGT.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact

(202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00060 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–1–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective November 1, 2003:

Third Revised Sheet No. 14
Third Revised Sheet No. 24
Second Revised Sheet No. 33
Fifth Revised Sheet No. 100
Third Revised Sheet No. 101
Second Revised Sheet No. 121C
Second Revised Sheet No. 216
First Revised Sheet No. 219
First Revised Sheet No. 220
Second Revised Sheet No. 227
First Revised Sheet No. 230
Second Revised Sheet No. 238
First Revised Sheet No. 241
First Revised Sheet No. 242
Second Revised Sheet No. 278
First Revised Sheet No. 281
Second Revised Sheet No. 288
First Revised Sheet No. 289
First Revised Sheet No. 295A
First Revised Sheet No. 296A
Second Revised Sheet No. 297
Third Revised Sheet No. 302

GBGP states that the purpose of this filing is to update its tariff to: (1) Remove remnants of Order No. 637 policies that no longer apply (eliminating capacity releases at rates above max tariff rate and five-year term limit for determining best bid); (2) update the legal name of its member company that handles certain administrative functions; (3) add two informational items to its Request for Service Form—the shipper's Federal Tax ID number and DUNS number—which are required for GBGP to conduct business; and, (4) correct format and typographical errors contained on several pages.

GBGP states that copies of the filing are being mailed to each of GBGP's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00057 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–11–000]

Guardian Pipeline, L.L.C; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Guardian Pipeline, L.L.C. (Guardian) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 5, proposed to become effective November 1, 2003.

Guardian states that this filing is made in accordance with Section 32 (Transporter's Use Gas Adjustment) of the General Terms and Conditions in its FERC Gas Tariff, Original Volume No. 1.

Guardian further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003 .

Magalie R. Salas,

Secretary.

[FR Doc. E3–00059 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–628–000]

Iroquois Gas Transmission System, L.P.; Notice of Tariff Filing

October 8, 2003.

Take notice that on September 30, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Twelfth Revised Sheet No. 4A, with an effective date of November 1, 2003.

Iroquois states that pursuant to Part 154 of the Commission's regulations and Section 12.5 of the General Terms and Conditions of its tariff, it is filing Twelfth Revised Sheet No. 4A and

supporting work paper as part of its annual Transportation Cost Rate Adjustment filing to reflect changes in Account No. 858 costs for the twelve month period commencing November 1, 2003.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00052 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–4–000]

Kern River Gas Transmission Company: Notice of Tariff Filing

October 8, 2003.

Take notice that on October 1, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective November 1, 2003.

Kern River states that the purpose of this filing is (1) to revise Kern River's tariff to reflect its new address and phone numbers, (2) to update Kern River's system map to reflect the facilities added in its 2003 expansion project, and (3) to propose other miscellaneous modifications.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00056 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–60–000]

MidAmerican Energy Company; Notice of Application

October 8, 2003.

Take notice that on September 30, 2003, MidAmerican Energy Company (MidAmerican) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue and sell up to $455 million principal amount of bonds, notes, debentures, guarantees or other evidence of long-term indebtedness.

MidAmerican also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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.

Comment Date: October 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00044 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–5–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

October 8, 2003.

Take notice that on October 1, 2003, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth

Revised Volume No. 1, the tariff sheets listed in Appendix A to its filing. The tariff sheets have a proposed effective date of November 1, 2003.

National Fuel states the purpose of the instant filing is to reflect the relocation of its principal office by replacing each reference to National Fuel's current address with a reference to its new address.

National Fuel's states that its filing indicates that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00063 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–18–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Natural Gas Pipeline Company of America (Natural) tendered for filing to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sixth Revised Sheet No. 414, to be effective October 1, 2003.

Natural states that the purpose of this filing is to update its list of non-conforming agreements. Natural states that it also tendered for filing copies of the Firm Transportation Rate Discount Agreement with The Board of Trustees of University of Illinois. Natural further states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00061 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES03–59–001]

NRG Energy, Inc.; Notice of Application

October 8, 2003.

Take notice that on October 7, 2003, NRG Energy, Inc. submitted a filing in response to a deficiency letter issued on October 2, 2003, by the Director of the Division of Tariffs and Market Development-Central, in the above-referenced docket.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 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 motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. 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.

Comment Date: October 17, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00045 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–9–000]

Panhandle Eastern Pipe Line Company, LCC; Notice of Proposed Changes in Ferc Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Panhandle Eastern Pipe Line Company, LLC (Panhandle) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to become effective November 1, 2003.

Panhandle states that this filing is made in accordance with Section 24 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Panhandle's FERC Gas Tariff, Second Revised Volume No. 1. Panhandle also states that the revised tariff sheets filed herewith reflect the following changes to Fuel Reimbursement Percentages:

(1) A 0.18% increase in the Gathering Fuel Reimbursement Percentage;

(2) A 0.19% increase in the Field Zone Fuel Reimbursement Percentage;

(3) A 0.07% increase in the Market Zone Fuel Reimbursement Percentage;

(4) A 0.12% decrease in the Injection and a 0.12% decrease in the Withdrawal Field Area Storage Reimbursement Percentages; and

(5) A 0.12% decrease in the Injection and a 0.12% decrease in the Withdrawal Market Area Storage Reimbursement Percentages.

Panhandle further states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00043 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–10–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on October 1, 2003, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Ninth Revised Sheet No. 5, proposed to become effective November 1, 2003.

Southwest states that this filing is made in accordance with Section 16 (Fuel Reimbursement Adjustment) of the General Terms and Conditions in Southwest's FERC Gas Tariff, First Revised Volume No. 1. Southwest also states that the Fuel Reimbursement Adjustment filed herewith reflects the following Fuel Reimbursement Percentages:

(1) West Area Storage Facilities Injection 1.17% and Withdrawal 0.35%;

(2) East Area Storage Facilities Injection 2.61% and Withdrawal 1.10%.

Southwest further states copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00058 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–3–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

October 8, 2003.

Take notice that on October 1, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff., Fifth Revised Volume No. 1, Third Revised Sheet No. 405 E with an effective date of November 1, 2003.

Tennessee states that the filing is being made in order to provide more flexibility to its current firm storage service, by primarily modifying the timeframe within which storage service can be sold.

Tennessee states that it also proposes to adopt a timeline in order to provide clarity on the requirements and timing for the future sales of capacity.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00062 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–630–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on September 30, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets attached to the filing, to become effective on November 1, 2003.

Viking states that the purpose of this filing is to revise Viking's Rate Schedule PAL by adding service options, allow park and loan transactions to be electronically contracted and to make corresponding changes in Viking's General Terms and Conditions and form of Agreement related to implementing new service options under Rate Schedule PAL.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00053 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–631–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 8, 2003.

Take notice that on September 29, 2003, Viking Gas Transmission Company (Viking) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective on November 1, 2003:

Fifth Revised Sheet No. 5H
Second Revised Sheet No. 87.01
Second Revised Sheet No. 87A

Viking states that the purpose of its filing is to modify Section 26 of the General Terms and Conditions of its FERC Gas Tariff to implement a twice a year change to its fuel and loss retention percentage (FLRP) to become effective April 1 and November 1 of each year. Furthermore, Viking proposes to establish an FLRP of 2.58% for Zone 1–2, .2.17% for Zone 1–1 and .46% for Zone 2–2 to become effective November 1, 2003. This represents decreases of .32% for Zone 1–2, .2% to Zone 1–1 and .12% to Zone 2–2. Viking states that its proposal will provide greater fuel cost certainty and less volatility.

Viking states that copies of this filing have been sent to all of Viking's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00054 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–633–000]

Williston Basin Interstate Pipeline Company; Notice of Annual Report

October 8, 2003.

Take notice that on September 30, 2003, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 Fourth Revised Sheet No. 358I, with an effective date of September 30, 2003.

Williston Basin states that as of July 31, 2003 it had a zero balance in FERC

Account No. 191. As a result, Williston Basin will neither refund nor bill its former sales customers for any amounts under the conditions of Subsection No. 39.3.1 of its Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. 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 proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Intervention and Protest Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00055 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–342–000]

Discovery Gas Transmission, LLC; Notice of Intent to Prepare An Environmental Assessment for the Proposed Market Expansion Project and Request for Comments on Environmental Issues

October 8, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Market Expansion Project (Project) involving construction and operation of facilities by Discovery Gas Transmission, LLC (Discovery) in LaFourche and Terrebone Parishes, Louisiana.[1] These facilities would consist of construction of about 2.6 miles of various diameter pipeline, an interconnection facility, related metering and pressure regulation facilities and the purchase of approximately 32 miles of existing pipeline from DPH, Inc and Discovery Producer Services, LLC (DPS). This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Discovery provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Discovery proposes to construct, install operate and maintain pipelines and meter stations at four different sites in Lafourche and Terrebone Parish, Louisiana. Discovery states that it proposes to acquire approximately 31.5 miles of existing pipeline (line 40E) from DPH, Inc., of which 22.8 miles will be used to provide the necessary interconnections, acquire approximately 0.4 miles of existing pipeline from DPS, and abandon approximately 8.8 miles of 20-inch pipeline.

Discovery would install the following facilities:

- 735 feet of 20-inch diameter pipeline from the existing 40E pipeline to the existing Tennessee platform located in Old Lady Lake in Terrebone Parish Louisiana. The interconnect construction would require exposing and lifting 1000 feet of the existing 40E pipeline.
- Installation of a new 40-foot by 40-foot meter platform at the 40E pipeline near Point Au Chien, in Terrebone Parish Louisiana.
- Installation of approximately 2.1 miles of 20-inch diameter pipeline running from the 40E pipeline to a new 40-foot by 40-foot platform near Isle de Jean Charles to connect with the existing Columbia Gulf Pipeline.
- Installation of 1840 feet of new 20-inch pipeline near Larose, in Lafourche Parish Louisiana.
- Construction of a new meter station near Thibodaux, in LaFourche Parish Louisiana along with 150 feet of interconnection pipeline to deliver to the Transcontinental Gas Pipe Line Corporation's system.
- Discovery also proposes to abandon approximately 8.8 miles of currently decommissioned 20-inch diameter 40E pipeline from the current Old Lady Lake Platform south to the Lake Barre platform in the Caillou Island Field. A 20-inch diameter weld cap could be installed after the introduction of a nitrogen gas blanket in the line.

The general location of the project facilities is shown in appendix 1.[2] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in appendix 3.

Land Requirements for Construction

Construction of the proposed facilities would require about 20.8 acres of land. Following construction, about 11.2 acres would be maintained as new aboveground facility sites. The remaining 9.6 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[3] to

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[1] Discovery's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's website at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- land use
- water resources, fisheries, and wetlands
- cultural resources
- vegetation and wildlife
- air quality and noise
- endangered and threatened species
- hazardous waste
- public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations/routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 3.
- Reference Docket No. CP03–342–000.
- Mail your comments so that they will be received in Washington, DC on or before November 10, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2).[4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors. By this notice we are also asking governmental agencies, especially those in appendix 3, to express their interest in becoming cooperating agencies for the preparation of the EA.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00065 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PF03–3–000]

Williston Basin Interstate Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Grasslands Expansion Project and Request for Comments on Environmental Issues

October 8, 2003.

The Federal Energy Regulatory Commission's (FERC or Commission) staff will prepare an environmental assessment (EA) on Williston Basin Interstate Pipeline Company's (Williston Basin) proposed Grasslands Expansion Project in Wyoming, Montana, and North Dakota. This notice announces the opening of the scoping process we[1] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be addressed in the EA. Details on how to submit written comments are provided in the public participation section of this notice. Please note that the scoping period will close on November 24, 2003.

We are sending this notice to potentially-affected landowners whose properties are within an approximate 1-mile radius of the project locations; Federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; and local libraries and newspapers. We are asking state and local government representatives to notify their constituents of this planned action and encourage them to comment on their areas of concern.

Summary of the Proposed Project

Williston Basin states that the Grasslands Expansion Project would allow transportation of an additional 120 million cubic feet per day (mmcf/d) to the Northern Border Pipeline on the Grasslands Pipeline. This would increase the capacity of the Grasslands Pipeline to 200 mmcf/d. The Grasslands Pipeline (Docket Nos. CP02–37–000, 002, and 003) was originally designed to transport 80 mmcf/d.

The project facilities include:

- construction of up to three new compressor stations; one each in Campbell County, Wyoming; Carter County, Montana; and Golden Valley County, North Dakota; and
- installation of additional compression at the existing Manning Compressor Station in Dunn County, North Dakota.

Construction and operation of the planned compressor stations would require a total of about 30 acres. Construction at the existing Manning Compressor Station would occur on the existing site. A general location map of the project facilities is shown in Appendix 1.[2]

Williston Basin also plans to construct additional facilities in Fallon County, Montana that are associated with the Grasslands Expansion Project, but are not under the jurisdiction of the Commission. These non-jurisdictional facilities, which include a supply lateral, gathering lines, and well field compression, would help alleviate transmission constraints and provide needed capacity for future production increases out of the Baker Production Area.

Williston Basin plans to construct this project in 2004, with the goal of placing it in-service by November 1, 2004, if the project is fully subscribed by the time they make application with the Commission (tentatively November 1, 2003). If not fully subscribed at the time of application, Williston Basin has stated that they may propose to phase its construction schedule of the various facilities over more than 1 year.

The EA Process

The Commission will be the lead Federal agency for this EA process which is being conducted to satisfy the requirements of the National Environmental Policy Act (NEPA). The Commission will use the EA to consider the environmental impacts that could result if it issues Williston Basin a Certificate of Public Convenience and Necessity for its proposed project.

This notice formally announces our preparation of the EA and the beginning of the process referred to as ''scoping.'' We are soliciting input from the public and interested agencies to help us focus the analysis in the EA on the potentially significant environmental issues related to the proposed action. All comments received will be considered during the preparation of the EA which will include our independent analysis of the identified issues.

Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all timely comments on the EA before we make our recommendations to the Commission.

Although Williston Basin has not filed a formal certificate application yet, we are initiating our review under the NEPA Pre-filing Process. The purpose of the FERC's NEPA Pre-filing Process is to: (1) Establish a framework for constructive discussion between the project proponents, potentially affected landowners, agencies, and the Commission staff; (2) encourage the early involvement of interested stakeholders to identify issues and study needs; and (3) attempt to resolve issues early, before an application is filed with the FERC.

A docket number (PF03–3–000) has been established to place information filed by Williston Basin, and related documents issued by the Commission, in the public record.[3] When Williston Basin files an application, it will be assigned a ''CP docket'' number, and all information filed under Docket No. PF03–3–000 will become part of the record for the ''CP docket.''

With this notice, we are asking other Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to the environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies, which would like to request cooperating status, should follow the instructions for filing comments described later in this notice.

If you are an affected property owner receiving this letter, a Williston Basin representative may contact you about the acquisition of an easement to construct, operate, and maintain the planned facilities. You may have already been contacted by Williston Basin about the Grasslands Expansion Project, or may have attended the open houses sponsored by Williston Basin in early August 2003. A fact sheet has been prepared by the FERC entitled ''An

[1] ''We'', ''us'' and ''our'', refer to the environmental staff of the Office of Energy Projects.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site (*http://www.ferc.gov*) at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call at (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Please focus your comments on the potential environmental effects, reasonable alternatives (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please mail your comments so they will be received in Washington, DC on or before November 24, 2003, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Branch 1, DG2E; and
- Reference Docket No. PF03–3–000 on the original and both copies.

The Commission strongly encourages you to file your comments 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 at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm*.

Williston Basin has initiated public participation to provide a means of communication with participating stakeholders and has held three open houses near the proposed compressor station locations. To facilitate the communication effort, it has provided a single point of contact for the Grasslands Expansion Project in Mr. Keith Tiggelaar, Director of Regulatory Affairs, at 1–701–530–1560, e-mail *keith.tiggelaar@wbip.com*. Additionally, Williston Basin will update its Grasslands Pipeline Web site (*www.grasslandspipeline.com*) to include information on the Grasslands Expansion Project. If you have any further questions for Williston Basin regarding its planned project, we encourage you to contact their representatives to answer your questions and address your concerns.

Finally, any public meetings or site visits will be posted on the Commission(s calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00051 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

October 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12453–000.

c. *Date filed:* March 18, 2003.

d. *Applicant:* Deadwood Hydro LLC.

e. *Name of Project:* Deadwood Dam Project.

f. *Location:* On the Deadwood River, in Valley County, Idaho, utilizing the Deadwood Dam which is administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent Smith, Deadwood Hydro LLC., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents 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 document on that resource agency.

k. *Description of Project:* The proposed project utilizing the U. S. Bureau of Reclamation's Deadwood Dam and would consist of: (1) A proposed 300-foot-long, 120-inch-diameter steel penstock, (2) a proposed powerhouse containing generating unit having an installed capacity of 2.6 MW, (3) a proposed 10-mile-long, 15 kV transmission line, and (4) appurtenant facilities.

Applicant estimates that the average annual generation would be 25 GWh and would be sold to a local utility.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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 address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice

of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *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.

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 ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. 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.

t. *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. E3–00047 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 199–203.

c. *Date Filed:* August 11, 2003.

d. *Applicant:* South Carolina Public Service Authority.

e. *Name of Project:* Santee-Cooper Project.

f. *Location:* Santee and Cooper Rivers (Lake Marion and Lake Moultrie) in Berkeley, Calhoun, Clarendon, Orangeburg, and Sumter Counties, South Carolina. The project occupies federal lands in the Francis Marion National Forest. The proposed action would involve project lands and waters located at Lake Marion.

g. *Filed pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. G. Denton Lindsay, Jr., Santee Cooper Property Management Division, One Riverwood Drive, P.O. Box 2946101, Moncks Corner, SC 29461–4003, (843) 761–8000.

i. *FERC Contact:* Any questions on this notice should be addressed to Diana Shannon, (202) 502–8887, or e-mail address: *diana.shannon@ferc.gov*.

j. *Deadline for filing motions to intervene, protests, comments:* November 10, 2003.

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.

k. *Description of Proposed Action:* The Applicant seeks approval to use project lands and waters at Lake Marion for the Lake Marion Regional Water System Water Supply Project (Water Project). The applicant proposes to construct an intake structure and pump station in Orangeburg County, South Carolina. Raw water would be withdrawn from Lake Marion and delivered to a proposed water treatment plant, to be located on non-project lands approximately 1,000 feet from the intake. The treatment plant will have an initial capacity of 8 million gallons/day (MGD) and a maximum of up to 12 MGD. The licensee states that lake inflow is considered adequate to withstand the demand of the water treatment facility. The proposed structures (both on project and non-project lands) will remain the applicant's, therefore, no conveyance of project property rights is necessary. The applicant intends to sell the potable water to the Lake Marion Water Agency, which includes the City of Santee, the Town of Elloree, the City of Manning, the Town of St. George, and the Town of Holly Hill. The Water Project is divided into 5 smaller, independent

projects. The initial project, referred to as the Santee Reach, includes the water treatment facility, elevated tank, and waterline to provide water to Santee and Orangeburg County. Other projects (including the Elloree, Holly Hill, St. George and Manning Reaches) will be phased in, based upon customer needs and funding availability with the last project anticipated being completed by March 2006.

l. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov/* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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 address in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and 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.

o. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the project number (199–203) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link. The Commission strongly encourages e-filings. All documents should be filed with: 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.

p. *Agency Comments*: Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00048 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2628–052.

c. *Date Filed:* September 9, 2003.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* R. L. Harris Dam.

f. *Location:* The project is located on the Tallapoosa River in Clay and Randolph Counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mr. R. M. Akridge, PO Box 2641, Birmingham, AL 35291, (205) 257–1398.

i. *FERC Contacts:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov*.

j. *Deadline for filing comments and or motions:* November 10, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2628–052) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* Alabama Power Company is requesting Commission approval to authorize Wedowee Marine to make improvements to its marina on Harris Lake in Randolph County, Alabama. Existing facilities within the project boundary include a fueling dock which can accommodate four to six watercraft and a concrete boat ramp. Proposed facilities within the project boundary include: construction of three covered, floating dock structures that will accommodate 96 watercraft; construction of a dock with six handicap-accessible boat slips; widening the existing boat ramp to 30-feet; and improvements to the existing fuel dock structure.

l. *Location of the Applications:* The filings are available for review at the Commission in the Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications 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.

q. 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 at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00049 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

October 8, 2003.

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.:* 9840–031.

c. *Date Filed:* August 21, 2003.

d. *Applicants:* Appomattox River Associates, L. P. and STS HydroPower, Ltd. (Transferors) and Appomattox River Associates, L. P. (Transferee).

e. *Name of Project:* Appomattox River Water Authority Hydroelectric Project.

f. *Location:* Located on the Appomattox River, in Chesterfield and Dinwiddie Counties, Virginia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contact:* Stephen J. Sinclair, Appomattox River Associates, L.P., c/o Northbrook Energy, 20 North Wacker Drive, Chicago, IL 60606, (312) 419–1221.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* November 10, 2003.

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–9840–031) 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 document on that resource agency.

k. *Description of Transfer:* Appomattox River Associates, L.P. and STS HydroPower, Ltd., co-licensees, (STS) jointly seek Commission approval to remove STS as co-licensee from the license for the Appomattox River Water Authority Hydroelectric Project.

l. *Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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 h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00050 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11883–001, et al.]

Notice of Surrender of Preliminary Permits

October 8, 2003.

Symbiotics, LLC, Project Nos. 11883–001, 11889–001, 11890–001, 11892–001, 11940–001, 11963–001, 11969–001, 11970–001, 11985–001, 11988–001, 11989–001, 11990–001, 11993–001, 11995–001, 12002–001, 12003–001, 12004–001, 12006–001, 12007–001, 12009–001, 12010–001, 12011–001, 12012–001, 12014–001, 12039–001, 12065–001, 12098–001; Sequoia Hydro, LLC, Project No. 12181–001; Calero Hydro, LLC, Project No. 12186–001; Skiatook Hydro, LLC, Project No. 12189–001; Crow Creek Hydro, LLC, Project No. 12197–001; Merritt Hydro, LLC, Project No. 12201–001; North San Gabriel Hydro, LLC, Project No. 12203–001; Three Mile Falls Hydro, LLC, Project No. 12209–002; Bayou D'Arbonne Hydro, LLC, Project No. 12217–001; Caddo Hydro, LLC, Project No. 12219–001; Lake Fork Hydro, LLC, Project No. 12231–001; Moose Creek Hydro, LLC, Project No. 12235–001; Pat Mayse Hydro, LLC, Project No. 12240–001; Waco Hydro, LLC, Project No. 12249–001; Ute Hydro, LLC, Project No. 12251–001; and MSR # 27 Hydro, LLC, Project No. 12267–001.

Take notice that the permittees for the subject projects have requested to surrender their preliminary permits. Investigations and feasibility studies have shown that the projects would not be economically feasible.

Project No.	Project name	Stream	State	Expiration date
11883–001	Mackay Dam	Big Lost River	ID	05–31–2004
11889–001	Porcupine Dam	Bear River	UT	07–31–2004
11890–001	Oneida Narrows	Bear River	ID	03–31–2005
11892–001	Smith's Fork	Bear River	WY	05–31–2004
11940–001	Willow Ck. Reservoir	Willow Creek	MT	06–30–2004
11963–001	San Pablo Dam	San Pablo Creek	CA	08–31–2004
11969–001	Broines Dam	Bear Creek	CA	08–31–2004
11970–001	Prado Dam	Santa Ana River	CA	08–31–2004
11985–001	Altus Dam	Red River	OK	08–31–2004
11988–001	Savage Dam	Otay River	CA	08–31–2004
11989–001	Painted Rock Dam	Gila River	AZ	07–31–2004
11990–001	South Fork Dam	Humboldt River	NV	06–30–2004
11993–001	Topaz Dam	Walker River	NV	08–31–2004
11995–001	Bishop Creek Dam	Bishop Creek	NV	06–30–2004
12002–001	Hensley Dam	Fresno River	CA	08–31–2004
12003–001	El Capitan	San Diego River	CA	08–31–2004
12004–001	San Vincente	Upper Salinas River	CA	08–31–2004
12006–001	San Antonio Dam	San Antonio Creek	CA	07–31–2004
12007–001	Alamo Dam	Bill Williams River	AZ	08–31–2004
12009–001	Mathews Dam	Santa Ana River	CA	08–31–2004
12010–001	Crocker Diversion	Merced River	CA	07–31–2004
12011–001	Martis Creek Lake	Martis Creek	CA	07–31–2004
12012–001	Calaveras Dam	Calaveras Creek	CA	07–31–2004
12014–001	Dake Dam	Thousand Springs Ck.	NV	08–31–2004
12039–001	Alpine	Snake River	WY	08–31–2004
12065–001	Big Timber	Big Timber Creek	MT	12–31–2004
12098–001	Scofield Reservoir Falls	Price River	UT	01–31–2005
12181–001	Sequoia Dam	Mill Flat Creek	CA	10–31–2005
12186–001	Calero Dam	Calero Creek	CA	12–31–2005
12189–001	Skiatook Dam	Hominy Creek	OK	10–31–2005
12197–001	Crow Creek Dam	Crow Creek	OR	09–30–2005
12201–001	Merritt Dam	Snake River	NE	11–30–2005
12203–001	North San Gabriel	San Gabriel River	TX	10–31–2005
12209–002	Three Mile Falls Dam	Umatilla River	OR	10–31–2005
12217–001	Bayou D'Arbonne Dam	Bayou D'Arbonne Res	LA	10–31–2005
12219–001	Caddo Dam	Cypress Bayou	LA	12–31–2005
12231–001	Lake Fork Dam	Lake Fork Creek	TX	03–31–2006
12235–001	Moose Creek	Chena River	AK	01–31–2006
12240–001	Pat Mayse Dam	Sanders Creek	TX	10–31–2005
12249–001	Waco Dam	Bosque River	TX	10–31–2005
12251–001	Ute Dam	Canadian River	NM	01–31–2006
12267–001	Mississippi L&D #27	Mississippi River	IL	01–31–2006

The permits shall remain in effect through the thirtieth day after issuance of this notice unless that day is Saturday, Sunday, or holiday as described in 18 CFR 385.2007, in which case each permit shall remain in effect through the first business day following that day. New applications involving these project sites, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00046 Filed 10–15–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Section 104 (k); Announcement of Proposal Deadlines for the Competition for the 2004 National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants

AGENCY: Environmental Protection Agency.

ACTION: Notice of the availability of brownfields grant application guidelines and deadlines for submissions of proposals.

SUMMARY: The United States Environmental Protection Agency (EPA) will begin to accept proposals for the National Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants on October 16, 2003. This notice provides information on how to obtain the application guidelines. These grants may be used to address sites contaminated by petroleum and hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum). The brownfields assessment grants (each funded up to $200,000 over two years) provide funding for a grant recipient to inventory, characterize, assess, and conduct planning and community involvement related to brownfield sites. The brownfields revolving loan fund grants (each funded up to $1,000,000 over five years) provide funding for a grant recipient to capitalize a revolving loan fund and to provide subgrants to carry out cleanup activities at brownfield sites that are

owned by the subgrant recipient. The brownfields cleanup grants (each funded up to $200,000 over two years) provide funding for a grant recipient to carry out cleanup activities at brownfield sites that are owned by the grant recipient (see Catalogue of Federal Domestic Assistance Number: 66.818).

For the brownfields assessment grants, an applicant may request a waiver of the $200,000 limit and obtain funding up to $350,000 based on the anticipated level of contamination, size, or ownership status of the site. The revolving loan fund and cleanup grants require a 20 percent cost share, which may be in the form of a contribution of money, labor, material, or services from a non-federal source. If the cost share is in the form of contribution of labor, material, or other services, it must be incurred for an eligible and allowable cost under the grant and not for ineligible costs. An applicant may request a waiver of the 20 percent cost share requirement based on hardship.

The National brownfields assessment, revolving loan fund, and cleanup grants will be awarded on a competitive basis. To ensure a fair selection process, evaluation panels consisting of EPA Regional and Headquarters staff and other federal agency representatives will assess how well the proposals meet the selection criteria outlined in the application booklet, *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants (October 2003).* Final selections will be made by EPA senior management after considering the ranking of proposals by the evaluation panels. EPA decisions may also take into account other statutory and policy considerations, such as fair distribution of funds between urban and non-urban and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. In addition, special consideration will be given to projects committed to achieving recognized green building and/or energy efficiency building standards.

DATES: This action is effective as of October 16, 2003. EPA expects to make up to 200 grant awards in fiscal year 2004, contingent upon the availability of funds. *The application deadline for proposals for the 2004 assessment, revolving loan fund, and cleanup grants is December 4, 2003.* All proposals must be postmarked by USPS or delivered to Don West, Environmental Management Support Inc., 8601 Georgia Avenue, Suite 500, Silver Spring, MD 20910 by other means, no later than December 4, 2003, and a duplicate copy sent to the appropriate U.S. EPA Regional Office.

ADDRESSES: Mailing addresses for EMS, U.S. EPA Regional Offices and U.S. EPA Headquarters are provided in the Proposal Guidelines.

Obtaining Proposal Guidelines: The proposal guidelines are available via the Internet: *http://www.epa.gov/brownfields/*.

Copies of the Proposal Guidelines will also be mailed upon request. Requests should be made by calling the U.S. EPA Call Center at the following numbers: Washington, DC, Metro Area at (703)–412–9810; Outside Washington, DC, Metro at 1–800–424–9346; and TDD for the Hearing Impaired at 1–800–553–7672.

In order to ensure that the Guidelines are received in time to be used in the preparation of the proposal, applicants should request a copy as soon as possible and in any event no later than ten (10) working days before the proposal due date. Applicants who request copies after that date might not receive the proposal guidelines in time to prepare and submit a responsive proposal.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields Cleanup and Redevelopment, (202) 566–2777.

SUPPLEMENTARY INFORMATION: On January 11, 2002, President George W. Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act. This act amended the Comprehensive Environmental Response, Compensation and Liability Act to authorize federal financial assistance for brownfields revitalization, including grants for assessment, cleanup, and job training.

Funding for the brownfields grants is authorized under section 104(k) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, (CERCLA), 42 U.S.C. 9604(k). Eligibility for brownfields assessment and revolving loan fund grants is limited to ''eligible entities'' as defined in section 104(k)(1) of CERCLA. These include a General Purpose Unit of Local Government; Land Clearance Authority or other quasi-governmental entity that operates under the supervision and control of, or as an agent of, a general purpose unit of local government; Governmental Entity Created by State Legislature; Regional council or group of general purpose units of local government; Redevelopment Agency that is chartered or otherwise sanctioned by a state; State; Indian Tribe other than in Alaska; and Alaska Native Regional Corporation, Alaska Native Village Corporation, and Metlakatla Indian Community. Eligibility for brownfields cleanup grants is limited to ''eligible entities'' and nonprofits. For the purposes of the brownfields grant program, EPA will use the definition of nonprofit organizations contained in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106–107, 31 U.S.C. 6101, Note. The term ''nonprofit organization'' means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization.

In addition, Intertribal Consortia, other than those composed of ineligible Alaskan tribes, are eligible to apply for the brownfields assessment, revolving loan fund, and cleanup grants. Coalitions of eligible governmental entities are eligible to apply for the brownfields revolving loan fund grants, but only one member of the coalition may receive a cooperative agreement.

The evaluation panels will review the proposals carefully and assess each response based on how well it addresses the criteria, briefly outlined below. There are two different types of criteria—threshold criteria and ranking criteria. Responses to the criteria will be utilized to determine whether to make an award and the amount of funds to be awarded. There is no guarantee of an award.

Assessment Grants

Threshold Criteria

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Site Eligibility and Property Ownership Eligibility

Ranking Criteria

A. Assessment Grant Proposal Budget (a maximum of 5 points may be received for this criterion)
B. Community Need (a maximum of 15 points may be received for this criterion)
C. Site Selection Process (a maximum of 10 points may be received for

this criterion)
D. Sustainable Reuse of Brownfields/Development Potential (a maximum of 10 points may be received for this criterion)
E. Creation and/or Preservation of Greenspace/Open Space or Other Nonprofit Purpose (a maximum of 5 points may be received for this criterion)
F. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
G. Community Involvement (a maximum of 15 points may be received for this criterion)
H. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)
I. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
J. Ability to Manage Grants (a maximum of 10 points may be received for this criterion)

Revolving Loan Fund Grants

Threshold Criteria

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Site Eligibility and Property Ownership Eligibility
E. Cleanup Authority and Oversight Structure
F. Cost Share
G. Legal Authority to Manage a Revolving Loan Fund

Ranking Criteria

A. RLF Grant Proposal Budget (a maximum of 5 points may be received for this criterion)
B. Community Need (a maximum of 15 points may be received for this criterion)
C. Description of Target Market for RLF Loans and Subgrants (a maximum of 10 points may be received for this criterion)
D. Business Plan (a maximum of 10 points may be received for this criterion)
E. Sustainable Reuse of Brownfields/Development Potential (a maximum of 10 points may be received for this criterion)
F. Creation and/or Preservation of Greenspace/Open Space or Other Nonprofit Purpose (a maximum of 5 points may be received for this criterion)
G. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
H. Community Involvement (a maximum of 15 points may be received for this criterion)
I. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)
J. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
K. Ability to Manage Grants/Management Structure (a maximum of 10 points may be received for this criterion)

Cleanup Grants

Threshold Criteria

A. Applicant Eligibility
B. Community Notification
C. Letter from the State or Tribal Environmental Authority
D. Site Eligibility and Property Ownership Eligibility
E. Cleanup Authority and Oversight Structure
F. Cost Share

Ranking Criteria

A. Cleanup Grant Budget (a maximum of 5 points may be received for this criterion)
B. Community Need (a maximum of 15 points may be received for this criterion)
C. Sustainable Reuse of Brownfields/Development Potential (a maximum of 10 points may be received for this criterion)
D. Creation and/or preservation of Greenspace/Open Space or Other Nonprofit Purpose (a maximum of 5 points may be received for this criterion)
E. Reuse of Existing Infrastructure (a maximum of 5 points may be received for this criterion)
F. Community Involvement (a maximum of 15 points may be received for this criterion)
G. Reduction of Threats to Human Health and the Environment (a maximum of 10 points may be received for this criterion)
H. Leveraging of Additional Resources (a maximum of 15 points may be received for this criterion)
I. Ability to Manage Grants (a maximum of 10 points may be received for this criterion)

EPA decisions may take into account other statutory and policy considerations, such as fair distribution of funds between urban and non-urban and other geographic factors; compliance with the statutory petroleum funding allocation; the benefits of promoting the long-term availability of funds under the RLF grants; designation as a federal Empowerment Zone, Enterprise Community, or Renewal Community; population; and whether the applicant is a federally recognized Indian tribe. In addition, special consideration will be given to projects committed to achieving recognized green building and/or energy efficiency building standards.

Dated: October 7, 2003.

Linda Garczynski,

Director, Office of Brownfields Cleanup and Redevelopment, Office of Solid Waste and Emergency Response.

[FR Doc. 03–26192 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0323; FRL–7329–2]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Technology Center, on behalf of the Arizona Cotton Research and Protection Council to conditionally register the pesticide product *Aspergillus flavus* AF36 containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: Shanaz Bacchus, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8097; e-mail address:*bacchus.shanaz@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS code 111)
- Animal production (NAICS code 112)
- Food manufacturing (NAICS code 311)

- Pesticide manufacturing (NAICS code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

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

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0323. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., 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.

Legacy docket for this case is OPP–2003–0048, which was set up in connection with the Notice of receipt of an application to register the pesticide product *Aspergillus flavus* AF36 containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, Arlington, VA (703) 305–5805. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, VA 22161.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at: *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of *Aspergillus flavus* AF36, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *Aspergillus flavus* AF36, during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registration

EPA issued a notice, published in the **Federal Register** of March 12, 2003 (68 FR 11841) (FRL–7293–8), which announced that Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, Technology Center of New Jersey, 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390, on behalf of the Arizona Cotton Research and Protection Council, 3721 East Weir Avenue, Phoenix, AZ 85040–2933, had submitted an application to register the pesticide product, *Aspergillus flavus* AF36, antifungal agent (EPA File Symbol 71693–R) containing *Aspergillus flavus* AF36 at 0.0008%, an active ingredient not included in any previously registered product.

EPA file symbol 71693–1: *Aspergillus flavus* AF36, a non aflatoxin-producing strain of *Aspergillus flavus*, is conditionally registered for use on cotton in Arizona and Texas to displace aflatoxin-producing strains of *Aspergillus flavus.*

The application was conditionally approved on June 24, 2003 for an end-use product manufactured by an integrated process:

Aspergillus flavus AF36 is conditionally registered for use on cotton in Arizona and Texas to reduce aflatoxin-producing colonies of *Aspergillus flavus.* The mammalian health effects and ecological effects data bases support the conditional approval of the pesticide. Soil and air monitoring studies were provided to demonstrate the efficacy of the product for the proposed uses in Arizona. Because the pesticide is to be used to reduce aflatoxin-producing strains of *Aspergillus flavus*, with a potential reduction of aflatoxin, a public health hazard, this pesticide qualifies for an automatic presumptive finding, and its use is presumed to be in the public interest. *Aspergillus flavus* AF36 was used for several years in an experimental use program without

adverse effects. Conditions of registration include (a) analyses of 5 batches at production, (b) confirmation by high performance liquid chromatography (HPLC) that the strain does not produce aflatoxin, (c) polymerase chain reaction (PCR) analyses of the active ingredient to confirm product identity, and (d) efficacy (product performance) data to demonstrate the reduction of toxigenic strains by *Aspergillus flavus* AF36 in Texas. These data must be submitted within 30 months of the conditional registration date. Additional data will be required to support application of the pesticide to cotton in other states or to other food/feed commodities. An exemption from tolerance for residues of *Aspergillus flavus* AF36 on cotton was established in association with this conditional registration.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: September 25, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–26195 Filed 10–15–03; 8:45 am]

BILLING CODE 6560–50–S

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Renewable Energy Exports Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Renewable Energy Exports Advisory Committee was established by the Board of Directors at Ex-Im Bank to assist the Bank in meeting its objective of supporting U.S. exporters in renewable energy industries. In addition, the goal is to seek advice from the private sector about best practices when addressing renewable energy exports.

TIME AND PLACE: Tuesday, October 28, 2003, at 9:30 a.m. to 12:30 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: Agenda items include discussion and presentations on current and projected market demand for renewable energy technology, its comparable cost and examples of success stories where renewable energy has met demand.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpretor) or other special accommodations, please contact, prior to October 23, 2003, Teri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3502.

Peter Saba,

General Counsel.

[FR Doc. 03–26179 Filed 10–15–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act; Notices of Meeting

AGENCY: Federal Election Commission.

DATE AND TIME: *Tuesday, October 21, 2003, 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–26280 Filed 10–14–03; 10:33 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 010977–052.

Title: Hispaniola Discussion Agreement.

Parties: Crowley Liner Services, Inc.; Seaboard Marine Ltd.; Tropical Shipping and Construction Co., Ltd.; and Bernuth Agencies, Inc.

Synopsis: The amendment removes A. P. Moller-Maersk Sealand as a party to the agreement.

Agreement No.: 011510–021.

Title: West Africa Discussion Agreement.

Parties: Atlantic Bulk Carriers, Ltd.; HUAL A/S; P&O Nedlloyd Limited.

Synopsis: The amendment deletes Zim Israel Navigation Company Limited from the membership of the agreement.

Agreement No.: 011632–004.

Title: Turkey/United States Rate Agreement.

Parties: Farrell Lines, Inc. and Turkon Container Transport & Shipping Inc.

Synopsis: The amendment deletes Hapag-Lloyd Container Linie GmbH as a party to the agreement.

Agreement No.: 11737–011.

Title: The MCA Agreement.

Parties: Atlantic Container Line AB; Alianca Navegacao e Logistica Ltda.; Antillean Marine Shipping Corporation; A.P. Moller-Maersk A/S; Bernuth Lines, Ltd.; CMA CGM S.A.; Companhia Libra de Navegacao; Compania Sud Americana de Vapores S.A.; CP Ships (UK) Limited d/b/a ANZDL and d/b/a Contship Containerlines; Crowley Liner Services, Inc.; Dole Ocean Cargo Express, Inc.; Great White Fleet (U.S.) Ltd.; Hamburg-Sud d/b/a Columbus Line and d/b/a Crowley American Transport; Hapag-Lloyd Container Linie; Italia di Navigazione S.p.A.; King Ocean Central America S.A.; King Ocean Service de Colombia S.A.; King Ocean Service de Venezuela S.A.; Lykes Lines Limited, LLC; Montemar Maritima S.A.; Norasia Container Line Limited; P&O Nedlloyd Limited; Safmarine Container Lines N.V.; TMM Lines Limited, LLC; Tropical Shipping & Construction Co., Ltd.; Wallenius Wilhelmsen Lines AS.

Synopsis: The amendment would add China Shipping Container Lines Co., Ltd. to the membership list and change Maersk Sealand's legal name to A.P. Moller-Maersk A/S.

Agreement No.: 011864.

Title: USAC—Norasia Space Charter Agreement.

Parties: Norasia Container Line Limited and United Arab Shipping Co., S.A.G.

Synopsis: Norasia may charter space on UASC vessels in the trade between

ports on the U.S. Atlantic Coast and ports on the Mediterranean Sea, the Red Sea, the Arabian Gulf and the Indian Ocean. Expedited Review is requested.

By Order of the Federal Maritime Commission.

Dated: October 10, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–26218 Filed 10–15–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security (SSS).

Time and Date: 9 a.m. to 5 p.m., October 28, 2003; 9 a.m. to 5 p.m., October 29, 2003; 8:30 a.m. to 1 p.m., October 30, 2003.

Place: Silver Spring Hilton, 8727 Colesville Road, Silver Spring, MD 20910.

Status: Open.

Purpose: The agenda for Tuesday, October 28th includes discussion on the Consolidated Health Informatics Initiative (CHI) and the International Classification of Diseases 10th revision (ICD–10). The morning session on Wednesday the 28th will be devoted to CHI preliminary reports. During the afternoon session, discussion will take place on the analysis of the impact of moving to ICD–10–CM and ICD–10–PCS. Discussions on ICD–10 will continue on day two. On Thursday the 30th, a discussion on Patient Medical Record Information (PMRI) Standards will begin the day followed by Subcommittee discussion and approval of the PMRI and ICD–10 recommendation letters to the Secretary.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of Committee members may be obtained from Karen Trudel, Senior Technical Advisor, Security and Standards Group, Centers for Medicare and Medicaid Services, MS: C5–24–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, telephone: 410–786–9937; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone: (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: October 6, 2003.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–26143 Filed 10–15–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), with authority to redelegate, authorities vested in the Secretary of Health and Human Services under Title III, of the Public Health Service (PHS) Act, as amended, by the Bioterrorism Preparedness and Response Act of 2002, only insofar as it pertains to the functions assigned to HRSA. The authorities are as follows:

- Sec. 105—Education of Health Care Personnel; Training Regarding Pediatric Issues, section 319F(g) of the PHS Act, as amended.
- Sec. 131(a)—Grants to Improve State, Local, and Hospital Preparedness for and Response to Bioterrorism and other Public Health Emergencies, section 319C; and Partnerships for Community and Hospital Preparedness, section 319C–2 of the PHS Act, as amended.

These delegations shall be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation is effective upon signature. In addition, I hereby affirm and ratify any actions taken by you or other HRSA officials which involved the exercise of this authority prior to the effective date of this delegation.

Dated: October 8, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–26144 Filed 10–15–03; 8:45 am]

BILLING CODE 4165–15–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MEPS–MPC)—2004 and 2005''. In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by December 15, 2003.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Room #5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''Medical Expenditure Panel Survey Household Component and Medical Provider Component (MEPS–HC and MPC)—2004 and 2005''.

The AHRQ intends to conduct an annual panel survey of U.S. households and medical providers to collect information on a variety of measures related to health status, health insurance coverage, health care use and expenditures, and source of payment for health services. This collection project consists of two parts: The MEPS Household Component (HC) and the MEPS Medical Provider Component (MPC).

Each panel of the MEPS–HC consists of a nationally representative sample of U.S. households with a data collection period covering 2½ years.

This time frame allows for the collection of annual data from the MEPS sample that covers their health care experiences over two consecutive calendar years. The first panel of MEPS began in 1996 and a new panel has been initiated annually thereafter. The MEPS–HC is jointly sponsored by the AHRQ and the National Center for Health Statistics (NCHS).

The MEPS–HC will be conducted using a sample of households selected from households which responded to

the previous year's National Health Interview Survey (NHIS) sponsored by NCHS. The NHIS is a household survey which collects health data from approximately 50,000 households and 110,000 individuals. The NHIS is used as the sampling frame for the MEPS and several other surveys as part of efforts by the Department of Health and Human Services (DHHS) to integrate survey data collection activities.

Data to be collected from each household include detailed information on demographics, health conditions, current health status, utilization of health care providers, charges and payments for health care services, quality of care received, medications, employment and health insurance.

The purpose of the MEPS–MPC is to supplement the information provided by household respondents in the MEPS–HC about the use of medical services in the United States based on a nationally representative sample. The MEPS–HC will be conducted with the permission of members of the households surveyed in the MEPS–HC. The AHRQ contractor will contact the medical providers of the HC Survey respondents to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged, the amount that was paid and the source of payment. Thus, the MPC is derived from or is based upon the core survey, (MEPS–HC). The MPC confirms and/or improves the quality of the core survey data.

Data from household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2004, and continuing into the year 2005, data for calendar year 2005 will be collected, beginning in 2005, and continuing into the year 2006.

Data from medical providers linked to household respondents in the MEPS Household Component for calendar year 2004, will be collected, beginning in 2005, and continuing into the year 2006, provider data for calendar year 2005 will be collected, beginning in 2006, and continuing into the year 2007.

Data Confidentiality Provisions

MEPS data confidentiality is protected under the AHRQ and NCHS Confidentiality statutes, section 308(d) and section 924(c) of the Public Health Service Act (42 U.S.C. 242m(d) and 42 U.S.C. 299c–3(c), respectively).

In accordance with AHRQ and NCHS confidentiality statutes, statistical and non-identifying data will be made available through publications, articles in major journals as well as public use data files. The statistical and analytic data are intended to be used for purposes such as:

- Generating national estimates of individual and family health care use and expenditures, private and public health insurance coverage, and the availability, costs and scope of private health insurance benefits among Americans;
- Examining the effects of changes in how chronic care and disability are managed and financed;
- Evaluating the growing impact of managed care and of enrollment in different types of managed care plans; and,
- Examining access to and costs of health care for common diseases and conditions, health care quality, prescription drug use, and other health issues.

Statisticians and researchers will use these data to make important generalizations about the health care of civilian non-institutionalized population of the United States, as well as to conduct research in which the household is the unit of analysis.

Methods of Collection

Data from the MEPS–HS will be collected using a combination of modes. For example, the AHRQ intends to introduce study participants to the survey through advance mailings. The first contact will provide the household the information regarding the importance and uses of the information obtained. The AHRQ will then conduct five (in-person) interviews with each household to obtain health care use and expense data for 2 calendar years. Data will be collected using a computer-assisted personal interviewing method (CAPI). In certain cases, AHRQ will conduct interviews over the telephone, if necessary respondents may be asked to respond to 1 or more short self-administered questionnaires over the course of the survey.

The medial provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

Estimated Annual Respondent Burden per year for the MEPS HC: Each MEPS participant is asked to complete 5 interviews over two and one half years. Each interview averages 1.8 hours in length. Total burden is estimated in the following chart:

MEPS HOUSEHOLD COMPONENT ESTIMATED BURDEN FOR 2004 AND 2005

Survey period	Number of completes	Burden per complete (hours)	Total burden (hours)
January–July '04	22,037	1.8	39,667
August–December '04	14,746	1.8	26,543
January–July '05	22,418	1.8	40,352
August–December '05	15,003	1.8	27,005
January–July '06	14,838	1.8	26,708
Total			160,275

Estimated Annual Respondent Burden per year for the MEPS MPC: The MPC for Calendar Year 2004 and 2005 estimated annual hour burden is as follows:

Type of provider	Number of respondents	Average No. of patents/ provider	Number of patients/pro-vider pairs	Average No. of events/ patient	Average burden/ event (minutes)	Total hours of burden
MPC 2004:						
Hospital Office-based	5,502	2.2	12,105	3.2	5	3,227
Doctor	23,077	1.3	30,000	3.5	5	8,750
Separately billing doctor	17,143	1.4	24,000	1.3	5	2,600

Type of provider	Number of respondents	Average No. of patents/ provider	Number of patients/provider pairs	Average No. of events/ patient	Average burden/ event (minutes)	Total hours of burden
Home Health	545	1.1	600	5.8	5	290
Pharmacy	8,077	2.6	21,000	10.3	3	10,815
Total	54,344	.....	87,705	.....	.....	25,682
MPC 2005:						
Hospital Office	5,310	2.2	11,681	3.2	5	3,115
Doctor	22,269	1.3	28,950	3.5	5	8,444
Separately billing doctor	16,543	1.4	23,160	1.3	5	2,509
Home Health	526	1.1	579	5.8	5	280
Pharmacy	7,794	2.6	20,265	10.3	3	10,436
Total	52,442	.....	84,635	.....	.....	24,784

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: October 9, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–26126 Filed 10–15–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Professional Training and Information Questionnaire (PTIQ) (OMB No. 0915–0208)—Revision

The National Health Service Corps (NHSC) of the HRSA's Bureau of Health Professions (BHPr), is committed to improving the health of the Nation's underserved by uniting communities in need with caring health professionals and by supporting communities' efforts to build better systems of care.

The National Health Service Corps (authorized by the Public Health Service Act, section 331) collects data on its programs to ensure compliance with legislative mandates and to report to Congress and policy makers on program accomplishments. To meet these objectives, the NHSC requires a core set of information collected annually that is appropriate for monitoring and evaluating performance and reporting on annual trends.

The PTIQ is used to collect data related to professional issues from NHSC-obligated Scholarship Program recipients including physicians, dentists, physician assistants (PAs), nurse practitioners (NPs), certified nurse midwives (CNMs), and other disciplines in the current year's placement cycle. The PTIQ is also used to collect data from NHSC Scholarship Program and Loan Repayment Program defaulters who request to satisfy their monetary debts through service. This data is used to match an individual health care professional with the most appropriate clinical practice setting.

The PTIQ will be provided to NHSC Scholarship Program participants up to twelve months in advance of the intended service availability date, and to defaulters when they submit a service request.

Estimates of annualized reporting burden are as follows:

Type of respondent	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Physicians and Dentists	202	1	5 min.	17
NPs, PAs, CNMs	106	1	5 min.	9
Total	308		.....	26

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management

and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: October 8, 2003.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 03–26187 Filed 10–15–03; 8:45 am]

BILLING CODE 4165–15–P

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, The Pediatric Brian Tumor Consortium.

Date: November 24–25, 2003.

Time: 3 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001.

Contact Person: Mary C. Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Rm 8115, Bethesda, MD 20892, 301/496–7413.

(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: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26155 Filed 10–15–03; 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 meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, 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.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: November 4–5, 2003.

Open: November 4, 2003, 8 a.m. to 3:15 p.m.

Agenda: Living Beyond Cancer: Adult Cancer Survivorship.

Place: Sheraton Birmingham Hotel, 2101 Civic Center Boulevard, Birmingham, AL 35203.

Open: November 4, 2003, 7 p.m. to 9 p.m.

Agenda: Town Hall Meeting.

Place: Sheraton Birmingham Hotel, 2101 Civic Center Boulevard, Birmingham, AL 35203.

Closed: November 5, 2003, 9 a.m. to 12 p.m.

Agenda: To review and evaluate discussion of prepublication manuscripts on adult cancer survivorship.

Place: Sheraton Birmingham Hotel, 2101 Civic Center Boulevard, Birmingham, AL 35203.

Contact Person: Maureen Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/pcp/pcp.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26167 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: October 30, 2003.

Time: 2 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, MSC 4874, Room 1068, Bethesda, MD 20892–4874, 301–435–0815, *browne@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS).

Dated: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26156 Filed 10–15–03; 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, Demonstration and Education Research.

Date: November 13–14, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21060.

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892, 301/435–0280.

(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: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26145 Filed 10–15–03; 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 552(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 Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: November 3–4, 2003.

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: Anne Krey, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 5E03, Bethesda, MD 20892, 301–435–6908, *ak41o@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: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26147 Filed 10–15–03; 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 Sperm Alpha 7 Nicotinic Acetylcholine Receptor Studies.

Date: November 5, 2003.

Time: 10 AM to 12 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

(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: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26148 Filed 10–15–03; 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, NICHD Population Research Center (Project 1 Supplement).

Date: October 27, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

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: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26149 Filed 10–15–03; 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(d)(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, Galanin-Like Peptide Linking Insulin and Sex in the Rat.

Date: October 23, 2003.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

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: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26150 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Special Emphasis Panel, 3 R01 Applications and A K01.

Date: November 6, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 6000 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–9787, *etaylor@niaaa.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26151 Filed 10–15–03; 8:45 am]

BILLING CODE 4110–01–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, Women's Reproductive Health Research Career Development Centers.

Date: October 23–24, 2003.

Time: 9 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: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, MSC 7510, 6100 Building, Room 5B01, Bethesda, MD 20892, (301) 496–1487, *anandr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation

Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26152 Filed 10–15–03; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, 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, Clinical Coordination Center/Data Coordination Center for the National Children's Study (NCS).

Date: November 3, 2003.

Time: 11:55 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Hameed Khan, Phd, Scientific Review Administrator, Division of Scientific Review, National Institute of Chile Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, *khanh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.664, 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)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26153 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 662b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, HIV/AIDS T32.

Date: October 21, 2003.

Time: 10:45 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6100 Executive Blvd. Room 6151, MSC 9608, Bethesda, MD 20892–9608 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistance Program Nos. 93.242, Mental Health Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health Research Service Awards for Research Training, National Institutes of Healths, HHS)

Dated: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26154 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, (MACS) Multicenter AIDS Cohort Study.

Date: November 18, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Calvert Rooms I & II, Bethesda, MD 20814.

Contact Person: Eugene R. Baizman, PhD, Scientific Review Administrator, NIH/NIAID/DEA, Scientific Review Program, Room 2209, 6700B Rockledge Drive, Bethesda, MD 20892–7616, 301–496–2550, *eb237e@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National institutes of Health, HHS).

Dated: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26157 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis and Vaccinia Immunization Network: Animal Studies Consortium.

Date: October 27, 2003.

Time: 8:30 am to 2 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Atopic Dermatitis and Vaccinia Network: Clinical Studies Consortium.

Date: October 27, 2003.

Time: 2 pm to 5:30 pm.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and infectious Diseases Research, National Institutes of Health, HHS).

Dated: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26158 Filed 10–15–03; 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, Initiation of Human Labor: Prevention of Prematurity.

Date: October 20, 2003.

Time: 8:30 a.m. to 11:30 a.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.*

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.

(Catalog 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: October 7, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26160 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 on Deafness and Other Communications Disorders Special Emphasis Panel, Small Grant Program.

Date: December 3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Stanley C. Oaks, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd—MSC7180, Bethesda, MD 20892–7180, 301–496–8683, *so14s@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26162 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel Mechanism for Time-Sensitive Research Opportunities.

Date: October 27, 2003.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive

Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC9606, Bethesda, MD 20892–9606, 301–443–1225, *rweise@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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26163 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The 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 Mental Health Special Emphasis Panel Psychiatry & Psychology Training.

Date: October 23, 2003.

Time: 1 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Houmam H Araj, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6148, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340, *haraj@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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Services Conflicts Meeting.

Date: November 25, 2003.

Time: 10:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Henry J. Haiglere, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm. 6150, MSC 9608, Bethesda, MD 20892–9608, 301/443–7216, *hhaigler@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26164 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The 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 Mental Health Special Emphasis Panel—Psychiatry and Psychology Training.

Date: October 23–24, 2003.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Sara K. Goldsmith, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Health, National Institute of Mental Health, 6001 Executive Blvd., Rm. 6149, Bethesda, MD 20892–9609, 301–443–6102, *sgoldsmi@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.

Name of Committee: National Institute of Mental Health Special Emphasis Panel—Imaging and Depression.

Date: October 28, 2003.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel—Translational Research and Behavioral Science.

Date: October 29, 2003.

Time: 11 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

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. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26165 Filed 10–15–03; 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; A Coordinated Program in Reproductive Biology: Project IV.

Date: October 30, 2003.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

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: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26166 Filed 10–15–03; 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 552(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: Hematology Integrated Review Group, Hematopoiesis Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn-Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Hematology Integrated Review Group, Hemostasis and Thrombosis Study Section.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *gangulyc@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Platelet Activation.

Date: October 17, 2003.

Time: 8:30 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

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.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CNNT 03S: Clinical Neuroplasticity and Neurotransmitters.

Date: October 17, 2003.

Time: 9:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Pathophysiological Sciences Integrated Review Group, General Medicine A Subcommittee 2.

Date: October 20–21, 2003.

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: Mushtaq A. Khan, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gastrointestinal Hepatobiliary and Pancreatic Physiology and Pathobiology.

Date: October 20–21, 2003.

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: Najma Begum, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2175, MSC 7818, Bethesda, MD 20892, 301–435–1243, *begumn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 and ACTS 01Q: Arthritis, Connective Tissue, and Skin: Quorum.

Date: October 20–21, 2003.
Time: 8:30 a.m. to 10 a.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, 301/435–1776, *davidsoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ACTS 10B: Small Business: Dermatology and Rheumatology.
Date: October 21, 2003.
Time: 10:30 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Harold M. Davidson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4216, MSC 7814, Bethesda, MD 20892, (301) 435–1776, *davidsoh@csr.him.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbial Genetics.
Date: October 23–24, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@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.

Name of Committee: Center for Scientific Review Special Emphasis Panel, R01 Review Grant.
Date: October 24, 2003.
Time: 10 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Development and Disease Study Section.
Date: October 27–28, 2003.
Time: 7:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.
Contact Person: Priscilla B. Chen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Biology Structure and Regeneration Study Section.
Date: October 27–28, 2003.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.
Contact Person: Daniel F. McDonald, PhD, Chief, Musculoskeletal, Oral, and Skin Sciences IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: AIDS and Related Research Integrated Review Group, Behavioral and Social Consequences of HIV/AIDS Study Section.
Date: October 27–28, 2003.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndam City Center Hotel, 1143 New Hampshire Ave., NW., Washington, DC 20037.
Contact Person: Mark P. Rubert, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, MSC 7852, Bethesda, MD 20892, (301) 435–2398, *rubertm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special R01 Review Grant.
Date: October 27, 2003.
Time: 1:30 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Raya Mandler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, (301) 402–8228.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Skeletal Biology.
Date: October 28, 2003.
Time: 8 a.m. to 8:30 a.m.
Agenda: To review and evaluate grant applications.
Place: Washington Marriott Hotel, 1221 22nd Street, NW., Washington, DC 20037.
Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

(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: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26159 Filed 10–15–03; 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 Adult Psychopathology and Disorders of Aging Study Section, October 20, 2003, 9 a.m. to October 21, 2003, 6 p.m. Radisson Barcello, 2121 P Street, NW., Washington, DC 20037 which was published in the **Federal Register** on September 16, 2003, 68 FR 54235–54237.

The meeting times have been changed to 8:30 a.m. on October 20, 2003, to 1 p.m. on October 21, 2003. The meeting dates and location remain the same. The meeting is closed to the public.

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26161 Filed 10–16–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center, September 19, 2003, 9 a.m. to September 19, 2003, 12 p.m., National Institutes of Health, Building 10, 10 Center Drive, Medical Board Room 2C116, Bethesda, MD 20892 which was published in the **Federal Register** on September 11, 2003, FR68, 176–53614.

The meeting will be held October 10, 2003 from 9 a.m. to 12 p.m. The meeting is open to the public.

Dated: October 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–26146 Filed 10–15–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16279]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boats and associated equipment, aftermarket marine equipment, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Saturday, November 1, 2003, from 1:30 p.m. to 4:30 p.m., on Monday, November 3, 2003, from 1:30 p.m. to 4:30 p.m. and on Tuesday, November 4, 2003, from 8:30 a.m. to 12 noon. The Prevention Through People Subcommittee will meet on Sunday, November 2, 2003, from 8:30 a.m. to 12 noon. The Boats and Associated Equipment Subcommittee will meet on Sunday, November 2, 2003, from 1:30 p.m. to 4:30 p.m. The Aftermarket Marine Equipment Subcommittee will meet on Monday, November 1, 2003, from 8:30 a.m. to 12 noon. These meetings may close early if all business is finished. On Sunday, November 2, a Subcommittee meeting may start earlier if the preceding Subcommittee meeting has closed early. Written material and requests to make oral presentations should reach the Coast Guard on or before Tuesday, October 28, 2003. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before Friday, October 24, 2003.

ADDRESSES: NBSAC will meet at the Hyatt Regency Chicago on The River Walk, 151 East Wacker Drive, Chicago, IL 60601. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Jeff Hoedt, Executive Director of NBSAC, Commandant (G-OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov* or at the Web Site for the Office of Boating Safety at URL address *http://www.uscgboating.org.*

FOR FURTHER INFORMATION CONTACT: Jeff Hoedt, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285. You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Tentative Agendas of Meetings

National Boating Safety Advisory Council (NBSAC). The agenda includes the following:

(1) Remarks—Rear Admiral Jeffrey J. Hathaway, Director of Operations Policy and Council Sponsor.

(2) Chief, Office of Boating Safety Update on NBSAC Resolutions.

(3) Executive Director's report.

(4) Chairman's session.

(5) Recreational Boating Safety Program report.

(6) Coast Guard Auxiliary report.

(7) National Association of State Boating Law Administrators Report.

(8) Wallop Breaux reauthorization update.

(9) Prevention Through People Subcommittee report.

(10) Boats and Associated Equipment Subcommittee report.

(11) Aftermarket Marine Equipment Subcommittee report.

Boats and Associated Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting boats and associated equipment.

Aftermarket Marine Equipment Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting aftermarket marine equipment.

Prevention Through People Subcommittee. The agenda includes the following: Discuss current regulatory projects, grants, contracts and new issues impacting prevention through people.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than Friday, October 24, 2003. Written material for distribution at a meeting should reach the Coast Guard no later than Friday, October 24, 2003. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than Friday, October 24, 2003.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: October 6, 2003.

Jeffrey J. Hathaway,

Rear Admiral, Coast Guard, Director of Operations Policy.

[FR Doc. 03–26130 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16297]

National Preparedness for Response Exercise Program (PREP)

AGENCY: Coast Guard, DHS.

ACTION: Notice; request for public comments on PREP triennial exercise schedule for 2004, 2005, and 2006.

SUMMARY: The Coast Guard, the Research and Special Programs Administration, the Environmental Protection Agency and the Minerals Management Service, in concert with representatives from various State governments, industry, environmental interest groups, and the general public,

developed the Preparedness for Response Exercise Program (PREP) Guidelines to reflect the consensus agreement of the entire oil spill response community. This notice announces the PREP triennial cycle, 2004 through 2006, requests comments from the public, and requests industry participants to volunteer for scheduled PREP Area exercises.

DATES: Comments and related material must reach the Docket Management Facility on or before December 15, 2003.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2003–16297 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web Site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

(5) *Federal eRulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, or need general information regarding the PREP Program and the schedule, contact Mr. Robert Pond, Office of Response, Plans and Preparedness Division (G–MOR–2), U.S. Coast Guard Headquarters, telephone 202–267–6603, fax 202–267–4065 or e-mail *rpond@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: The Preparedness for Response Exercise Program (PREP) Area exercise schedule and exercise design manuals are available on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/index.html.* To obtain a hard copy of the exercise design manual, contact Ms. Melanie Barber at the Research and Special Programs Administration, Office of Pipeline Safety, at 202–366–4560. The 2003 PREP Guidelines booklet is available at no cost on the Internet at *http://www.uscg.mil/hq/nsfweb/nsfcc/prep/index.html* or by writing or faxing the TASC DEPT Warehouse, 33141Q 75th Avenue, Landover, MD 20785, facsimile: 301–386–5394. The stock number of the manual is USCG–X0241. Please indicate the quantity when ordering. Quantities are limited to 10 per order.

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' three paragraphs below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2003–16297), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this triennial exercise schedule in view of them.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background and Purpose

In 1994, the Coast Guard (USCG) and the Research and Special Programs Administration (RSPA) of the Department of Transportation, the U.S. Environmental Protection Agency (U.S. EPA), and the Minerals Management Service (MMS) of the Department of Interior, coordinated the development of the National Preparedness for Response Exercise Program (PREP) Guidelines to provide guidelines for compliance with the Oil Pollution Act of 1990 (OPA 90) pollution response exercise requirements (33 U.S.C. 1321(j)). The guiding principles for PREP distinguish between internal and external exercises. Internal exercises are conducted within the plan holder's organization. External exercises extend beyond the plan holder's organization to involve other members of the response community. External exercises are separated into two categories: (1) Area exercises, and (2) Government-initiated unannounced exercises. These exercises are designed to evaluate the entire response mechanism in a given area to ensure adequate pollution response preparedness.

Since 1994, the USCG, U.S. EPA, MMS, and RSPA's Office of Pipeline Safety (OPS) have published a triennial schedule of Area exercises. In short, the Area exercises involve the entire response community (Federal, State, local, and industry participants) and therefore, require more extensive planning than other oil spill response exercises. The PREP Guidelines describe all of these exercises in more detail.

Table 1 below lists the dates and **Federal Register** cites of past PREP exercise notices.

TABLE 1—PAST PREP EXERCISE NOTICES

Date published	**Federal Register** Cite	Notice
October 30, 2002	67 FR 66189	PREP triennial exercise schedule for 2003, 2004, and 2005.
January 22, 2002	67 FR 2944	PREP triennial exercise schedule for 2002, 2003, and 2004.

TABLE 1—PAST PREP EXERCISE NOTICES—Continued

Date published	Federal Register Cite	Notice
February 9, 2001	66 FR 9744	PREP triennial exercise schedule for 2001, 2002, and 2003.
March 7, 2000	65 FR 12049	PREP triennial exercise schedule for 2000, 2001, and 2002.
June 15, 1999	64 FR 32090	PREP triennial exercise schedule for 1999, 2000, and 2001.
January 8, 1998	63 FR 1141	PREP triennial exercise schedule for 1998, 1999, and 2000.
March 26, 1997	62 FR 14494	PREP triennial exercise schedule for 1997, 1998, and 1999.
January 26, 1996	61 FR 2568	Correction to PREP triennial exercise schedule for 1996, 1997, and 1998.
November 13, 1995	60 FR 57050	PREP triennial exercise schedule for 1996, 1997, and 1998.
October 26, 1994	59 FR 53858	Revision to PREP triennial exercise schedule for 1995, 1996, and 1997.
March 25, 1994	59 FR 14254	PREP triennial exercise schedule for 1995, 1996, and 1997.

This notice announces the next triennial schedule of Area exercises. If a company wants to volunteer for an Area exercise, a company representative may call either the Coast Guard or EPA On-Scene Coordinator (OSC) where the exercise is scheduled.

Table 2 below is the PREP schedule for calendar years 2004, 2005, and 2006.

TABLE 2.—PREP SCHEDULE

Area	Agency	Qtr [1]	Participant
Government-Led Area Exercises			
Calendar Year 2004			
Guam (Marine Safety Office (MSO) Guam)	CG	1	
Los Angeles/Long Beach South (MSO LA/LB), SONS [2]	CG	2	
San Diego (MSO San Diego), SONS [2]	CG	2	
Prince William Sound (MSO Valdez)	CG	4	
Calendar Year 2005			
Houston-Galveston (MSO Houston)	CG	1	
Virginia Coastal (MSO Hampton Road)	CG	1	
Alabama-Mississippi (MSO Mobile)	CG	2	
Providence (MSO Providence)	CG	3	
Western Alaska (MSO Anchorage)	CG	3	
Region V Regional Contingency Plan (RCP) (EPA Region V)	EPA	4	
Calendar Year 2006			
Cleveland, OH (MSO Cleveland)	CG	1	
Jacksonville, FL (MSO Jacksonville)	CG	2	
To Be Determined	CG	2	
Northwest Area-Portland (MSO Portland)	CG	3	
Region IX RCP or Oceania (EPA Region IX)	EPA	3	
New Orleans, LA (MSO New Orleans)	CG	4	
Area		**Qtr [1]**	**Participant**
Industry-Led Area Exercises			
Calendar Year 2004			
Chicago, IL (MSO Chicago)		2	
Long Island Sound (MSO Long Island)		2	
Maryland Coastal (MSO Baltimore)		2	
San Francisco Bay (MSO San Francisco)		2	
South Texas Coast (MSO Corpus Christi)		2	
Charleston, SC (MSO Charleston)		3	
Morgan City, LA (MSO Morgan City)		3	
New York, NY (Activities NY)		3	
Savannah, GA (MSO Savannah)		3	
Duluth-Superior (MSO Duluth)		4	
Eastern Wisconsin (MSO Milwaukee)		4	
Northwest-Puget Sound (MSO Puget Sound)		4	
Region IV RCP (EPA Region IV)		4	
Region VII RCP (EPA Region VII)		4	
Calendar Year 2005			
Detroit, MI (MSO Detroit)		1	

Area	Qtr [1]	Participant
Region VIII (EPA Region VIII)	1	
Boston (MSO Boston)	2	
Hawaiian Islands (MSO Honolulu)	2	
South Florida (MSO Miami)	2	
South Los Angeles/Long Beach, CA (MSO LA/LB)	2	
S. North Carolina (MSO Wilmington)	3	
SW La./SE Texas (MSO Port Arthur)	3	
Tampa, FL (MSO Tampa)	3	
Region X or EPA Alaska RCP (EPA Region X)	4	
Sault Ste. Marie, MI (MSO Sault Ste. Marie)	4	
Calendar Year 2006		
Florida Panhandle (MSO Mobile)	1	
SE Alaska (MSO Juneau)	1	
Buffalo (MSO Buffalo)	2	
Maine-New Hampshire (MSO Portland, ME)	2	
Philadelphia, PA (MSO Philadelphia)	2	
Region II RCP or Caribbean (EPA Region II)	2	
North Coast (CA) Area (MSO San Francisco)	3	
Region III RCP (EPA Region III)	3	
Region VI RCP (EPA Region VI)	3	
Caribbean Area (MSO San Juan)	4	
Northern Marianas (MSO Guam)	4	
Western Lake Erie (MSO Toledo)	4	

[1] Quarters: 1 (January-March); 2 (April-June); 3 (July-September); 4 (October-December).
[2] SONS: 2004 Spill of National Significance Exercise.

Dated: October 9, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–26129 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of Customs duties. For the calendar quarter beginning October 1, 2003, the interest rates for overpayments will be 3 percent for corporations and 4 percent for non-corporations, and the interest rate for underpayments will be 4 percent. This notice is published for the convenience of the importing public and Customs personnel.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ronald Wyman, Accounting Services Division, Accounts Receivable Group, 6026 Lakeside Boulevard, Indianapolis, Indiana 46278; telephone 317/298–1200, extension 1349.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of Customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2003–104 (*see,* 2003–39 IRB __, dated September 29, 2003), the IRS determined the rates of interest for the calendar quarter beginning October 1, 2003, and ending December 31, 2003. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). For corporate overpayments, the rate is the Federal short-term rate (1%) plus two percentage points (2%) for a total of three percent (3%). For overpayments made by non-corporations, the rate is the Federal short-term rate (1%) plus three percentage points (3%) for a total of four percent (4%). These interest rates are subject to change for the calendar quarter beginning January 1, 2004, and ending March 31, 2004.

For the convenience of the importing public and Customs personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of Customs duties, is published in summary format.

Beginning date	Ending date	Underpay-ments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	

Beginning date	Ending date	Underpay-ments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	123103	4	4	3

Dated: October 8, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–26109 Filed 10–15–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4817–N–18]

Notice of Proposed Information Collection for Public Comment—Public Housing Operating Subsidy Program Computation of Payments in Lieu of Taxes Form

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be 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.

DATES: *Comments Due Date:* December 15, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected 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.

The Public Housing Computation of Payment in Lieu of Taxes (PILOT) form is used by the Department to collect information from Public Housing Agencies (PHAs), financial data on supporting funding request under the operating subsidy program.

The title, purpose, and estimated time it will take applicants to complete the form is described in the section below.

This Notice also lists the following information:

Title of Proposal: Computation of Payment in Lieu of Taxes.

OMB Control Number: 2577–0072.

Description of the need for the information and proposed use: In order for the Department to adequately and accurately fund the statutorily required payments in lieu of taxes, the Department collects data from PHAs to support this cost.

The form is used by the Department for calculation and documentation of cost paid to PHAs for payments in lieu of taxes to local governments. The form captures specific financial data to detail the allowed amount of the payments in lieu of taxes in accordance with regulatory requirements.

Agency form numbers, if applicable: HUD–52267.

Members of affected public: Local, State, or Tribal Governments, and Resident Associations.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: For public housing agencies: 3,200 respondents, one response per year; .4 hours per response; 1,280 total burden hours.

Status of the proposed information collection: Reinstatement, without change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Computation of Payments in Lieu of Taxes

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

For Fiscal Year Ended _____

OMB Approval No.) (Exp.)

Public Reporting Burden for this collection of information is estimated to average .4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2577-0072), Washington, D.C. 20503.

Name of Local Authority	Location	Contract Number	Project Number

Part I - Computation of Shelter Rent Charged

1. Dwelling Rental (Account 3110)	$_____	
2. Excess Utilities (Account 3120)	_____	
3. Nondwelling Rental (Account 3190)	_____	
4. **Total Rental Charged** (Lines 1, 2 & 3)		$_____
5. Utilities Expense (Accounts in 4300 group)		_____
6. Shelter Rent Charged (Line 4 Minus Line 5)		_____

Part II - Computation of Shelter Rent Collected To be completed only if Cooperation Agreement Provides for payment of PILOT on basis of Shelter Rent Collected)

1. Shelter Rent Charged (Line 6 of Part I above)	$_____
2. Add: Accounts Receivable (Account 1122) at Beginning of Fiscal Year	_____
3. Less: Collection Losses (Account 4570) During Current Fiscal Year	_____
4. Less: Accounts Receivable (Account 1122) at end of Fiscal Year	_____
5. Shelter Rent Collected (Line 1 Plus Line 2 Minus Lines 3 & 4)	_____

Part III - Computation of Approximate Full Real Property Taxes

Taxing Districts (1)	Assessable Value (2)	Tax Rate (3)	Approximate Full Real Property Taxes (4)
Total			

Part IV - Limitation Based on Annual Contribution (To be completed if Cooperation Agreement limits PILOT to an amount by which real property taxes exceed 20% of Annual Contribution)

1. Approximate Full Real Property Taxes		$_____
2. Accruing Annual Contribution for All Projects Under the Contract	$_____	
3. Prorata share of Accruing Annual Contribution*	_____	
4. 20% of Accruing Annual Contribution (20% of Line 3)		_____
5. Approximate Full Real Property Taxes less 20% of Accruing Annual Contribution (Line 1 minus Line 4, if Line 4 exceeds Line 1, enter zero)		_____

Part V - Payments in Lieu of Taxes

1. 10% of Shelter Rent (10% of Line 6 of Part I or 10% of Line 5 of Part II, whichever is applicable)**	$_____	
2. Payments in Lieu of Taxes (If Part IV is not applicable, enter the amount shown on Line 1 above or the total in Part III, whichever is the lower. If Part IV is applicable, enter the amount shown on Line 1 above or the amount shown on Line 5 of Part IV, whichever is lower)		$_____

*Same as Line 2 if the statement includes all projects under the annual contributions contract. If this statement does not include all projects under the contract, enter prorata share based upon the development cost of each project,
**If the percentage specified in the cooperation agreement or the contract with HUD is lower, such lower percentage shall be used.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012: 31 U.S.C. 3729, 3802)

Prepared By:		**Approved By:**	
Name		Name	
Title	Date	Title	Date

Previous Editions are Obsolete

Page 1 of 1

Form HUD-52267 (9/30/03)

[FR Doc. 03–26088 Filed 10–15–03; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Renewal To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Declaration for Importation or Exportation of Fish or Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service (We) has submitted the collection of information described below to OMB for approval under the provisions of the Paperwork Reduction Act of 1995. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the information collection requirements, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address or telephone number listed below.

DATES: We will accept comments until November 17, 2003.

ADDRESSES: Submit your comments on this information collection renewal to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 N. Fairfax Dr., MS 222 ARLSQ, Arlington, VA 22207; (703) 358–2269 (fax); or *anissa_craghead@fws.gov* (e-mail).

Form 3–177 (with instructions for its completion) is available for electronic submission using the electronic declaration system (eDecs) at the following Web site: *https://edecs.fws.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, related forms, or explanatory material, contact Anissa Craghead at telephone number (703) 358–2445, or electronically at *Anissa_Craghead@fws.gov.*

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)).

We have submitted a request to OMB to renew its approval of the collection of information included on Form 3–177, Declaration For Importation or Exportation of Fish or Wildlife. The current OMB control number for Form 3–177 is 1018–0012, and the OMB approval for this collection of information expires on October 31, 2003. This form (with instructions for its completion) is now available for electronic submission at the following Web site: *https://edecs.fws.gov.* We are requesting a three year term of approval for this information collection activity. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Endangered Species Act (16 U.S.C. 1531 *et seq.*) makes it unlawful to import or export fish, wildlife, or plants without filing a declaration or report deemed necessary for enforcing the Act or upholding the Convention on International Trade in Endangered Species (CITES) (*see* 16 U.S.C. 1538(e)). The U.S. Fish and Wildlife Service's Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife, is the declaration form required of any business or individual importing into or exporting from the United States any fish, wildlife, or wildlife products. The information collected is unique to each wildlife shipment and enables us to accurately inspect the contents of the shipment; enforce any regulations that pertain to the fish, wildlife, or wildlife products contained in the shipment; and maintain records of the importation and exportation of these commodities. Additionally, since the United States is a member of CITES, much of the collected information is compiled in an annual report that is forwarded to the CITES Secretariat in Geneva, Switzerland. Submission of an annual report on the number and types of imports and exports of fish, wildlife, and wildlife products is one of our treaty obligations under CITES. We also use the information obtained from Form 3–177 as an enforcement tool and management aid in monitoring the international wildlife market and detecting trends and changes in the commercial trade of fish, wildlife, and wildlife products. Our Division of Scientific Authority and Division of Management Authority use this information to assess the need for additional protection for native species. In addition, nongovernment organizations, including the commercial wildlife community, request information from us that we obtain from Form 3–177. You must file Form 3–177 with us at the time and port where you request clearance of your import or export wildlife shipment. In certain instances, Form 3–177 may be filed with the U.S. Bureau of Customs and Border Protection. The standard information collection includes the name of the importer or exporter and broker, the scientific and common name of the fish or wildlife, permit numbers (if a permit is required), a description of the fish or wildlife, quantity and value of the fish or wildlife, and natural country of origin of the fish or wildlife. In addition, certain information, such as the airway bill or bill of lading number, the location of the wildlife shipment, and the number of cartons containing fish or wildlife, assists our wildlife inspectors if a physical examination of the shipment is required.

Title: Declaration for Importation or Exportation of Fish or Wildlife.

Approval Number: 1018–0012.

Service Form Number: 3–177.

Associated Regulations: 50 CFR 14.61 through 14.64.

Frequency of Collection: Whenever clearance is requested for an importation or exportation of fish, wildlife, or wildlife products.

Description of Respondents: Businesses or individuals that import or export fish, wildlife, or wildlife products; scientific institutions that import or export fish or wildlife scientific specimens; government agencies that import or export fish or wildlife specimens for various purposes.

Total Annual Responses: Approximately 120,000 individual Form 3–177s are filed with us in a fiscal year.

Total Annual Burden Hours: The total annual burden is approximately 26,832 hours. We estimate that approximately two-thirds (67%), or 80,400, of these responses will be completed by hand. Each of these responses will require approximately .25 hours (15 minutes) of the importer's or exporter's time. This amount includes approximately .08 hours (5 minutes) for reviewing instructions and approximately .17 hours (10 minutes) to complete Form 3–177. We estimate that approximately one-third (33%), 39,600, of the responses received will be submitted electronically. Using eDecs should reduce the time to complete Form 3–177 to about .08 hours (5 minutes) per response. Therefore, the total time to review instructions (.08 hours/5 minutes) and complete Form 3–177 electronically amounts to approximately

.17 hours (10 minutes) per response. As such, the total estimated reporting burden for completing Form 3–177 is approximately 26,832 hours [(80,400 × .25 hours = 20,100 hours) + (39,600 × .17 hours = 6,732 hours)]. The estimate of electronic responses we expect to receive is based upon a recent pilot program of eDecs. We anticipate that the use of eDecs will expand in the future, which would further reduce the burden on the public.

We invite comments concerning this renewal on: (1) Whether the collection of information is useful and necessary for us to do our job, (2) the accuracy of our estimate of the burden on the public to complete the form; (3) ways to enhance the quality and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. This information collection is part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the record, which we will honor to the extent allowable by law. There may also be limited circumstances in which we would withhold a respondent's identity from the rulemaking record, as allowable by law. If you wish us to withhold your name and/or address, you must state this clearly at the beginning of your comment. We will not consider anonymous comments. We generally make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: September 22, 2003.

Anissa Craghead,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 03–26120 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Revised Recovery Plan for Hawaiian Forest Birds

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (''we'') announce the availability for public review and comment, the Draft Revised Recovery Plan for Hawaiian Forest Birds. There are 21 bird taxa included in this plan, 19 are listed as endangered, 1 is a candidate species for Federal listing, and 1 is a species of concern. These taxa are from four bird families, with the majority being Hawaiian Honeycreepers (subfamily Drepanidinae within Fringillidae). This is a new recovery plan for two of the listed birds.

DATES: Comments on the draft recovery plan received by December 15, 2003, will receive our consideration.

ADDRESSES: The document is available online at *http://www.rl.fws.gov/ecoservices/endangered/recovery/default.htm.* Copies of the draft revised recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, Hawaii 96850 (phone: 808/541–3441) and Hawaii State Library, 478 S. King Street, Honolulu, Hawaii 96813. Requests for copies of the draft revised recovery plan and written comments and materials regarding this plan should be addressed to Paul Henson, Field Supervisor, Ecological Services, at the above U.S. Fish and Wildlife Service Honolulu address.

FOR FURTHER INFORMATION CONTACT: Jay Nelson, Fish and Wildlife Biologist, at the above Honolulu address.

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.* Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. We will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. We, along with other Federal agencies, will also take these comments into account in the course of implementing approved recovery plans. Individual responses to comments will not be provided.

This Draft Revised Recovery Plan for Hawaiian Forest Birds addresses 21 bird taxa. Three taxa are endemic to the island of Hawai'i, four taxa are endemic to the island of Maui, one taxon is endemic to the island of Moloka'i, two taxa are endemic to the island of O'ahu, and six taxa are endemic to the island of Kaua'i. Two taxa are endemic to all the major islands of Hawai'i, two taxa are endemic to the islands of Maui and Moloka'i, and one taxon is endemic to the islands of Moloka'i and Lā'i. The birds federally listed as endangered are: Maui nuku pu'u (*Hemignatus lucidus affinus*); Kaua'i nuku pu'u (*Hemignathus lucidus hanapepe*); Kaua'i 'akialoa (*Hemignathus procerus*); 'ō'ō'ā'ā or Kaua'ī'ō'ō *Moho braccatus*); oloma'o or Moloka'i thrush (*Myadestes lanaiensis rutha*); kāma'o or large Kaua'i thrush (*Myadestes myadestinus*); kākāwahie or Moloka'i creeper (*Paroreomyza flammea*); O'ahu 'ālauahio or O'ahu creeper (*Paroreomyza maculata*); Maui 'ākepa (*Loxops coccineus ochraceus*); 'ō'ū (*Psittirostra psittacea*); po'ouli (*Melamprosops phaeosoma*); puaiohi or small Kaua'i thrush (*Myadestes palmeri*); Maui parrotbill (*Pseudonesor xanthophrys*); 'akia pōlā'au (*Hemignathus munroi*); palila (*Loxioides bailleui*); 'ā kohekohe or crested honeycreeper (*Palmeria dolei*); O'ahu 'elepaio (*Chasiempis sandwichensis ibidis*); Hawai'i 'ā kepa (*Loxops coccineus coccineus*); and Hawai'i creeper (*Oreomystis mana*). The candidate species is the Kaua'i creeper (*Oreomystis bairdi*), and the species of concern is the Bishop's 'ō'ō (*Moho bishopi*).

Most taxa are now found only in upper elevation rain forests on the islands of Hawai'i, Maui, and Kaua'i. The palila is limited to dryland forests on Mauna Kea volcano on the island of Hawai'i. The O'ahu 'elepaio occurs at elevations as low as 100 meters (330 feet) in non-native forests on the island of O'ahu. Sub-fossil records and observations by early naturalists to the Hawaiian islands indicate that most of the species included in this plan once occurred at lower elevations. These taxa and their habitats have been variously affected or are currently threatened by

one or more of the following: habitat degradation by wild, feral, or domestic animals (pigs, goats, and deer); predation by animals (rats, cats, and mongoose); avian disease (malaria and avian pox); and habitat loss due to agriculture, ranching, forest cutting, and urbanization. Threats also include the expansion of invasive non-native plant species into native-dominated plant communities. In addition, due to the small number of existing individuals and their very narrow distribution, these taxa and most of their populations are subject to an increased likelihood of extinction from naturally-occurring events such as hurricanes.

The objective of this plan is to provide a framework for the recovery of these 21 taxa so that their protection by the Act is no longer necessary. Recovery will require protecting and managing forest bird habitat to maintain and enhance viable populations of endangered Hawaiian forest birds. Recovery actions include: measures to protect habitat where the taxa occur; restoration of degraded habitat; removal of feral ungulates from habitat areas; control of introduced rodents and feral cats that feed on forest birds; control of invasive plant species; reduction in numbers of mosquito breeding sites; captive propagation and translocation; and the development of means to address threats of avian disease. Management emphasis may differ among species, as taxa are affected differently and to varying degrees by different limiting factors. Habitat management and restoration will encourage the expansion of current populations into unoccupied habitat. However, the establishment of new populations using various translocation and/or captive propagation techniques will be needed in some cases to accelerate population expansion and to establish new populations in suitable habitat.

Recovery objectives for each taxon are to: (1) Restore populations to levels that allow the taxon to persist despite demographic and environmental chance events, and are large enough to allow natural demographic and evolutionary processes to occur; (2) to protect enough habitat to support these population levels; and (3) to identify and remove the threats responsible for a taxon's endangered status. For all taxa, stabilization is the first (interim) objective. For species that are exceedingly rare (no individuals can currently be located), an interim objective is to first locate remaining individuals. In a few cases, insufficient forest bird habitat remains within a species' historic range to establish a second separate and distinct population, and further opportunities for habitat restoration do not exist. In these situations a species is unlikely to be delisted (by the criteria listed below), and downlisting is considered the interim recovery objective.

The draft revised recovery plan indicates that a taxon may be reclassified from endangered to threatened based on the following criteria apply: (1) The species occurs in two or more viable populations or a viable metapopulation that represent the ecological, morphological, behavioral, and genetic diversity of the species; (2) quantitative surveys show either (a) the number of individuals in each isolated population or in the metapopulation has been stable or increasing for 15 consecutive years, or (b) demographic monitoring exhibits an average intrinsic growth rate (lambda, L) not less than 1.0 over a period of at least 15 consecutive years; *and* total population size is not expected to decline by more than 20 percent within the next 15 consecutive years for any reason; (3) sufficient habitat is protected and managed to achieve criteria 1 and 2 above; and (4) the major threats that were responsible for the species becoming endangered have been identified and controlled. The draft revised plan indicates delisting a taxon may be considered on the basis of persistence of those criteria for a period of 30 consecutive years.

Public Comments Solicited

We solicit written comments on the draft revised recovery plan described. All comments received by the date specified above will be considered in developing a final revised Hawaiian forest bird recovery plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533 (f).

Dated: August 19, 2003.

David J. Wesley,

Deputy Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–26112 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–04–1020–PG]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting will be held on November 13–14, 2003, at the Hotel Santa Fe, 1501 Paseo de Peralta, Santa Fe, New Mexico, beginning at 8 a.m. both days. The meeting will adjourn approximately 5 p.m. on Thursday and 1 p.m. on Friday. The two established RAC subcommittees may have a late afternoon or an evening meeting on Thursday, November 13, 2003.

On Wednesday, November 12, 2003, there will be a half-day orientation for new RAC members. An optional field trip is planned for the afternoon of November 12, 2003. The public comment period is scheduled for Wednesday, November 12, 2003, from 6–8 p.m. The public may present written comments to the RAC. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, individual oral comments may be limited.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics for discussion include:

Access, healthy forest initiative, land disposal, overview of the vegetation monitoring and analysis pilot project in New Mexico, oil and gas reclamation standards, update on Otero Mesa, BLM/New Mexico Association of Counties liaison role, and preview of the legacy lands program.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, P.O. Box 27115, San Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: October 9, 2003.

Ron Dunton,

Acting State Director.

[FR Doc. 03–26113 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–03–1420–BJ]

Notice of Filing of Plats of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

Supplemental Plat for:

T. 10 S., R. 26 E., approved July 28, 2003, NM;
T. 13 S., R. 4 W., approved August 15 2003, NM;

Protraction Diagrams for:

T. 17 S., R. 11 E., approved June 18, 2003, NM;
T. 10 S., R. 12 E., approved June 24, 2003, NM;

New Mexico Principal Meridian, New Mexico:

T. 16 N., R. 6 W., approved July 16, 2003, for Group 995 NM;
T. 23 N., R. 10 E., approved August 21, 2003, for Group 1011 NM;

Sixth Principal Meridian, Kansas:

T. 33 S., R 41 W., approved August 15, 2003, for Group 25 KS;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of a protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico, 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: August 26, 2003.

Robert A. Casias,

Chief Cadastral Surveyor.

[FR Doc. 03–26182 Filed 10–15–03; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: release and receipt of imported firearms, ammunition and implements of war.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until December 15, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Tom Stewart, Chief, Firearms and Explosives Import Branch, Room 5100, 650 Massachusetts Avenue NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of this information collection:

(1) Type of Information Collection: Extension of a currently approved collection.

(2) Title of the Form/Collection: Release and Receipt of Imported Firearms, Ammunition and Implements of War.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: ATF F 6A (5330.3C). Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. Other: Business or other for-profit, Not-for-profit institutions. The data provided by this information collection request is used by ATF to determine if articles imported meet the statutory and regulatory criteria for importation and if the articles shown on the permit application have been actually imported.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: It is estimated that 20,000 respondents will complete a 24-minute form.

(6) An estimate of the total public burden (in hours) associated with the collection: There are 8,000 estimated annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 9, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–26261 Filed 10–15–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

The Department of Justice (DOJ), Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 127, page 39597 on July 2, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Cost Recovery Regulations, Communications Assistance for Law Enforcement Act of 1994.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. This collection is facilitated by the procedures whereby telecommunications carriers can recover the costs associated with complying with the Communications Assistance for Law Enforcement Act, which went into effect on October 25, 1994.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 3,000 respondents to provide the information requested is approximately four hours per telecommunications switch.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden, to provide the information necessary to file a claim under the Cost Recovery Regulation, is approximately 46,000 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 10, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–26262 Filed 10–15–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Flexible Deployment Assistance Guide.

The Department of Justice (DOJ), Federal Bureau of Investigation has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 147, on page 44969 on July 31, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of This Information Collection

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the form/collection:* Flexible Deployment Assistance Guide.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Federal Bureau of Investigation, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The Flexible Deployment Assistance Guide has been developed to assist the telecommunications industry in meeting its obligations under the Communications Assistance for Law Enforcement Act 47 U.S.C. 1001–1010 (1994).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The average time burden of the approximately 5,000 respondents to provide the information requested is approximately four hours and fifteen minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to provide the information requested by the Flexible Deployment Assistance Guide is approximately 21,250 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 10, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–26263 Filed 10–15–03; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; New Collection Semi-Annual Progress Report for Grants to Encourage Arrest Polices and Enforcement of Protection Orders Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 147, page 44696, on July 31, 2003, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of this information:

(1) *Type of information collection:* New collection.

(2) *Title of the form/collection:* Semi-Annual Progress Report for Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. Office on Violence Against Women, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes approximately 200 grantees of the Grants to Encourage Arrest Policies and Enforcement of Protection Orders Program (Arrest Program) whose eligibility is determined by statute. The Arrest Program was authorized through the Violence Against Women Act (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000). The Arrest Program promotes mandatory or pro-arrest policies and encourages jurisdictions to treat domestic violence as a serious crime, establish coordinated community responses and facilitate the enforcement of protection orders. By statute, eligible grantees for the Arrest Program are States, Indian tribal governments, State and local courts including juvenile courts, tribal courts, and units of local government. For the purpose of the Program, a unit of local government is any city, county, township, town, borough, parish, village, or other general-purpose political subdivision of a State; an Indian tribe that performs law enforcement functions as determined by the Secretary of the Interior; or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia, and any Trust Territory of the U.S.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it will take the 200 respondents (Arrest Program grantees) approximately one hour to complete a semiannual progress report. The semiannual progress report is divided into sections that pertain to the different types of activities that grantees may engage in, *i.e.*, law enforcement agencies, prosecutors' offices, courts, victim services agencies, etc. An Arrest Program grantee will be required to complete those sections of the form that pertain to their own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual

hour burden to complete the data collection forms is 400 hours. Two hundred grantees will complete a form twice a year with an estimated completion time of one hour per form.

If additional information is required contact: Ms. Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: October 10, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–26264 Filed 10–15–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; New Collection Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

The Department of Justice, Office of Justice Programs, Office on Violence Against Women, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register**, Volume 68, Number 89, page 24762, on May 8, 2003, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until November 17, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including 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.

Overview of this information:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Semi-Annual Progress Report for the Legal Assistance for Victims Grant Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number. The component is the Office on Violence Against Women, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000, Congress statutorily authorized the Legal Assistance for Victims Grant Program (LAV Program). 42 U.S.C. 3796gg–6. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Ms. Brenda E. Dyer, Department Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530, or via facsimile at (202) 514–1590.

Dated: October 10, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–26265 Filed 10–15–03; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Comment Request, of IMLS Funded Digital Collections and Content—Collection Registry

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a preclearance consultation program to

provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of IMLS Funded Digital Collections and Content.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 15, 2003.

IMLS is particularly interested in comments that help the agency to:

- 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 submissions of responses.

ADDRESSES: Send comments to: Martha Crawley, Senior Program Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Crawley can be reached on Telephone: (202) 606–5513, Fax: (202) 606–1077 or by e-mail at *mcrawley@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant Program, IMLS funds the digitization of library and museum collections. This study is to determine the feasibility of using the Open Archives Initiative (OAI) metadata harvesting protocol to aggregate and provide integrated item-level search access to the collections that Institute of Museum and Library Services funding has helped to digitize through the National Leadership Grant program and to create a collection level registry of those collections.

Agency: Institute of Museum and Library Services.

Title: Study of IMLS Funded Digital Collections and Content.

OMB Number: n/a.

Agency Number: 3137.

Affected Public: Museums and Libraries that created digital collections with IMLS funding.

Number of Respondents: All institutions that digitize collections with IMLS National Leadership Grant Funds.

Frequency: One time.

Estimated time per respondent: 30 minutes.

Estimated cost per respondent: $12.50 (30 minutes × $25 hour).

Total Burden Hours: 77 hours (94 respondents plus about 60 from 2003, 2004, 2005 grants).

Total annualized capital/startup costs: Zero.

Total annual costs: $962.50.

Contact: Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: October 9, 2003.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 03–26180 Filed 10–15–03; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

Proposed Collection, Comment Request, of IMLS Funded Digital Collections and Content—Focus Groups

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burdens, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3508(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed study of IMLS Funded Digital Collections and Content.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before December 15, 2003.

IMLS is particularly interested in comments that help the agency to:

- 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 submissions of responses.

ADDRESSES: Send comments to: Martha Crawley, Senior Program Officer, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Ms. Crawley can be reached on telephone: (202) 606–5513, Fax: (202) 606–1077 or by e-mail at *mcrawley@imls.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Public Law 104–208. The IMLS

provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. In the National Leadership Grant program, IMLS funds the digitization of library and museum collections. This study is to determine the feasibility of using the Open Archives Initiative (OAI) metadata harvesting protocol to aggregate and provide integrated item-level search access to the collections that Institute of Museum and Library Services funding has helped to digitize through the National Leadership Grant program and to create a collection level registry of those collections.

Agency: Institute of Museum and Library Services.

Title: Study of IMLS Funded Digital Collections and Content—Focus Groups.

OMB Number: n/a.

Agency Number: 3137.

Affected Public: Museums and Libraries that created digital collections with IMLS funding.

Number of Respondents: 24 (maximum two focus groups with 12 participants each).

Frequency: Once.

Estimated time per respondent: 2 hours.

Estimated cost per respondent: $50 (2 × $25 per hour).

Total Burden Hours: 48 hours.

Total Annualized capital/startup costs: Zero.

Total Annual costs: $1200 (48 × $25 per hour = $1200).

Contact: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–2478.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 03–26181 Filed 10–15–03; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Committee Management

Notice of Establishment

The Deputy Director of the National Science Foundation has determined that the establishment of the Earthscope Science and Education Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon the National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: EarthScope Science and Education Advisory Committee (#16638)

Purpose: Provide advice and recommendations to the National Science Foundation concerning support for research, education and outreach in the EarthScope program. The committee will: review and advise on the impact of research and facility support programs in the disciplines and fields encompassed by the EarthScope program; advise on program management, overall program balance, diversity and other aspects of program performance; and advise as to the impact of overall NSF-wide policies on the EarthScope facility and community.

Responsible NSF Official: James Whitcomb, Division of Earth Sciences, National Science Foundation, 4201 Wilson Boulevard, Room 995, Arlington, VA 22230. Telephone: (703) 292–8550.

Dated: October 9, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–26094 Filed 10–15–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources (#1119).

Date & Time: November 5, 8:30 a.m.–6 p.m.; November 6, 8:30 a.m.–3 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Sheila R. Tyndell, Staff Assistant, Directorate for Education and Human Resources, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230, 703–292–8601.

Summary Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning NSF support for Education and Human Resources.

Agenda: Discussion of FY 2003 programs of the Directorate for Education and Human Resources and planning for future activities.

Dated: October 9, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–26096 Filed 10–15–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Geosciences (1755).

Dates: November 12–14, 2003.

Time: 1:30–5:30 p.m., Wednesday, November 12, 2003; 8:30 a.m.–5:30 p.m., Thursday, November 13, 2003; 8:30 a.m.–2:30 p.m. Friday, November 14, 2003.

Place: National Science Foundation, 4200 Wilson Boulevard, Room 1235, Arlington, VA 22230.

Type of Meeting: Open.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas Spence, Directorate for Geosciences, National Science Foundation, Suite 705, 4210 Wilson Boulevard, Arlington, Virginia 22230, Phone 703–292–8500.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To provide advice, recommendations, and oversight concerning support for research, education, and human resources development in the geosciences.

Agenda: Day 1: Cyberinfrastructure Subcommittee Meeting, Directorate activities and plans. *Day 2:* Division Subcommittee Meetings, Directorate initiatives. *Day 3:* Committee of Visitors report, Sensors and Sensor Networks, Intersessional activities.

Dated: October 9, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–26095 Filed 10–15–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Dominion Nuclear North Anna, LLC; Notice of Receipt and Availability of Application for Early Site Permit for the North Anna ESP Site

On September 25, 2003, the Nuclear Regulatory Commission (NRC, the

Commission) received an application from Dominion Nuclear North Anna, LLC dated September 25, 2003, filed pursuant to section 103 of the Atomic Energy Act and 10 CFR part 52, for an early site permit (ESP) for a location in central Virginia (near Mineral, Virginia) identified as the North Anna ESP site.

An applicant may seek an early site permit in accordance with subpart A of 10 CFR part 52 separate from the filing of an application for a construction permit (CP) or combined license (COL) for a nuclear power facility. The ESP process allows resolution of issues relating to siting. At any time during the period of an ESP (up to 20 years), the permit holder may reference the permit in an application for a CP or COL.

Subsequent **Federal Register** notices will address the acceptability of the tendered ESP application for docketing and provisions for participation of the public and other parties in the ESP review process.

A copy of the application is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland and via the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* The accession number for the application is ML032731517. Future publicly available documents related to the application will also be posted in ADAMS. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC Public Document Room staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

The application is also available to local residents at the Louisa County Library, near Mineral, Virginia, and it will be available on the NRC Web page at *http://www.nrc.gov/reactors/new-licensing/license-reviews/esp.html.*

Dated at Rockville, Maryland, this 9th day of October, 2003.

For the Nuclear Regulatory Commission.

Michael L. Scott,

Senior Project Manager, New, Research and Test Reactors Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–26139 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted pursuant to the Federal Advisory Committee Act by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Nuclear Waste (ACNW). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACNW advises the NRC on technical issues related to nuclear materials and waste management. The bases of ACNW reviews include 10 CFR parts 20, 60, 61, 63, 70, 71, and 72 and other applicable regulations and legislative mandates, such as the Nuclear Waste Policy Act as amended, the Low-Level Radioactive Waste Policy Act and amendments, and the Uranium Mill Tailings Radiation Control Act, as amended. The Committee's reports become a part of the public record.

The ACNW meetings are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. The meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process. ACNW meetings are conducted in accordance with the Federal Advisory Committee Act.

General Rules Regarding ACNW Meetings

An agenda is published in the **Federal Register** for each full Committee meeting and is available on the Internet at *http://www.nrc.gov/ACRSACNW.* There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day during another meeting. Persons planning to attend a meeting may contact the Designated Federal Official (DFO) specified in the individual **Federal Register** notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACNW meetings:

(a) Persons who plan to make oral statements and/or submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** notice for the individual meeting in care of the Advisory Committee on Nuclear Waste, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be in the possession of the DFO prior to the meeting to allow time for reproduction and distribution. Comments should be limited to topics being considered by the Committee.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO specified in the individual **Federal Register** notice.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACNW meeting agenda, transcripts, and letter reports are available through the NRC

Public Document Room at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/*. A copy of the certified minutes of the meeting will be available at the same location up to three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of some ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. eastern time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACNW Working Group Meetings

From time to time the ACNW may sponsor an in-depth meeting on a specific technical issue to understand staff expectations and review work in progress. Such meetings are called Working Group meetings. These Working Group meetings will also be conducted in accordance with these procedures noted above for the ACNW meeting, as appropriate. When Working Group meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACNW meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 9, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–26135 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Procedures for Meetings

Background

This notice describes procedures to be followed with respect to meetings conducted by the Nuclear Regulatory Commission's (NRC's) Advisory Committee on Reactor Safeguards (ACRS) pursuant to the Federal Advisory Committee Act (FACA). These procedures are set forth so that they may be incorporated by reference in future notices for individual meetings.

The ACRS is a statutory group established by Congress to review and report on nuclear safety matters and applications for the licensing of nuclear facilities. The Committee's reports become a part of the public record.

The ACRS meetings are conducted in accordance with FACA; they are normally open to the public and provide opportunities for oral or written statements from members of the public to be considered as part of the Committee's information gathering process. ACRS reviews do not normally encompass matters pertaining to environmental impacts other than those related to radiological safety.

The ACRS meetings are not adjudicatory hearings such as those conducted by the NRC's Atomic Safety and Licensing Board Panel as part of the Commission's licensing process.

General Rules Regarding ACRS Meetings

An agenda is published in the **Federal Register** for each full Committee meeting. There may be a need to make changes to the agenda to facilitate the conduct of the meeting. The Chairman of the Committee is empowered to conduct the meeting in a manner that, in his/her judgment, will facilitate the orderly conduct of business, including making provisions to continue the discussion of matters not completed on the scheduled day on another meeting day. Persons planning to attend the meeting may contact the Designated Federal Official (DFO) specified in the **Federal Register** notice prior to the meeting to be advised of any changes to the agenda that may have occurred.

The following requirements shall apply to public participation in ACRS full Committee meetings:

(a) Persons who plan to make oral statements and/or submit written comments at the meeting should provide 35 copies to the DFO at the beginning of the meeting. Persons who cannot attend the meeting but wishing to submit written comments regarding the agenda items may do so by sending a readily reproducible copy addressed to the DFO specified in the **Federal Register** notice, care of the Advisory Committee on Reactor Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments should be limited to items being considered by the Committee. Comments should be in the possession of the DFO prior to the meeting to allow time for reproduction and distribution.

(b) Persons desiring to make oral statements at the meeting should make a request to do so to the DFO. If possible, the request should be made five days before the meeting, identifying the topics to be discussed and the amount of time needed for presentation so that orderly arrangements can be made. The Committee will hear oral statements on topics being reviewed at an appropriate time during the meeting as scheduled by the Chairman.

(c) Information regarding topics to be discussed, changes to the agenda, whether the meeting has been canceled or rescheduled, and the time allotted to present oral statements can be obtained by contacting the DFO.

(d) The use of still, motion picture, and television cameras will be permitted at the discretion of the Chairman and subject to the condition that the physical installation and presence of such equipment will not interfere with the conduct of the meeting. The DFO will have to be notified prior to the meeting and will authorize the installation or use of such equipment after consultation with the Chairman. The use of such equipment will be restricted as is necessary to protect proprietary or privileged

information that may be in documents, folders, etc., in the meeting room. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

(e) A transcript is kept for certain open portions of the meeting and will be available in the NRC Public Document Room (PDR), One White Flint North, Room O–1F21, 11555 Rockville Pike, Rockville, MD 20852–2738. ACRS meeting agenda, transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov,* by calling the PDR at 1–800–394–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/.* A copy of the certified minutes of the meeting will be available at the same location up to three months following the meeting. Copies may be obtained upon payment of appropriate reproduction charges.

(f) Video teleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician, (301–415–8066) between 7:30 a.m. and 3:45 p.m. eastern time at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

ACRS Subcommittee Meetings

In accordance with the revised FACA, the agency is no longer required to apply the FACA requirements to meetings conducted by the Subcommittees of the NRC Advisory Committees, if the Subcommittee's recommendations would be independently reviewed by its parent Committee.

The ACRS, however, chose to conduct its Subcommittee meetings in accordance with the above procedures noted above for ACRS meetings, as appropriate, to facilitate public participation, and to provide a forum to stakeholders to express their views on regulatory matters being considered by the ACRS. When Subcommittee meetings are held at locations other than at NRC facilities, reproduction facilities may not be available at a reasonable cost. Accordingly, 25 additional copies of the materials to be used during the meeting should be provided for distribution at such meetings.

Special Provisions When Proprietary Sessions Are To Be Held

If it is necessary to hold closed sessions for the purpose of discussing matters involving proprietary information, persons with agreements permitting access to such information may attend those portions of the ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and related to the material being discussed.

The DFO should be informed of such an agreement at least five working days prior to the meeting so that it can be confirmed, and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. The minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the DFO prior to the beginning of the meeting for admittance to the closed session.

Dated: October 9, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–26136 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued a revision of a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in its review of applications for permits and licenses, and data needed by the NRC staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 1.159, ''Assuring the Availability of Funds for Decommissioning Nuclear Reactors,'' provides guidance to licensees and applicants of nuclear power, research, and test reactors concerning methods acceptable to the NRC staff for complying with requirements in the rules regarding the amount of funds for decommissioning. It also provides guidance on the content and form of the financial assurance mechanisms in those rule amendments.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555. Questions on the content of this guide may be directed to Mr. B.J. Richter, (301) 415–1978; e-mail *BJR@NRC.GOV.*

Regulatory guides are available for inspection or downloading at the NRC's Web site at *http://www.nrc.gov* under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to *DISTRIBUTION@NRC.GOV.* Issued guides may also be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS at 5285 Port Royal Road, Springfield, VA 22161; telephone 1–800–553–6847; *http://www.ntis.gov/.* Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, MD, this 2nd day of October, 2003.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 03–26138 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8989]

Issuance of Environmental Assessment and Finding of No Significant Impact for Exemption From Certain NRC Licensing Requirements for Special Nuclear Material for Envirocare of Utah, Inc.

I Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an Order pursuant to

Section 274f of the Atomic Energy Act that would modify an Order transmitted to Envirocare of Utah, Inc. (Envirocare). The original Order was published in the **Federal Register** on May 21, 1999 (64 FR 27826). The 1999 Order exempted Envirocare from certain NRC regulations and permitted Envirocare, under specified conditions, to possess waste containing special nuclear material (SNM), in greater quantities than specified in 10 CFR part 150, at Envirocare's low-level waste (LLW) disposal facility located in Clive, Utah, without obtaining an NRC license pursuant to 10 CFR part 70. At the request of Envirocare, the Order was subsequently modified on January 30, 2003, and published in the **Federal Register** on February 13, 2003 (68 FR 7399).

Envirocare is licensed by the State of Utah, an NRC Agreement State, under a 10 CFR part 61 equivalent license for the disposal of LLW. Envirocare is also licensed by Utah to dispose of mixed-radioactive and hazardous waste. In addition, Envirocare has an NRC license (SMC–1559) to dispose of waste containing 11(e)2 byproduct material.

In a letter dated July 8, 2003, Envirocare requested that the January 2003 Order be amended as discussed below. Staff's safety analysis for the revisions to the January 2003 Order is discussed in the companion Safety Evaluation Report (SER).

II Environmental Assessment (EA)

Identification of Proposed Action

Envirocare proposes that NRC amend the January 2003 Order to: (1) Modify the table in Condition 1 to a criticality basis for uranium-233 and plutonium isotopes, and revise the concentration limits for uranium and plutonium to include limits for waste without magnesium oxide; (2) modify the units of the table from pCi of SNM per gram of waste material to gram of SNM per gram of waste material; and (3) revise the language of Condition 5 to be consistent with the revised units in the table.

Need for the Proposed Action

The table in Condition 1 of the January 2003 Order prescribes concentration limits that are based on Class A low-level radioactive waste limits rather than a criticality-based analysis. Envirocare would like to expand its capabilities to accept additional waste streams. In order to do so, the SNM concentration limits in the table in Condition 1 of the Order would need to be revised.

Alternatives to the Proposed Action

The NRC staff considered the proposed action and the no-action alternative. The no-action alternative would be not to revise the Order.

Affected Environment

NRC has prepared an environmental impact statement (EIS) (NUREG–1476), SERs, and EAs for its previous actions. The affected environment for the Envirocare site is described in detail in NUREG–1476.

Environmental Impacts of the Alternatives

No-Action Alternative: For the no-action alternative, the environmental impacts would be the same as evaluated in the Environmental Assessments to support the 1999 Order (64 FR 26463, May 14, 1999) and the January 2003 modification of the Order (68 FR 3281). The regulations regarding SNM possession in 10 CFR part 150 set mass limits whereby a licensee is exempted from the licensing requirements of 10 CFR part 70 and can be regulated by an Agreement State. The licensing requirements in 10 CFR part 70 apply to persons possessing greater than critical mass quantities (as defined in 10 CFR 150.11). The principle emphasis of 10 CFR part 70 is criticality safety and safeguarding SNM against diversion or sabotage. The NRC staff considers that criticality safety can be maintained by relying on concentration limits, under the specified conditions. These concentration limits are considered an alternative definition of quantities not sufficient to form a critical mass to the weight limits in 10 CFR 150.11; thereby, assuring the same level of protection. The 1999 and January 2003 EAs concluded that the Order would have no significant radiological or nonradiological environmental impacts.

Proposed Action: For the proposed action, the environmental impacts are not expected to be significant. Effluent releases and potential doses to the public are regulated by the State of Utah and are not anticipated to change as a result of this revision. In a 2001 EA for Waste Control Specialists, LLC (WCS) (66 FR 56358), the staff found that there would be no significant radiological or nonradiological impacts resulting from the proposed limits of uranium and plutonium, and the same limits are being applied to Envirocare in this revision of its Order. In addition, these revisions to the Order are not expected to significantly change environmental impacts from current operations at Envirocare. WCS does not use magnesium oxide in its processing; therefore, in order to use the same limits for uranium and plutonium at its facility, Envirocare will not use magnesium oxide during treatment of the waste stream allowed by the revision. This will help ensure criticality safety during processing.

For Envirocare, the changes to the limits will allow the site to accept a new waste stream, which may increase the number of waste shipments to the site. The addition of a new waste stream would result in approximately 40 additional shipments per year to the site, which equates to less than one shipment per week. It is not expected that the small increase in shipments would have a significant environmental impact to the local area.

Preferred Alternative

The staff has concluded that the proposed action is the preferred alternative. The radiological and nonradiological impacts are not expected to be significant.

Agencies and Persons Consulted

Officials from the State of Utah, Department of Environmental Quality, Division of Radiation Control were contacted about this EA for the proposed action and had no comments. Because the proposed action is not expected to have any impact on threatened or endangered species or historic resources, the Fish and Wildlife Service and the State of Utah Historic Preservation Officer were not contacted.

III. Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the forgoing EA, the NRC finds that the preferred alternative of the proposed action will not significantly impact the quality of the human environment. Accordingly, the NRC has decided not to prepare an EIS for the proposed exemption.

IV. Further Information

The request for modifying the Order is available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html* ML031950334. The September 23, 2003, Safety Evaluation Report is available at ML032680942. The EA for the January 2003 Order is available in the **Federal Register** at 68 FR 3281. The EA for the exemption for WCS is available in the **Federal Register** at 66 FR 56358. Documents may also be obtained from NRC's Public Document Room at U.S. Nuclear Regulatory Commission, Public Document Room,

Washington DC 20555. Any questions with respect to this action should be referred to Anna H. Bradford, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001. Telephone: (301) 415–5228, Fax: (301) 415–5397.

Dated at Rockville, Maryland, this 8th day of October, 2003.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Chief, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–26137 Filed 10–15–03; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meetings; Public Hearing

October 14, 2003.

OPIC's Sunshine Act notice of its public hearing was published in the **Federal Register** (Volume 68, Number 193, page 57716) on October 6, 2003. No requests were received to provide testimony or submit written statements for the record; therefore, OPIC's public hearing in conjunction with OPIC's October 15, 2003 Board of Directors meeting scheduled for 11 AM on October 14, 2003 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Information on the hearing cancellation may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via email at *cdown@opic.gov.*

Dated: October 14, 2003.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 03–26278 Filed 10–14–03; 11:45 am]

BILLING CODE 3210–01–M

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 30–1

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 30–1, Request to Disability Annuitant for Information on Physical Condition and Employment, is used by persons who are not yet age 60 and who are receiving disability annuity and are subject to inquiry as to their medical condition as OPM deems reasonably necessary. RI 30–1 collects information as to whether the disabling condition has changed.

Approximately 8,000 RI 30–1 forms will be completed annually. We estimate it takes approximately 60 minutes to complete the form. The annual burden is 8,000 hours.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology. For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251 or E-mail to *mbtoomey@opm.gov*. Please include your mailing address with your request.

DATES: Comments on this proposal should be received on or before December 15, 2003.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

For Information Regarding Administrative Coordination— Contact: Cyrus S. Benson, Team Leader, Publications Team, (202) 606–0623.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–26215 Filed 10–15–03; 8:45 am]

BILLING CODE 6325–50–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension: Rule 17f–6 [17 CFR 270.17f–6]; SEC File No. 270–392; OMB Control No. 3235–0447.

Notice is hereby given that, under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 17f–6 under the Investment Company Act of 1940 [17 CFR 270.17f–6] permits registered investment companies (''funds'') to maintain assets (*i.e.*, margin) with futures commission merchants (''FCMs'') in connection with commodity transactions effected on both domestic and foreign exchanges. Before the rule was adopted, funds generally were required to maintain such assets in special accounts with a custodian bank.[1]

The rule requires a written contract that contains certain provisions to ensure important safeguards and other benefits relating to the custody of fund assets by FCMs. The requirement that FCMs comply with the segregation or secured amount requirements of the Commodity Exchange Act (''CEA'') and the rules under that statute is designed to protect fund assets held by FCMs. The contract requirement that an FCM obtain an acknowledgment from an entity that clears fund transactions that the fund's assets are held on behalf of the FCM's customers according to CEA provisions seeks to accommodate the legitimate needs of the participants in the commodity settlement process, consistent with the protection of fund assets. Finally, FCMs are required to furnish to the Commission or its staff on request information concerning the fund's assets in order to facilitate Commission inspections of funds.

The Commission estimates that approximately 2,154 funds effect commodities transactions and could

[1] *See* Custody of Investment Company Assets With Futures Commission Merchants and Commodity Clearing Organizations, Investment Company Act Release No. 22389 (Dec. 11, 1996) [61 FR 66207 (Dec. 17, 1996)].

deposit margin with FCMs under rule 17f–6 in connection with those transactions. Commission staff estimates that each fund uses and deposits margin with 2 different FCMs in connection with its commodity transactions.[2] Approximately 179 FCMs are eligible to hold fund margin under the rule.[3]

The Commission estimates that each of the 2,154 funds spend an average of 1 hour annually complying with the contract requirements of the rule (*e.g.*, executing contracts that contain the requisite provisions with additional FCMs), for a total of 2,154 burden hours. The estimate does not include the time required by an FCM to comply with the rule's contract requirements because, to the extent that complying with the contract provisions could be considered ''collections of information,'' the burden hours for compliance are already included in other PRA submissions or are *de minimis*.[4] The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Compliance with the collection of information requirements of the rule is necessary to obtain the benefit of relying on the rule. If an FCM furnishes records pertaining to a fund's assets at the request of the Commission or its staff, the records will be kept confidential to the extent permitted by relevant statutory or regulatory provisions. The rule does not require these records be retained for any specific period of time. 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 control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days after this notice.

Dated: October 8, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26097 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

[2] This estimate is based on information conversations with representatives of the fund industry.

[3] Commodity Futures Trading Commission, Annual Report (2002).

[4] The rule requires a contract with the FCM to contain three provisions. Two of the provisions require the FCM to comply with existing requirements under the CEA and rules adopted under that Act. Thus, to the extent these provisions could be considered collections of information, the hours required for compliance would be included in the collection of information burden hours submitted by the Commodity Futures Trading Commission for its rules. The third contract provision requires that the FCM produce records or other information requested by the Commission or its staff. Commission staff has requested this type of information from an FCM so infrequently in the past that the annual burden hours are *de minimis*.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26205; 812–13023]

JF International Management Inc., et al.; Notice of Application and Temporary Order

October 8, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Applicants have received a temporary order exempting them from section 9(a) of the Act, with respect to an injunction entered against J.P. Morgan Securities Inc. (''JPMSI'') on October 8, 2003 by the United States District Court for the District of Columbia (the ''Injunction''), until the Commission takes final action on an application for a permanent order. Applicants also have applied for a permanent order.

Applicants: JF International Management Inc., J.P. Morgan Alternative Asset Management Inc., J.P. Morgan Fleming Asset Management (London) Limited, and J.P. Morgan Investment Management Inc. (together, the ''Applicants'').[1]

Filing Dates: The application was filed on October 1, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 3, 2003, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, c/o Scott G. Campbell, Esq., J.P. Morgan Chase & Co., Legal Department, One Chase Manhattan Plaza, New York, NY 10081.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, or Mary Kay Frech, Branch Chief, at 202–942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a temporary order and a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. Each Applicant is an investment adviser registered under the Investment Advisers Act of 1940 (the ''Advisers Act'') and an indirect subsidiary of J.P. Morgan Chase & Co. (''JPMC''), a holding company that, through its subsidiaries and affiliates, provides investment, financing, advisory, banking and related products and services on a global basis. JPMC also is the ultimate parent company of JPMSI. JPMSI, a Delaware corporation, is a full service investment-banking firm and is registered as a broker-dealer under the Securities Exchange Act of 1934 (the ''Exchange Act'') and as an investment adviser under the Advisers Act. Each Applicant serves as investment adviser or sub-adviser to certain registered investment companies (''Funds'').

2. On October 8, 2003, the United States District Court for the District of Columbia entered the Injunction against JPMSI in a matter brought by the Commission.[2] The Commission alleged

[1] Applicants request that any relief granted pursuant to the application also apply to JPMSI and any other existing company of which JPMSI is an affiliated person within the meaning of section 2(a)(3) of the Act and to any other company of which JPMSI may become an affiliated person in the future (together with Applicants, ''Covered Persons'').

[2] *Securities and Exchange Commission* v. *J.P. Morgan Securities Inc.,* Final Judgment Against J.P. Morgan Securities Inc., 03:CV 02028 (ESH) (D.D.C., filed October 8, 2003).

in the complaint (''Complaint'') that JPMSI violated Rule 101 of Regulation M under the Exchange Act by attempting to induce certain institutional customers to place orders for shares in the aftermarket for certain initial public offerings (''IPOs'') it underwrote during the restricted period of such IPOs. In addition, the Complaint alleged that JPMSI violated NASD Conduct Rule 2110 by persuading one or more institutional customers to take an allocation of a ''cold'' IPO by promising to reward the customer with an allocation of an upcoming ''hot'' IPO. The alleged violations occurred in connection with certain IPOs underwritten by JPMSI from March 1999 through August 2000. Without admitting or denying any of the allegations in the Complaint, except as to jurisdiction, JPMSI consented to the entry of the Injunction as well as the payment of a civil penalty of $25 million.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company, any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that because JPMSI and the Applicants are under common control of JPMC, JPMSI is an ''affiliated person'' of each of the Applicants within the meaning of section 2(a)(3) of the Act. Applicants state that, as a result of the Injunction, they would be subject to the prohibitions of section 9(a).

2. Section 9(c) of the Act provides that the Commission shall grant an application for exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to Applicants, are unduly or disproportionately severe or that Applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) seeking a temporary and permanent order exempting them from the disqualification provisions of section 9(a) of the Act.

3. Applicants believe they meet the standards for exemption specified in section 9(c). Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a).

4. Applicants state that none of their officers or employees who are engaged in the provision of investment advisory services to the Funds participated in any way in the conduct underlying the Injunction. Applicants further state that the conduct underlying the Injunction did not involve any Funds.

5. Applicants state that the inability to continue providing advisory services to the Funds would result in potentially severe hardships for the Funds and their shareholders. Applicants also state that they have distributed, or will distribute as soon as reasonably practical, written materials, including an offer to meet in person to discuss the materials, to the boards of directors or trustees of the Funds (the ''Boards''), including the directors who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of such Funds and their independent legal counsel as defined in rule 0–1(a)(6) under the Act, if any, regarding the Injunction, any impact on the Funds, and the application. The Applicants will provide the Boards with all information concerning the Injunction and the application that is necessary for the Funds to fulfill their disclosure and other obligations under the federal securities laws.

6. Applicants also assert that, if they were barred from providing services to the Funds, the effect on their businesses and employees would be severe. Applicants state that they have committed substantial resources to establish an expertise in advising and subadvising Funds. Applicants recently applied for, and received, an order of exemption pursuant to section 9(c) of the Act for conduct relating to Enron Corp.'s financial statement disclosure of transactions with affiliates of JPMC.[3] In addition, Applicants recently applied for an exemption pursuant to section 9(c) of the Act for conduct relating to certain research analysts' conflicts of interest.[4]

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Covered Persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order:

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that Covered Persons are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Injunction, subject to the condition in the application, until the date the Commission takes final action on an application for a permanent order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26098 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

[3] JF International Management Inc., *et al.*, Investment Company Act Release Nos. 26141 (July 28, 2003)(notice and temporary order) and 26168 (August 26, 2003)(permanent order).

[4] J.P. Morgan Securities Inc. *et al.*, File No. 812–12959.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [68 FR 58728, October 10, 2003]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 16, 2003 at 10 a.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the closed meeting of Thursday, October 16, 2003: Litigation matter.

Commissioner Campos, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: October 14, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–26344 Filed 10–14–03; 3:57 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48610; File No. SR–Amex–2003–42]

Self Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2 and 3 Thereto by the American Stock Exchange LLC Relating to Shareholder Approval of Stock Option Plans and Other Equity Compensation Arrangements

October 9, 2003.

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 May 6, 2003, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On July 24, 2003, the Amex filed Amendment No. 1 to the proposed rule change.[3] On September 10, 2003, the Amex filed Amendment No. 2 to the proposed rule change.[4] On October 1, 2003, the Amex filed Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal, as amended, on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Section 711 of the Amex *Company Guide* relating to shareholder approval of stock option and equity compensation plans.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized;* proposed deleted language is [bracketed].

* * * * *

American Stock Exchange LLC Company Guide

* * * * *

Sec. 711, [Options to Officers, Directors or Key Employees]—*Shareholder Approval of Stock Option and Equity Compensation Plans*

Approval of shareholders is required in accordance with Section 705 [(unless exempted under paragraphs (a) and (b) below) as a prerequisite to approval of applications to list additional shares reserved for] *with respect to the establishment of (or material amendment to) a stock* option[s] *or purchase plan or other equity compensation arrangement pursuant to which options or stock may be acquired by officers, directors, employees, or consultants* [granted or to be granted to officers, directors or key employees], regardless of whether or not such authorization is required by law or by the company's charter*, except for*:[.]

[**Note:** This policy does not preclude the adoption of a stock option plan, or the granting of options, subject to ratification by shareholders, prior to the filing of an application for the listing of the shares reserved for such purpose.

The Exchange will not require shareholders' approval as a condition to listing shares reserved for the exercise of options when:]

(a) [such options are issued] *issuances* to an individual, not previously *an* employee[d] *or director of* [by] the company, *or following a bonafide period of non-employment,* as an inducement [essential] *material* to entering into [a contract of] employment with the company provided that *such issuances are approved by the company's independent compensation committee or a majority of the company's independent directors, and, promptly following an issuance of any employment inducement grant in reliance on this exception, the company discloses in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved* [the potential issuance of shares pursuant to such options does not exceed 5% of the company's outstanding common stock]; or

(b) [such options are to be granted:]

[(i)] [under a] *tax qualified, non-discriminatory employee benefit* plans [or arrangement] (*e.g., plans that meet the requirements of Section 401(a) or 423 of the Internal Revenue Code) or parallel nonqualified plans, provided such plans are approved by the company's independent compensation committee or a majority of the company's independent directors; or plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market value* [in which all, or substantially all, of the company's employees participate, in a fair and equitable manner]; or

(c) a plan or arrangement relating to an acquisition or merger; or

(d) warrants or rights issued generally to all security holders of the company or stock purchase plans available on equal terms to all security holders of the company (such as a typical dividend reinvestment plan).

A listed company is required to notify the Exchange in writing with respect to the use of any of the exceptions set forth in paragraphs (a) through (d).

[(ii) under a plan or arrangement for officers, directors or key employees provided such incentive arrangements do not authorize the issuance of more than 5% of outstanding common stock in any one year and provided that all arrangements adopted without shareholder approval in any five-year period do not authorize, in the aggregate, the issuance of more than 10% of such common stock. (For the purpose of calculating the percentage of stock issued in the aggregate, stock to be issued pursuant to options which have expired and/or been cancelled shall not be included.)]

[For purposes of the above policy, the term ''options'' includes not only the usual type of nontransferable options granted in consideration of continued employment, but also any other arrangement under which controlling shareholders, officers, directors or key employees may acquire (other than as part of a public offering) stock or convertible securities of a company at a price below market price at the time such stock is acquired or through the use of credit extended, directly or indirectly, by the company. Thus, the sale to such a person(s) of a common stock purchase warrant or right (not part

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 22, 2003 (''Amendment No. 1''). Amendment No. 1 supercedes and replaces Amex's original Rule 19b–4 filing in its entirety.

[4] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated September 9, 2003 (''Amendment No. 2''). Amendment No. 2 supercedes and replaces Amex's original Rule 19b–4 filing and Amendment No. 1 in their entirety.

[5] *See* letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Sapna C. Patel, Special Counsel, Division, Commission, dated October 1, 2003 (''Amendment No. 3''). In Amendment No. 3, the Amex made a technical change to the proposed rule language.

of a public offering) or the sale of stock to such person who has borrowed money from the company, will normally necessitate shareholder approval.]

Commentary * * *

.01 Section 711 requires shareholder approval when a plan or other equity compensation arrangement is established or materially amended. For these purposes, a material amendment would include, but not be limited to, the following:

(a) any material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction);

(b) any material increase in benefits to participants, including any material change to: (i) permit a repricing (or decrease in exercise price) of outstanding options, (ii) reduce the price at which shares or options to purchase shares may be offered, or (iii) extend the duration of a plan;

(c) any material expansion of the class of participants eligible to participate in the plan; and

(d) any expansion in the types of options or awards provided under the plan.

While general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would generally be required. However, if a plan contains a formula for automatic increases in the shares available (sometimes called an ''evergreen formula''), or for automatic grants pursuant to a dollar-based formula (such as annual grants based on a certain dollar value, or matching contributions based upon the amount of compensation the participant elects to defer), such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. Plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements.

As a general matter, when preparing plans and presenting them for shareholder approval, issuers should strive to make plan terms easy to understand. In that regard, it is recommended that plans meant to permit repricing use explicit terminology to make this clear.

Section 711 provides an exception to the requirement for shareholder approval for shareholder approval for warrants or rights offered generally to all shareholders. In addition, an exception is provided for tax qualified, non-discriminatory employee benefit plans as well as parallel nonqualified plans[1] as these plans are regulated under the Internal Revenue Code and Treasury Department regulations. An equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax-qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under this section.

Further, there is an exception for inducement grants to new employees because in these cases a company has an arm's length relationship with the new employees. Inducement grants for these purposes include grants of options or stock to new employees in connection with a merger or acquisition. Section 711 requires that such issuances must be approved by the issuer's independent compensation committee or a majority of the issuer's independent directors. Also, promptly following an issuance of any employment inducement grant in reliance on this exception, the listed company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, plans or arrangements involving a merger or acquisition do not require shareholder approval in two situations. First, shareholder approval will not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of this Section 711. These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or arrangement or another plan or arrangement, without further shareholder approval, provided: (1) The time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company or its subsidiaries at the time the merger or acquisition was consummated. A plan or arrangement adopted in contemplation of the merger or acquisition transaction would not be viewed as pre-existing for purposes of this exception. This exception is appropriate because it will not result in any increase in the aggregate potential dilution of the combined enterprise. In this regard, any additional shares available for issuance under a plan or arrangement acquired in connection with a merger or acquisition would be counted in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thus triggering the shareholder approval requirements of Section 712(b).

Inducement grants, tax qualified non-discriminatory benefit plans, and parallel nonqualified plans are subject to approval by either the issuer's independent compensation committee, or a majority of the issuer's independent directors. A listed company is not permitted to use repurchased shares to fund option plans or grants without prior shareholder approval. In addition, the issuer must notify the Exchange in writing when it uses any of these exceptions (see also Part 3 with respect to the requirements applicable to additional listing of the underlying shares).

* * * * *

[1] The term ''parallel nonqualified plan'' means a plan that is a ''pension plan'' within the meaning of the Employee Retirement Income Security Act (''ERISA''), 29 U.S.C. § 1002 (1999), that is designed to work in parallel with a plan intended to be qualified under Internal Revenue Code Section 401(a), to provide benefits that exceed the limits set forth in Internal Revenue Code Section 402(g) (the section that limits an employee's annual pre-tax contributions to a 401(k) plan), Internal Revenue Code Section 401(a)(17) (the section that limits the amount of an employee's compensation that can be taken into account for plan purposes) and/or Internal Revenue Code Section 415 (the section that limits the contributions and benefits under qualified plans) and/or any successor or similar limitations that may thereafter be enacted. However, a plan will not be considered a parallel nonqualified plan unless (i) it covers all or substantially all employees of an employer who are participants in the related qualified plan whose annual compensation is in excess of the limit of Code Section 401(a)(17) (or any successor or similar limitation that may hereafter be enacted) and (ii) its terms are substantially the same as the qualified plan that it parallels except for the elimination of

the limitations described in the preceding sentence; and (iii) no participant receives employer equity contributions under the plan in excess of 25% of the participant's cash compensation.

See also Section 806.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange represents that Section 711 of the Amex *Company Guide* currently requires listed companies to obtain shareholder approval for many stock option plans and other arrangements in which officers, directors and key employees participate, to address concerns about the possibility of self-dealing and dilution to the detriment of shareholders. The Exchange further states that under Section 711(b)(i) of the Amex *Company Guide* there is an exception for ''broadly based'' plans in which all, or substantially all, of the company's employees participate in a fair and equitable manner, even if officers, directors and key employees receive option grants under the plan, as well as for *de minimus* grants.

The Exchange represents that, in order to enhance investor confidence and provide consistency across marketplaces, it is proposing to eliminate the existing exceptions to the shareholder approval requirements under current Section 711 of the Amex *Company Guide* and to require shareholder approval of all stock option and equity compensation plans, subject to limited exceptions.[6] The proposed amendments to Section 711 of the Amex *Company Guide* will become effective upon SEC approval.

The Exchange represents that existing plans will not require shareholder approval unless there is a material amendment to the plan. Proposed Commentary .01 to Section 711 of the Amex *Company Guide* specifies a non-exclusive list of plan amendments that would be considered material, and also clarifies that while broad general authority to amend a plan would not obviate the need for shareholder approval, if a plan permits a specific action without further shareholder approval, then no such approval would be required. Certain provisions in a plan, however, cannot be amended without shareholder approval. For example, plans that contains a formula for automatic increases in the shares available (sometimes called an ''evergreen plan'') or for automatic grants pursuant to a dollar-based formula cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. In addition, plans that do not contain a formula and do not impose a limit on the number of shares available for grant would require shareholder approval of each grant under the plan. A requirement that grants be made out of treasury shares or repurchased shares will not alleviate these additional shareholder approval requirements. The proposed Commentary also provides that issuers should strive to make plan terms easily understandable and that plans meant to permit repricing should use explicit terminology in this regard.

With respect to plans involving a merger or acquisition, shareholder approval would not be required in two situations. First, shareholder approval would not be required to convert, replace or adjust outstanding options or other equity compensation awards to reflect the transaction. Second, shares available under certain plans acquired in corporate acquisitions and mergers may be used for certain post-transaction grants without further shareholder approval. This exception applies to situations where the party which is not a listed company following the transaction has shares available for grant under pre-existing plans that meet the requirements of revised Section 711 of the Amex *Company Guide*.[7] These shares may be used for post-transaction grants of options and other equity awards by the listed company (after appropriate adjustment of the number of shares to reflect the transaction), either under the pre-existing plan or another plan, without further shareholder approval, so long as (1) the time during which those shares are available for grants is not extended beyond the period when they would have been available under the pre-existing plan, absent the transaction, and (2) such options and other awards are not granted to individuals who were employed by the granting company at the time the merger or acquisition was consummated. The Exchange would view a plan adopted in contemplation of the merger or acquisition as not pre-existing for purposes of this exception. This exception is appropriate because it would not result in any increase in the aggregate potential dilution of the combined enterprise.[8]

The adoption of tax-qualified, non-discriminatory benefit plans (pursuant to Internal Revenue Code and Treasury Department regulations) or parallel nonqualified plans, will not require shareholder approval, but must be approved by either the issuer's independent compensation committee or a majority of its independent directors. In addition, an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax-qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law, is also exempt from shareholder approval under Section 711 of the Amex *Company Guide*. However, the proposed rule addresses only the issue of whether shareholder approval is required pursuant to Amex rules, and would not impact any shareholder approval or other requirements under the Internal Revenue Code or other applicable laws or requirements with respect to such plans.

The Exchange is also proposing to retain its existing exception for inducement grants to new employees (including a previous employee following a bonafide period of non-employment by the listed company), including grants to new employees in connection with a merger or acquisition. The Exchange is also proposing to remove the existing restriction which

[6] Section 302 of the Amex *Company Guide* provides that listed companies may not reissue treasury shares without first obtaining shareholder approval, for any purpose where the rules or policies of the Exchange would require such approval had the shares to be issued been previously authorized but unissued. This requirement is unchanged by the current proposal.

[7] The Amex represents that such post-transaction grants can only be made under pre-existing plans that were previously approved by shareholders. Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Attorney, Division, Commission, on July 23, 2003.

[8] The Amex notes that any such shares reserved for listing in connection with the transaction would be counted by the Amex in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock and thus required shareholder approval under Section 712(b) of the Amex *Company Guide*.

limits such grants to five percent of the company's outstanding common stock, which is in conformance with recently approved New York Stock Exchange, Inc. (''NYSE'') and The Nasdaq Stock Market, Inc. (''Nasdaq'') proposals.[9] The Exchange does not believe that shareholder approval is necessary in these circumstances for several reasons. The Exchange believes that inducement grants are often subject to some urgency and the need to obtain shareholder approval could thus be impracticable. Furthermore, the Exchange believes that such grants are negotiated at ''arms'' length'' and do not involve the potential for self-dealing on the part of existing officers and directors. However, the Exchange represents that all inducement grants will be subject to approval by either the issuer's independent compensation committee or a majority of its independent directors. Additionally, the Exchange represents that promptly following an issuance of any employment inducement grant in reliance on this exception, a company must disclose in a press release the material terms of the grant, including the recipient(s) of the grant and the number of shares involved.

In addition, rights and warrants issued generally to all shareholders will not require shareholder approval, nor would plans that merely provide a convenient way for all security holders to purchase shares on the open market or from the issuer at fair market value on equal terms. The Amex believes that such issuances do not raise the same concerns regarding self-dealing and dilution as stock option plans.

Further, the Exchange proposes to require the issuer to notify the Exchange in writing when it uses any of the exceptions to the shareholder approval requirement contained in Section 711 of the Amex *Company Guide*, and such grants are also subject to Part 3 of the Amex *Company Guide* with respect to the requirements applicable to the additional listing of the underlying shares.

The Exchange also proposes to delete the existing provision of Section 711 of the Amex *Company Guide*, which contains an exception from the shareholder approval requirement for an option plan that does not authorize the issuance to officers, directors or key employees of more than five percent of outstanding common stock in any one year (provided all such arrangements adopted without shareholder approval in any five year period do not authorize the issuance of more than ten percent of outstanding common stock), and which governs participation by controlling shareholders, officers, directors and key employees in discounted private placements.[10]

Finally, the Exchange notes that the Commission has asked the Amex to adopt a rule similar to the NYSE's rule prohibiting members and member organizations from giving a proxy to vote without instructions from beneficial owners when the matter to be voted on authorizes the implementation of any equity compensation plan, or any material revision to the terms of any existing equity compensation plan.[11] The Amex has consented to reconsidering this issue.[12]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6 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 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, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

No written comments were solicited or received with respect to 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, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–42 and should be submitted by November 6, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the Amex's proposal, as amended, is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b) of the Act.[15] Specifically, the Commission finds that approval of the Amex's proposal, as amended, is consistent with Section 6(b)(5) of the Act[16] in that it is designed to, among other things, facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and

[9] *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (order approving File Nos. SR–NYSE–2002–46 and SR–NASD–2002–140). *See* also Section 303A(8) of the NYSE's Listed *Company Manual*; NASD Rule 4350(i) and IM–4350–5; and File No. SR–NASD–2003–130.

[10] The Exchange has submitted a separate rule change proposal (SR–Amex–2003–70) to amend Section 713 of the Amex *Company Guide* to reincorporate this policy solely in the context of discounted private placements. The Commission notes that this separate proposed rule change filed by the Amex is currently pending before the Commission and has not been approved.

[11] *See* NYSE Rule 452 and Section 402.08 of the NYSE's *Listed Company Manual.*

[12] Telephone conversation between Claudia Crowley, Vice President, Listing Qualifications, Amex, and Sapna C. Patel, Special Counsel, Division, Commission, on October 2, 2003. The Commission notes that equity compensation plans have become an important issue for shareholders. Because of the potential for dilution from such issuances, the Commission believes that shareholders should be making the determination rather than brokers on their behalf. The Commission further notes that, generally under Amex rules, only matters that are considered routine are allowed to be voted on by a broker on behalf of a beneficial owner. Because of the recent significance and concern about equity compensation plans, the Commission strongly urges the Amex to designate that shareholder approval of equity compensation plans is not a routine matter and must be voted on by the beneficial owner.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b). In approving the Amex's proposal, as amended, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general, to protect investors and the public interest, and does not permit unfair discrimination among issuers.

The Commission has long encouraged exchanges to adopt and strengthen their corporate governance listing standards in order to, among other things, restore investor confidence in the national marketplace. The Commission believes that the Amex's amended proposal, which requires shareholder approval of equity compensation plans and which follows the Commission's approval of similar proposals by the NYSE and Nasdaq,[17] is the first step under this directive because it should have the effect of safeguarding the interests of shareholders, while placing certain restrictions on Amex-listed companies.

In addition, the Commission notes that the Amex's proposal, as amended, is similar and almost identical to proposals by NYSE and Nasdaq requiring shareholder approval of equity compensation plans that have previously been approved by the Commission.[18] The Commission believes that it has already considered and addressed the issues that may be raised by the Amex's proposal when it approved the NYSE and Nasdaq's proposals. The Commission notes that approval of the Amex's proposal, as amended, will conform Amex's shareholder approval requirements for equity compensation plans with those of the NYSE and Nasdaq, and will immediately impose the same requirements on Amex issuers as those imposed upon NYSE and Nasdaq issuers. The adoption of these standards by the Amex is an important step to ensure that issuers will not be able to avoid shareholder approval requirements for equity compensation plans based on their listed marketplace.

A. Exception From Shareholder Approval for Inducement Grants

The Commission believes that the requirement that the issuance of all inducement grants be subject to review by either the issuer's independent compensation committee or a majority of the board's independent directors, under the Amex's amended proposal, should prevent abuse of this exception from shareholder approval. The Commission notes that the Amex is proposing to include a requirement, similar to the requirement under NYSE's recently approved shareholder approval rule, that, promptly following the grant of any inducement award, companies must disclose in a press release the material terms of the award, including the recipient(s) of the award and the number of shares involved.[19] The Commission notes that the Amex is also proposing a requirement, similar to the requirements under the NYSE and Nasdaq's recently approved shareholder approval rules,[20] that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. The Commission believes that these disclosure and notification requirements will provide transparency to investors and should reduce the potential for abuse of this exception for inducement grants.

In addition, the Amex proposes to limit its exception for inducement grants to new employees or to previous employees being rehired after a bona fide period of interruption of employment, and to new employees in connection with an acquisition or merger. The Commission believes that these limitations should help to prevent the inducement exception from being used inappropriately.

B. Exception From Shareholder Approval for Mergers and Acquisitions

The Commission notes that the Amex's exception from shareholder approval for mergers and acquisitions contains safeguards that should prevent abuse in this area. First, only pre-existing plans that were previously approved by the acquired company's shareholders would be available to the listed company for post-transactional grants. In addition, shares under those previously approved plans could not be granted to individuals who were employed, immediately before the transaction, by the post-transaction listed company or its subsidiaries. The Commission also notes that, under both the Amex's proposal, as amended, any shares reserved for listing in connection with a merger or acquisition pursuant to this exception would be counted by the Amex in determining whether the transaction involved the issuance of 20% or more of the company's outstanding common stock, thereby requiring shareholder approval under Section 712(b) of the Amex *Company Guide*. Finally, the Commission notes that the Amex proposes an additional requirement that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. Based on the above, the Commission believes that the Amex has provided measures to ensure that the exception for mergers and acquisitions is only used in limited circumstances, which should help reduce the potential for dilution of shareholder interests.

C. Exception From Shareholder Approval for Tax Qualified and Parallel Nonqualified Plans

The Commission believes that, given the extensive government regulation—the Internal Revenue Code and Treasury regulations—for tax qualified plans and the general limitations associated with parallel nonqualified plans, shareholders should not experience significant dilution as a result of this exception. In addition, the Commission notes that the Amex proposes to add a limitation under this exception that a plan would not be considered a nonqualified parallel under its proposal if employees who are participants in such plans receive employer contributions under the plans in excess of 25% of the participants' cash compensation. The Commission further notes that the Amex proposes an additional requirement that an issuer must notify it in writing when it uses this exception, and/or any other exception, from its shareholder approval requirement. The Commission believes that, taken together, these limitations should reduce concerns regarding abuse of this exception from the shareholder approval requirements.

In addition, the Commission notes that, similar to the exemption under Section 303A(8) of the NYSE's *Listed Company Manual*, the Amex proposes to adopt an exception from the shareholder approval requirements for an equity compensation plan that provides non-U.S. employees with substantially the same benefits as a comparable tax qualified, non-discriminatory employee benefit plan or parallel nonqualified plan that the issuer provides to its U.S. employees, but for features necessary to comply with applicable foreign tax law. The Commission believes that this change will conform Amex's shareholder approval rule to that of the NYSE and will provide greater clarity for issuers regarding tax qualified, non-

[17] *See supra* note 9.

[18] *See supra* note 9.

[19] This disclosure would, of course, be in addition to any information that is required to be disclosed in annual reports filed with the Commission. For example, Item 201(d) of Regulation S–K [17 CFR 229.201(d)] and Item 201(d) of Regulation S–B [17 CFR 228.201(d)] require issuers to present—in their annual reports on Form 10–K or Form 10–KSB—separate, tabular disclosure concerning equity compensation plans that have been approved by shareholders and equity compensation plans that have not been approved by shareholders.

[20] *See* Section 303A(8) of the NYSE's *Listed Company Manual* and NASD Rules 4310(c)(17)(A) and 4320(e)(15)(A) .

discriminatory employee benefit plans and parallel nonqualified plans for their non-U.S. employees.

D. Material Amendments to Plans

The Commission notes that the Amex proposes to provide a non-exclusive list, similar to lists found in the NYSE and Nasdaq's shareholder approval rules,[21] as to what constitutes a material amendment to a plan. As noted above, material amendments to plans will require shareholder approval under Amex rules. A material amendment under the Amex proposal, as amended, would include, but is not limited to: A material increase in the number of shares to be issued under the plan (other than to reflect a reorganization, stock split, merger, spinoff or similar transaction); a material increase in benefits to participants, including any material change to (1) permit a repricing (or decrease in exercise price) of outstanding options, (2) reduce the price at which shares or options to purchase shares may be offered, or (3) extend the duration of the plan; a material expansion of the class of participants eligible to participate in the plan; an expansion of the type of options or awards available under the plan. The Amex's proposal, as amended, also describes what would constitute a material amendment for plans containing a formula for automatic increases (such as evergreen plans) and automatic grants requiring shareholder approval.

The Commission believes that the Amex's non-exclusive list of what would constitute a material amendment to a plan provides companies with clarity and guidance for when certain amendments to plans would require shareholder approval. The Commission also believes that the Amex's proposal to conform its non-exclusive list with the NYSE and Nasdaq's rules on material amendments/revisions should help to ensure that the concept of material amendments is consistent among the markets so that differences between the markets cannot be abused.

E. Repricing of Plans

The Commission notes that, under the Amex's proposal, as amended, if a plan is amended to permit repricing, such an amendment would be considered a material amendment to a plan requiring shareholder approval. In addition, the Amex recommended in its proposal that plans meant to permit repricing should explicitly and clearly state that repricing is permitted.

The Commission believes that the Amex's proposal, as amended, should benefit shareholders by ensuring that companies cannot do a repricing of options, which can have a dilutive effect on shares, without explicit shareholder approval of such provisions and their terms. The Commission also believes that the Amex's approach to repricings is similar to the NYSE and Nasdaq's respective approaches to repricings, and should offer companies clarity and guidance as to when a change in a plan regarding the repricing of options would trigger a shareholder approval requirement.

F. Evergreen or Formula Plans and Plans Without a Formula or Limit on the Number of Shares Available

The Commission notes the Amex's proposal, as amended, provides guidance for the treatment of evergreen/formula plans. More specifically, under the Amex's proposal, as amended, if a plan contains a formula for automatic increases in the shares available or for automatic grants pursuant to a formula, such plans cannot have a term in excess of ten years unless shareholder approval is obtained every ten years. In addition, under the Amex's proposal, as amended, if a plan contains no limit on the number of shares available and is not a formula plan, then each grant under the plan will require separate shareholder approval. Furthermore, the Amex's proposal, as amended, provides that a requirement that grants be made out of treasury or repurchased shares will not alleviate the need for shareholder approval for additional grants.[22]

The Commission believes that these provisions should help to ensure that certain terms of a plan cannot be drafted so broad as to avoid shareholder scrutiny and approval. The Commission also believes that Amex's proposed rules relating to the treatment of evergreen/formula plans and plans that do not contain a formula or place a limit on the number of shares available should provide more clarity and transparency to issuers as to when shareholder approval would be required for such plans. Finally, the Commission believes that the provision ensuring that treasury and repurchased shares cannot be used to avoid these additional shareholder approval requirements strengthens the proposal and ensures that companies cannot avoid compliance with the rule.

G. Miscellaneous Provisions and Other Items

The Commission notes that the Amex's amended proposal—similar to the NYSE and Nasdaq's recently approved shareholder approval rules[23]—incorporates the term ''equity compensation'' and proposes that plans that merely provide a convenient way to purchase shares in the open market or from the issuer at fair market price on equal terms to all security holders would not require shareholder approval. The Commission believes that the Amex's proposal, as amended, is consistent with the NYSE and Nasdaq's rules in this area and should provide greater clarity with respect to which plans would and would not require shareholder approval.

The Commission notes that the Amex's proposal, as amended, provides that pre-existing plans, which were adopted prior to the SEC's approval of the Amex's proposal, would essentially be ''grandfathered'' and would not require shareholder approval unless the plans were materially amended. The Commission believes that this clarification should provide companies with guidance as to which plans would be subject to the new Amex shareholder approval requirements.

Finally, the Commission urges the Amex to quickly adopt a standard prohibiting discretionary broker voting of equity compensation plans. NASD rules do not provide for broker voting on any matters, and NYSE rules prohibit broker voting on equity compensation plans. In its approval of the NYSE and Nasdaq proposals, the Commission considered the impact on smaller issuers, such as those listed on Nasdaq and the Amex, in response to the comments received on this issue.[24] The Commission believes that the benefit of ensuring that the votes reflect the views of beneficial shareholders on equity compensation plans outweighs the potential difficulties in obtaining the vote, and, therefore, strongly recommends that the Amex quickly adopt a prohibition on broker voting of equity compensation plans.[25]

H. Summary

Overall, the Commission believes that the Amex's proposal, as amended, is similar to the NYSE and Nasdaq's recently approved shareholder approval rules.[26] The Commission therefore believes that the Amex's proposal, as amended, should provide for more clear

[21] *See supra* note 9.

[22] *See also supra* note 8.

[23] *See supra* note 9.

[24] *See also supra* notes 9 and 11.

[25] *See also supra* note 12 and accompanying text.

[26] *See supra* note 9.

and uniform standards for shareholder approval of equity compensation plans. The Commission notes that, even with the availability of the proposed limited exceptions to shareholder approval under the Amex's proposal, as amended, shareholder approval under the new standards would be required in more circumstances than under existing Amex rules. The Commission further notes that the Amex proposes to adopt a requirement that an issuer must notify it in writing when it uses one of the exceptions from the shareholder approval requirements. The Commission believes that such a requirement, coupled with the additional disclosure requirements for inducement grants, should reduce the potential for abuse of any of the exceptions.[27]

The Commission believes that the Amex's proposal, as amended, which is similar to the NYSE's shareholder approval rule and almost identical to Nasdaq's shareholder approval rule,[28] sets a consistent, minimum standard for shareholder approval of equity compensation plans. The Commission believes that the Amex's proposal, as amended, should help to ensure that companies will not make listing decisions simply to avoid shareholder approval requirements for equity compensation plans and should provide shareholders with greater protection from the potential dilutive effect of equity compensation plans. Based on the above, the Commission finds that the Amex's proposal, as amended, should help to protect investors, are in the public interest, and do not unfairly discriminate among issuers, consistent with Sections 6(b) of the Act.[29] The Commission therefore finds the Amex's proposal, as amended, to be consistent with the Act and the rules and regulations thereunder.

V. Accelerated Approval of the Amex's Proposal and Amendment Nos. 1, 2 and 3

The Commission finds good cause for approving the Amex's proposal, as amended, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Amex's proposal, as amended, is similar to the NYSE's proposal and almost identical to the Nasdaq's proposal requiring shareholder approval of equity compensation plans. Both the NYSE and Nasdaq proposals were published for comment in the **Federal Register** and recently approved by the Commission.[30] The Commission believes that it already considered and addressed the issues that may be raised by the Amex's proposal in its approval of the NYSE and Nasdaq's proposals.[31]

The Commission believes that accelerated approval of the Amex's proposal, as amended, is essential to allow for immediate harmonization of, and consistency in, the shareholder approval requirements for equity compensation plans between the Amex, the NYSE, and Nasdaq. This will prevent issuers from making listing decisions based on differences in self-regulatory organization shareholder approval requirements and should provide equal investor protection to shareholders on the dilutive effects of plans irrespective of where the security trades. The Commission further believes that making the Amex's new shareholder approval rules effective upon Commission approval will immediately impose the same requirements on Amex issuers as those imposed upon NYSE and Nasdaq issuers. Based on the above, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act[32] to approve the Amex's proposal, as amended, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Amex–2003–42) and Amendment Nos. 1, 2 and 3 are hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26103 Filed 10–15–03; 8:45 am]

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[27] *See also supra* note 19 and accompanying text.

[28] *See supra* note 9.

[29] 15 U.S.C. 78f(b)(5).

[30] *See* Securities Exchange Act Release No. 46620 (October 8, 2002), 67 FR 63486 (notice of the NYSE's proposal). The Commission also published a correction to the notice of the NYSE's proposal. *See* Securities Exchange Act Release No. 44620A (October 21, 2002), 67 FR 65617 (October 25, 2002). *See* Securities Exchange Act Release No. 46649 (October 11, 2002), 67 FR 64173 (notice of Nasdaq's proposal). *See supra* note 9.

[31] Some of the substantive provisions ultimately adopted by the NYSE and Nasdaq, and now being proposed for adoption by the Amex, were in response to these comments. The comments on the NYSE and Nasdaq proposals were also discussed in detail in the Commission's approval order of the NYSE and Nasdaq proposals. *See supra* note 9.

[32] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[33] 15 U.S.C. 78s(b)(2).

[34] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48609; File No. SR–CBOE–2003–22]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Relating to the Limitation of Liability of the Options Clearing Corporation to Exchange Members

October 9, 2003.

I. Introduction

On May 22, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to add an interpretation to its Rule 6.7. On August 12, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on August 19, 2003.[4] On September 10, 2003, the CBOE submitted Amendment No. 2 to the proposed rule change.[5] On October 6, 2003, the CBOE submitted Amendment No. 3 to the proposed rule change.[6]

The Commission received no comments on the proposed rule change,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division of Market Regulation (''Division''), Commission, dated August 11, 2003 (''Amendment No. 1''). In Amendment No. 1, the CBOE replaced the phrase ''persons associated therewith'' with the phrase ''associated persons'' in proposed Interpretation .04 to CBOE Rule 6.7.

[4] Securities Exchange Act Release No. 48320 (August 12, 2003), 68 FR 49827.

[5] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Timothy Fox, Attorney, Division, Commission, dated September 9, 2003 (''Amendment No. 2''). In Amendment No. 2, the CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that the Options Intermarket Linkage (''Linkage'') is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7. Further, the CBOE proposed that the Exchange would have no liability to its members with respect to the use, non-use or inability to use the Linkage.

[6] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Jennifer Colihan, Special Counsel, Division, Commission, dated October 3, 2003 (''Amendment No. 3''). In Amendment No. 3, which superseded and replaced Amendment No. 2 in its entirety, CBOE deleted the provisions of proposed Interpretation .04 to CBOE Rule 6.7 that provided that Linkage is a facility or service afforded by the Exchange for the purposes of CBOE Rule 6.7.

as amended. This order approves the proposed rule change, as amended, and issues notice of, and grants accelerated approval to, Amendment No. 3.

II. Description of the Proposed Rule Change

Pursuant to the Linkage Project and Facilities Management Agreement (''Agreement''),[7] the Linkage Participants, including the Exchange, are required to file a proposed rule change with the Commission to provide the Options Clearing Corporation (''OCC'') with limited liability with respect to the members'' use of the Linkage. The CBOE represents that it filed this proposed rule change to fulfill its obligation under the Agreement. The CBOE proposes to adopt Interpretation .04 to CBOE Rule 6.7 to limit the liability for the OCC with respect to CBOE members' use of the Linkage.

III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[8] and, in particular, the requirements of Section 6(b) of the Act[9] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act,[10] which requires, among other things, that the rules of the Exchange be designed to foster cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and 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, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Commission believes that this proposed rule change, as amended, should foster cooperation and should promote a relationship between the CBOE and the OCC that is conducive to the effective operation of the Linkage.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[11] for approving Amendment No. 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the CBOE proposes to eliminate a provision from proposed Interpretation .04 to CBOE Rule 6.7 that characterized Linkage as a facility or service of the Exchange for purposes of Exchange Rule 6.7. The Commission believes that removing this provision makes the CBOE's rules consistent with the rules of some of the other Exchanges recently approved by the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–22 and should be submitted by November 6, 2003.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change, as amended, (File No. SR–CBOE–2003–22) is approved, and Amendment No. 3 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26206 Filed 10–15–03; 8:45 am]

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[7] Linkage Project and Facilities Management Agreement (January 30, 2003).

[8] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] *See* Exchange Act Release Nos. 48530 (September 24, 2003), 68 FR 56357 (September 30, 2003) (SR–ISE–2003–15), and 48531 (September 24, 2003), 68 FR 56370 (SR–Phlx–2003–43).

[13] *Id.*

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48600, File No. SR–CBOE–2003–44]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., To Amend a Rule Regarding Nullification and Adjustment of Transactions

October 7, 2003.

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 October 7, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is granting accelerated approval of the proposed rule change, which will be in effect on a temporary basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its obvious error rule, CBOE Rule 6.25, on a pilot basis. Proposed new language is *italicized*.

* * * * *

Rule 6.25 Nullification and Adjustment of Electronic Transactions

(a)–(e) No Change.

Interpretations and Policies.....

.03 (a) Trades may be adjusted or nullified when the execution price of the trade is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option under Rule 8.7(b)(4), so long as such amount is $0.50 or more or $0.25 or more for options priced under $3. For purposes of this subparagraph, the Theoretical Price of an option is the last bid (offer) price, just prior to the trade, from the exchange providing the most volume in the option with respect to an erroneous bid (offer) entered on the Exchange. If there are no quotes for comparison purposes, then the Theoretical Price of an option is as determined by two Trading Officials. CBOE will use the volume figures for

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

that day (up to the time of the transaction in question) to determine which exchange provides the most volume. If CBOE is the volume leader, it will use volume figures from the exchange with the next highest volume level.

(b) This Interpretation expires upon final approval of SR–CBOE–2001–04 or December 1, 2003, whichever occurs earlier.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 29, 2003, the Commission granted partial accelerated approval on a pilot basis of a provision of CBOE's proposed obvious error rule that allows for the adjustment and nullification of trades resulting from verifiable disruptions or malfunctions of Exchange systems.[3] According to CBOE, while approval of this section provides a degree of relief to market makers and Designate Primary Market Makers (''DPMs'') who, through no fault of their own, execute trades electronically based on erroneous prices, it does not provide any protection against transactions executed at obviously erroneous prices that are not the result of Exchange systems disruptions. The purpose of this proposal, therefore, is to request accelerated approval, of new temporary Interpretation .03 to CBOE Rule 6.25, which is substantially similar to the SBT trade nullification rule (CBOE Rule 43.5) provision relating to obvious pricing errors, as described below.[4]

Proposed Interpretation .03 to CBOE Rule 6.25 will allow for the adjustment or nullification of trades when the execution price of the trade is higher or lower than the ''Theoretical Price'' for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the option under CBOE Rule 8.7(b)(4), provided the amount is $0.50 or more or $0.25 or more for options priced under $3. For purposes of this Interpretation, the Theoretical Price of an option is defined as the last bid (offer) price, just prior to the trade, from the exchange providing the most volume in the option with respect to an erroneous bid (offer) entered on the Exchange. If there are no quotes for comparison purposes, then the Theoretical Price of an option is as determined by two Trading Officials. CBOE will look to the volume figures for that day, up to the time of the transaction in question, to determine which exchange provides the most volume. If CBOE is the volume leader, it will use volume figures from the exchange with the next highest volume level.

The Exchange represents that approval is both necessary and justified for several reasons. First, as indicated above, the Commission has already approved a substantially similar rule provision in the context of CBOE's SBT. The SBT rules were published for comment and the Commission received no negative comments. Second, and most important, the rule is necessary from a protective standpoint: trades executed at obviously erroneous prices can have extreme financial ramifications on a market maker and the inability to seek relief for obvious errors imposes a form of strict liability trading upon participants. The Exchange is not requesting relief from errors that do not qualify as obvious, and readily accepts that in some instances the cost of doing business means that market makers must honor trades executed at inaccurate prices. CBOE believes that requiring a market maker to honor trades executed at prices that are not even remotely close to theoretical value, will have nothing but a chilling effect and cause those market participants to stop quoting or reduce their sizes. CBOE notes that both the International Securities Exchange (''ISE'') and Pacific Exchange (''PCX'') have ''clearly erroneous'' rules, and CBOE represents that the obvious pricing component that it proposes herein is much more restrictive than either of those Exchanges' rules. According to CBOE, this means that the same trade executed on CBOE and ISE or PCX could be nullified or adjusted on the PCX or ISE while it would stand on CBOE. Accordingly, CBOE believes that competitive forces necessitate this proposal.

The Exchange requests approval of this Interpretation on a temporary basis until the earlier of final Commission approval of File No. SR–CBOE–2001–04 or December 1, 2003. The procedural requirements necessary for implementation of CBOE Rule 6.25 (*i.e.*, Sections (b)–(e)) were approved by the Commission on a pilot basis on September 29, 2003 and will be utilized to implement proposed Interpretation .03.

2. Statutory Basis

By providing for the adjustment or nullification of trades executed at clearly erroneous prices, the Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act,[6] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CBOE did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and

[3] *See* Securities Exchange Act Release No. 48556 (September 29, 2003), 68 FR 57716 (October 6, 2003), (File No. SR–CBOE–2001–04). The Exchange's proposed obvious error rule, CBOE Rule 6.25, defines six instances that qualify as ''obvious errors'' and hence are subject to adjustment or nullification. The Commission approved on a temporary basis until December 1, 2003 the following sections of CBOE Rule 6.25: (a)(3) and (b)–(e). The following sections of CBOE Rule 6.25 have not yet been approved: (a)(1), (2), (4)–(6) and Interpretations .01 and .02.

[4] The Commission approved CBOE Rule 43.5 as part of the Exchange's screen-based trading (''SBT'') rules. *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR–CBOE–2000–55). CBOE represents that SBT rules have no application to trading that is not effected through the SBT.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–44 and should be submitted by November 6, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval on a Pilot Basis

After careful review, the Commission finds that proposed Interpretation .03 to CBOE Rule 6.25 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed Interpretation is consistent with the requirements of Section 6(b)(5)[8] of the Act, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade is such that execution of a trade at that particular price indicates that an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether such an ''obvious error'' has occurred should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that CBOE's proposed Interpretation .03 to CBOE Rule 6.25 establishes such specific and objective criteria for determining when a trade may involve an ''obvious price error,'' and thus may be adjusted or nullified in a fair and non-discriminatory manner. The Commission notes that if there are no quotes for comparison, CBOE has specified that trading officials may determine the Theoretical Price, which would then be used to adjust or nullify transactions resulting from an obvious price error.

The Commission finds good cause, pursuant to Section 6(b)(5)[9] and Section 19(b)[10] thnsp; of the Act, to accelerate approval of Interpretation .03 to CBOE Rule 6.25 on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the provisions of the proposal are substantially similar to CBOE's SBT obvious price error rule, CBOE Rule 43.5(b)(5), which the Commission has approved.[11] The Commission also notes that it has recently approved ''obvious error'' rules for ISE and PCX that provide procedures for the nullification or adjustment of a trade.[12] Furthermore, the provisions of the proposed rule change would be in effect on a temporary basis until the earlier of approval of File No. SR–CBOE–2001–04 or December 1, 2003, whichever occurs earlier. Finally, the Commission notes that the procedures to implement Interpretation .03 to CBOE Rule 6.25 were adopted on a pilot basis in Securities Exchange Act Release No. 48556.[13] The Commission finds, therefore, that granting accelerated approval of the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, is appropriate and consistent with Section 6(b)(5)[14] of the Act.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that Interpretation .03 to CBOE Rule 6.25, as set forth in the proposed rule change be and hereby is approved on an accelerated basis. Interpretation .03 to CBOE Rule 6.25 specifies that the Interpretation will expire upon final Commission approval of File No. SR–CBOE–2001–04 or December 1, 2003, whichever occurs earlier.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26207 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b).

[11] *See* Securities Exchange Act Release No. 47628 (April 3, 2003), 68 FR 17697 (April 10, 2003) (File No. SR–CBOE–00–55).

[12] *See* Securities Exchange Act Release No. 48538 (September 25, 2003), 68 FR 56858 (October 2, 2003) (File No. SR–PCX–2002–01); and Securities Exchange Act Release No. 48097 (June 26, 2003), 68 FR 39604 (July 2, 2003) (File No. SR–ISE–2003–10).

[13] *See supra* note 3.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48606; File No. SR–NASD–2003–134]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. To Amend Rule 4710 To Allow Nasdaq National Market Execution System Order Entry Firms To Automatically Internalize in SuperMontage

October 8, 2003.

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 22, 2003, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. On September 26, 2003, Nasdaq amended the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Rule 4710 to allow the Nasdaq National Market Execution System (''NNMS'' or ''SuperMontage'') to automatically

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation (''Division''), Commission, dated September 25, 2003 (''Amendment No. 1''). In Amendment No. 1, Nasdaq expands upon the purpose of the proposed rule change.

match any non-directed buy and sell quotes/orders entered by an NNMS Order Entry Firm against the quotes/orders of that same NNMS Order Entry Firm on the other side of the market if such a quote/order on the other side of the market is at the best bid/offer in Nasdaq. Nasdaq expects to implement the proposed rule change within 60 days after approval by the Commission. The text of the proposed rule change is set forth below. Proposed new language is in italic; proposed deletions are in [brackets].

4710. Participant Obligations in NNMS

(a) No change.
(b) Non-Directed Orders
(1) No change.
(A) No change.
(B) No change.
(i) through (iii) No change.
(iv) Exceptions—The following exceptions shall apply to the above execution parameters:

(a) If a Nasdaq Quoting Market Participant *or NNMS Order Entry Firm* enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's *or NNMS Order Entry Firm's* own Quote/Order if the participant is at the best bid/best offer in Nasdaq. [This exception shall not apply to Non-Directed Orders entered by NNMS Order Entry Firms.] Nasdaq Quoting Market Participants *and NNMS Order Entry Firms* may [, and NNMS Order Entry Firms must,] avoid any attempted automatic system matching permitted by this paragraph through the use of an anti-internalization qualifier (AIQ) quote/order flag containing the following values: ''Y'' or ''I'', subject to the following restrictions:

Y—if the Y value is selected, the system will execute the flagged quote/order solely against attributable and non-attributable quotes/orders (displayed and reserve) of Quoting Market Participants and NNMS Order Entry Firms other than the party entering the AIQ ''Y'' flagged quote/order. If the only available trading interest is that of the same party that entered the AIQ ''Y'' flagged quote/order, the system will not execute at an inferior price level, and will instead return the latest entered of those interacting quote/orders (or unexecuted portions thereof) to the entering party.

I—if the I value is selected, the system will execute against all available trading interest, including the quote/orders of the NNMS Order Entry Firm or Nasdaq Quoting Market Participant that entered the AIQ ''I'' flagged order, based exclusively on the execution algorithm selected when entering the AIQ I flagged quote/order.

[The I value described above shall be available for the use of Nasdaq Quoting Market Participants on May 12, 2003.]

(b) No change.
(2) through (8) No change.
(c) through (e) 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, Nasdaq included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq 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

Currently, SuperMontage rules provide a general exception to the system's execution algorithms that allow non-directed orders entered by NNMS Market Makers and NNMS ECNs to first match off against any quotes/order previously entered by that same party on the opposite side of the market if that previously entered quote/order is at the best bid/offer in Nasdaq.[4] Market participants can voluntarily avoid or control this automatic matching functionality through use of anti-internalization qualifiers that will either skip quotes/orders entered by them on the opposite side of the market or execute against them based solely on the execution algorithm selected.

NNMS Order Entry Firms are currently prohibited from using this automatic matching functionality and are instead required to enter all non-directed orders with an anti-internalization qualifier that prevents an automatic match. Nasdaq represents that, in response to requests from NNMS Order Entry Firms, it seeks to give NNMS Order Entry Firms the same capability as all other NNMS users to have their non-directed orders match off against quote/orders previously entered by them on the opposite side of the market if those previously entered quotes/orders are at the best bid or offer price in Nasdaq, as appropriate. Like all other system users, NNMS Order Entry Firms would have the voluntary ability to prohibit or control any automatic matching through the use of an anti-internalization qualifier. Nasdaq believes that providing NNMS Order Entry Firms with the opportunity to have their quotes/orders on opposite sides of the market match off against each other will provide an additional incentive for such firms to post increased liquidity in the SuperMontage system, thereby benefiting all users.[5]

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[6] in general, and with Section 15A(b)(6) of the Act,[7] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with person engaged in regulating, clearing, settling, processing information with respect to, and 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

[4] Nasdaq clarified that the rules governing UTP Exchanges do not explicitly permit this function, although NASD Rule 4710(e) contemplates that such a function may be provided by Nasdaq to a UTP Exchange pursuant to contract. Consequently, at the request of Nasdaq, Commission staff has removed a reference to UTP Exchanges contained in the original filing. Telephone conversation between Thomas P. Moran, Associate General Counsel, Nasdaq, and Ann E. Leddy, Attorney, Division, Commission (October 8, 2003).

[5] *See* Amendment No. 1, *supra* note 3.

[6] 15 U.S.C. 78*o*–3.

[7] 15 U.S.C. 78*o*–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended, or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–134 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26099 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48603; File No. SR–PCX–2003–48]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to the Establishment of a New Total Order Imbalance Indicator

October 8, 2003.

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 September 22, 2003, the Pacific Exchange, Inc. (''PCX'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On September 30, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange facility (''ArcaEx''), the equities trading facility of PCXE, by: (1) amending PCXE Rule 1.1(q) to add the definition of Total Imbalance and Market Imbalance; and (2) amending PCXE Rule 7.35 to add a new Total Imbalance indicator to its Market Order Auction and Trading Halt Auction display.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

PCX Equities, Inc.

Rule 1—Definitions

Rule 1.1—(No change).

(a)–(p)—(No change).

(q) For the purposes of the Opening Auction, the Market Order Auction and the Trading Halt Auction, as the case may be[,]*:*

(*1*) the term ''Imbalance'' shall mean the number of buy or sell shares that [can not] *cannot* be matched with other shares at the Indicative Match Price at any given time.

(A) the term ''Total Imbalance'' shall mean the net Imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction.

(B) the term ''Market Imbalance'' shall mean the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

(r)–(aaa)—No change.

* * * * *

Rule 7—Equities Trading

Opening Session Auctions

Rule 7.35 (No change).

(a)–(b)—(No change.)

(c) Market Order Auction.

(1) Publication of Indicative Match Price and Imbalances

(A) Beginning at 5:00 am (Pacific Time), and *updated real-time thereafter,* [various times thereafter as determined from time to time by the Corporation,] the Indicative Match Price of the Market Order Auction and the volume of *Market and Limit orders* available to trade at such price, *and the Market and Total Imbalance associated with the Market Order Auction, if any,* shall be published via electronic means [as determined from time to time by the Corporation. If such a price does not exist (*i.e.*, there is an Imbalance of market orders), the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

Example 1:

(1) Market order to buy 5000 shares;

(2) Auction-Only Limit Order to sell 1000 at 50;

(3) Limit order to sell 1000 at 50.50; and

(4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, a buy Market Imbalance of 2500 shares, and a Total Imbalance of 2500 shares.

Example 2:

(1) Market order to buy 3000 shares;

(2) Market order to sell 1000 shares;

(3) Limit order to sell 1000 shares at 41.00; and

(4) Limit order to sell 1000 shares at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Peter D. Bloom, Managing Director, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the PCX submitted a new Form 19b–4, which replaced the original filing in its entirety.

41.25 and a match volume of 3000 shares and will not publish an Imbalance.

(B) *If an Indicative Match Price does not exist, the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.* [Beginning at 5:00 am (Pacific Time), and various times thereafter as determined from time to time by the Corporation, the market order Imbalance associated with the Market Order Auction, if any, shall be published via electronic means as determined from time to time by the Corporation.]

(C) If the difference between the Indicative Match Price and the closing price of the previous trading day's normal market hours, as determined by the Consolidated Tape, is equal to or greater than a pre-determined amount, as determined from time to time by the Corporation, the Archipelago Exchange will assign a ''SIG'' designator to such Indicative Match Price and publish such designator via electronic means as determined from time to time by the Corporation.

[Example:

(1) Market order to buy 5000 shares;

(2) Auction-Only Limit Order to sell 1000 at 50;

(3) Limit order to sell 1000 at 50.50; and

(4) Limit order to sell 500 at 50.75.

The Archipelago Exchange will publish an Indicative Match Price of 50.75, a volume of 2500 shares, and a buy Imbalance of 2500 shares.]

[Example:

(1) Market order to buy 3000 shares;

(2) Market order to sell 1000;

(3) Limit order to sell 1000 at 41.00; and

(4) Limit order to sell 1000 at 41.25.

The Archipelago Exchange will publish an Indicative Match Price of 41.25 and a volume of 3000 shares and will not publish an Imbalance.]

(2)–(3)—(No change).

(d) Re-Opening After Trading Halts. To re-open trading in a security following a trading halt in that security, the Archipelago Exchange shall conduct a Trading Halt Auction, as described below:

(1)—(No change).

(2) Publication of Indicative Match Price and Imbalances.

(A) Immediately after trading is halted in a security, and *updated real-time thereafter* [various times thereafter as determined from time to time by the Corporation], the Indicative Match Price of the Trading Halt Auction and the volume available to trade at such price, shall be published via electronic means [as determined from time to time by the Corporation]. If such a price does not exist [(*i.e.*, there is an Imbalance of market orders)], the Archipelago Exchange shall indicate via electronic means that an Indicative Match Price does not exist.

(B) Immediately after trading is halted in a security, and [various times thereafter as determined from time to time by the Corporation] *updated real-time thereafter,* the [m]*M*arket [order] *and Total* Imbalance associated with the Trading Halt Auction, if any, shall be published via electronic means [as determined from time to time by the Corporation]. *Market orders shall be included for purposes of calculating the Total Imbalance and Market Imbalance. Limit orders shall only be included in the Total Imbalance calculations.*

(C)—(No change).

(3)–(6)—(No change).

(e)–(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 PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

As part of its continuing efforts to enhance participation on ArcaEx, the PCX is proposing to add a new imbalance indicator to its Market Order Auction and Trading Halt Auction display to reflect the total net imbalance of market and limit orders at the indicative match price. This imbalance indicator will be in addition to the already existing market imbalance indicator that displays the imbalance of unmatched market orders. The PCX believes that the display of the new total imbalance indicator will provide ETP Holders and Sponsored Participants (collectively ''Users'') with more information regarding auction imbalances. Furthermore, the PCX proposes to add the terms ''Total Imbalance'' and ''Market Imbalance'' to PCXE Rule 1.1(q). The PCX is also proposing to amend PCXE Rule 7.35(c) and (d) to clarify that the published Total Imbalance or Market Imbalance (if any exist) may contain market and/or limit orders.

Currently, PCXE Rule 1.1(q) refers to the term ''Imbalance.'' The PCX proposes to amend PCXE Rule 1.1(q) to define the terms ''Total Imbalance'' and ''Market Imbalance'' for clarity. Total Imbalance shall mean the net imbalance of buy (sell) orders at the Indicative Match Price for all orders that are eligible for execution during the applicable auction. The term ''Market Imbalance'' shall mean the imbalance of any remaining buy (sell) Market Orders that are not matched for execution during the applicable auction.

The PCXE's current rules governing the publication of imbalances associated with its Market Order Auction and Trading Halt Auction are set forth in PCXE Rule 7.35. The PCX now proposes to add to PCXE Rule 7.35(c) and (d) a Total Imbalance indicator. The current rule only refers to publishing a Market Imbalance. In order to provide more information about the auction imbalance during the Market Order Auction and Trading Halt Auction, the PCX proposes to also publish the Total Imbalance, if any exists, to reflect the fact that the total size of the order imbalance includes both market and limit orders. The dissemination of this new imbalance indicator does not impact the operation of the existing Market Order Auction or Trading Halt Auction processes as described in PCXE Rule 7.35(c) and (d), respectively.

The PCX believes that the dissemination of the aforementioned imbalance indicators would provide Users with additional information with which to make trading decisions during the auction process. Accordingly, this would facilitate enhanced order interaction and foster price competition. The PCX believes that the proposed rule change, as amended, would provide a more efficient and effective market operation, and would enhance the information available to investors.

2. Statutory Basis

The PCX believes that the proposed rule change, as amended, is consistent with Section 6(b)[4] of the Act, in general, and further the objectives of Section 6(b)(5),[5] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

the mechanisms of a free and open market and to protect investors and the public interest. In addition, the PCX believes that the proposed rule change, as amended, is consistent with provisions of Section 11A(a)(1)(B) of the Act,[6] which states that new data processing and communications techniques create an opportunity for more efficient and effective market operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) by order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–48 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26100 Filed 10–15–03; 8:45 am]

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[6] 15 U.S.C. 78k(a)(1)(B).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48598; File No. SR–PCX–2003–46]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Transmission of Identity Orders

October 7, 2003.

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 September 5, 2003, the Pacific Exchange, Inc. (''PCX'') filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. On September 30, 2003 the PCX submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), proposes to amend its rules governing the Archipelago Exchange (''ArcaEx''), the equities trading facility of PCXE. Specifically, the PCX proposes to offer an identity order feature to its Equities Trading Permit (''ETP'') Holders.[4] In accordance with the proposal, an ETP Holder may affirmatively choose, on an order-by-order basis, to display orders with its unique ETP identifier (hereinafter referred to as the ''ETPID''). To facilitate the change, the PCX proposes to amend PCXE Rules 7.7(b) (''Transmission of Bids or Offers'') and 7.36(b) (''Order Ranking and Display'') to clarify and reconcile when ETP Holders may display their identities. The PCX also wishes to make additional changes to PCXE Rule 7.7(a). The text of the proposed rule change is below. Proposed new language is italicized; deletions are in brackets.

* * * * *

Rule 7.7(a). [The names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP.] No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.

(b) Except as otherwise permitted by these Rules, no ETP Holder shall transmit through the facilities of the Corporation any information regarding a bid, offer, [or] other indication of an order*, or the ETP Holder's identity* to a non-holder of an ETP *or to another ETP Holder* until *permission to disclose and transmit* such bid, offer, [or] other indication of an order*, or the ETP Holder's identity* has been [disclosed and permission to transmit such information has been] obtained from the originating ETP Holder *or the originating ETP Holder affirmatively elects to disclose its identity.*

* * * * *

Order Ranking and Display

Rule 7.36—No change.

(a)(1)–(a)(2)—No change.

(b) Display. *Except as otherwise permitted by Rule 7.7,* [A] *all* orders at all price levels in the Display Order Process of the Arca Book shall be displayed to all Users and other market participants on an anonymous basis.

(c)—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 PCX 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.

[3] *See* letter from Peter Bloom, Managing Director of Regulatory Policy, PCX, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated September 29, 2003 (''Amendment No. 1''). In Amendment No. 1, the PCX replaced its proposed rule change in its entirety.

[4] *See* PCXE Rule 1.1(n) for the definition of ''ETP Holder.''

comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX 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

A. Introduction

The PCX proposes to offer ETP Holders the ability to display their identities with orders entered into the ArcaEx. The identity order feature would offer an ETP Holder the choice to display its unique ETPID with a specified order. Alternatively, an ETP Holder may choose to remain anonymous.

Any identity orders entered into ArcaEx would be included in the Arca Book data feed that ArcaEx makes available free of charge to Users [5] and other subscribers. Identity orders would also be included in the ArcaEx limit order book that is displayed for free on the ArcaEx Web site.

ArcaEx would process orders designated as identity orders no differently from other orders sent to ArcaEx. PCXE Rules 7.36 (Order Ranking and Display) and 7.37 (Order Execution) set forth the order interaction process for orders entered on the ArcaEx. Orders designated as identity orders would be ranked, displayed, and executed under the same criteria (under PCXE Rules 7.36 and 7.37) as anonymous orders in the ArcaEx. ArcaEx has no capacity limitations on the number of identity orders that could be displayed for an individual security.

The purpose of the identity order feature is to provide more visibility to those ETP Holders who may choose to identify their ETPIDs with their trading interest in a particular security. The PCX believes that the identity order feature would benefit investors by increasing market transparency in an automatic execution venue such as ArcaEx. By providing a mechanism by which ETP Holders could display their identities, ArcaEx hopes to attract more orders and contribute more liquidity to the market while adding to the transparency of trading interest.

B. Order Interaction

As with all orders entered on ArcaEx, identity orders would be centrally processed for execution by computer, subject to the price, time, and priority rules that govern the automated matching and execution of orders. No ETP Holder has any special control over the timing of an execution or any special order handling advantages on ArcaEx. All Users would see and be privy to the same orders ranked in the ArcaEx Book. No User would have special access to trading interest that is not also available to others on ArcaEx, and all Users would have the equivalent opportunity to receive fills.

An ETP Holder displaying an identity order would be subject to the same rules applicable to the ETP Holder's orders entered on ArcaEx on an anonymous basis.[6] Use of the identity order by ETP Holders would not require registration as a Market Maker [7] on ArcaEx under PCXE rules. Market Maker status is available only to those ETP Holders who seek registration as Market Makers.[8] Only those ETP Holders that seek registration as a Market Makers are required to maintain two-sided markets in return for the benefits of Market Maker status, *e.g.*, the ArcaEx rebates to Market Makers for the execution of ''Q Orders'' [9] and the ability to obtain exempt credit under Regulation T. ETP Holders that elect to use the identity order would have no commitment to ArcaEx to maintain two-sided identity orders on a continuous basis.

C. Market Makers

With respect to Market Makers, the PCX's proposal would not alter the responsibilities of Market Makers, nor does it change the manner in which Market Maker orders would be processed and executed within ArcaEx. Market Makers are obligated to enter and maintain continuous, two-sided limit orders in the securities in which they are registered. There would be no limit, however, on the number of orders a Market Maker may enter into ArcaEx, whether anonymous or identity orders. A Market Maker would be able to maintain multiple proprietary orders, including multiple Q Orders in the securities in which were registered. Under the proposal, Market Makers would be permitted to use the identity order feature for any and all of the orders that they are eligible to use. As with any identity order, a Market Maker's ETPID would be displayed in relation to a specified order. A Market Maker may choose to make the Q Order or any other order an identity order.[10]

Whether utilizing anonymous orders or identity orders, Market Makers would remain subject to the rules governing their conduct and the handling of orders. Specifically, PCXE Rule 7.26(a) states that a Market Maker must maintain an information barrier between the market making activities and other business activities, including conducting a public securities business and acting as a General Authorized Trader (''GAT'') [11] on ArcaEx. This separation between the Market Making activities of an ETP Holder and the handling of public orders is an important mechanism to separate the Market Maker from knowledge of pending transactions, order flow information, and other sensitive information at other parts of the firm.[12] As long as the Market Maker has an effective system of internal controls that operate to prevent the Market Making desk from obtaining knowledge of customers' limit orders that are received for execution by other business units of the broker-dealer, the Market Maker does not have responsibilities to protect customer limit orders received by other parts of the firm.[13]

[5] *See* PCXE Rule 1.1(yy) for the definition of ''User.''

[6] For example, ETP Holders would remain prohibited from trading ahead of customer limit orders pursuant to PCXE Rule 6.16(a), which provides that ''[n]o ETP Holder may accept and hold an unexecuted limit order from its customer (whether its own customer or a customer of another ETP Holder) and continue to trade on the Corporation the subject security for its own account at prices that would satisfy the customer's limit order, without executing that limit order; provided, however, that an ETP Holder may negotiate specific terms and conditions applicable to the acceptance of limit orders. * * *''

[7] See PCXE Rule 1.1(u) states that ''[t]he term ''Market Maker'' shall refer to an ETP Holder that acts as a Market Maker pursuant to Rule 7.''

[8] PCXE Rule 7.20(a) states that ''[n]o ETP Holder shall act as a Market Maker in any security unless such ETP Holder is registered as a Market Maker in such security by the Corporation pursuant to this Rule. * * *'' PCXE Rule 7.23 and Rule 7.34(b) set forth the obligations of market makers and apply only to those ETP Holders who are registered as Market Makers. For example, a Market Maker must maintain a two-sided order or ''Q Order'' in every stock in which the Market Maker is registered.

[9] *See* PCXE Rule 7.31(k) for the definition of ''Q Order.''

[10] As stated above, ArcaEx has no capacity limitations on the number of identity orders that can be displayed for an individual security.

[11] Rule 1.1(*o*) defines a General Authorized Trader ''GAT'' to mean ''an authorized trader who performs only non-market making activities on behalf of an ETP Holder.''

[12] *See* PCXE Rule 7.26(b).

[13] For example, where an ETP Holder has an agency desk and a Market Maker desk, both desks will be permitted to use identity orders. Should an agency desk utilize identity orders to represent customer orders, Market Makers from the same firm would not have responsibilities to protect the customer orders, assuming an appropriate information barrier is in place. Once the agency desk displays an identity order in the ArcaEx limit order book, the price time rules in the automated execution system of the ArcaEx ensure that the

D. Section 11(a) Under the Act

The PCX believes that the use of identity orders on ArcaEx would not confer ETP Holders any time and place advantages over other orders on ArcaEx. As such, the introduction of identity orders would not change the analysis of Section 11(a) of the Act [14] to the PCX provided to the Commission prior to the approval of ArcaEx.[15] Accordingly, the introduction of the identity order would not change the PCX's conclusion that the order execution algorithm of ArcaEx complies with the requirements of, and satisfies the policy concerns underlying, Section 11(a) of the Act [16] without requiring public customer priority.

Section 11(a) of the Act [17] prohibits a member of a national securities exchange from effecting transactions on the exchange for its own account, the account of an associated person, or an account in which it or an associated person exercises investment discretion (collectively, ''covered accounts''), unless an exception applies. In enacting this provision, Congress was concerned about members benefiting in their principal transactions from special ''time and place'' advantages associated with floor trading—such as the ability to ''execute decisions faster than public investors.'' [18] The Commission, however, has adopted a number of exceptions to the general statutory prohibition for situations in which the principal transactions contribute to the fairness and orderliness of exchange markets or do not reflect any time and place trading advantages. The PCX believes that the use of identity orders on ArcaEx would not alter Rule 11a2–2(T),[19] commonly referred to as the ''effect versus execute'' rule,[20] which provides an exemption that applies to the PCX. The effect versus execute rule imposes four requirements ''designed to put members and non-members on the same footing, to the extent practicable, in light of the purposes of Section 11(a).'' [21] Given ArcaEx's automated matching and execution services, no ETP Holder enjoys any special control over the timing of execution or special order handling advantages, as all orders would be centrally processed for execution by computer, rather than being handled by a member through bids or offers made on the trading floor. Because ArcaEx's open, electronic structure is designed to prevent any ETP Holders from gaining any time and place advantages, the PCX believes that ArcaEx satisfies the four requirements of the ''effect versus execute'' rule as well as the general policy objectives of Section 11(a) of the Act.[22]

E. Surveillance

According to the PCX, PCXE has developed procedures to maintain a high level of surveillance of ETP Holders and their use of specific order types, including those orders designated as identity orders, for executions that take place on ArcaEx. Among its procedures, the PCX has developed mechanisms to help detect manipulation of prices on ArcaEx whether or not through use of identity orders.

Use of identity orders would help an ETP Holder to advertise the trading interest and activity the firm has in a particular stock. Should an ETP Holder attract order flow and wish to match buy and sell orders for execution away from the centralized limit order book of ArcaEx, an ETP Holder would have to report that trade to a marketplace that allows broker-dealers to ''print'' trades to the tape. Specifically, broker-dealers in the Nasdaq dealer market are permitted to define parameters of a trade (*i.e.*, price) without bringing the trade to an exchange system for validation. By design, the Nasdaq dealer market enables broker-dealers to control trade execution outside of a centralized price validation system. The regulation of these trades is the responsibility of the marketplace that supports and encourages the execution of these trades away from an exchange infrastructure. Any executions by a broker-dealer brought to a marketplace that permits ''printing'' are trades appropriately within the jurisdiction of the alternate marketplace.[23] Should Nasdaq (or other marketplace) determine that it requires information or assistance from the PCX for the surveillance of these trades, the PCX would provide such information and assistance.

To facilitate the identity order feature, the Exchange proposes to make changes to PCXE Rules 7.7(b) and 7.36(b). Currently, PCXE Rule 7.7(b) prohibits an ETP Holder from transmitting information ''regarding a bid, offer or other indication of an order'' to a non-ETP Holder until the bid, offer or other indication information has been disclosed and permission to transmit the information has been obtained from the originating ETP Holder. Conversely, PCXE Rule 7.36(b) provides for anonymity in displaying orders in the Display Order Process [24] of the ArcaEx Book.[25]

The Exchange wishes to revise PCXE Rule 7.36(b) to state that except as provided by PCXE Rule 7.7(b), all orders at all price levels will continue to be displayed on an anonymous basis. Therefore, a User could choose to either display its ETPID or remain anonymous.

customer order will be executed in a fair and consistent manner. A Market Maker from that same firm is subject to the same rules, and importantly, has no special advantage over the execution of other orders in the book, including the customer order represented by the agency desk. The price time priority granted to orders in the ArcaEx book dictate that orders with the best price are executed first, and, where there is more than one order at the best price, the order first in time receives an execution. With these rules, a Market Maker's order at a price equal to the price of other orders in the ArcaEx book, would receive an execution over these orders only if the Market Maker's order was entered first. A Market Maker's order entered *after* other orders in the book can receive an execution over other orders in the book only if the Market Maker order is at a better price (by a minimum of one penny) than the orders displayed. These rules for the ranking, display and interaction of orders apply equally to all orders entered by all Users of the ArcaEx.

[14] 15 U.S.C. 78k.

[15] *See* Letter, dated April 19, 2001 from Cherie MacCauley, Counsel to PCX, Wilmer Cutler & Pickering to John Polise, Division of Market Regulation.

[16] 15 U.S.C. 78k(a).

[17] 15 U.S.C. 78k(a).

[18] *See* Securities Exchange Act Release No. 14563 (March 14, 1978), 43 FR 11542 (March 17, 1978); Securities Exchange Act Release No. 14713 (April 28, 1978), 43 FR 18557 (May 1, 1978); Securities Exchange Act Release No. 15533 (January 29, 1979), 44 FR 6093 (Jan. 31, 1979). The 1978 and 1979 Releases cite the House Report at 54–57.

[19] 17 CFR 240.11a2–2(T).

[20] Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (1) must transmit the order from off the exchange floor; (2) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; (3) may not be affiliated with the executing member; and (4) with respect to an account over which the member or an associated person has investment discretion, neither the member nor the associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

[21] *See* 1978 Release II at 18560.

[22] 15 U.S.C. 78k(a).

[23] The ability of broker-dealers to advertise trading interest is not limited to the use of exchange trading systems. Broker-dealers can display indications of interest through services such as Autex (offered by Thompson Financial). Autex permits broker-dealers to display the price and size of indications of interest and communicate with other subscribers interested in facilitating trades. While not a trading system, Autex allows broker-dealers to advertise their trading activity and attract trading interest. Broker-dealers finding counterparties through this service must bring such trades to Nasdaq's dealer market which permits the printing of trades. Whether the prices of these transactions are executed within the standards of best execution or other standards of appropriate order handling is the business of the regulator for the marketplace supporting the ''printing'' infrastructure.

[24] *See* PCXE Rule 7.36(a)–(c) for a discussion of the Display Order Process.

[25] *See* PCXE Rule 1.1(a) for a definition of Arca Book.

Additionally, the Exchange proposes to revise PCXE Rule 7.7(a)[26] to reflect the proposed changes to PCXE Rules 7.7(b) and 7.36(b).

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act,[27] in general, and Section 6(b)(5) of the Act,[28] in particular, in that it will promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–2003–46 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–P

[26] PCXE Rule 7.7(a) provides that ''[t]he names of ETP Holders bidding for or offering securities through the use of the facilities of the Corporation shall not be transmitted from the facilities of the Corporation to a non-holder of an ETP. No ETP Holder having the right to trade through the facilities of the Corporation and who has been a party to or has knowledge of an execution shall be under obligation to divulge the name of the buying or selling firm in any transaction.''

[27] 15 U.S.C. 78f(b).

[28] 15 U.S.C. 78f(b)(5).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48601; File No. SR–Phlx–2003–51]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Listing Standards Regarding Issuers' Audit Committees and Delisting Procedures

October 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 14, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 849, Audit Committee/Conflicts of Interest, and Phlx Rule 811, Delisting Policies and Procedures. The majority of the proposed rule changes are intended to comply with the requirements of new Commission Rule 10A–3 under the Act.[3] Specifically, the new listing standards proposed to be adopted by the Exchange pursuant to Commission Rule 10A–3 would require that:

(1) Each member of the audit committee of the issuer must be independent according to specified criteria (proposed Phlx Rule 849(b)(1));[4]

(2) The audit committee of each issuer must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer, and each such registered public accounting firm must report directly to the audit committee (proposed Phlx Rule 849(b)(2));

(3) Each audit committee must establish procedures for the receipt, retention and treatment of complaints regarding accounting, internal accounting controls or auditing matters, including procedures for the confidential, anonymous submission by employees of the issuer of concerns regarding questionable accounting or auditing matters (proposed Phlx Rule 849(b)(3));

(4) Each audit committee must have the authority to engage independent counsel and other advisors, as it determines necessary to carry out its duties (proposed Phlx Rule 849(b)(4)); and

(5) Each issuer must provide appropriate funding for the audit committee (proposed Phlx Rule 849(b)(5)).

Additional changes relating to audit committee charters, audit committee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.10A–3.

[4] Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are ''independent directors'' as defined in Phlx Rule 851. This current requirement would remain in effect pending the implementation of the higher standards proposed in this rule change. (Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on their boards. It also defines ''independent director'' as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.)

composition requirements, audit committee approval of related party transactions, and revisions to the Exchange's delisting rule are also proposed.[5]

Below is the text of the proposed rule change. Proposed new language is italicized; deletions are in brackets.

Rule 849. Audit Committee/Conflicts of Interest

Rule 849

(a) A listed company shall establish and maintain an audit committee, a majority of the members of which shall be independent directors, as defined in Rule 851. [The audit committee shall conduct an appropriate review of all related party transactions on an ongoing basis in order to review for potential conflict of interest situations]. *The requirements set forth in this Rule 849(a) shall continue to apply pending the implementation of the new requirements set forth in 849(b)–(j) and Commentary Sections (1)–(4). Listed issuers must be in compliance with such new requirements, subject to any applicable exemptions set forth therein, by the following dates: (A) July 31, 2005 for foreign private issuers and small business issuers as defined in Commission Rule 12b–2 under the Securities Exchange Act of 1934 (the ''Act''); and (B) for all other listed issuers, the earlier of the listed issuer's first annual shareholders meeting after January 15, 2004, or October 31, 2004.*

(b) Listing Standards Relating to Audit Committees. Each issuer of securities listed on the Exchange must have, and certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Securities Exchange Act of 1934, of at least three members each of whom meet the following criteria.

(1) Independence.

(i) Each member of the audit committee must be a member of the board of directors of the listed issuer, and must otherwise be independent; provided that, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies. The following restrictions apply to every audit committee member:

(A) Employees. A director who is an employee (including non-employee executive officers) of the company or any of its affiliates may not serve on the audit committee until three years following the termination of his or her employment. In the event the employment relationship is with a former parent or predecessor of the company, the director could serve on the audit committee after three years following the termination of the relationship between the company and the former parent or predecessor. ''Affiliate'' for purposes of this subsection (A) includes a subsidiary, sibling company, predecessor, parent company, or former parent company.

(B) Business Relationship. A director (a) who is a partner, controlling shareholder, or executive officer of an organization that has a business relationship with the company, or (b) who has a direct business relationship with the company (e.g., as a consultant), may serve on the audit committee only if the issuer's board of directors determines in its business judgment that the relationship does not interfere with the director's exercise of independent judgment. In making a determination regarding the independence of a director pursuant to this paragraph, the board of directors should consider, among other things, the materiality of the relationship to the issuer, to the director, and, if applicable, to the organization with which the director is affiliated.

''Business relationships'' can include commercial, industrial, banking, consulting, legal, accounting and other relationships. A director can have this relationship directly with the company, or the director can be a partner, officer or employee of an organization that has such a relationship. The director may serve on the audit committee without the above-referenced board of directors' determination after three years following the termination of, as applicable, either (a) the relationship between the organization with which the director is affiliated and the company, (b) the relationship between the director and his or her partnership status, shareholder interest or executive officer position, or (c) the direct business relationship between the director and the company.

(C) Cross Compensation Committee Link. A director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee may not serve on the audit committee.

(D) Immediate Family. A director who is an Immediate Family member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship. ''Immediate Family'' includes a person's spouse, parents, children, siblings, mothers-in-law and fathers-in-law, sons and daughters-in-law, and anyone (other than employees) who shares such person's home.

(ii) Independence requirements for non-investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is not an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an affiliated person of the issuer or any subsidiary thereof.

(iii) Independence requirements for investment company issuers. In order to be considered to be independent for purposes of this paragraph (b)(1), a member of an audit committee of a listed issuer that is an investment company may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee:

(A) Accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer or any

[5] The Exchange intends to file additional proposed rule changes relating to other corporate governance listing standards, including board independence and independent committees, issuers' codes of conduct, and announcement of going concern qualification in the near future. The New York Stock Exchange (''NYSE'') and the National Association of Securities Dealers (''NASD'') have proposed a number of rule changes in these areas. *See, e.g.*, Securities Exchange Act Release Nos. 47516 (March 17, 2003), 68 FR 14451 (March 25, 2003) (SR–NASD–2002–141, a proposed rule change relating to board independence and independent committees); 48123 (July 2, 2003), 68 FR 41191 (July 10, 2003) (SR–NASD–2002–77, disclosure of audit opinions with going concern qualifications); 48125 (July 2, 2003), 68 FR 41194 (July 10, 2003) (SR–NASD–2002–139 and Amendment No. 1 thereto, requiring listed companies to adopt a code of conduct for all directors, officers, and employees); and 47672 (April 11, 2003), 68 FR 19051 (April 17, 2003) (SR–NYSE–2002–33 and Amendment No. 1 thereto, proposing corporate governance rule changes). The Commission has recently approved NYSE and Nasdaq proposals relating to shareholder approval of equity compensation plans. *See* Securities Exchange Act Release No. 48108 (June 30, 2003), 68 FR 39995 (July 3, 2003) (approving SR–NYSE–2002–46 and SR–NASD–2002–140). The Exchange filed a proposed rule change relating to equity compensation on September 30, 2003 (File No. SR–Phlx–2003–67).

subsidiary thereof, provided that compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the listed issuer (provided that such compensation is not contingent in any way on continued service); or

(B) Be an ''interested person'' of the issuer as defined in section 2(a)(19) of the Investment Company Act of 1940.

(iv) Exemptions from the independence requirements.

(A) For an issuer listing securities pursuant to a registration statement under section 12 of the Act, or for an issuer that has a registration statement under the Securities Act of 1933 covering an initial public offering of securities to be listed by the issuer, where in each case the listed issuer was not, immediately prior to the effective date of such registration statement, required to file reports with the Commission pursuant to section 13(a) or 15(d) of the Act;

(1) [Reserved]; and

(2) A minority of the members of the listed issuer's audit committee may be exempt from the independence requirements of paragraph (b)(1)(ii) of this section for one year from the date of effectiveness of such registration statement.

(B) An audit committee member that sits on the board of directors of a listed issuer and an affiliate of the listed issuer is exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if the member, except for being a director on each such board of directors, otherwise meets the independence requirements of paragraph (b)(1)(ii) of this section for each such entity, including the receipt of only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of each such entity.

(C) An employee of a foreign private issuer who is not an executive officer of the foreign private issuer is exempt from the requirements of paragraph (b)(1)(ii) of this section if the employee is elected or named to the board of directors or audit committee of the foreign private issuer pursuant to the issuer's governing law or documents, an employee collective bargaining or similar agreement or other home country legal or listing requirements.

(D) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(1) The member is an affiliate of the foreign private issuer or a representative of such an affiliate;

(2) The member has only observer status on, and is not a voting member or the chair of, the audit committee; and

(3) Neither the member nor the affiliate is an executive officer of the foreign private issuer.

(E) An audit committee member of a foreign private issuer may be exempt from the requirements of paragraph (b)(1)(ii)(B) of this section if that member meets the following requirements:

(1) The member is a representative or designee of a foreign government or foreign governmental entity that is an affiliate of the foreign private issuer; and

(2) The member is not an executive officer of the foreign private issuer.

(F) In addition to paragraphs (b)(1)(iv)(A) through (E) of this section, if the Commission exempts from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of Commission Rule 10A–3 under the Act a particular relationship with respect to audit committee members, as the Commission determines appropriate in light of the circumstances, such relationship shall also be exempt from the requirements of paragraphs (b)(1)(ii) or (b)(1)(iii) of this Rule 849.

(2) Responsibilities relating to registered public accounting firms. The audit committee of each listed issuer, in its capacity as a committee of the board of directors, must be directly responsible for the appointment, compensation, retention and oversight of the work of any registered public accounting firm engaged (including resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer, and each such registered public accounting firm must report directly to the audit committee.

(3) Complaints. Each audit committee must establish procedures for:

(i) The receipt, retention, and treatment of complaints received by the listed issuer regarding accounting, internal accounting controls, or auditing matters; and

(ii) The confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.

(4) Authority to engage advisers. Each audit committee must have the authority to engage independent counsel and other advisers, as it determines necessary to carry out its duties.

(5) Funding. Each listed issuer must provide for appropriate funding, as determined by the audit committee, in its capacity as a committee of the board of directors, for payment of:

(i) Compensation to any registered public accounting firm engaged for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the listed issuer;

(ii) Compensation to any advisers employed by the audit committee under paragraph (b)(4) of this section; and

(iii) Ordinary administrative expenses of the audit committee that are necessary or appropriate in carrying out its duties.

(c) General exemptions.

(1) At any time when an issuer has a class of common equity or similar securities that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A–3 under the Act, the listing of other classes of securities on the Exchange is not subject to the requirements of this section.

(2) At any time when an issuer has a class of common equity securities (or similar securities) that is listed on a national securities exchange or national securities association subject to the requirements of listing standards which comply with the requirements of Commission Rule 10A–3 under the Act, the listing on the Exchange of classes of securities of a direct or indirect consolidated subsidiary or an at least 50% beneficially owned subsidiary of the issuer (except classes of equity securities, other than non-convertible, non-participating preferred securities, of such subsidiary) is not subject to the requirements of this section.

(3) The listing of securities of a foreign private issuer is not subject to the requirements of paragraphs (b)(1) through (b)(5) of this section if the foreign private issuer meets the following requirements:

(i) The foreign private issuer has a board of auditors (or similar body), or has statutory auditors, established and selected pursuant to home country legal or listing provisions expressly requiring or permitting such a board or similar body;

(ii) The board or body, or statutory auditors is required under home country legal or listing requirements to be either:

(A) Separate from the board of directors; or

(B) Composed of one or more members of the board of directors and

one or more members that are not also members of the board of directors;

(iii) The board or body, or statutory auditors, are not elected by management of such issuer and no executive officer of the foreign private issuer is a member of such board or body, or statutory auditors;

(iv) Home country legal or listing provisions set forth or provide for standards for the independence of such board or body, or statutory auditors, from the foreign private issuer or the management of such issuer;

(v) Such board or body, or statutory auditors, in accordance with any applicable home country legal or listing requirements or the issuer's governing documents, are responsible, to the extent permitted by law, for the appointment, retention and oversight of the work of any registered public accounting firm engaged (including, to the extent permitted by law, the resolution of disagreements between management and the auditor regarding financial reporting) for the purpose of preparing or issuing an audit report or performing other audit, review or attest services for the issuer; and

(vi) The audit committee requirements of paragraphs (b)(3), (b)(4) and (b)(5) of this section apply to such board or body, or statutory auditors, to the extent permitted by law.

(4) The listing of a security futures product cleared by a clearing agency that is registered pursuant to Section 17A of the Act or that is exempt from the registration requirements of Section 17A pursuant to paragraph (b)(7)(A) of such section is not subject to the requirements of this section.

(5) The listing of a standardized option, as defined in Commission Rule 9b–1(a)(4) under the Act, issued by a clearing agency that is registered pursuant to Section 17A of the Act is not subject to the requirements of this section.

(6) The listing of securities of the following listed issuers are not subject to the requirements of this section:

(i) Asset-Backed Issuers (as defined in Commission Rules 13a–14(g) and 15d–14(g) under the Act);

(ii) Unit investment trusts (as defined in 15 U.S.C. 80a–4(2)); and

(iii) Foreign governments (as defined in Commission Rule 3b–4(a) under the Act).

(7) The listing of securities of a listed issuer is not subject to the requirements of this section if:

(i) The listed issuer, as reflected in the applicable listing application, is organized as a trust or other unincorporated association that does not have a board of directors or persons acting in a similar capacity; and

(ii) The activities of the listed issuer that is described in paragraph (c)(7)(i) of this section are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

(d) [Reserved]

(e) Definitions. Unless the context otherwise requires, all terms used in this section have the same meaning as in the Act. In addition, unless the context otherwise requires, the following definitions apply for purposes of this section:

(1)(i) The term affiliate of, or a person affiliated with, a specified person, means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(ii)(A) A person will be deemed not to be in control of a specified person for purposes of this section if the person:

(1) Is not the beneficial owner, directly or indirectly, of more than 10% of any class of voting equity securities of the specified person; and

(2) Is not an executive officer of the specified person.

(B) Paragraph (e)(1)(ii)(A) of this section only creates a safe harbor position that a person does not control a specified person. The existence of the safe harbor does not create a presumption in any way that a person exceeding the ownership requirement in paragraph (e)(1)(ii)(A)(1) of this section controls or is otherwise an affiliate of a specified person.

(iii) The following will be deemed to be affiliates:

(A) An executive officer of an affiliate;

(B) A director who also is an employee of an affiliate;

(C) A general partner of an affiliate; and

(D) A managing member of an affiliate.

(iv) For purposes of paragraph (e)(1)(i) of this section, dual holding companies will not be deemed to be affiliates of or persons affiliated with each other by virtue of their dual holding company arrangements with each other, including where directors of one dual holding company are also directors of the other dual holding company, or where directors of one or both dual holding companies are also directors of the businesses jointly controlled, directly or indirectly, by the dual holding companies (and, in each case, receive only ordinary-course compensation for serving as a member of the board of directors, audit committee or any other board committee of the dual holding companies or any entity that is jointly controlled, directly or indirectly, by the dual holding companies).

(2) In the case of foreign private issuers with a two-tier board system, the term board of directors means the supervisory or non-management board.

(3) In the case of a listed issuer that is a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body, the term board of directors means the board of directors of the managing general partner, managing member or equivalent body.

(4) The term control (including the terms controlling, controlled by and under common control with) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(5) The term dual holding companies means two foreign private issuers that:

(i) Are organized in different national jurisdictions;

(ii) Collectively own and supervise the management of one or more businesses which are conducted as a single economic enterprise; and

(iii) Do not conduct any business other than collectively owning and supervising such businesses and activities reasonably incidental thereto.

(6) The term executive officer has the meaning set forth in Commission Rule 3b–7.

(7) The term foreign private issuer has the meaning set forth in Commission Rule 3b–4(c).

(8) The term indirect acceptance by a member of an audit committee of any consulting, advisory or other compensatory fee includes acceptance of such a fee by a spouse, a minor child or stepchild or a child or stepchild sharing a home with the member or by an entity in which such member is a partner, member, an officer such as a managing director occupying a comparable position or executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the issuer or any subsidiary of the issuer.

(9) The terms listed and listing refer to securities listed on a national securities exchange or listed in an automated inter-dealer quotation

system of a national securities association or to issuers of such securities.

(f) Opportunity to cure defects. A listed issuer shall have the opportunity provided for in Rule 811 to cure any defects that would be the basis for delisting under paragraph (a) of this section, before the imposition of such delisting. Additionally, if a member of an audit committee ceases to be independent in accordance with the requirements of this section for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting of the listed issuer or one year from the occurrence of the event that caused the member to be no longer independent.

(g) Notification of noncompliance. Listed issuers must notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of this section.

(h) Audit Committee Charter. The board of directors must adopt and approve a formal written charter for the audit committee. The audit committee must review and reassess the adequacy of the formal written charter on an annual basis. The charter must specify the following:

(i) The scope of the audit committee's responsibilities and how it carries out those responsibilities, including structure, processes, and membership requirements;

(ii) That the outside auditor is ultimately accountable to the board of directors and the audit committee of the company, that the audit committee and board of directors have the ultimate authority and responsibility to select, evaluate, and, where appropriate, replace the outside auditor (or to nominate the outside auditor to be proposed for shareholder approval in any proxy statement), and that the audit committee is vested with all responsibilities and authority required by Rule 10A–3 under the Securities Exchange Act of 1934; and

(iii) That the audit committee is responsible for ensuring that the outside auditor submits on a periodic basis to the audit committee a formal written statement delineating all relationships between the auditor and the company and that the audit committee is responsible for actively engaging in a dialogue with the outside auditor with respect to any disclosed relationships or services that may impact the objectivity and independence of the outside auditor and for recommending that the board of directors take appropriate action in response to the outside auditors' report to satisfy itself of the outside auditors' independence.

(i) Expertise Requirement of Audit Committee Members.

(i) Each member of the audit committee must be financially literate, as such qualification is interpreted by the company's board of directors in its business judgment, or must become financially literate within a reasonable period of time after his or her appointment to the audit committee; and

(ii) At least one member of the audit committee must have accounting or related financial management expertise, as the Board of Directors interprets such qualification in its business judgment.

(j) Written Affirmation. As part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each company should provide the Exchange written confirmation regarding:

(i) any determination that the company's board of directors has made regarding the independence of directors pursuant to any of the subparagraphs above;

(ii) the financial literacy of the audit committee member;

(iii) the determination that at least one of the audit committee members has accounting or related financial management expertise; and

(iv) the annual review and reassessment of the adequacy of the audit committee charter.

(k) Related Party Transactions. Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and all such transactions must be approved by the company's audit committee or another independent body of the board of directors. For purposes of this rule, the term ''related party transaction'' shall refer to transactions required to be disclosed pursuant to SEC Regulation S–K, Item 404.

Commentary:

1. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with, and do not affect the application of, any requirement or ability under a listed issuer's governing law or documents or other home country legal or listing provisions that requires or permits shareholders to ultimately vote on, approve or ratify such requirements. The requirements instead relate to the assignment of responsibility as between the audit committee and management. In such an instance, however, if the listed issuer provides a recommendation or nomination regarding such responsibilities to shareholders, the audit committee of the listed issuer, or body performing similar functions, must be responsible for making the recommendation or nomination.

2. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v), (c)(3)(vi) and Commentary 1 of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that prohibits the full board of directors from delegating such responsibilities to the listed issuer's audit committee or limits the degree of such delegation. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law, including submitting nominations or recommendations to the full board.

3. The requirements in paragraphs (b)(2) through (b)(5), (c)(3)(v) and (c)(3)(vi) of this section do not conflict with any legal or listing requirement in a listed issuer's home jurisdiction that vests such responsibilities with a government entity or tribunal. In that case, the audit committee, or body performing similar functions, must be granted such responsibilities, which can include advisory powers, with respect to such matters to the extent permitted by law.

4. For purposes of this section, the determination of a person's beneficial ownership must be made in accordance with Rule 13d–3 under the Act.

Rule 811. Delisting Policies and Procedures

Rule 811. *Once Exchange staff identifies a company as being below the Exchange's continued listing criteria (and not able to otherwise qualify under an initial listing standard), Exchange staff will so notify the company by letter. This letter will also provide the company with an opportunity to provide the Exchange staff with a plan (the ''Plan'') advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months of receipt of the letter. The company has 30 days from the receipt of the letter to submit its Plan to the Exchange for review; if it does not submit a Plan within this period the Exchange will promptly initiate delisting proceedings as provided in subsections (a)–(g) below. The Exchange's Allocation, Evaluation and Securities Committee (the ''Committee'')*

will evaluate the Plan and determine whether the company has made reasonable demonstration in the Plan of an ability to regain compliance with the continued listing standards within the three month period. The Committee will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing. If the Committee does not accept the Plan, the Exchange will promptly initiate delisting proceedings as provided in subsections (a)–(g) below. If Exchange staff accepts the Plan, the three month Plan period will commence on the date the issuer is notified of such acceptance. The Exchange will then review the company on a periodic basis for compliance with the Plan. If the company does not show progress consistent with the Plan, the Committee will review the circumstances and variance, and determine whether such variance warrants the commencement of delisting procedures. Should the Committee determine to proceed with delisting procedures, it may do so regardless of the company's continued listing status at that time. If, prior to the end of the three month Plan period, the company is able to demonstrate compliance with the continued listing standards at the end of the three month Plan period, the Exchange will deem the Plan period over. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures. If the company, within twelve months of the end of the Plan (including any early termination of the Plan period) is again determined to be below continued listing standards, the Committee will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of recovery from the first incident. It will then take appropriate action which, depending upon the circumstances, may include truncating the procedures described above or immediately initiating delisting procedures.

Whenever the Exchange determines that it is appropriate to consider removing a security from listing [(or from unlisted trading)] for other than routine reasons (redemptions or maturities) it will follow the following procedures:

(a)–(g) 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 discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The 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 amend Phlx Rule 849 to provide enhanced listing standards related to Phlx-listed issuers' audit committees, and to amend Phlx Rule 811 to incorporate a procedure to provide issuers a ''cure period'' prior to being delisted for failure to meet Exchange listing standards. The changes are summarized below.

Rule 849, Audit Committee/Conflicts of Interest.

Independence—Background. Currently, Phlx Rule 849 requires listed companies to maintain audit committees, a majority of the members of which are ''independent directors'' as defined in Phlx Rule 851. Phlx Rule 851 requires listed issuers to maintain a minimum of two independent directors on its board and defines ''independent director'' as a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director. This current requirement would remain in effect pending the implementation of the higher standards proposed in Phlx Rules 849(b)–(j). Proposed Phlx Rule 849(b) would require a listed issuer to have, and to certify that it has and will continue to have, an audit committee, as defined in Section 3(a)(58) of the Act, of at least three members, each of whom meet certain criteria set forth in proposed Phlx Rule 849(b).

Independence—Blue Ribbon Committee Recommendations. Proposed Phlx Rule 849(b)(1)(i) would require each member of the audit committee to be a member of the board of directors of the listed issuer and to be otherwise independent.[6] Proposed Rules 849(b)(1)(i)(A) through (D) are based in large part upon Rule 5.3(b)(3)(i)–(iv) of PCX Equities, Inc.,[7] and would preclude employees and those with business relationships from serving on a listed company's audit committee. They would also prohibit audit committee service by a director who is employed as an executive of another corporation where any of the company's executives serves on that corporation's compensation committee. Further, a director who is an ''Immediate Family'' member of an individual who is an executive officer of the company or any of its affiliates cannot serve on the audit committee until three years following the termination of such employment relationship.

Independence—Rule 10A–3 Requirements. Proposed Phlx Rules 849(b)(1)(ii) and (iii) prescribe certain independence requirements for audit committee members of non-investment company issuers and for investment company issuers, respectively, which are mandated by Commission Rule 10A–3(b)(1)(ii) and (iii). Proposed Phlx Rules 849(b)(1)(iv)(A) through (F) provide a number of exemptions from the Phlx Rule 849(b)(1) independence requirements as permitted by Commission Rule 10A–3(b)(1)(iv).[8]

Responsibilities Relating to Registered Public Accounting Firms, Complaints, Authority to Engage Advisers and Funding. Phlx Rules 849(b)(2)–(5) provide for the audit committee's responsibility to select and oversee the issuer's independent accountant, procedures for handling complaints regarding the issuer's accounting practices, the authority of the audit committee to engage advisors, and funding for the independent auditor and any outside advisors engaged by the

[6] However, where a listed issuer is one of two dual holding companies, those companies may designate one audit committee for both companies so long as each member of the audit committee is a member of the board of directors of at least one of such dual holding companies.

[7] PCX Equities, Inc. Rules 5.3(b)(3)(i)–(iv) were approved by the Commission on February 7, 2001. *See* Securities Exchange Act Release No. 43941 (February 7, 2001), 66 FR 10545 (February 15, 2001) (approving SR–PCX–00–40). The rules had been proposed to conform to recommendations made in 1999 by the Blue Ribbon Committee on Improving Effectiveness of Corporate Audit Committees (the ''Blue Ribbon Committee'') and rule changes adopted by other self-regulatory organizations. The Blue Ribbon Committee's recommendations were intended to strengthen the independence of the audit committee, make the audit committee more effective, and address mechanisms for accountability among the audit committee, the outside auditors, and management.

[8] The Commission notes that Phlx did not include the exception provided for in Commission Rule 10A–3(b)(1)(iv)(A)(*1*).

audit committee. As noted above, these standards are required by Commission Rule 10A–3(b)(2)–(5).

General Exemptions. Phlx Rule 849(c)(1)–(7) provides a number of exemptions from Phlx Rule 849, which are provided for in Commission Rule 10A–3(c).

Definitions. Phlx Rule 849(e) defines a number of terms used in Phlx Rule 849, including the terms ''affiliate'' and ''control,'' and also including the term ''board of directors'' in the case of foreign private issuers with a two-tier board system or a limited partnership or limited liability company where such entity does not have a board of directors or equivalent body.

Opportunity to Cure Defects. Phlx Rule 849(f) provides that a listed issuer shall have the opportunity provided for in Phlx Rule 811 (see below) to cure any defects that would be the basis for delisting under Phlx Rule 849(a) before the imposition of such delisting. It also provides that if a member of an audit committee ceases to be independent in accordance with the requirements of Phlx Rule 849 for reasons outside the member's reasonable control, that person, with notice by the issuer to the Exchange, may remain an audit committee member of the listed issuer until the earlier of the next annual shareholders meeting or one year from the occurrence of the event that caused the member to be no longer independent.

Notification of Noncompliance. Proposed Phlx Rule 849(g) requires listed issuers to notify the Exchange promptly after an executive officer of the listed issuer becomes aware of any material noncompliance by the listed issuer with the requirements of Phlx Rule 849.

Audit Committee Charter. Proposed Phlx Rule 849(h) requires the board of directors to adopt and approve a formal written charter for the audit committee, and requires the audit committee to review and reassess the adequacy of the formal written charter on an annual basis. The proposed rule details the required content of the charter.

Expertise Requirement of Audit Committee Members. Proposed Phlx Rule 849(i) requires each member of the audit committee to be financially literate or become financially literate within a reasonable period of time after his or her appointment to the audit committee. It requires at least one member of the audit committee to have accounting or related financial management expertise.

Written Affirmation. Proposed Phlx Rule 849(j) provides that as part of the initial listing process, and with respect to any subsequent changes to the composition of the audit committee, and otherwise approximately once each year, each listed company should provide the Exchange written confirmation regarding determinations of directors' independence, the financial literacy of audit committee members, the determination that at least one of the audit committee members has accounting or related financial management expertise, and the annual review and reassessment of the adequacy of the audit committee charter.

Related Party Transactions. Proposed Phlx Rule 849(k) replaces the second sentence of current Phlx Rule 849. It defines ''related party transactions'' and requires issuers to conduct an appropriate review of all such transactions on an ongoing basis. It also requires all such transactions to be approved by the audit committee or another independent body of the board of directors.

Commentary. Commentary sections 1–4 replicate the Instructions adopted by the Commission as part of Rule 10A–3, and are designed to clarify the applicability of certain other Rule 849 provisions.

Rule 811, Delisting Policies and Procedures.

Rule 811, Delisting Policies and Procedures, is proposed to be amended by the addition of introductory text prior to subsection (a). The new language would provide a process pursuant to which a company identified by Exchange staff as being below the Exchange's continued listing criteria would be provided an opportunity to provide Exchange staff with a plan advising the Exchange of action the company has taken, or will take, that would bring it into compliance with the continued listing standards within three months (the ''Plan''). The company would have 30 days from receipt of a letter from the Exchange notifying the company of the deficiency to submit the plan. The Exchange's Allocation, Evaluation and Securities Committee, within 45 days of receipt of the proposed plan, will determine whether the company has made a reasonable demonstration of an ability to regain compliance with the continued listing standards within the three month period. If Exchange staff accepts the Plan, the three-month Plan period will commence on the date the issuer is notified of such acceptance. If the company does not show progress consistent with the Plan, it may proceed with delisting. If the company does not meet continued listing standards at the end of the three month Plan period, the Exchange will promptly initiate delisting procedures.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Specifically, Amex believes the proposed rule change is designed to increase investor protection by promoting accountability, transparency and integrity by listed companies.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Phlx consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–51 and should be submitted by November 6, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–26101 Filed 10–15–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

The Ticket to Work and Work Incentives Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

ACTION: Notice of meeting.

DATES: November 5, 2003, 9:30 a.m.–4:45 p.m.*, November 6, 2003, 9 a.m.–5 p.m., November 7, 2003, 9 a.m.–1 p.m.

*The full Panel deliberative meeting will end at 4:45 p.m. The standing committees of the Panel will meet from 5 p.m. to 6:30 p.m.

ADDRESSES: Hyatt Regency Crystal City, 2799 Jefferson Davis Highway, Arlington, VA 22202, Phone: (703) 418–1234.

SUPPLEMENTARY INFORMATION: *Type of meeting:* This is a quarterly meeting open to the public. The public is invited to participate by coming to the address listed above. Public comment will be taken during the quarterly meeting. The public is also invited to submit comments in writing on the implementation of the Ticket to Work and Work Incentives Improvement Act (TWWIIA) of 1999 at any time.

Purpose: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, the Social Security Administration (SSA) announces a meeting of the Ticket to Work and Work Incentives Advisory Panel (the Panel). Section 101(f) of Public Law 106–170 establishes the Panel to advise the President, the Congress and the Commissioner of SSA, on issues related to work incentives programs, planning and assistance for individuals with disabilities as provided under section 101(f)(2)(A) of the TWWIIA. The Panel is also to advise the Commissioner on matters specified in section 101(f)(2)(B) of that Act, including certain issues related to the Ticket to Work and Self-Sufficiency Program established under section 101(a) of that Act.

Interested parties are invited to attend the meeting. The Panel will use the meeting time to receive briefings, hear presentations, conduct full Panel deliberations on the implementation of TWWIIA and receive public testimony. The topics for the meeting will include presentations of briefing papers prepared for the Panel, discussion of topics for the next Annual Report, and agency updates from SSA, the Department of Education and the Department of Health and Human Services.

The Panel will meet in person commencing on Wednesday, November 5, 2003 from 9:30 a.m. to 4:45 p.m.; Thursday, November 6, 2003 from 9 a.m. to 5 p.m.; and Friday, November 7, 2003 from 9 a.m. to 1 p.m.

Agenda: The Panel will hold a quarterly meeting. Briefings, presentations, full Panel deliberations and other Panel business will be held on Wednesday, Thursday and Friday, November 5, 6, and 7, 2003. Public testimony will be heard in person on Wednesday, November 5, 2003 from 2:30 p.m. to 3 p.m. and on Friday, November 7, 2003 from 9:05 a.m. to 9:35 a.m. Members of the public must schedule a timeslot in order to comment. In the event that the public comments do not take up the scheduled time period for public comment, the Panel will use that time to deliberate and conduct other Panel business.

Individuals interested in providing testimony in person should contact the Panel staff as outlined below to schedule time slots. Each presenter will be called on by the Chair in the order in which they are scheduled to testify and is limited to a maximum five-minute verbal presentation. Full written testimony on TWWIIA implementation, no longer than 5 pages, may be submitted in person or by mail, fax or email on an on-going basis to the Panel for consideration.

Since seating may be limited, persons interested in providing testimony at the meeting should contact the Panel staff by e-mailing Kristen M. Breland, at *kristen.m.breland@ssa.gov* or calling (202) 358–6423.

The full agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/work/panel* at least one week before the meeting or can be received in advance electronically or by fax upon request.

Contact Information: Anyone requiring information regarding the Panel should contact the TWWIIA Panel staff. Records are being kept of all Panel proceedings and will be available for public inspection by appointment at the Panel office. Anyone requiring information regarding the Panel should contact the Panel staff by:

- Mail addressed to Social Security Administration, Ticket to Work and Work Incentives Advisory Panel Staff, 400 Virginia Avenue, SW., Suite 700, Washington, DC, 20024.
- Telephone contact with Kristen Breland at (202) 358–6423.
- Fax at (202) 358–6440.
- E-mail to *TWWIIAPanel@ssa.gov.*

Dated: October 9, 2003.

Carol Brenner,

Designated Federal Officer.

[FR Doc. 03–26140 Filed 10–15–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4513]

Culturally Significant Objects Imported for Exhibition; Determinations: ''Verrocchio's David Restored: A Renaissance Bronze From the National Museum of Bargello, Florence''

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the object to be included in the exhibition ''Verrocchio's David Restored: A Renaissance Bronze from the National Museum of Bargello, Florence,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is

imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the High Museum of Art, Atlanta, GA from on or about November 22, 2003, to on or about February 8, 2004, the National Gallery of Art, Washington, DC, from on or about February 13, 2004, to on or about March 21, 2004, and at possible additional venues yet to be determined, is in the national interest. Public notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 8, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–26186 Filed 10–15–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4514]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Cross-Regional Initiatives in the Non-Arab Muslim World

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD) announces an open competition for assistance awards. Organizations may submit grant proposals that focus on promotion of human rights, political participation and freedom of opportunity in the non-Arab Muslim World.

Awards are contingent upon the availability of Fiscal Year 2003 funds. Up to $4,500,000 may be available under the Economic Support Fund for projects that address cross-regional Bureau objectives in the non-Arab Muslim World. Funds will be targeted toward Muslim populations outside the Middle East. Regions that fall into this category may include Africa, East Asia and the Pacific, South Asia, and Eurasia. Projects must be targeted at multiple countries, either within a single region or across regions. Projects may also include countries with sizeable Muslim minority populations, such as Russia, India and Thailand, among others. The Bureau anticipates awarding between 5–15 grants in amounts of $250,000—$1,000,000.

Background: DRL/PHD supports innovative, cutting-edge programs which uphold democratic principles, support and strengthen democratic institutions, promote human rights, and build civil society in countries and regions of the world that are geo-strategically important to the U.S.

DRL/PHD funds projects that have an immediate impact but that also have potential for continued funding beyond DRL/PHD resources. Projects must not duplicate or simply add to efforts by other entities.

SUPPLEMENTARY INFORMATION: The Bureau of Democracy Human Rights and Labor has identified the following issues as priorities. Projects that address these issues may receive a higher priority, but DRL is open to innovative programming ideas on other issues that meet our general criteria:

1. Empowerment of Muslim women, including projects that promote capacity building and/or networks of women or women's organizations, especially as they relate to human-rights;
2. Addressing the problem of disenfranchised youth and the need to reach out to this group to prevent growth of extremism;
3. Political reform programs that would entail support for conducting free and fair elections, issues of good governance and corruption;
4. Independent media and access to a diversity of sources of information;
5. Judicial systems, especially in the context of Shari'a;
6. Promotion of the compatibility of democracy with Islam; and
7. Civil society and increasing political participation.

Project Criteria

- Project implementation should begin no earlier than March 2004.
- Projects should not exceed two years in duration. Shorter projects with more immediate outcomes may receive preference.
- Project activity should take place abroad. U.S.-based or exchange projects are strongly discouraged.
- Projects that have a strong academic or research focus will not be highly considered. DRL will not fund health, technology, environmental, or scientific projects unless they have an explicit democracy, human rights, or rule of law component.
- Projects should include a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the regions and how the submitted proposal will complement them.

Applicant/Organization Criteria

Organizations applying for a grant should meet the following criteria:

- Be a U.S. non-profit organization meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3). Applicant must submit proof of its non-profit status in the application at the time of submission.
- Have demonstrated experience administering successful projects in the regions in which it is proposing to administer a project.
- Have existing, or the capacity to develop, active partnerships with in-country organization(s).
- Organizations that have not previously received and successfully administered U.S. government grant funds will be subject to additional scrutiny before an award can be granted.

Note: Organizations are welcome to submit more than one proposal, but should know that DRL wishes to reach out to as many different organizations as possible with its limited funds.

Budget Guidelines

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. eastern standard time (e.s.t.) on Thursday, November 13, 2003. Please refer to the PSI for specific delivery instructions.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the PSI. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. Further explanation of these criteria is included in the PSI. These criteria are not rank-

ordered and all carry equal weight in the proposal evaluation: Quality of the program idea; program planning and ability to achieve program objectives; multiplier effect/impact; institution's record/ability/capacity; cost-effectiveness.

FOR FURTHER INFORMATION CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor (DRL/PHD). Please specify Sondra Govatski 202–647–9734 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The Solicitation Package consists of this RFP plus the Proposal Submission Instructions (PSI). The PSI contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The PSI may be downloaded from the HRDF section on the Bureau's Web site at *http://www.state.gov/g/drl/*.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Final technical authority for assistance awards resides with the Office of Acquisition Management's Grants Officer.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: October 9, 2003.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 03–26185 Filed 10–15–03; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No.: OST–2003–15962]

Notice of Request for Renewal of a Previously Approved Collection.

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for renewal and comment. The ICR describes the nature of the information collection and its expected cost and burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on August 22, 2003 [68 FR 50825]. No comments were received.

DATES: Comments on this notice must be received by November 17, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST 2003–15962 by the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

SUPPLEMENTARY INFORMATION:

Title: Procedures and Evidence Rules for Air Carrier Authority Applications: 14 CFR part 201—Air Carrier Authority under Subtitle VII of title 49 of the United States Code—(Amended); 14 CFR Part 204—Data to Support Fitness Determinations; 14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

OMB Control Number: 2106–0023.

Affected Public: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Annual Estimated Burden: 4,604 hours.

Abstract: In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR part 201 and 204.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval.

Issued in Washington, DC on October 8, 2003.

Michael A. Robinson,

Information Technology Program Management, United States Department of Transportation.

[FR Doc. 03–26127 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Extension of Scoping

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

ACTION: Notice of extension of scoping for the Programmatic Environmental Impact Statement for Licensing Launches of Horizontally Launched Vehicles and Reentries of Reentry Vehicles.

SUMMARY: The FAA is preparing a Programmatic Environmental Impact Statement (PEIS) in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality implementing regulations and is requesting comments in preparation of the PEIS. The FAA has extended public scoping for the PEIS to ensure that all interested government and private organizations, and the general public have an opportunity to express their concerns and identify topics that should be addressed in the PEIS. Scoping comments will be accepted until October 31, 2003. This PEIS will assess environmental impacts associated with the proposed action, reasonable alternatives including those identified during scoping, the no action alternative, and cumulative impacts. This PEIS will support decisions made to meet the FAA's responsibility to license commercial launch and reentry operations and the operation of launch and reentry sites consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. Issuing a launch or reentry license is a Federal action and is therefore subject to NEPA review.

Proposed Action and Possible Alternatives: The proposed action for this PEIS is to license the launch and landing of horizontally launched vehicles and the reentry of reentry vehicles. A reentry vehicle is defined in 14 CFR 401.5 as ''a vehicle designed to return from Earth orbit or outer space to Earth substantially intact. A reusable launch vehicle (RLV) that is designed to return from Earth orbit or outer space to Earth substantially intact is a reentry vehicle.'' Launch, as defined in 14 CFR 401.5, means ''to place or try to place a launch vehicle or reentry vehicle and any payload from Earth in a suborbital trajectory, in Earth orbit in outer space, or otherwise in outer space, and includes activities involved in the preparation of a launch vehicle for flight, when those activities take place at a launch site in the United States. The term launch includes the flight of a launch vehicle and pre-flight ground operations beginning with the arrival of a launch vehicle or payload at a U.S. launch site. For purposes of an expendable launch vehicle launch, flight ends after the licensee's last exercise of control over its launch vehicle. For purposes of an orbital RLV launch, flight ends after deployment of a payload for an RLV having payload deployment as a mission objective. For other orbital RLVs, flight ends upon completion of the first sustained, steady-state orbit of an RLV at its intended location.''

Alternatives to the proposed action may include activities such as not licensing horizontal launches, not licensing vertical reentries, not licensing horizontal reentries, not licensing powered reentries, and not licensing unpowered reentries.

FAA exercises licensing authority in accordance with the Commercial Space Launch Act and Commercial Space Transportation Licensing Regulations, 14 CFR Ch.III, which authorize the FAA to license the launch of a launch vehicle when conducted within the U.S. and those operated by U.S. citizens abroad. The scope of the PEIS would include launches on both orbital and suborbital trajectories.

In May 1992, the U.S. Department of Transportation issued the Final Programmatic Environmental Impact Statement for Commercial Reentry Vehicles that assessed the environmental impacts of licensing the unpowered reentry of reentry vehicles from space to Earth. This 1992 PEIS relied in part on the analysis in the Programmatic Environmental Assessment of Commercial Expendable Launch Vehicle Programs, February 1986.

In May 2001, the FAA issued the Programmatic Environmental Impact Statement for Licensing Launches, which assessed the environmental impacts of licensing commercial launches. This 2001 PEIS updated and replaced the 1986 Programmatic Environmental Assessment (EA).

The PEIS for Licensing Launches of Horizontally Launched Vehicles and Reentries of Reentry Vehicles will update and replace the 1992 PEIS and address the launch of horizontally launched vehicles and the reentry of all reentry vehicles.

Scoping: Public scoping will be conducted as part of the PEIS development process to ensure that all interested government and private organizations, and the general public have an opportunity to express their concerns and identify topics that should be addressed in the PEIS. The FAA has developed a public participation Web site (*http://ast.faa.gov/*), which provides information on the development of this PEIS and provides the public an opportunity to submit comments electronically. Materials on the web site include information about licensing and the NEPA process; frequently asked questions, a fact sheet on the PEIS; a comparison of the analysis of the previous programmatic documents; and public comment forms. Scoping meetings may be requested by organizations or individuals that feel their concerns cannot be met through the online opportunity to comment. Information regarding the development of the PEIS is available on the public participation web site at *http://ast.faa.gov/*, under the ''What's new on the AST Web site ''Announcements'' section.

To Submit Comments: Written comments, statements, and/or questions regarding scoping issues or the PEIS process should be addressed to Ms. Michon Washington, FAA Environmental Specialist, FAA PEIS, c/o ICF Consulting, 9300 Lee Highway, Fairfax, Virginia 22031; phone (703) 934–3950; fax (703) 934–3951; e-mail at *FAA.PEIS@icfconsulting.com*; or by Web site *http://ast.faa.gov/*. Comments should clearly identify and describe the specific issue(s) or topics to be included in the PEIS. To ensure sufficient time to consider issues identified during public scoping, comments should be submitted no later than October 31, 2003.

Charles Larsen,

(Acting) Manager, Space Systems Development Division.

[FR Doc. 03–26090 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2003–14652]

Commercial Driver's License Standards; Isuzu Motors America, Inc. Exemption Application

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: The FMCSA announces its decision to grant the Isuzu Motors America, Inc. request for an exemption from the Federal commercial driver's license (CDL) requirement in 49 CFR 383.23. The exemption is for 31 Japanese engineers and technicians who will be test-driving commercial motor vehicles (CMVs) for Isuzu. All of the individuals hold a valid Japanese commercial driver's license and are specially trained in driving CMVs in Japan. They normally work at Isuzu Motors Limited in Japan where their duties involve developing, designing, and/or testing engines for CMVs that will be manufactured, assembled, sold or primarily used in the United States. The FMCSA believes that enforcement of the terms and conditions of the exemption would ensure that the level of safety for the drivers is equivalent to or greater than the level of safety that would be achieved by complying with the Federal regulations. The exemption would preempt inconsistent State requirements applicable to interstate commerce.

DATES: The exemption is effective November 17, 2003. The exemption expires October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, (202) 366–2990, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, now codified at 49 U.S.C. 31315 and 31136), requires the FMCSA to publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, provide the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and provide an opportunity for public comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who would receive the exemption, the provisions from which the person would be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by the FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, the FMCSA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

Exemption Request

Isuzu Motors America, Inc. (Isuzu), a private motor carrier of property as defined by 49 CFR 390, filed an application for an exemption from the commercial driver s licensing rules in 49 CFR part 383, that would allow drivers Shintaro Moroi, Shigeru Takamatsu, Norio Takeda, Takeshi Yamagishi, Satoru Amemiya, Toshiya Asari, Yasunori Fujita, Shiro Fukuda, Tetsuya Hiromatsu, Kazunori Ligo, Masao Inoue, Akihuro Kashiwakura, Kinya Kitamura, Tsuyoshi Koyama, Takao Kudo, Wataru Kumakura, Yoshihiko Matsubara, Nobuyuki Miyazaki, Ryo Natsume, Motoki Nishi, Takuo Nishi, Fumio Oota, Masuru Otsu, Toshimitsu Sato, Kazuyoshi Shimamura, Masahito Suzuki, Yasuhito Tahara, Hiroyoshi Takahashi, Takashi Tanabe, Takehito Yaguchi, and Tsutomu Yamazaki—to test-drive CMVs within the United States. According to its application, the drivers working for Isuzu hold current commercial driver's licenses issued by the Japanese authorities. The drivers also meet testing and driver qualification standards, including medical examinations, which are comparable to State-issued CDLs. The Japanese-issued license indicates that the drivers have the knowledge and skills necessary to comply with the Federal Motor Carrier Safety Regulations (FMCSRs). A copy of the application for exemption is in the docket.

Isuzu seeks this exemption because the drivers it employs are citizens and residents of Japan and the company needs their specialized services before they could qualify for a CDL in the United States. It does not anticipate any adverse safety impacts from this exemption due to the fact that the Japanese authorities adhere to very strict commercial driver testing and licensing procedures.

There will always be two qualified drivers in each motor vehicle. The drivers employed by Isuzu are fully qualified CMV operators with valid Japanese CDLs. The company ensures that the qualifications are maintained and all current laws in Japan are followed. Due to strict regulations in Japan for drivers holding Japanese CDLs, Isuzu believes that it will achieve a greater level of safety than would be achieved if it used United States drivers unfamiliar with its process for testing, designing, and producing safe commercial vehicles.

Drivers applying to obtain a Japanese CDL must take both a knowledge test and skills test before a license to operate CMVs is issued. Prior to taking the tests, drivers are required to hold a conventional driver's license for at least three years. The process for obtaining a Japanese-issued commercial driver's license is very rigorous and comprehensive, and Isuzu considers it to be comparable to, or as effective as, the requirements in part 383 of the FMCSRs. Isuzu believes it adequately assesses the driver's ability to operate CMVs in the United States.

Once a Japanese driver is granted a commercial driver's license, he/she is allowed to drive any CMV currently allowed on roads in Japan. There are no limits to the types or weights of vehicles that may be operated by the drivers. The drivers affected by the exemption will be operating tractor-trailer units. These vehicles will be used for transporting merchandise as a commercial activity. It is estimated that each driver will drive approximately 5,000 miles on U.S. roads. The drivers expect to operate CMVs through the states of Arizona, California, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Nebraska, Nevada, Ohio, Utah, and Wyoming.

Discussion of Comments

On April 30, 2003, the FMCSA published notice of its receipt of an application from Isuzu on behalf of the above-referenced 31 drivers, and requested comments from the public (67 FR 34515). The comment period closed on May 30, 2003. The FMCSA received one comment, which is from Michael D. Millard. Mr. Millard opposes granting Isuzu an exemption from the CDL requirements regardless of the individuals' engineering and mechanical abilities. Mr. Millard

believes that an important safety factor is that these drivers be capable of operating commercial vehicles that have the steering wheel on the left side of the vehicle. Commercial vehicles manufactured in Japan are equipped with steering wheels that are operated from the right side of the vehicle. Mr. Millard stated that the need to train and qualify these drivers in left-side steering maneuvers should be emphasized, since the vehicles being driven could cause a great deal of damage to the public and to private property if involved in an accident. Mr. Millard further stated that Isuzu could hire experienced U.S. drivers to operate its test vehicles, or take the necessary measures to train the Japanese drivers to obtain a CDL issued in the U.S.

FMCSA Response to Comments

Although the commenter opposed granting the exemption, the FMCSA believes that granting the exemption to Isuzu would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the FMCSRs.

The FMCSA believes the drivers for Isuzu have the knowledge and skills necessary to safely operate CMVs in the U.S. The FMCSA determined that the Japanese CDLs are comparable to the CDLs that are issued from the various State licensing agencies in the U.S. CMV drivers in both Japan and the U.S. are given extensive and comprehensive knowledge and skills tests and must be medically qualified before a commercial license is issued. There is no data to suggest that a driver's ability to control and maneuver a vehicle in traffic would be contingent upon the placement of the steering wheel in the vehicle. These drivers have demonstrated that they can safely operate a CMV with the steering wheel on the right-side of the vehicle and there is no data to indicate they would be less safe operating CMVs with the steering wheel on the left-side of the vehicle. Alternatively, drivers of certain types of refuse trucks operated in residential neighborhoods in the U.S. drive vehicles with dual steering wheels to enable them to steer from either the left-or the right-side to expedite the collection of garbage. There has been no indication that U.S. drivers are less safe when they operate refuse trucks from the right-side driving position versus the left-side.

Basis for FMCSA's Determination

The agency has determined that it is in the public's interest to grant these exemptions because the drivers are over the age of 21 years, hold currently valid Japanese CDLs that allow them to drive such vehicles in their home country, and have passed medical examinations that are compatible with the agency's medical standards. The exemptions are likely to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the exemptions because the drivers will meet all applicable FMCSRs, except for having a State-issued CDL. Drivers, who meet license testing and driver qualification standards, including medical examinations that are compatible with U.S. standards and have behind-the-wheel experience operating these vehicles, will operate the vehicles.

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The statute also allows the agency to renew exemptions at the end of the 2-year period. Accordingly, the FMCSA has evaluated the exemption request on its merit, and made a determination to grant the exemption to all of the drivers.

Terms and Conditions for the Exemption

After considering the comments to the docket and based upon its evaluation of the application for an exemption, the FMCSA grants Isuzu an exemption from the Federal commercial driver's license requirement in 49 CFR 383.23 for 31 drivers—Shintaro Moroi, Shigeru Takamatsu, Norio Takeda, Takeshi Yamagishi, Satoru Amemiya, Toshiya Asari, Yasunori Fujita, Shiro Fukuda, Tetsuya Hiromatsu, Kazunori Ligo, Masao Inoue, Akihuro Kashiwakura, Kinya Kitamura, Tsuyoshi Koyama, Takao Kudo, Wataru Kumakura, Yoshihiko Matsubara, Nobuyuki Miyazaki, Ryo Natsume, Motoki Nishi, Takuo Nishi, Fumio Oota, Masuru Otsu, Toshimitsu Sato, Kazuyoshi Shimamura, Masahito Suzuki, Yasuhito Tahara, Hiroyoshi Takahashi, Takashi Tanabe, Takehito Yaguchi, and Tsutomu Yamazaki—to test-drive CMVs within the United States, subject to the following terms and conditions: (1) That these drivers will be subject to drug and alcohol testing, (2) that these drivers are subject to the same driver disqualification rules under 49 CFR 383 and 391 that apply to other CMV drivers in the U.S., (3) that these drivers keep a copy of the exemption on the vehicle at all times, (4) that Isuzu notify FMCSA in writing of any accident involvement by a driver as defined in 49 CFR 390.5 and, (5) that Isuzu notify FMCSA in writing if any driver is convicted of disqualification offenses in §§ 383.51 or 391.15 of the FMCSRs.

In accordance with 49 U.S.C. 31315 and 31136(e), the exemption will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) the drivers for Isuzu fail to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136.

Issued on: October 10, 2003.

Pamela M. Pelcovits,

Office Director, Policy, Plans, and Regulation.

[FR Doc. 03–26119 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA–2003–16162]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes an existing collection of information for Federal Motor Vehicle Safety Standard (FMVSS) No. 213, ''Child restraint systems,'' for which NHTSA intends to seek OMB approval.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than December 15, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number NHTSA –2003–16162] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.

• Fax: 1–202–493–2251.

• Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0003.

• 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*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this collection. It is requested, but not required, that two copies of the comments be provided. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Mr. Michael Huntley, NHTSA, 400 Seventh Street, SW., Room 5320, NVS–113, Washington, DC 20590.

Mr. Huntley's telephone number is (202) 366–0029. Please identify the relevant collection of information by referring to its OMB Control Number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collection of information:

Title: 49 CFR 571.213, ''Child Restraint Systems''.

OMB Control Number: 2127–0511.

Affected Public: Business.

Abstract: Manufacturers are required to provide owner registration cards and to label each child restraint system with a message informing users of the importance of registering the restraint with the manufacturer. The owner registration information is then retained in the event that owners need to be contacted for recall or replacement campaigns. The manufacturer is also required to provide a printed instructions brochure with step-by-step information on how the restraint is to be used. Without proper use, the effectiveness of these systems is greatly diminished. Each child restraint system must also have a permanent label. A permanently attached label gives quick-look information on whether the restraint meets the safety requirements, recommended installation and use, and warnings against misuse.

Estimated Annual Burden: 90,000 hours.

Number of Respondents: 15.

Currently, approximately 15 manufacturers produce, on average, a total of approximately 4,500,000 child restraints per year. The agency estimates that manufacturers use a total of 0.02 hours per response. The estimated annual burden hour is 90,000 hours. This number reflects the total responses (4,500,000) times the total hours per response (0.02). Prior years' information indicates that it takes an average of $20.00 per hour for professional/clerical personnel to collect the information for Standard No. 213. Therefore, the agency estimates that the cost associated with the burden hours is $1,800,000 ($20.00 per hour x 90,000 burden hours).

Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued on October 9, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–26091 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on June 12, 2003 [68 FR 35253–35254].

DATES: Comments must be submitted on or before November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Marvin Levy, Ph.D. at the National Highway Traffic Safety Administration, Office of Research and Technology (NTI–131), 202–366–5597, 400 Seventh Street, SW, Room 5319, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: National Survey of Drinking and Driving Attitudes and Behavior.

OMB Number: 2127—New.

Type of Request: New Collection.

Abstract: Recent data show an increase in alcohol-related crashes. In 1999, 16,572 persons were killed in alcohol-related crashes; in 2000, it rose to 17,380 and for 2001, it rose again to 17,448 deaths. Based on this alarming trend, the NHTSA Administrator has

made it an agency goal to reduce the death rate, from 0.63 to 0.53 deaths per 100-million vehicle miles traveled. In order to plan and evaluate programs intended to reduce alcohol-impaired driving, NHTSA needs to periodically update its knowledge and understanding of the public's attitudes and behaviors with respect to drinking and driving . The proposed survey, the seventh in this series of biennial surveys, will be administered by telephone to a national probability sample of the driving-age public (aged 16 years or older as of their last birthday).

The findings from this proposed collection will assist NHTSA in addressing the problem of alcohol-impaired driving and in formulating programs and recommendations to Congress. NHTSA will use the findings to help focus future programs and activities to achieve improved efficiencies and outcomes. Also, comparisons with previous surveys will be made.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,800 hours.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Marilena Amoni,

Associate Administrator, Program Development and Delivery.

[FR Doc. 03–26092 Filed 10–15–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Section 5a Application No. 45 (Amendment No. 17)]

Niagara Frontier Tariff Bureau, Inc.—Agreement

By application filed on July 25, 2003, the Niagara Frontier Tariff Bureau, Inc. (NFTB) seeks approval of two categories of changes to its collective ratemaking agreement: (1) amendments that appear to be minor;[1] and (2) amendments that are designed to conform to the Board's decisions in *EC–MAC Motor Carrier Service Association, Inc., et al.,* Section 5a Application No. 118 (Sub-No. 2), *et al.* (*EC–MAC*).[2]

The minor amendments proposed by NFTB include: (1) A change in the name of the organization to North American Transportation Council, Inc., with an office located in Ontario, Canada; (2) a non-substantive rewording of the services to be provided by the organization; (3) changes to reflect statutory revisions; (4) a reduction in the quorum required to take action; (5) rates and rules no longer to be discussed at special meetings or annual meetings; (6) membership class of ''participating'' carriers eliminated (all carriers to be members); (7) new membership class of associate membership for noncarrier entities established; (8) changes in titles of officers; (9) ''Rate and Tariff Agreement'' provisions to be eliminated as no longer required; (10) changes in ''Rate Procedure'' provisions so as to eliminate time requirements and other provisions that no longer apply, to reduce notice requirements for meetings, to combine committees, and to eliminate certain provisions governing independent rate action; and (11) changes to eliminate agreements with two other bureaus, the Southern Motor Carriers Rate Conference, Inc., and the Rocky Mountain Motor Tariff Bureau, Inc.

The Board tentatively concludes that the amendments are minor and are consistent with the statutory requirements of 49 U.S.C. 13703. Accordingly, these minor amendments will be approved if no adverse comments are timely filed. Because the issues involving the amendments required by the Board in the *EC–MAC* proceeding have been fully addressed in that proceeding, the Board is not seeking comments on them here.

By this notice, the Board is giving the public an opportunity to comment on the minor changes proposed by NFTB. An original and 10 copies of any comments, referring to STB Section 5a Application No. 45 (Amendment No. 17), must be sent to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of any comments filed with the Board must also be served on applicant's representative: David J. Sirgey, North American Transportation Council, Inc., P.O. Box 548, Buffalo, NY 14225–0548.

NFTB must provide a copy of its application on request to members of the public. A copy of the application, as well as Board decisions and notices, also is available on the Board's Web site at *http://www.stb.dot.gov*.

Comments must be filed with the Surface Transportation Board by November 17, 2003. NFTB's reply to any comments is due by December 1, 2003.

For more information, contact Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS): 1–800–877–8339.]

Decided: October 9, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26132 Filed 10–15–03; 8:45 am]

BILLING CODE 4915–00–P

[1] By application filed on December 14, 1998, in *Niagara Frontier Tariff Bureau, Inc.,* Section 5a Application No. 45 (Sub-No. 16), NFTB applied for renewal of its agreement without change. The minor amendments proposed in the instant proceeding apply to NFTB's renewed agreement.

[2] There, the Board has been considering renewal of the collective ratemaking agreements of NFTB and other bureaus. In decisions served on March 27, 2003, and November 20, 2001, the Board renewed its approval of the bureau agreements, subject to three conditions. First, the bureaus were directed to propose amendment of their agreements to require bureau members to give the truth-in-rates notice described in those decisions when they list rates or otherwise give a rate quote that references a collectively set rate. Second, the bureaus were directed to submit the range-of-discount information specified in the decisions. Third, bureau agreements must require members to certify that they will not apply a loss-of-discount provision that would reinstate the collectively set rate as a penalty for late payment. NFTB's proposed amendments implement these conditions.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34341]

Wheeling & Lake Erie Railway Company—Acquisition and Operation Exemption—CSX Transportation, Inc.

By petition filed on August 1, 2003, Wheeling & Lake Erie Railway Company (W&LE) seeks an exemption pursuant to 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10902 to

acquire the rail freight operating easement of CSX Transportation, Inc. (CSXT) over a 17.77-mile rail line between approximately milepost 15.93 at Canton, OH, and approximately milepost 33.70 at Krumroy, OH (the Canton Line), owned by Metro Regional Transit Authority (METRO). The petition will be granted subject to employee protective conditions.

Background

The Canton Line consists of two segments—the Canton-Aultman segment, which extends from approximately milepost 15.93 at Canton to approximately milepost 25.55 at Aultman, OH, and the Aultman-Krumroy segment, which extends from approximately milepost 25.55 at Aultman to approximately milepost 33.70 at Krumroy.

In 1992, W&LE, a Class II carrier, leased from CSXT an approximately 10.25-mile segment extending north from Canton to Aultman.[1] In 1997, CSXT abandoned, and W&LE discontinued service over, a short segment of this leased line in Canton.[2] The part of this line that CSXT retained constitutes the Canton-Aultman segment involved in this proceeding. In 1993, CSXT discontinued service over, but did not abandon, the Aultman-Krumroy segment.[3] No rail freight service of any kind has been conducted on this segment since the discontinuance.[4] In May 2000, CSXT sold to METRO the assets of the Canton Line and a segment of rail line extending from Krumroy north to Akron, OH.[5] As part of that transaction, CSXT retained an exclusive rail freight easement over all three segments, subject to W&LE's pre-existing lease of the Canton-Aultman segment. Also as part of that transaction, CSXT agreed to transfer its freight easement over the Canton Line to METRO or its designee.

According to W&LE, METRO designated it to receive the rail freight easement over the Canton Line from CSXT. Therefore, pursuant to a July 1, 2003 Purchase and Sale Agreement between W&LE and CSXT, W&LE proposes to acquire CSXT's rail freight easement over the Canton Line. Under the agreement, W&LE will continue to provide service to shippers on the Canton-Aultman segment in the same manner that it does today. As to the Aultman-Krumroy segment, W&LE will acquire CSXT's freight operating rights and obligations on that segment in its current, discontinued state, and will seek further, appropriate Board authority should W&LE wish to reinstate rail freight operations thereon in the future.

W&LE currently provides rail service on the Canton-Aultman segment approximately two days per week. No other carrier provides rail freight service on that segment. Approximately four active shippers exist on the segment, accounting for approximately 340 carloads per year of kaolin clay, synthetic rubber, lumber, plastics, and other commodities.

According to W&LE, this transaction will not change existing rail freight operations or service. W&LE states that it will simply become the owner rather than the lessee of the freight common carrier interests in the rail line on which it has operated since 1992, thereby enhancing effective rail management and the long-term stability of its operations.[6]

Discussion and Conclusions

Under 49 U.S.C. 10502, the Board must exempt a transaction or service from regulation upon finding that: (1) Regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

An exemption from the prior approval requirements of 49 U.S.C. 10902 is warranted under the standards of 49 U.S.C. 10502. Detailed scrutiny of this transaction is not necessary to carry out the rail transportation policy. An exemption from the application process will minimize the need for Federal regulatory control [49 U.S.C. 10101(2)], foster sound economic conditions in transportation [49 U.S.C. 10101(5)], reduce regulatory barriers to entry into and exit from the rail industry [49 U.S.C. 10101(7)], and encourage efficient management of railroads [49 U.S.C. 10101(9)]. Other aspects of the rail transportation policy will not be adversely affected.

Regulation of this transaction is not needed to protect shippers from the abuse of market power. W&LE has stated that shippers will continue to have the same service options that they have now. Indeed, no shipper has opposed the transaction. Nevertheless, to ensure that shippers are informed of the Board's actions here, W&LE will be required to serve all shippers on the line with a copy of this decision within 5 days after its service date and to certify to the Board that it has done so. Given this market power finding, it is not necessary to determine whether the transaction is limited in scope.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, the employee protective conditions set forth in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR,* 2 S.T.B. 218 (1997), *rev'd in part sub nom. Association of American Railroads* v. *Surface Transp. Bd,* 162 F.3d 101 (DC Cir. 1998), will be imposed.

This transaction is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, the above-described transaction is exempted from the prior approval requirements of 49 U.S.C. 10902, subject to the employee protective conditions set forth in *Wisconsin Central Ltd.—Acquisition Exem.—Union Pac. RR,* 2 S.T.B. 218 (1997), *rev'd in part sub nom. Association of American Railroads* v. *Surface Transp. Bd,* 162 F.3d 101 (DC Cir. 1998).

[1] Also in that transaction, W&LE purchased from CSXT an approximately 12.26-mile rail line extending south from Canton to Sandyville, OH. *See Wheeling & Lake Erie Railway Company—Lease, Purchase and Operation Exemption—CSX Transportation, Inc.,* Finance Docket No. 32083 (ICC served Oct. 15, 1992).

[2] *See CSX Transportation, Inc.—Abandonment Exemption—In Stark County, OH,* STB Docket No. AB–55 (Sub-No. 535X) (STB served Apr. 1, 1997). Following the abandonment and discontinuance of this short segment, W&LE reached the current Canton-Aultman segment via trackage rights over the Reed Runner track and via the former wye track leased from CSXT at McKinley, OH.

[3] *See CSX Transportation, Inc.—Abandonment Exemption—Summit County, OH,* Docket No. AB–55 (Sub-No. 447X) (ICC served Jan. 12, 1993).

[4] W&LE states that, although no freight service has been provided on this segment for 10 years, the track remains in place and is expected to be utilized for the operation of excursion trains and commuter passenger service under the auspices of METRO.

[5] On May 24, 2000, METRO filed a verified notice of exemption for authority to acquire the assets of all three segments from CSXT. It simultaneously filed a motion to dismiss the notice of exemption on jurisdictional grounds. On June 23, 2000, the Board served notice of METRO's notice of exemption, indicating that the Board would address the motion to dismiss in a separate decision. *See Metro Regional Transit Authority—Acquisition Exemption—CSX Transportation, Inc.,* STB Finance Docket No. 33838 (STB served June 23, 2000). A separate Board decision will address that motion.

[6] In a prior decision in this proceeding, the Board granted W&LE a waiver of the 60-day labor notice requirement of 49 CFR 1121.4(h). *See Wheeling & Lake Erie Railway Company—Acquisition and Operation Exemption—CSX Transportation, Inc.,* STB Finance Docket No. 34341 (STB served Sept. 2, 2003).

2. Within 5 days of service of this decision, W&LE shall serve a copy of the decision on all shippers on the line and certify to the Board that it has done so.

3. This decision will be published in the **Federal Register** on October 16, 2003.

4. The exemption will become effective on November 9, 2003.

5. Petitions to stay must be filed by October 27, 2003. Petitions to reopen must be filed by November 4, 2003.

Decided: October 8, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–26038 Filed 10–15–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Disciplinary Appeals Board Panel

AGENCY: Department of Veterans Affairs

ACTION: Notice with request for comments.

SUMMARY: Section 203 of the Department of Veterans Affairs Health Care Personnel Act of 1991 (Pub. L. 102–40), dated May 7, 1991, revised the disciplinary grievance and appeal procedures for employees appointed under 38 U.S.C. 7401(1). It also required the periodic designation of employees of the Department who are qualified to serve on Disciplinary Appeals Boards. These employees constitute the Disciplinary Appeals Board panel from which Board members in a case are appointed. This notice announces that the roster of employees on the panel is available for review and comment. Employees, employee organizations, and other interested parties shall be provided, without charge, a list of the names of employees on the panel upon request and may submit comments concerning the suitability for service on the panel of any employee whose name is on the list.

DATES: Names that appear on the panel may be selected to serve on a Board or as a grievance examiner after November 17, 2003.

ADDRESSES: Requests for the list of names of employees on the panel and written comments may be directed to: Secretary of Veterans Affairs (051E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Requests and comments may also be faxed to (202) 273–9776.

FOR FURTHER INFORMATION CONTACT: Catherine Baranek, Employee Relations Specialist (051E), Office of Human Resources Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Baranek may be reached at (336) 631–5019.

SUPPLEMENTARY INFORMATION: Public Law 102–40 requires that the availability of the roster be posted in the **Federal Register** periodically, and not less than annually.

Dated: October 8, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–26253 Filed 10–15–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Thursday,
October 16, 2003

Part II

Department of Homeland Security

Office of the Secretary

6 CFR Part 25

Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act); Interim Rule

DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 25

[USCG–2003–15425]

RIN 1601–AA15

Regulations Implementing the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements Subtitle G of Title VIII of the Homeland Security Act of 2002—the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (''the SAFETY Act'' or ''the Act''), which provides critical incentives for the development and deployment of anti-terrorism technologies by providing liability protections for Sellers of ''qualified anti-terrorism technologies.'' This rule provides the application process by which a seller will apply for liability protections for anti-terrorism technologies. Its purpose is to facilitate and promote the development and deployment of anti-terrorism technologies that will save lives.

DATES: This interim rule is effective October 16, 2003. Comments and related material must reach the Docket Management Facility on or before December 15, 2003. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before December 15, 2003.

ADDRESSES: Because the Department of Homeland Security does not yet have electronic docketing capability, for the purposes of this rule, we are using the Department of Transportation Docket Management System for the U.S. Coast Guard. You may submit comments identified by Coast Guard docket number USCG–2003–15425 to the Docket Management Facility at the Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Web site: http://dms.dot.gov.*

(2) *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) *Fax:* 202–493–2251.

(4) *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. The telephone number is 202–366–9329.

(5) Federal eRulemaking portal: *http://www.regulations.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, ATTN: Desk Officer, Department of Homeland Security.

Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2003–15425 and are available for inspection or copying from the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.* You may also access the Federal eRulemaking Portal at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call Wendy Howe, Directorate of Science and Technology, Department of Homeland Security, telephone 202–772–9887. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking (USCG–2003–15425), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Viewing comments and document: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in 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.

Privacy Act: Anyone can search the electronic form of all comments received in the docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).

Regulatory History

On July 11, 2003, we published a notice of proposed rulemaking entitled ''Regulations Implementing the Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)'' in the **Federal Register** (68 FR 41420). No public hearing was requested and none was held. As stated in the notice of proposed rulemaking, we intended to implement this interim rule as soon as possible. The Department of Homeland Security (Department) finds that the need to foster anti-terrorism technology by instituting liability protection measures, as soon as practicable, furnishes good cause for this interim rule to take effect immediately under both the Administrative Procedure Act, 5 U.S.C. 552(d)(3), and section 808 of the Congressional Review Act. The Department believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market, technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in its statement of findings and purpose in the Terrorism Risk Insurance Act of 2002 (''TRIA''), concluded that temporary financial assistance in the insurance market is needed to ''allow for a transitional

period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses * * *.'' TRIA § 101(b)(2).

The United States remains at risk to terrorist attacks. It is in the public's interest to have this interim rule effective immediately because its aim is to foster the development and deployment of anti-terrorism technologies. Additionally, this interim rule will clarify to the greatest extent possible the application of the liability protections created by the SAFETY Act, thus providing an instant incentive for prospective applicants to apply for its protections and for others to begin exploring new measures that will prevent or reduce acts of terrorism. The interim rule will also provide the Department with sufficient program flexibility to address the specific circumstances of each particular request for SAFETY Act coverage. The application process is interactive. Those persons availing themselves of the protections afforded in this interim rule will also be interacting with the Department in the application process. Furthermore, the Department will continue to consider comments on this interim rule. Since the use of the liability protections afforded in this interim rulemaking is voluntary, there are no mandatory costs or burdens associated with the immediate implementation of this rule.

By having these provisions in place, the Department may begin processing applications for the liability protections and thus provide qualified Sellers of anti-terrorism technologies valuable incentives to develop and sell such technologies, as well as incentives for others to deploy such technologies. The purpose of those technologies is to detect, deter, mitigate, or assist in the recovery from a catastrophic act of terrorism. Thus, the Department finds that it is not only impracticable to delay an effective date of implementation, but it is also in the public's interest to make the interim rule effective upon publication in the **Federal Register**.

As previously mentioned in the proposed rule, the Department does not intend to resolve every conceivable programmatic issue through this interim rule. Instead, this interim rule sets out a basic set of regulations that implements the SAFETY Act program. The Department will continue to consider public comments and determine whether possible supplemental regulations are needed as we gain experience with implementing the Act.

Discussion of Comments and Changes

The Department received 43 different sets of comments on the proposed rule during the comment period. Two additional sets of comments were received on August 12, 2003, the day after the comment period ended, but in view of the relatively brief comment period (30 days), the Department has decided to accept those comments as well. The Department has considered all of the aforementioned 45 sets of comments, and summaries of the comments and the Department's responses follow.

Applicability and Use of Standards

The Department received a total of 24 comments relating to references to standards in the proposed rule. A change in the term ''safety and effectiveness standards,'' used in Section 25.3(c) of the proposed rule, to the industry accepted term ''technical standards,'' was suggested and has been implemented in Section 25.3(c) of the interim rule. A number of comments were made regarding the use of voluntary consensus technical standards and the advisability of ensuring that the Department provide for stakeholder participation in any standard development activities. The Department recognizes the advisability of such participation and has instituted a comprehensive program based on using the voluntary consensus process for the majority of its standard development activities. This process is designed to involve users, manufacturers, and private and public sector technical communities in all phases of standard development. The American National Standards Institute, numerous Standards Development Organizations, and the National Institute for Standards and Technology already have been actively involved in assisting the Department in accomplishing its standard development goals. Although the Department is vested with the authority to promulgate regulatory standards, the circumstances under which Department regulations governing anti-terrorism technologies are likely to be required are unusual. Therefore, the Department does not believe that there is a need for specific language about rulemaking with respect to standards.

One comment suggested postponing standard setting activities for two years in order to allow the market to stabilize. Other comments indicated a concern regarding possible prejudice against technologies that were not governed by formally accepted standards. The Department believes, however, that because of the rapidly evolving threat environment and the lack of basic standards for many classes of technologies, it is not in the best interest of the nation—and particularly of the emergency response community—to delay standard development activities. The Department also understands, however, that there is a continuing need for flexibility in the technical evaluation criteria under the SAFETY Act, and accordingly the Department will apply standards in SAFETY Act evaluations only to the extent that they are applicable to a particular technology and the circumstances of its proposed deployment. For those technologies without applicable standards (or with incomplete standards), additional methods of evaluation will be used, such as best practices, existing laboratory or field testing, etc. It will be highly desirable to use test information, where appropriate, from independent, accredited laboratories. The Department has also initiated a program to establish a network of certified labs that should address this need.

It will be important for SAFETY Act applicants to identify applicable standards that are appropriate to the specific operating environment and threat conditions for any potential anti-terrorism technology. The degree to which a proposed technology meets applicable standards will certainly be used to inform the technical evaluation process. However, technical effectiveness is only one facet of the criteria for issuance of a Designation or a Certification. Therefore, prior approval or certification by a United States Government agency (such as the Food and Drug Administration) will not be sufficient to form the basis for a SAFETY Act Designation or Certification per se, although such approval or certification might constitute relevant evidence of utility, effectiveness, or safety, and of course prior use of a technology by the United States Government is expressly relevant to the first criterion in Section 862(b)(1) of the SAFETY Act and the corresponding provision of the interim rule (§ 25.3(b)(1)).

Section 25.3(c) of the proposed rule stated that the Department will make available standards that are developed for anti-terrorism technologies. This service will apply only to potential regulatory criteria established by the Department. As noted by several commenters, many voluntary consensus technical standards are developed and owned by private sector entities. Where voluntary consensus standards are identified by the Department as being applicable to anti-terrorism

technologies, a summary of such standards may be published, along with a link to the appropriate site for the applicant to obtain or purchase the required or suggested standard. In preparing applications for SAFETY Act protections, however, applicants are encouraged not to limit themselves to standards previously promulgated or recognized by the Department, but rather to consider and reference any consensus technical standards that they believe to be applicable to technology.

Several standards development organizations suggested that voluntary consensus standards themselves be designated as qualified anti-terrorism technologies under the SAFETY Act. Although the Department believes it is unlikely that standards themselves will qualify for a Designation because it is unlikely that a standard will fall within the definition of ''qualified anti-terrorism technology'' in the Act, the Department will fully evaluate all applications for SAFETY Act protections received from Sellers of standards.

Scope of Required Insurance Coverage

Thirteen comments expressed concerns or confusion regarding the scope of required insurance coverage. Some commenters expressed uncertainty regarding the definition of the term ''Seller,'' the issue of who may be a defendant in the Federal cause of action prescribed in the SAFETY Act, and the nature of protection from liability afforded to entities other than the ''Seller'' in the manufacturing and distribution chains of the technology. In response, the Department has revised the definition of ''Seller'' in Section 25.9 of the interim rule in order to clarify that the ''Seller'' is the actual recipient of the Designation for a qualified anti-terrorism technology. The Department has also revised Section 25.4(a) of the interim rule to clarify that only the Seller is required to obtain the required liability insurance coverage.

Concern was expressed regarding the availability of insurance covering all of the parties specified in Section 864(a)(3) of the SAFETY Act and the corresponding provision in the interim rule (§ 25.4(c)). First, under the interpretation of Section 863 of the Act expressed by the Department in the preamble of the interim rule, (1) there is one exclusive Federal cause of action for claims relating to the deployment of a qualified anti-terrorism technology with respect to an act of terrorism, and (2) such cause of action may be brought only against the Seller, and only for injuries proximately caused by the Seller. Therefore, although other persons and entities must be covered by the required insurance coverage, the actuarial analyses of the insurance industry should focus mainly, if not exclusively, on the Seller's potential liability, which should facilitate the issuance of insurance policies. Moreover, in this context, the provisions of Section 864(a)(2) of the Act and the corresponding provision of the interim rule (§ 25.4(b)), which limit the required insurance to no more than the maximum amount reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies (which the Department intends to interpret with regard to the effect of the insurance requirement on the price of the technology and ultimately on the demand for and deployment of the technology for anti-terrorism purposes), should be emphasized. It should also be noted that the Department has revised Section 25.4(a) of the interim rule to provide specifically for the possibility of self-insurance if the Under Secretary determines that insurance in appropriate amounts or of appropriate types is not available for a particular technology from third-party insurance carriers.

Term, Expiration, and Termination of Designation

Twenty-four comments were made suggesting that SAFETY Act Designations either should not expire or should have a longer duration (10–20 years) than provided for in the proposed rule (five to eight years). In response, the Department notes that qualification for a SAFETY Act Designation depends on a combination of the ability of the technology to be effective in a specific threat environment, the nature and cost of available insurance, and other factors, all of which are subject to rapid and unpredictable change. At the same time, the Department is very cognizant of the need for a guaranteed period of protection for successful SAFETY Act applicants in order to achieve the main goal of the Act, which is to facilitate the commercialization of needed anti-terrorism technologies. The Department believes that mandatory reconsideration of Designations after five to eight years provides a fair balancing of public and private interests.

Several comments suggested that SAFETY Act protections should have retroactive effect. There are two different senses of retroactivity that must be addressed. The first sense relates to the deployment of a technology. The Department believes that it would be inappropriate to apply SAFETY Act protections retroactively to deployments of a qualified anti-terrorism technology that occurred prior to the effective date of the Designation issued for such technology. The reasons are (1) there is no explicit authority to issue retroactive protections under the SAFETY Act, (2) a Designation with such retroactive effect would be potentially unlawful if it extinguishes an already accrued cause of action, (3) retroactive designation is not necessary to achieve, and does not further, the goals of the Act, and (4) there is no equitable method for determining the retroactivity of particular Designations. The Department believes that SAFETY Act protections should apply only to deployments of a qualified anti-terrorism technology that occur on or after the effective date of the Designation issued for such technology.

The second sense of retroactivity relates to the date of the sale of the qualified anti-terrorism technology by the Seller. The Department recognizes that, in some cases, technologies that qualify for SAFETY Act protections will have been sold by the Seller prior to the effective date of such protections. The Department believes that the date on which a technology was sold by a Seller, per se, is not necessarily relevant to the applicability of SAFETY Act protections to a deployment of the technology in defense against, response to, or recovery from an act of terrorism, provided that the technology is within the scope of a Designation and was originally sold by the Seller to which the Designation is issued. In other words, it might be appropriate for SAFETY Act protections to be applicable to any deployment of a qualified anti-terrorism technology that occurs on or after the effective date of the Designation issued for such technology even if such technology was originally sold by the Seller before the effective date of such Designation. The Department believes that any other interpretation would lead to anomalous and inequitable results. Therefore, provisions have been added to Sections 25.3(f), 25.4(f), 25.6(b), and 25.7(g) of the interim rule to clarify this issue, and in particular to require the Under Secretary to specify in each Designation and Certification the earliest date of the sale of the technology to which the protections will apply.

The Department notes that many qualified anti-terrorism technologies might be designed for continuous ''deployment'' (*e.g.*, sensors). The fact that a qualified anti-terrorism technology was sold and ''deployed'' prior to the effective date of an applicable Designation or Certification, or is, in a sense, continuously

''deployed,'' should not prevent such protections from applying to any deployment of such technology that occurs on or after the effective date of the applicable Designation or Certification in defense against, response to, or recovery from any act of terrorism.

Termination of a Designation Resulting From Significant Modification

Several comments expressed concern regarding Section 25.5(i) of the proposed rule, which provided for automatic termination if a designated technology is significantly modified or changed as defined in that provision. The concern was essentially that the standard for termination is too vague, although at least one commenter opposed automatic termination for any reason.

It is vital that the Department be able to ensure that technologies for which protections are granted are not changed in a way that will significantly affect their safety or effectiveness. The Department does not have the ability to monitor every change to a designated technology, however, and therefore the interim rule must place the burden on Sellers to submit proposed changes to the Department so that they may be properly evaluated.

That said, the Department agrees with one of the comments that suggested that only changes that significantly reduce the safety or effectiveness of the technology should be subject to automatic termination, and Section 25.5(i) of the interim rule has been revised accordingly. In addition, that Section has been revised to authorize the Under Secretary, in lieu of issuing a modified Designation, to issue a certificate to a Seller that certifies that a proposed change or modification to a technology does not significantly reduce its safety or effectiveness and reaffirms the applicability of the existing Designation to the technology. That option should enable the Under Secretary to respond swiftly to submissions of relatively minor changes. The Department strongly encourages holders of Designations to submit to the Under Secretary any proposed modifications or changes that could significantly reduce the safety or effectiveness of the designated technology.

One commenter wondered how the Department will evaluate a proposed change in advance when the factors to be evaluated would seem to require actual ''implementation'' of the change. The Department is confident that Sellers will have effective methods to evaluate the safety and effectiveness of changes to their technologies prior to actual commercialization, and the Department will take advantage of those same methods in its evaluation.

Confidentiality of Information

Seventeen commenters indicated a concern regarding the Department's ability to protect the confidentiality of information that is provided in an application. In particular, there is apprehension that the Freedom of Information Act (FOIA) protections might be inadequate to guarantee nondisclosure of an applicant's trade secrets or confidential business information. It was suggested that explicit protections similar to those available for source selection or procurement information under FAR section 3, or a declaration that all financial information provided is deemed voluntary, or both, be included in the interim rule.

The Department is committed to the protection of applicants' proprietary information to the fullest extent required or permitted by law. Although the interim rule does not establish any new special protections (such as those in section 3 of the FAR), there are multiple protections available for applicants' sensitive information. Those protections include the Trade Secrets Act (18 U.S.C. 1905), Exemption 1 (''national security'') of FOIA, and Exemption 4 (''privileged or confidential information'') of FOIA. In particular, Federal employees are subject to criminal penalties for unauthorized disclosure of information qualifying under Exemption 4 of FOIA. All contractors or other agents of the Secretary will be required to enter into nondisclosure agreements, and each will be examined on an Application-by-Application basis for potential conflicts of interest, before being granted access to any confidential information provided by applicants.

Services as Distinguished From Products

Fourteen comments expressed concerns that the language in the proposed rule did not make clear how certain provisions of the SAFETY Act will apply to services, as opposed to physical products. The Department recognizes that the Act applies equally to product-based technologies and service-based technologies.

The Department will evaluate services and products using the same seven non-exclusive criteria set forth in Section 862(b) and the corresponding provision in the interim rule (§ 25.3(b)), as required by the Act. These criteria include ''demonstrated substantial utility and effectiveness'' and ''studies * * * to assess the capability of the technology to substantially reduce risks of harm.'' Similarly, qualified Sellers of service-based technologies must satisfy the same post-Designation obligations as Sellers of products. These obligations include reporting insurance status, notifying the Secretary of any transfer or licensing of the designated technology, and applying for modification of a Designation prior to making any significant change to the designated technology. Appropriate revisions have been made to Section 25.5(i) and other provisions of the interim rule to clarify their applicability to services.

Transfer or licensing of Designations for products and, in particular, services may not be appropriate, since the identity and established expertise of the Seller is often be an integral basis for a Designation. That issue will be addressed in appropriate cases in individual Designations, as provided in Section 25.3(f) of the interim rule.

Determining the Required Amount of Insurance

A number of commenters discussed the potential difficulty of determining the amounts of insurance that must be carried to satisfy claims arising out of, relating to, or resulting from an act of terrorism with respect to which qualified anti-terrorism technologies have been deployed. Issues revolve around concern that most liability insurance is not purchased product-by-product, so that it might be difficult to estimate the ''price distortion'' caused by needing to insure a proposed new product or service. It was also suggested that there is a circular dependency between insurance costs and Designation: *i.e.*, the cost of insurance depends on the liability exposure, which depends on the content of the Designation (if any), which in turn depends on the cost of insurance. There was also concern expressed that insurance is not available at any price for certain technologies.

The Department is aware of the difficulties involved in quantifying the price impact of insuring (or self-insuring) against the specific potential liabilities addressed by the Act. The Department will rely on expert opinion and analysis in this area, as it will with technical determinations of safety and effectiveness. The Department will address the potential circularity issue by evaluating the need for SAFETY Act protections assuming the non-existence of such protections, and then setting the required amount of insurance by taking into account all relevant factors, including the cost and availability of

insurance coverage at different liability limitation levels.

Regarding potential unavailability of insurance for certain technologies, the Department notes that the granting of a Designation may render a previously uninsurable technology insurable through reduction of liability exposure. Where necessary to address unavailability of insurance, however, Designations may be granted that permit the insurance requirement to be satisfied by self-insurance up to a specified limit of liability. A new Section 25.4(f) and other provisions have been inserted in the interim rule to address this issue, as well as the continuing applicability of SAFETY Act protections after the expiration or termination of a Designation (which had been addressed in the proposed rule only in the preamble).

Clarification of Government Contractor Defense (GCD)

The precise nature and consequences of the GCD as applied by the Act were considered by 14 commenters to be unclear in the proposed rule. In particular, the interaction between the scope of the judicially derived GCD and the scope of the presumption defined in the Act was believed to be unclear.

As defined in the Act, the rebuttable presumption of the applicability of the GCD is accorded to any Seller who (1) has received Certification as described in Section 863(d), and (2) is the defendant in the Federal cause of action arising in Section 863(a). Pursuant to Section 863(d)(1), the presumption may only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information during the SAFETY Act application process.

The view of the Department is that the GCD protections afforded by the SAFETY Act to recipients of Certifications are similar to those affirmed by the courts in *Boyle* v. *United Technologies* and its progeny as of the date of the enactment of the SAFETY Act. In applying those protections, the Department believes that Congress intended that, for purposes of applying the GCD, courts presume that all of the legal and factual requirements for establishment of the GCD by a government contractor are met by the existence of an applicable SAFETY Act Certification.

The Department has added a new paragraph to Section 25.6 of the interim rule that corresponds to Section 863(d)(1) of the Act. Such new paragraph makes it clear that the presumption of the GCD will continue to apply in perpetuity to all deployments of technologies that receive a Certification, provided that the sale of the technology was consummated by the Seller prior to the expiration or termination of the applicable Certification.

Relationship of the SAFETY Act and Indemnification Under Public Law 85–804

Thirteen comments related to the relationship between SAFETY Act protections and indemnification under Public Law 85–804. The Department believes, however, that the language contained in part 8 of the ''Special Issues'' section of the preamble of the interim rule adequately explains such relationship, and makes it clear that eligibility for a SAFETY Act Designation does not preclude the granting of indemnification under Public Law 85–804.

Detailed Specification of the Seller, Technology, and Scope of a Designation

Twenty comments focused on the detailed specification of the Seller, technology, and scope of a Designation. Commenters suggested that there are advantages to the public, to industry, and to the application evaluation process in designating entire classes of technology, rather than designating each Seller of a technology individually.

The Department seeks to balance the need for rapid deployment of anti-terrorism technologies with the need for careful evaluation of each technology and the need to avoid uncertainty in the marketplace concerning which specific product or service deployments are protected by Designation. In general, Designations will be restricted in scope to a particular Seller, a specific product or service, and delineated types of deployment or application. This approach addresses the comment that it is beneficial to the public to be able to learn precisely which Sellers and which of their products/services have been designated, and for what scope of deployment. At some in the near future, as relevant standards are adopted and the body of ''substantially equivalent'' technologies increases, the Department will revisit the advisability of awarding broader Designations (''Block Designations'') to classes of technology.

Definition of ''Act of Terrorism''

Ten comments indicated a belief that the definition of ''act of terrorism'' in Section 865(2) of the Act (and in Section 25.9 of the interim rule) is ambiguous. One suggested that the definition coincide with other federal definitions of ''terrorism,'' such as the definition in 22 U.S.C. 2656f(d)(2). The Department notes that the definition of ''act of terrorism'' was prescribed by Congress in the SAFETY Act. The Department believes that the definition in the Act provides an appropriate degree of flexibility in the evolving threat environment, including the use of the broad term ''harm.'' Regarding the comment concerning whether acts that occur on foreign territory are covered by the definition, the Department's view is that the term ''act of terrorism,'' as defined, potentially encompasses acts that occur outside the territory of the United States. The basis for that view is that there is no geographic requirement in the definition; rather, an act that occurs anywhere may be covered if it causes harm to a person, property, or an entity in the United States. The statutory definition of ''act of terrorism'' has been added to Section 25.9 of the interim rule.

Determinations Not Subject to Review or Appeal

Five commenters observed that the SAFETY Act Designation and Certification processes are complex and that many apparently subjective assessments will be made during the evaluation process. They were concerned that the Secretary's decision is final, without recourse or appeal. Some commenters suggested that the Administrative Procedures Act (APA) requires a formal review as part of the process.

The Department is aware of the complexity of the review process and has made numerous allowances for exchange of information and concerns between evaluators and applicants at multiple points during the process, in order to clarify uncertainties and to give the applicant an opportunity to provide supplemental information and address issues. The Department believes that this interactive process provides sufficient recourse to applicants. The SAFETY Act is a discretionary authority accorded by Congress to the Secretary of Homeland Security in order to facilitate the commercialization and deployment of needed anti-terrorism technologies. The exercise of that authority with respect to a particular technology requires that many discretionary judgments be made regarding the applicability and application of the SAFETY Act criteria to the technology and the weighting of the criteria in each case. It would be inappropriate to provide for what would amount to the second-guessing of the Secretary's discretionary judgment by empowering another entity to substitute its own discretionary judgment for that of the Secretary.

SAFETY Act protections are not required to market any technology, and therefore the absence of a grant of protection under the SAFETY Act will not prevent any person or entity from doing business. The Department also notes that a SAFETY Act Designation is not a ''license required by law'' within the meaning of Section 558(c) of the APA, and thus is not covered by the APA.

Allowability of Insurance Costs

Four comments questioned whether the cost of maintaining the insurance required by a SAFETY Act Designation is an ''allowable cost'' under Federal contracting practices. The Department notes that each Federal procurement and contracting arrangement is unique to the Federal agency involved. When an applicant has questions regarding allowability for a specific case involving Federal procurements, the applicant should consult with the procuring agency and, if appropriate, with the applicant's legal counsel.

Burden of Proof With Regard to Evaluation Criteria

Three commenters asked, in essence, if the applicant bears the responsibility for demonstrating the applicability of each of the seven evaluation criteria. In particular, it was asked whether the applicant must establish the existence of an extraordinarily large or unquantifiable potential risk exposure (criterion 3), or the magnitude of risk exposure to the public if applicant's technology were not deployed (criterion 5). It was also asked whether applicants will bear the cost of scientific studies (criterion 6).

An application for a Designation or a Certification is a positive assertion on the applicant's part that the technology in question deserves special protections under the law in order to promote a public good. It is the applicant's responsibility to make a persuasive and defensible case. This will involve, at a minimum, submitting evidence that the technology satisfies the criteria in Section 862(b) of the SAFETY Act and the corresponding provision of the interim rule (§ 25.3(b)). To that end, an application that contains the most complete suite of supporting information regarding concrete evidence of proven or potential effectiveness will be more persuasive than an application that relies solely on the applicant's personal effectiveness estimates and *a priori* threat and liability assessments. Any evaluations needed to address the criteria will be the financial responsibility of the applicant.

Relationship of Designation and Certification Processes

Three comments addressed the linkage of the Designation and Certification processes. The Department believes that it is appropriate for these two aspects of the Act to remain closely aligned, and that the SAFETY Act indeed requires the issuance of a Designation for a technology to be a prerequisite (but not sufficient in itself) for issuance of a Certification. The same high standard of review will be applied to evaluations for Designations and Certifications, and a substantial amount of the information that is needed to evaluate applications for Designations is also integral to the Certification process (although there is additional information required to support the evaluation for a Certification). The Designation and the Certification are two separate protections with separate (but overlapping) criteria, and therefore they require two discrete application processes. The Department notes again, however, that applications for both protections may be considered in parallel, and that both protections may be granted simultaneously.

Multi-use Technologies and ''Specific Purpose''

Four commenters noted that the proposed rule stated that a technology must be ''designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying or deterring acts of terrorism * * *.'' They stated that the word ''specific,'' as used in this context, seems overly restrictive. They believe that this narrow reading could exclude from designation any product originally developed for another use.

The ''specific purpose'' clause was prescribed by Congress in Section 865(1) of the Act, and the Department does not have the authority to change that definition. The Department believes, however, that Congress did not intend for ''specific purpose'' to mean ''exclusive purpose.'' An applicant need only show that one specific purpose of the subject technology is to prevent, detect, identify, or deter acts of terrorism or limit the harm such acts might otherwise cause; it is irrelevant for purposes of the definition of ''qualified anti-terrorism technology'' that a technology might have other purposes or uses. Applications for SAFETY Act protections, and their component parts, should, of course, focus on the specific purpose(s) of the technology for which the applicant is seeking protection.

Expedited Reviews

Thirteen comments expressed a desire for the Department to provide expedited reviews for specific technologies based on various criteria. The approach of the Department will be to prioritize and expedite SAFETY Act applications in order to ensure that the highest risk vulnerabilities to the highest consequence threats are addressed first. In general, the Department will expedite reviews of SAFETY Act applications as its resources allow.

Reciprocal Waivers

Several comments stated that reciprocal waivers of the type described in the Act (reciprocal waivers of claims by the specified parties for losses sustained by them or their employees arising from an act of terrorism with respect to which a qualified anti-terrorism technology is deployed) are not standard practice in most industries, and that some customers, vendors, and suppliers may be unwilling to enter into such reciprocal agreements. The Department will not withhold or revoke a Designation based on the failure to obtain one or more required reciprocal waivers, provided that the Seller shows that it made diligent efforts in good faith to obtain such waivers.

The Department's view is that such waivers are not an absolute condition (precedent or subsequent) for the issuance, validity, effectiveness, duration, or applicability of a Designation, because (1) obtaining such waivers often will be beyond the control of SAFETY Act applicants, (2) requiring all of such waivers as such a condition would thwart the intent of Congress in enacting the SAFETY Act by rendering the benefits of the SAFETY Act inapplicable in many otherwise appropriate situations, and (3) the consequences of failing to obtain the waivers are not specified in the Act. Section 25.4(e) of the interim rule has been revised accordingly.

Mass Casualty Data

Four comments expressed concern over the use of mass casualty data. In particular, the proposed rule stated that the Secretary's inquiry concerning an application ''may involve * * * data and history regarding mass casualty losses.'' It was noted that, in the case of past mass tort settlements, such data may exist but be confidential. Questions were asked regarding whether providing such data (where it exists) would be mandatory for a Designation or a Certification, even when restricted by prior court-ordered confidentiality agreements, and whether special

protections would exist to prevent unauthorized disclosure.

The Department will not ask applicants to violate court ordered confidentiality agreements, but will expect that every reasonable effort will be made to extract relevant non-protected information or to provide equivalent information—*e.g.*, from industry aggregate data or summaries, etc.

Multiple Sellers

Questions were posed regarding whether it will be possible for joint ventures or other multi-party arrangements to receive SAFETY Act protections, and who will be responsible for obtaining insurance for such a multi-Seller Designation. A joint venture may take many forms. A joint venture that takes the form of a recognized business association with legal personality will be treated as a single Seller, and will be required to obtain insurance coverage itself.

As specified in the proposed rule, SAFETY Act protections may be issued to multiple Sellers (*e.g.*, a situation in which the owner of a technology and one or more of its licensees are to be covered by a single Designation). In that situation, the parties' respective obligations to obtain insurance will be specified in the Designation.

Discussion of Interim Rule

As part of the Homeland Security Act of 2002, Public Law 107–296, Congress enacted several liability protections for providers of anti-terrorism technologies. The SAFETY Act provides incentives for the development and deployment of anti-terrorism technologies by creating a system of ''risk management'' and a system of ''litigation management.'' The purpose of the Act is to ensure that the threat of liability does not deter potential manufacturers or Sellers of anti-terrorism technologies from developing and commercializing technologies that could save lives. The Act thus creates certain liability limitations for ''claims arising out of, relating to, or resulting from an act of terrorism'' where qualified anti-terrorism technologies have been deployed. The Act does not limit liability for harms caused by anti-terrorism technologies when no act of terrorism has occurred.

Together, the risk and litigation management provisions provide the following protections:

- Exclusive jurisdiction in Federal court for suits against the Sellers of ''qualified anti-terrorism technologies'' (§ 863(a)(2));
- A limitation on the liability of Sellers of qualified anti-terrorism technologies to an amount of liability insurance coverage specified for each individual technology, provided that Sellers will not be required to obtain any more liability insurance coverage than is reasonably available ''at prices and terms that will not unreasonably distort the sales price'' of the technology (Section 864(a)(2));
- A prohibition on joint and several liability for noneconomic damages, so that Sellers can only be liable for that percentage of noneconomic damages proportionate to their responsibility for the harm (§ 863(b)(2));
- A complete bar on punitive damages and prejudgment interest (§ 863(b)(1));
- A reduction of plaintiffs' recovery by amounts that plaintiffs received from ''collateral sources,'' such as insurance benefits or other government benefits (§ 863(c)); and
- A rebuttable presumption that the Seller is entitled to the ''government contractor defense'' (§ 863(d)).

The Act provides that these liability protections are conferred by two separate actions by the Secretary. The Secretary's designation of a technology as a ''qualified anti-terrorism technology'' confers all of the liability protections *except* the rebuttable presumption in favor of the government contractor defense. The presumption in favor of the government contractor defense requires an additional ''approval'' by the Secretary under Section 863(d) of the Act. In many cases, however, the designation and the approval can be conferred simultaneously.

Analysis

This preamble to the interim rule first addresses the two major aspects of the Act—the designation of qualified anti-terrorism technologies and the approval of technologies for purposes of the government contractor defense. Following that discussion, the preamble addresses specific issues regarding the interim rule and the Department's interpretation of the Act.

Designation of Qualified Anti-Terrorism Technologies

As noted above, the designation of a technology as a qualified anti-terrorism technology confers all of the liability protections provided in the Act, except for the presumption in favor of the government contractor defense. The Act gives the Secretary broad discretion in determining whether to designate a particular technology as a ''qualified anti-terrorism technology,'' although the Act sets forth the following criteria that must be considered to the extent that they are applicable to the technology: (1) Prior United States Government use or demonstrated substantial utility and effectiveness; (2) availability of the technology for immediate deployment; (3) the potential liability of the Seller; (4) the likelihood that the technology will not be deployed unless the SAFETY Act protections are conferred; (5) the risk to the public if the technology is not deployed; (6) evaluation of scientific studies; and (7) the effectiveness of the technology in defending against acts of terrorism. These criteria are not exclusive—the Secretary may consider other factors that he deems appropriate. The Secretary has discretion to give greater weight to some factors over others, and the relative weighting of the various criteria may vary based upon the particular technology at issue and the threats that the technology is designed to address. The Secretary may, in his discretion, determine that failure to meet a particular criterion justifies denial of an application under the SAFETY Act. However, the Secretary is not required to reject an application that fails to meet one or more of the criteria. Rather the Secretary, after considering all of the relevant criteria, may conclude that a particular technology merits designation as a ''qualified anti-terrorism technology'' even if a particular criterion is not satisfied. The Secretary's considerations will also vary with the constantly evolving threats and conditions that give rise to the need for the technologies. The interim rule provides for designation as a qualified anti-terrorism technology for five to eight years.

The SAFETY Act applies to a very broad range of technologies, including products, services, software, and other forms of intellectual property, as long as the Secretary, as an exercise of discretion and judgment, determines that a technology merits designation under the statutory criteria. Further, as the statutory criteria suggest, a ''qualified anti-terrorism technology'' is not necessarily required to be newly developed—it may have already been employed (*e.g.* ''prior United States government use'') or may be a new application of an existing technology.

The Act also provides that, before designating a ''qualified anti-terrorism technology,'' the Secretary will examine the amount of liability insurance the Seller of the technology proposes to maintain for coverage of the technology at issue. Under § 864(a), the Secretary must certify that the coverage level is appropriate ''to satisfy otherwise

compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.'' Section 864(a)(1). The Act further provides that ''the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies'' (which the Department intends to interpret with regard to the effect of the insurance requirement on the price of the technology and ultimately on the demand for and deployment of the technology for anti-terrorism purposes). Section 864(a)(2).

The Secretary does not intend to set a ''one-size-fits-all'' numerical requirement regarding required insurance coverage for all technologies. Instead, as the Act suggests, the inquiry will be specific to each application and may involve an examination of several factors, including the following: the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller's business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; and the particular technology at issue. The Secretary will not require insurance beyond the point at which the cost of coverage would ''unreasonably distort'' the price of the technology. Once the Secretary concludes the analysis regarding the appropriate level of insurance coverage (which might include discussions with the Seller in appropriate cases), the Secretary will identify in a short certification a description of the coverage appropriate for the particular qualified anti-terrorism technology. If, during the term of the designation, the Seller would like to request reconsideration of that insurance certification due to changed circumstances or for other reasons, the Seller may do so. If the Seller fails to maintain coverage at the certified level during that time period, the liability protections of the Act will continue to apply, but the Seller's liability limit will remain at the certified insurance level. Such failure, however, will be regarded as a negative factor in the consideration of any future application by the Seller for renewal of the applicable designation, and perhaps in any other application by the Seller.

The Department solicits comment on the designation of qualified anti-terrorism technologies, including whether the five to eight year period is an appropriate length of time for such a designation.

Government Contractor Defense

The Act creates a rebuttable presumption that the government contractor defense applies to qualified anti-terrorism technologies ''approved by the Secretary'' in accordance with certain criteria specified in Section 863(d)(2). The government contractor defense is an affirmative defense that immunizes Sellers from liability for certain claims brought under Section 863(a) of the Act. *See* § 863(d)(1). The presumption of this defense applies to all ''approved'' qualified anti-terrorism technologies for claims brought in a ''product liability or other lawsuit'' and ''arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies * * * have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.'' *Id.* While the government contractor defense is a judicially-created doctrine, Section 863's express terms supplant many of the requirements in the case law for application of the defense.

First, and most obviously, the Act expressly provides that the government contractor defense is available not only to government contractors, but also to those who sell to state and local governments and the private sector. *See* § 863(d)(1) (''This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to federal government or non-federal government customers.'').

Second, Sellers of qualified anti-terrorism technologies need not design their technologies to federal government specifications in order to obtain the government contractor defense under the SAFETY Act. Instead, the Act sets forth criteria for the Department's ''approval'' of technologies. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a ''comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended.'' Section 863(d)(2). The Act also provides that the Seller will ''conduct safety and hazard analyses'' and supply such information to the Secretary. *Id.* This express statutory framework thus governs in lieu of the requirements developed in case law for the application of the government contractor defense.

Third, the Act expressly states the limited circumstances in which the applicability of the defense can be rebutted. The Act provides expressly that the presumption can be overcome *only* by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology. *See* § 863(d)(1) (''This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology under this subsection.'').

The applicability of the government contractor defense to particular technologies is thus governed by these express provisions of the Act, rather than by the judicially-developed criteria for applicability of the government contractor defense outside the context of the SAFETY Act.

While the Act does not expressly delineate the scope of the defense (*i.e.*, the types of claims that the defense bars), the Act and the legislative history make clear that the scope is broad. For example, it is clear that any Seller of an ''approved'' technology cannot be held liable under the Act for design defects or failure to warn claims, unless the presumption of the defense is rebutted by evidence that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary's consideration of such technology.

The government contractor defense under *Boyle* and its progeny bars a broad range of claims. The Supreme Court in *Boyle* concluded that ''state law which holds government contractors liable for design defects'' can present a significant conflict with Federal policy (including the discretionary function exception to the Federal Tort Claims Act) and therefore ''must be displaced.'' *Boyle* v. *United Technologies Corp.,* 487 U.S. 500, 512 (1988). The Department believes that Congress incorporated the Supreme Court's *Boyle* line of cases as it existed on the date of enactment of the SAFETY Act, rather than incorporating future developments of the government contractor defense in the courts. Indeed, it is hard to imagine that Congress would have intended a statute designed to provide certainty and protection to Sellers of anti-terrorism technologies to be subject to future developments of a judicially-created doctrine. In fact, there is evidence that Congress rejected such a construction. *See, e.g.,* 148 Cong. Rec.

E2080 (November 13, 2001) (statement of Rep. Armey) (''[Companies] will have a government contractor defense as is commonplace in *existing law.*'') (emphasis added).

Procedurally, the presumption of applicability of the government contractor defense is conferred by the Secretary's ''approval'' of a qualified anti-terrorism technology specifically for the purposes of the government contractor defense. This approval is a separate act from the Secretary's ''designation'' of a qualified anti-terrorism technology. Importantly, the Seller may submit applications for both designation as a qualified anti-terrorism technology and approval for purposes of the government contractor defense at the same time, and the Secretary may review and act upon both applications simultaneously. The distinction between the Secretary's two actions is important, however, because the approval process for the government contractor defense includes a level of review that is not required for the designation of a qualified anti-terrorism technology. Specifically, the Act provides that during the process of approval for the government contractor defense the Secretary will conduct a ''comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended.'' Section 863(d)(2). The Department believes that certain Sellers will be able to obtain the protections that come with designation as a qualified anti-terrorism technology even if they have not satisfied the requirements for the government contractor defense. Similarly, even if the applicability of the government contractor defense were rebutted under the test set forth in Section 863(d)(1) of the Act, the technology may still retain the designation and protections as a qualified anti-terrorism technology. Fraud or willful misconduct in the submission of information to the Department in connection with an application under the Act may result not only in rebuttal of the presumed application of the government contractor defense, but may also prompt the Department to refer the matter to the Department of Justice for pursuit of criminal or civil penalties.

The Department invites comment regarding the government contractor defense.

Specific Issues Regarding the Act and This Interim Rule

1. *Definition of Anti-Terrorism Technologies.* The Department recognizes that the universe of technologies that can be deployed against terrorism includes far more than physical products. Rather, the defense of the homeland will require deployment of a broad range of technologies that includes services, software, and other forms of intellectual property. Thus, consistent with Section 865 of the Act, Section 25.3(a) of the interim rule defines qualified anti-terrorism technologies very broadly to include ''any qualifying product, equipment, service (including support services), device, or technology (including information technology)'' that the Secretary, as an exercise of discretion and judgment, determines to merit designation under the statutory criteria.

2. *Development of New Technologies.* The Act's success depends not only upon encouraging Sellers to provide existing anti-terrorism technologies, but also upon encouraging Sellers to develop new and innovative technologies to respond to the ever-changing threats to the American people. The interim rule is thus designed to allow the Department to assist would-be Sellers during the invention, design, and manufacturing phases in two important respects. First, Section 25.3(h) of the proposal makes clear that the Department, within its discretion and where feasible, may provide feedback to inventors and manufacturers regarding whether proposed or developing anti-terrorism technologies might meet the qualification factors under the Act. The Department has developed a pre-application submission process in order to facilitate the procurement of such feedback. To be sure, the Department cannot provide advance designation, as some of the factors for the Secretary's consideration cannot be addressed in advance. The Department may, however, provide feedback regarding other factors, with the goal of giving potential Sellers some understanding of whether it might be advantageous to proceed with further development of the technology. Departmental feedback at the design, prototyping, or testing stage of development, to the extent feasible, may provide manufacturers with added incentive to commence and/or complete production of cutting-edge anti-terrorism technology that otherwise might not be produced or deployed in the absence of the risk and litigation management protections in the Act. The Department will perform these consultations with potential Sellers in a manner consistent with the protection of intellectual property and trade secrets, as discussed below.

Second, Section 25.3(g) of the interim rule recognizes that Federal, state, and local government agencies will often be the purchasers of anti-terrorism technologies. The Department recognizes that terms on which Sellers are able to provide anti-terrorism technologies to government agencies may vary depending on whether the technologies receive SAFETY Act coverage or not. The interim rule thus provides that the Department may coordinate SAFETY Act reviews with government agency procurements. The Department also intends to review SAFETY Act applications relating to technologies that are the subject of government agency procurements on an expedited basis.

The Department requests public comments regarding the best way for the Department to provide feedback to potential Sellers regarding SAFETY Act coverage and the best way for the Department to coordinate SAFETY Act review with agency procurements.

3. *Protection of Intellectual Property and Trade Secrets.* The Department believes that successful implementation of the Act requires that applicants' intellectual property interests and trade secrets remain protected in the application process and beyond. Toward that end, the Department will create an application and review process in which the Department maintains the confidentiality of an applicant's proprietary information. The Department notes that laws mandating disclosure of information submitted to the government generally contain exclusions or exceptions for such information. The Freedom of Information Act, for instance, provides specific exceptions for proprietary information submitted to Federal agencies.

4. *Evaluation of Scientific Studies; Consultation with Scientific and Technical Experts.* Section 862(b)(6) of the Act provides that, as one of many factors in determining whether to designate a particular technology under the Act, the Secretary shall consider evaluation of all scientific studies ''that can be feasibly conducted'' in order to assess the capability of the technology to substantially reduce the risks of harm. An important part of this provision is that it contemplates review only of such studies as can ''feasibly'' be conducted. The Department believes that the need to protect the American public by facilitating the manufacture and marketing of anti-terrorism technologies might render it infeasible to defer a designation decision until after every conceivable scientific study is completed. In many cases, existing

information (whether based on scientific studies, experience with the technology or a related technology, or other factors) might enable the Secretary to perform an appropriate assessment of the capability of the technology to reduce risks of harm. In other cases, even where less information is available about the capability of a technology to reduce risks of harm, the public interest in making the technology available as soon as practicable may render it infeasible to await the conduct of further scientific studies on that issue. In considering whether or to what extent it is feasible to defer a designation decision until additional scientific studies can be conducted, the Department will bring to bear its expertise concerning the protection of the American homeland and will consider the urgency of the need for the technology and other relevant factors and circumstances.

5. *''Exclusive Federal Jurisdiction'' and ''Scope'' of Insurance Coverage under Section 864(a)(3).* The Act creates an exclusive Federal cause of action ''for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.'' Section 863(a)(2); *see also* section 863(a)(1). This exclusive ''Federal cause of action shall be brought only for claims for injuries that are proximately caused by sellers that provide qualified anti-terrorism technology.'' Section 863(a)(1). The best reading of Section 863(a), and the reading the Department hereby adopts, is that (1) only one Federal cause of action exists for loss of property, personal injury, or death when a claim relates to the deployment (performance or non-performance) of the Seller's qualified anti-terrorism technology in defense against, response to, or recovery from an act of terrorism, and (2) such cause of action may be brought *only against the Seller.*

The exclusive Federal nature of this cause of action is evidenced in large part by the exclusive jurisdiction provision in Section 863(a)(2). That subsection states: ''Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller.'' *Id.* Any presumption of concurrent causes of action (between State and Federal law) is overcome by two basic points. First, Congress would not have created in this Act a Federal cause of action to complement State law causes of action. Not only is the substantive law for decision in the Federal action derived from State law (and thus would be surplusage), but in creating the Act Congress plainly intended to limit rather than increase the liability exposure of Sellers. Second, the granting of exclusive jurisdiction to the Federal district courts provides further evidence that Congress wanted an exclusive Federal cause of action. Indeed, a Federal district court (in the absence of diversity) does not have jurisdiction over state law claims, and the statute makes no mention of diversity claims anywhere in the Act.

Further, it is clear that the Seller is the only appropriate defendant in this exclusive Federal cause of action. First and foremost, the Act unequivocally states that a ''cause of action shall be brought only for claims for injuries that are *proximately caused by sellers* that provide qualified anti-terrorism technology.'' Section 863(a)(1) (emphasis added). Second, if the Seller of the qualified anti-terrorism technology at issue was not the only defendant, would-be plaintiffs could, in an effort to circumvent the statute, bring claims (arising out of or relating to the performance or non-performance of the Seller's qualified anti-terrorism technology) against arguably less culpable persons or entities, including but not limited to contractors, subcontractors, suppliers, vendors, and customers of the Seller of the technology. Because the claims in the cause of action would be predicated on the performance or non-performance of the Seller's qualified anti-terrorism technology, those persons or entities, in turn, would file a third-party action against the Seller. In such situations, the claims against non-Sellers thus ''may result in loss to the Seller'' under section 863(a)(2). The Department believes Congress did not intend through the Act to increase rather than decrease the amount of litigation arising out of or related to the deployment of qualified anti-terrorism technology. Rather, Congress balanced the need to provide recovery to plaintiffs against the need to ensure adequate deployment of anti-terrorism technologies by creating a cause of action that provides a certain level of recovery against Sellers, while at the same time protecting others in the supply chain.

The scope of Federal preemption of state laws is highly relevant to the Department's implementation of the Act, as the Department will have to determine the amount of insurance that Sellers must obtain. Accordingly, the Department seeks comment on that matter.

6. *Amount of Insurance.* The Act requires that Sellers obtain liability insurance ''of such types and in such amounts'' certified by the Secretary ''to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed.'' Section 864(a)(1). However, the Act makes clear that Sellers are *not* required to obtain liability insurance beyond ''the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.'' Section 864(a)(2).

As explained above, the Department eschews any ''one-size-fits-all'' approach to the insurance coverage requirement. Instead, the Department construes the Act as contemplating the examination of several factors. Section 25.4(b) of the interim rule therefore sets forth a nonexclusive list of several factors that the Department may consider. These include the amount of insurance the Seller has previously maintained; the amount of insurance maintained by the Seller for other technologies or for the Seller's business as a whole; the amount of insurance typically maintained by sellers of comparable technologies; data and history regarding mass casualty losses; information regarding the amount of liability insurance offered on the world market; the particular technology at issue and its intended use; and the point at which the cost of coverage would ''unreasonably distort'' the price of the technology.

In the course of determining the amount of insurance required under the Act for a particular technology, the Department may consult with the Seller, the Seller's insurer, and others. While the decision regarding the amount of insurance required will generally be specific to each Seller or each technology, the Department recognizes that the incentive-based purposes of the Act may be furthered if the Department provides information to potential Sellers regarding the types and amounts of insurance that they will likely be required to obtain. Thus the Secretary may, where appropriate, give guidance to potential Sellers regarding the type and amounts of insurance that may be sufficient under the Act for particular

technologies or categories of technologies.

The Department also recognizes that the amount of insurance available at prices that will not unreasonably distort the price of the anti-terrorism technology may vary over time. Thus, the interim rule is written to give the Department flexibility to address fluctuating insurance prices by providing that, during the term of the designation, the Seller may request reconsideration of the insurance certification due to changed circumstances or other reasons.

The interim rule provides that the Seller shall certify on an annual basis that the Seller has maintained the insurance required by the Under Secretary's certification. It further provides that the Under Secretary may terminate the designation as a qualified anti-terrorism technology if the Seller fails to provide the certification or provides a false certification. Termination of the designation would mean that the Seller would not be able to sell the technology as a qualified anti-terrorism technology after the date of the termination. The Seller's failure to maintain the insurance also may adversely affect the Seller's ability to obtain a renewal of the designation for the technology, and may even adversely affect the Seller's ability to obtain future designations of ''qualified anti-terrorism technologies.'' Finally, a false certification may result in criminal or other penalties under existing laws.

The liability protections of the Act will continue to apply to technologies sold while the SAFETY Act designation was effective, regardless of whether the seller maintains the required insurance. This is necessary because the SAFETY Act protects not only the Seller, but also others in the manufacturing and distribution chains. For example, a buyer who purchases the technology while the SAFETY Act designation is still in effect should not be punished for the Seller's failure to maintain the insurance. The Seller, however, will face potential uninsured liability, because the Seller's liability limit will remain at the certified insurance level. This is because subsection (c) of Section 864 makes clear that the Seller's liability is capped at the amount of insurance ''*required*'' to be maintained under Section 864, rather than the amount of coverage actually obtained. The limitation of liability thus relates entirely to the amount of insurance required and makes no reference to whether such insurance is, in fact, maintained by the Seller.

The Department, as part of each certification, will specify the Seller or Sellers of the anti-terrorism technology for purposes of SAFETY Act coverage. The Department may, but need not, specify in the certification the others who are covered by the liability insurance required to be purchased by the Seller.

7. *Use of Standards.* Section 25.3(c) of the interim rule provides that the Under Secretary may issue technical standards for categories of anti-terrorism technologies, and that the Under Secretary may consider compliance with any such applicable standards in determining whether to grant a designation under the Act.

8. *Relationship of the SAFETY Act to Indemnification under Public Law 85–804.* The Department recognizes that Congress intended that the SAFETY Act's liability protections would substantially reduce the need for the United States to provide indemnification under Public Law 85–804 to Sellers of anti-terrorism technologies. Where applicable, the strong liability protections of the SAFETY Act should, in most circumstances, make it unnecessary to provide indemnification to Sellers. The Department recognizes, however, that there might be, in some limited circumstances, technologies or services with respect to which both SAFETY Act coverage and indemnification might be warranted. *See* 148 Cong. Rec. E2080 (statement by Rep. Armey) (November 13, 2002) (stating that in some situations the SAFETY Act protections will ''complement other government risk-sharing measures that some contractors can use such as Public Law 85–804'').

In recognition of this close relationship between the SAFETY Act and indemnification authority, in Section 73 of Executive Order 13286 of February 28, 2003, the President recently amended the existing Executive Order on indemnification—Executive Order 10789 of November 14, 1958, as amended. The amendment granted the Department of Homeland Security authority to indemnify under Public Law 85–804. At the same time, it requires that *all* agencies—not just the Department of Homeland Security—follow certain procedures to ensure that the potential applicability of the SAFETY Act is considered before any indemnification is granted for an anti-terrorism technology. Specifically, the amendment provides that Federal agencies cannot provide indemnification ''with respect to any matter that has been, or could be, designated by the Secretary of Homeland Security as a qualified anti-terrorism technology'' unless the Secretary of Homeland Security has advised whether SAFETY Act coverage would be appropriate and the Director of the Office and Management and Budget has approved the exercise of indemnification authority. The amendment includes an exception for the Department of Defense where the Secretary of Defense has determined that indemnification is ''necessary for the timely and effective conduct of United States military or intelligence activities.''

Application of Various Laws and Executive Orders to This Interim Rulemaking

Executive Order 12866—Regulatory Planning and Review

The Department has examined the economic implications of this interim rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

The Department did not receive any comments on our economic analysis.

The Department concludes that this interim rule is a significant regulatory action under the Executive Order because it will have a positive, material effect on public safety under Section 3(f)(1), and it raises novel legal and policy issues under Section 3(f)(4). The Department concludes, however, that this interim rule does not meet the significance threshold of $100 million effect on the economy in any one year under Section 3(f)(1), due to the relatively low estimated burden of applying for this technology program, the unknown number of certifications and designations that the Department will dispense, and the unknown probability of a terrorist attack that would have to occur in order for the protections put in place in this interim rule to have a large impact on the public.

Need for the Regulation and Market Failure

This regulation implements the SAFETY Act and is intended to implement the provisions set forth in that Act. The Department believes the current development of anti-terrorism technologies has been slowed due to the potential liability risks associated with their development and eventual deployment. In a fully functioning insurance market, technology developers would be able to insure themselves against excessive liability risk; however, the terrorism risk insurance market appears to be in disequilibrium. The attacks of September 11 fundamentally changed the landscape of terrorism insurance. Congress, in the findings of TRIA, concluded that temporary financial assistance in the insurance market is needed to ''allow for a transitional period for the private markets to stabilize, resume pricing of such insurance, and build capacity to absorb any future losses.'' TRIA § 101(b)(2). This interim rulemaking addresses a similar concern, to the extent that potential technology developers are unable to efficiently insure against large losses due to an ongoing reassessment of terrorism issues in insurance markets.

Even after a temporary insurance market adjustment, purely private terrorism risk insurance markets may exhibit negative externalities. Because the risk pool of any single insurer may not be large enough to efficiently spread and therefore insure against the risk of damages from a terrorist attack, and because the potential for excessive liability may render any terrorism insurance prohibitively expensive, society may suffer from less than optimal technological protection against terrorist attacks. The measures set forth in this interim rule are designed to meet this goal; they will provide certain liability protection from lawsuits and consequently will increase the likelihood that businesses will pursue important technologies that may not be pursued without this protection.

Costs and Benefits to Technology Development Firms

Since this interim rulemaking puts in place an additional voluntary option for technology developers, the expected direct net benefits to firms of this interim rulemaking will be positive; companies presumably will not choose to pursue the designation of ''anti-terrorism technology'' unless they believe it to be a profitable endeavor. The Department cannot predict with certainty the number of applicants for this program. An additional source of uncertainty is the reaction of the insurance market to this designation. As mentioned above, insurance markets appear currently to be adjusting their strategy for terrorism risk, so little market information exists that would inform this estimate. The Department invites comments on these issues.

If a firm chooses to invest effort in pursuing SAFETY Act liability protection, the direct costs to that firm will be the time and money required to submit the required paperwork and other information to the Department. Only companies that choose to request this protection will incur costs. Please see the accompanying PRA analysis for an estimate of these costs.

The direct benefits to firms include lower potential losses from liability for terrorist attacks, and as a consequence a lower burden from liability insurance for this type of technology. In this assessment, we were careful to only consider benefits and costs specifically due to the implementation of the interim rule and not costs that would have been incurred by companies absent any interim rulemaking. The SAFETY Act requires the sellers of the technology to obtain liability insurance ''of such types and in such amounts'' certified by the Secretary. The entire cost of insurance is not a cost specifically imposed by the proposed rulemaking, as companies in the course of good business practice routinely purchase insurance absent Federal requirements to do so. Any difference in the amount or price of insurance purchased as a result of the SAFETY Act would be a cost or benefit of this interim rule for firms.

The wording of the SAFETY Act clearly states that sellers are not required to obtain liability insurance beyond the maximum amount of liability insurance reasonably available from private liability sources on the world market at prices and terms that will not unreasonably distort the sales price of the seller's anti-terrorism technologies. We tentatively conclude, however, that this interim rulemaking will impact both the prices and terms of liability insurance relative to the amount of insurance coverage absent the SAFETY Act. The probable effect of this interim rule is to lower the quantity of liability coverage needed in order for a firm to protect itself from terrorism liability risks, which would be considered a benefit of this interim rule to firms. This change will most likely be a shift back in demand that leads to a movement along the supply curve for technology firms already in this market; they probably will buy less liability coverage. This will have the effect of lowering the price per unit of coverage in this market.

The Department also expects, however, that this interim rulemaking will lead to greater market entry, which will generate surplus for both technology firms and insurers. Again, this market is still in development, and the Department solicits comments on exactly how to predict the effect of this interim rulemaking on technology development.

Costs and Benefits to Insurers

The Department has little information on the future structure of the terrorism risk insurance market, and how this interim rulemaking will affect that structure. As stated above, this type of intervention could serve to lower the demand for insurance in the current market, thus the static effect on the profitability of insurers is negative. The benefits of the lower insurance burden to technology firms would be considered a cost to insurers; the static changes to insurance coverage would cause a transfer from insurers to technology firms. On the other hand, this type of intervention should serve to increase the surplus of insurers by making some types of insurance products possible that would have been prohibitive to customers or impossible for insurers to design in the absence of this interim rulemaking. The Department is interested in public comment on any possible negative or positive impacts to insurers caused by the SAFETY Act and this interim rulemaking, and whether these impacts would result in transfers within this market or an efficiency change not captured by another party. We encourage commenters to be as specific as possible.

Costs and Benefits to the Public

The benefits to the public of this interim rulemaking are very difficult to put in dollar value terms since its ultimate objective is the development of new technologies that will help prevent or limit the damage from terrorist attacks. It is not possible to even determine whether these technologies could help prevent large or small scale attacks, as the SAFETY Act applies to a vast range of technologies, including products, services, software, and other forms of intellectual property that could have a widespread impact. In qualitative terms, the SAFETY Act removes a great deal of the risk and uncertainty associated with product liability and in the process creates a powerful incentive that will help fuel the development of critically needed anti-terrorism

technologies. Additionally, we expect the SAFETY Act to reduce the research and development costs of these technologies.

The tradeoff, however, may be that a greater number of technologies may be developed and qualify for this program that have a lower average effectiveness against terrorist attacks than technologies currently on the market, or technologies that would be developed in the absence of this interim rulemaking. In the absence of this rulemaking, strong liability discouragement implies that the fewer products that are deployed in support of anti-terrorist efforts may be especially effective, since profit maximizing firms will always choose to develop the technologies with the highest demand first. It is the tentative conclusion of the Department that liability discouragement in this market is too strong or prohibitive, for the reasons mentioned above. The Department tentatively concludes that this interim rule will have positive net benefits to the public, since it serves to strike a better balance between consumer protection and technological development. The Department welcomes comments informing this tradeoff argument, and public input on whether this interim rulemaking does strike the correct balance.

Collection of Information

Paperwork Reduction Act of 1995

This interim rule includes collection of information under the Paperwork Reduction Act of 1995 (Paperwork Reduction Act) (44 U.S.C. 3501–3520). As defined in 5 CFR 1320(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

The Department submitted the following information collection requests to the Office of Management and Budget (OMB) for emergency review with an expiration of six months from the date of publication of this interim rule in accordance with procedures of the Paperwork Reduction Act of 1995. The proposed information collection will be published to obtain comments from the public and affected agencies.

The Department requests comments on at least the following four points:

(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) The quality, utility, and clarity of the information to be collected; and

(4) 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.

For the purpose of each analysis described below and associated with each collection of information, the Department assumes a loaded labor rate of the personnel preparing each collection of information to be $100 per hour. The Department does not have sufficient information to provide a known number of applicants or submitters of information. All numbers are estimates.

This rule requires persons to conduct safety, effectiveness, utility, and hazard analyses and provide them to the Under Secretary in the course of applying for Designation of qualified anti-terrorism technology. We do not have quantified estimates of the impact of this provision, but we expect that much of the safety, effectiveness, utility, and hazard analysis activity will already take place in the normal course of technology development, since those matters are fundamental characteristics of a product. The Department acknowledges considerable uncertainty in these estimates, but even if the estimates were considerably higher, this does not represent a large investment by firms relative to overall development costs.

Overview of Requests for Collection of Information

(a) Collection of Information Form No. DHS–S&T–I–SAFETY–001.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Pre-Application for Designation of Qualified Anti-terrorism Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–001, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers and potential Sellers of qualified anti-terrorism technology. Abstract: The Pre-Application Form for Designation of Qualified Anti-Terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers pre-qualify for risk and litigation management protections under the SAFETY Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 applicants annually; 14 to 72 hours per application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,000 to 72,000 hours.

(b) Collection of Information Form No. DHS–S&T–I–SAFETY–002.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Designation of Qualified Anti-Terrorism Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–002, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers and potential Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Designation of Qualified Anti-Terrorism Technology will be used to provide information to the Under Secretary for Science and Technology of the Department of Homeland Security in determining whether Sellers qualify for risk and litigation management protections under the SAFETY Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,000 applicants annually; 36 to 180 hours per application.

(6) *An estimate of the annual total public burden associated with the collection:* 36,000 to 180,000 hours.

(c) Collection of Information Form No. DHS–S&T–I–SAFETY–003.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application of Transfer of Designation.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–003, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Transfer of Designation will be used by Sellers to notify the Under Secretary for Science and Technology of the Department of Homeland Security of a transfer of Designation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually, 15 to 30 minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(d) Collection of Information Form No. DHS–S&T–I–SAFETY–004.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Notice of License of Qualified Anti-Terrorism Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–004, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Notice of License of Qualified Anti-Terrorism Technology.

Application Form for Transfer of Designation will be used by Sellers to notify the Under Secretary for Science and Technology of the Department of Homeland Security of its license of the right to manufacture, use or sell Designated technology.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually; fifteen to thirty minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(e) Collection of Information Form No. DHS–S&T–I–SAFETY–005.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Notice of License of Approved Technology.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–005, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of approved anti-terrorism technology. Abstract: The Form for Notice of License of Approved Anti-Terrorism Technology will be used by Sellers to notify the Under Secretary for Science and Technology of the Department of Homeland Security of the right to manufacture and sell approved technology.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually; fifteen to thirty minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(f) Collection of Information Form No. DHS–S&T–I–SAFETY–006.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Modification of Designation.

(3) *Agency form numbers and applicable component sponsoring the collection: Form Number:* DHS–S&T–I–SAFETY–006, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Modification of Designation will be used by Sellers to apply to the Under Secretary for Science and Technology of the Department of Homeland Security for approval of modification of a designation of Qualified Anti-Terrorism Technology.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 applicants annually; 10 to 20 hours per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 5,000 hours.

(g) Collection of Information Form No. DHS–S&T–I–SAFETY–007.

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Application for Renewal of Certification of an Approved Product for Homeland Security.

(3) *Agency form numbers and applicable component sponsoring the collection:* Form Number: DHS–S&T–I–SAFETY–007, Directorate of Science and Technology, Department of Homeland Security.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Sellers of qualified anti-terrorism technology. Abstract: The Application Form for Renewal of Certification of an Approved Product for Homeland Security will be used by Sellers to request renewal of Certification of an approved product for Homeland Security to the Under Secretary for Science and Technology of the Department of Homeland Security.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 to 500 applicants annually; fifteen to thirty minutes per application.

(6) *An estimate of the annual total public burden (in hours) associated with the collection:* 250 hours.

(h) *Additional Information:* If additional information is required on any of these forms, contact: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(i) *Submission of Comments on the Collection of Information:* If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under addresses, by the date under Dates.

(j) *Valid OMB Control Document:* You need not respond to a collection of information unless it displays a currently valid control document from OMB.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Department to determine whether this interim rulemaking will have a significant impact on a substantial number of small entities. Although we expect that many of the applicants for SAFETY Act protection are likely to meet the Small Business Administration's criteria for being a small entity, we do not believe this interim rulemaking will impose a significant financial impact on them. In fact, we believe this interim rule will be a benefit to technology development businesses, especially small businesses, by presenting them with an attractive, voluntary option of pursuing a potentially profitable investment by reducing the amount of risk and uncertainty of lawsuits associated with developing anti-terrorist technology. The requirements of this interim rulemaking will only be imposed on such businesses that *voluntarily* seek the liability protection of the SAFETY Act. If a company does not request that protection, the company will bear no cost.

To the extent that demand for insurance falls, however, insurers may be adversely impacted by this interim rule. The Department believes that

eventual new entry into this market and further opportunities to insure against terrorism risk implies that the long-term impact of this interim rulemaking on insurers is ambiguous but could very well be positive. We also expect that this interim rulemaking will affect relatively few firms and relatively few insurers either positively or negatively, as this appears to be a specialized industry. Therefore, we preliminarily certify this notice of interim rulemaking will not have a significant impact on a substantial number of small entities, and we request comments on this certification.

Unfunded Mandates Reform Act of 1995

This interim 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 Fairness Act of 1996

As noted above, the Department has tentatively determined that this interim rule would not qualify as a ''major rule'' as defined by section 804 of the Small Business and Regulatory Enforcement Act of 1996.

Executive Order 13132—Federalism

The Department of Homeland Security does not believe this interim rule will have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. States will, however, benefit from this interim rule to the extent that they are purchasers of qualified anti-terrorism technologies. The Department requests comment on the federalism impact of this Interim rule. In particular, the Department seeks comment on whether this interim rule will raise significant federalism implications and, if so, what is the nature of those implications.

List of Subjects in 6 CFR Part 25

Business and industry, Insurance, Practice and procedure, Science and technology, Security measures.

■ For the reasons discussed in the preamble, 6 CFR Chapter I is amended by adding part 25 to read as follows:

PART 25—REGULATIONS TO SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES

Sec.
25.1 Purpose.
25.2 Delegation.
25.3 Designation of qualified anti-terrorism technologies.
25.4 Obligations of seller.
25.5 Procedures for designation of qualified anti-terrorism technologies.
25.6 Government contractor defense.
25.7 Procedures for certification of approved products for homeland security.
25.8 Confidentiality and protection of intellectual property.
25.9 Definitions.

Authority: Subtitle G, Title VIII, Pub. L. 107–296, 116 Stat. 2238 (6 U.S.C. 441–444).

§ 25.1 Purpose.

This part implements the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, Subtitle G of Title VIII of Public Law 107–296 (''the SAFETY Act'' or ''the Act'').

§ 25.2 Delegation.

All of the Secretary's responsibilities, powers, and functions under the SAFETY Act may be exercised by the Under Secretary for Science and Technology of the Department of Homeland Security (''the Under Secretary'') or the Under Secretary's designees.

§ 25.3 Designation of qualified anti-terrorism technologies.

(a) *General.* The Under Secretary may designate as a qualified anti-terrorism technology for purposes of protections set forth in Subtitle G of Title VIII of Public Law 107–296 any qualifying product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause.

(b) *Criteria to be considered.* In determining whether to grant the designation under paragraph (a) (a ''Designation''), the Under Secretary may exercise discretion and judgment in interpreting and weighting the following criteria in each case:

(1) Prior United States Government use or demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protections under the system of risk management provided under 6 U.S.C. 441–444 are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks of harm.

(7) Anti-terrorism technology that would be effective in facilitating the defense against acts of terrorism, including technologies that prevent, defeat or respond to such acts.

(8) Any other factor that the Under Secretary may consider to be relevant to the determination or to the homeland security of the United States.

(c) *Use of standards.* From time to time the Under Secretary may develop, issue, revise, and adopt technical standards for various categories of anti-terrorism technologies. Such standards will be published by the Department at *http://www.dhs.gov,* and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Compliance with any such standards that are applicable to a particular anti-terrorism technology may be considered before any Designation will be granted for such technology under paragraph (a) of this section; in such cases, the Under Secretary may consider test results produced by an independent laboratory or other entity engaged to test or verify the safety, utility, performance, or effectiveness of such technology.

(d) *Consideration of substantial equivalence.* In determining whether a particular technology satisfies the criteria in paragraph (b) and complies with any applicable standards referenced in paragraph (c), the Under Secretary may take into consideration evidence that the technology is substantially equivalent to other, similar technologies (''predicate technologies'') that have been previously designated as ''qualified anti-terrorism technologies'' under the SAFETY Act. A technology may be deemed to be substantially equivalent to a predicate technology if:

(1) it has the same intended use as the predicate technology; and

(2) it has the same or substantially similar technological characteristics as the predicate technology.

(e) *Duration and depth of review.* Recognizing the urgency of certain security measures, the Under Secretary will make a judgment regarding the duration and depth of review appropriate for a particular technology. This review will include submissions by the applicant for SAFETY Act coverage, along with information that the Under Secretary can feasibly gather from other sources. For technologies with which a Federal, state, or local government agency already has substantial experience or data (through the procurement process or through prior use or review), the review may rely in part upon that prior experience and, thus, may be expedited. The Under Secretary may consider any scientific studies, testing, field studies, or other experience with the technology that he deems appropriate and that are available or can be feasibly conducted or obtained in order to assess the capability of the technology to substantially reduce risks of harm. Such studies may, in the Under Secretary's discretion, include:

(1) Public source studies;

(2) Classified and otherwise confidential studies;

(3) Studies, tests, or other performance records or data provided by or available to the producer of the specific technology; and

(4) Proprietary studies that are available to the Under Secretary.

In considering whether or the extent to which it is feasible to defer a decision on a Designation until additional scientific studies can be conducted on a particular technology, the Under Secretary will bring to bear his or her expertise concerning the protection of the security of the American homeland and will consider the urgency of the need for the technology.

(f) *Content of Designation.* A Designation shall specify the technology, the Seller(s) of the technology, and the earliest date of sale of the technology to which the Designation shall apply (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, the effective date of the Designation). The Designation may, but need not, also specify others who are required to be covered by the liability insurance required to be purchased by the Seller. The Designation shall include the Under Secretary's certification required by § 25.4(h). The Designation may also include such other specifications as the Under Secretary may deem to be appropriate, including, but not limited to, specific applications of the technology, materials or processes required to be used in producing or using the technology, restrictions on transfer or licensing, and training and instructions required to be provided to persons involved in the deployment of the technology. Failure to specify a covered person or entity in a Designation will not preclude application of the Act's protections to that person or entity.

(g) *Government procurements.* The Under Secretary may coordinate a SAFETY Act review in connection with a Federal, state, or local government agency procurement of an anti-terrorism technology in any manner he or she deems appropriate and consistent with the Act and other applicable laws.

(h) *Pre-application consultations.* To the extent that he or she deems it appropriate, the Under Secretary may consult with potential SAFETY Act applicants regarding the need for or advisability of particular types of anti-terrorism technologies, although no pre-approval of any particular technology may be given. Such potential applicants may request such consultations through the Pre-Application process set forth in the SAFETY Act Application Kit. The confidentiality provisions in § 25.8 shall be applicable to such consultations.

§ 25.4 Obligations of Seller.

(a) *Liability insurance required.* The Seller shall obtain liability insurance of such types and in such amounts as shall be required in the applicable Designation, which shall be the amounts and types certified by the Under Secretary to satisfy otherwise compensable third-party claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from, such act. Notwithstanding the foregoing, if the Under Secretary determines that insurance in appropriate amounts or of appropriate types is not available for a particular technology, the Under Secretary may authorize a Seller to self-insure and prescribe the amount and terms of the Seller's liability in the applicable Designation, which amount and terms shall be such as will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary may request at any time (before or after the insurance certification process established under this section) that the Seller or any other provider of qualified anti-terrorism technology submit any information that would:

(1) Assist in determining the amount of liability insurance required, or

(2) Show that the Seller or any other provider of qualified anti-terrorism technology otherwise has met all the requirements of this section.

(b) *Maximum Amount.* For the total claims related to one act of terrorism, in determining the required amounts and types of liability insurance that the Seller will be required to obtain, the Under Secretary shall not require the Seller to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of the Seller's anti-terrorism technology. The Under Secretary will determine the amount of liability insurance required for each technology, or, to the extent feasible and appropriate, a particular group of technologies. The Under Secretary or his designee may find that—notwithstanding the level of risk exposure for a particular technology, or group of technologies—the maximum amount of liability insurance from private sources on the world market is set at a price or contingent on terms that will unreasonably distort the sales price of a Seller's technology, thereby necessitating liability insurance coverage below the maximum amount available. In determining the amount of liability insurance required, the Under Secretary may consider any factor, including, but not limited to, the following:

(1) The particular technology at issue;

(2) The amount of liability insurance the Seller maintained prior to application;

(3) The amount of liability insurance maintained by the Seller for other technologies or for the Seller's business as a whole;

(4) The amount of liability insurance typically maintained by sellers of comparable technologies;

(5) Information regarding the amount of liability insurance offered on the world market;

(6) Data and history regarding mass casualty losses;

(7) The intended use of the technology;

(8) The possible effects of the cost of insurance on the price of the product, and the possible consequences thereof for development, production, or deployment of the technology; and

(9) In the case of a Seller seeking approval to self-insure, the factors described in 48 CFR 28.308(d).

(c) *Scope of coverage.* Liability insurance required to be obtained (or self-insurance required) pursuant to this section shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale,

use, or operation of qualified anti-terrorism technologies deployed in defense against, response to, or recovery from, an act of terrorism:

(1) Contractors, subcontractors, suppliers, vendors and customers of the Seller.

(2) Contractors, subcontractors, suppliers, and vendors of the customer.

(d) *Third party claims.* Any liability insurance required to be obtained (or self-insurance required) pursuant to this section shall provide coverage against third party claims arising out of, relating to, or resulting from an act of terrorism when the applicable qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act.

(e) *Reciprocal waiver of claims.* The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors, and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use, or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against, response to, or recovery from such act. Notwithstanding the foregoing, if the Seller has used diligent efforts in good faith to obtain all required reciprocal waivers, then obtaining such waivers shall not be a condition precedent or subsequent for, nor shall the failure to obtain one or more of such waivers adversely affect, the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification. Nothing in this paragraph (e) shall be interpreted to render the failure to obtain one or more of such waivers a condition precedent or subsequent for the issuance, validity, effectiveness, duration, or applicability of a Designation or a Certification.

(f) *Extent of liability.* Liability for all claims against a Seller arising out of, relating to, or resulting from an act of terrorism when such Seller's qualified anti-terrorism technology has been deployed in defense against, response to, or recovery from such act in accordance with the applicable Designation and such claims result or may result in loss to the Seller, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this Section, or, in the case of a Seller authorized by the Under Secretary to self-insure pursuant to this Section, shall not be in an amount greater than the liability limit prescribed by the Under Secretary in the applicable Designation.

(1) In addition, in any action brought under Section 863 of the Act for damages:

(i) No punitive damages intended to punish or deter, exemplary damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment,

(ii) Noneconomic damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm, and

(iii) any recovery by a plaintiff shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(2) Without prejudice to the authority of the Under Secretary to terminate a Designation pursuant to paragraph (h) of this Section, such liability limitations and reductions shall apply in perpetuity to all deployments of a qualified anti-terrorism technology that occur on or after the effective date of the Designation applicable to such technology in defense against, response to, or recovery from any act of terrorism, regardless of whether any liability insurance coverage required to be obtained by the Seller is actually maintained or not, provided that the sale of such technology was consummated by the Seller on or after the earliest date of sale of such technology specified in such Designation (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Designation.

(g) *Information to be submitted by the Seller.* As part of any application for a Designation, the Seller shall provide a statement, executed by a duly authorized representative of the Seller, of all liability insurance coverage applicable to third-party claims arising out of, relating to, or resulting from an act of terrorism when the Seller's qualified anti-terrorism technology has been deployed in defense against, response to, or recovery from such act, including:

(1) Names of insurance companies, policy numbers, and expiration dates;

(2) A description of the types and nature of such insurance (including the extent to which the Seller is self-insured or intends to self-insure);

(3) Dollar limits per occurrence and annually of such insurance, including any applicable sublimits;

(4) Deductibles or self-insured retentions, if any, that are applicable;

(5) Any relevant exclusions from coverage under such policies;

(6) The price for such insurance, if available, and the per-unit amount or percentage of such price directly related to liability coverage for the Seller's qualified anti-terrorism technology deployed in defense against, or response to, or recovery from an act of terror;

(7) Where applicable, whether the liability insurance, in addition to the Seller, protects contractors, subcontractors, suppliers, vendors and customers of the Seller and contractors, subcontractors, suppliers, vendors and customers of the customer to the extent of their potential liability for involvement in the manufacture, qualification, sale, use or operation of Qualified Anti-terrorism Technologies deployed in defense against, response to, or recovery from an act of terrorism;

(8) Any limitations on such liability insurance; and

(9) In the case of a Seller seeking approval to self-insure, all of the information described in 48 CFR 28.308(a)(1) through (10).

(h) *Under Secretary's certification.* For each qualified anti-terrorism technology, the Under Secretary shall certify the amount of insurance required under Section 864 of the Act. The Under Secretary shall include the certification under this section as a part of the applicable Designation. The certification may specify a period of time for which the certification will apply. The Seller of a qualified anti-terrorism technology may at any time petition the Under Secretary for a revision or termination of the certification under this section. The Under Secretary or his designee may at any time request information from the Seller regarding the insurance maintained by the Seller or the amount of insurance available to the Seller.

(i) *Seller's continuing obligations.* Within 30 days after the Under Secretary's certification required by paragraph (h), and within 30 days after each subsequent anniversary of the issuance of a Designation, the Seller shall certify to the Under Secretary that the Seller has maintained the insurance required by such certification. The Under Secretary may terminate a Designation if the Seller fails to provide

the certification required by this paragraph or provides a false certification. The Under Secretary may also consider such failure to provide the certification or provision of a false certification when reviewing future applications from the same Seller. The Seller must also notify the Under Secretary of any changes in types or amounts of liability insurance coverage for any qualified anti-terrorism technology.

§ 25.5 Procedures for designation of qualified anti-terrorism technologies.

(a) *Application procedure.* Any Seller seeking a designation shall submit information supporting such request to the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology (''the Assistant Secretary''), or such other official of such Directorate as may be designated from time to time by the Under Secretary. The Under Secretary shall make application forms available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528.

(b) *Initial notification.* Within 30 days after receipt of an Application for a Designation, the Assistant Secretary or his or her designee shall notify the applicant in writing that:

(1) The Application is complete and will be reviewed, or

(2) That the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review process.* The Assistant Secretary or his or her designee will review each complete Application and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or nonfederal entity;

(4) Perform studies or analyses of the technology or the insurance market for such technology; and

(5) Seek information from insurers regarding the availability of insurance for such technology.

(d) *Recommendation of the Assistant Secretary.* (1) Within 90 days after receipt of a complete Application for a Designation, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application:

(i) That the Application be approved and a Designation be issued to the Seller;

(ii) That the Seller be notified that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or

(iii) That the Application be denied.

(2) If approval is recommended, the recommendation shall include a recommendation regarding the certification required by § 25.4(h). The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Action by the Under Secretary.* Within 30 days after receiving a recommendation from the Assistant Secretary pursuant to paragraph (d) of this section, the Under Secretary shall take one of the following actions:

(1) Approve the Application and issue an appropriate Designation to the Seller, which shall include the certification required by §25.4(h);

(2) Notify the Seller in writing that the technology is potentially eligible for a Designation, but that additional specified information is needed before a decision may be reached; or

(3) Deny the Application, and notify the Seller in writing of such decision. The Under Secretary may extend the time period beyond 30 days upon notice to the Seller; the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(f) *Term of Designation; renewal.* A Designation shall be valid and effective for a term of five to eight years (as determined by the Under Secretary based upon the technology) commencing on the date of issuance. At any time commencing two years prior to the expiration of a Designation, the Seller may apply for renewal of the Designation. The Under Secretary shall make the application form for renewals available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/ room 4320, Department of Homeland Security, Washington, DC 20528.

(g) *Transfer of Designation.* (1) Except as may be restricted by the terms and conditions of a Designation, any Designation may be transferred and assigned to any other person or entity to which the Seller transfers and assigns all right, title, and interest in and to the technology covered by the Designation, including the intellectual property rights therein (or, if the Seller is a licensee of the technology, to any person or entity to which such Seller transfers all of its right, title, and interest in and to the applicable license agreement). Such transfer and assignment of a Designation will not be effective unless and until:

(i) the Under Secretary is notified in writing of the transfer using the ''Application for Transfer of Designation'' form issued by the Under Secretary (the Under Secretary shall make this application form available at *http://www.dhs.gov* and by mail by written request sent to: Directorate of Science and Technology, SAFETY Act/ room 4320, Department of Homeland Security, Washington, DC 20528), and

(ii) the transferee complies with all applicable provisions of the SAFETY Act, this Part, and the relevant Designation as if the transferee were the Seller.

(2) Upon the effectiveness of such transfer and assignment, the transferee will be deemed to be a Seller in the place and stead of the transferor with respect to the applicable technology for all purposes under the SAFETY Act, this Part, and the transferred Designation. The transferred Designation will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which the transfer and assignment of the Designation became effective, as specified in the applicable Application for Transfer of Designation.

(h) *Application of Designation to licensees.* Except as may be restricted by the terms and conditions of a Designation, any Designation shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture, use, or and sell the technology, in the same manner and to the same extent that such Designation applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a ''Notice of License of Qualified Anti-terrorism Technology'' form issued by the Under Secretary. The Under Secretary shall make this form available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Designation.

(i) *Termination of Designation resulting from significant modification.*

A Designation shall terminate automatically, and have no further force or effect, if the designated qualified anti-terrorism technology is significantly changed or modified. A significant change or modification in the technology is one that could significantly reduce the safety or effectiveness of the technology. This could include, in the case of a device, a significant change or modification in design, material, chemical composition, energy source, manufacturing process, or purpose for which it is to be sold, and in the case of a service, a significant change or modification in methodology, procedures, or purpose for which it is to be sold. If a Seller is planning a change or modification to a designated technology, such Seller may apply for a corresponding modification of the applicable Designation in advance of the implementation of such modification. Application for such a modification must be made using the ''Application for Modification of Designation'' form issued by the Under Secretary. The Under Secretary shall make this application form available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. Changes or modifications will be evaluated at a minimum with reference to the description of the technology and its purposes as provided in the Seller's application and with reference to what was designated in the applicable Designation. In lieu of issuing a modified Designation in response to such an application, the Under Secretary may elect to issue a certificate to the Seller certifying that the submitted changes or modifications are not significant within the meaning of this paragraph (i) and that the Seller's existing Designation continues to be applicable to the changed or modified technology.

§ 25.6 Government contractor defense.

(a) *Criteria for certification.* The Under Secretary may certify a qualified anti-terrorism technology as an Approved Product for Homeland Security for purposes of establishing a rebuttable presumption of the applicability of the government contractor defense. In determining whether to grant such certification, the Under Secretary or his or her designee shall conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller shall provide safety and hazard analyses and other relevant data and information regarding such technology to the Department in connection with an application. The Under Secretary or his designee may require that the Seller submit any information that the Under Secretary or his designee considers relevant to the application for approval. The Under Secretary or his designee may consult with, and rely upon the expertise of, any other governmental or non-governmental person or entity, and may consider test results produced by an independent laboratory or other person or entity engaged by the Seller.

(b) *Extent of liability.* Should a product liability or other lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies certified by the Under Secretary as provided in §§ 25.6 and 25.7 of this part have been deployed in defense against or response or recovery from such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Assistant Secretary during the course of the Assistant Secretary's consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers. Such presumption shall apply in perpetuity to all deployments of a qualified anti-terrorism technology (for which a Certification has been issued by the Under Secretary as provided in this section and § 25.7) that occur on or after the effective date of the Certification applicable to such technology in defense against, response to, or recovery from any act of terrorism, provided that the sale of such technology was consummated by the Seller on or after the earliest date of sale of such technology specified in such Certification (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, such effective date) and prior to the expiration or termination of such Certification.

§ 25.7 Procedures for Certification of Approved Products for Homeland Security.

(a) *Application procedure.* A Seller seeking certification of anti-terrorism technology as an Approved Product for Homeland Security under §25.6 (a ''Certification'') shall submit information supporting such request to the Assistant Secretary. The Under Secretary shall make application forms available at *http://www.dhs.gov,* and copies may also be obtained by mail by sending a request to: Directorate of Science and Technology, SAFETY Act/room 4320, Department of Homeland Security, Washington, DC 20528. An application for a certification may not be filed unless the Seller has also filed an application for designation of qualified anti-terrorism technology for the same technology. The two applications may be filed simultaneously and may be reviewed simultaneously.

(b) *Initial notification.* Within 30 days after receipt of an Application for a Certification, the Assistant Secretary or his or her designee shall notify the applicant in writing that:

(1) The Application is complete and will be reviewed, or

(2) That the Application is incomplete, in which case the missing or incomplete parts will be specified.

(c) *Review process.* The Assistant Secretary or his or her designee will review each complete Application for a Certification and any included supporting materials. In performing this function, the Assistant Secretary or his or her designee may, but is not required to:

(1) Request additional information from the Seller;

(2) Meet with representatives of the Seller;

(3) Consult with, and rely upon the expertise of, any other Federal or nonfederal entity; and

(4) Perform or seek studies or analyses of the technology.

(d) *Recommendation of the Assistant Secretary.* (1) Within 90 days after receipt of a complete Application for a Certification, the Assistant Secretary shall make one of the following recommendations to the Under Secretary regarding such Application:

(i) That the Application be approved and a Certification be issued to the Seller;

(ii) That the Seller be notified that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) That the Application be denied.

(2) The Assistant Secretary may extend the time period beyond 90 days upon notice to the Seller; the Assistant Secretary is not required to provide a reason or cause for such extension.

(e) *Action by the Under Secretary.* (1) Within 30 days after receiving a

recommendation from the Assistant Secretary pursuant to paragraph (d) of this section, the Under Secretary shall take one of the following actions:

(i) Approve the Application and issue an appropriate Certification to the Seller;

(ii) Notify the Seller in writing that the technology is potentially eligible for a Certification, but that additional specified information is needed before a decision may be reached; or

(iii) Deny the Application, and notify the Seller in writing of such decision.

(2) The Under Secretary may extend the time period beyond 30 days upon notice to the Seller, and the Under Secretary is not required to provide a reason or cause for such extension. The Under Secretary's decision shall be final and not subject to review, except at the discretion of the Under Secretary.

(f) *Designation is a pre-condition.* The Under Secretary may approve an application for a certification only if the Under Secretary has also approved an application for a designation for the same technology under section 25.3.

(g) *Content and term of certification; renewal.* A Certification shall specify the technology, the Seller(s) of the technology, and the earliest date of sale of the technology to which the Certification shall apply (which shall be determined by the Under Secretary in his or her discretion, and may be prior to, but shall not be later than, the effective date of the Certification). The Certification may also include such other specifications as the Under Secretary may deem to be appropriate, including, but not limited to, specific applications of the technology, materials or processes required to be used in producing or using the technology, restrictions on transfer or licensing, and training and instructions required to be provided to persons involved in the deployment of the technology. A certification shall be valid and effective for the same period of time for which the related Designation is issued, and shall terminate upon the termination of such related Designation. The Seller may apply for renewal of the Certification in connection with an application for renewal of the related Designation. An application for renewal must be made using the ''Application for Certification of an Approved Product for Homeland Security'' form issued by the Under Secretary.

(h) *Application of Certification to licensees.* Any certification shall apply to any other person or entity to which the Seller licenses (exclusively or nonexclusively) the right to manufacture and sell the technology, in the same manner and to the same extent that such certification applies to the Seller, effective as of the date of commencement of the license, provided that the Seller notifies the Under Secretary of such license by submitting, within 30 days after such date of commencement, a ''Notice of License of Approved Anti-terrorism Technology'' form issued by the Under Secretary. The Under Secretary shall make this form available at *http://www.dhs.gov* and by mail upon request sent to: Directorate of Science and Technology, SAFETY Act/ room 4320, Department of Homeland Security, Washington, DC 20528. Such notification shall not be required for any licensee listed as a Seller on the applicable Certification.

(i) *Transfer of Certification.* In the event of any permitted transfer and assignment of a Designation, any related Certification for the same anti-terrorism technology shall automatically be deemed to be transferred and assigned to the same transferee to which such Designation is transferred and assigned. The transferred Certification will continue to apply to the transferor with respect to all transactions and occurrences that occurred through the time at which such transfer and assignment of the Certification became effective.

(j) *Issuance of Certificate; Approved Product List.* For anti-terrorism technology reviewed and approved by the Under Secretary and for which a Certification is issued, the Under Secretary shall issue a certificate of conformance to the Seller and place the anti-terrorism technology on an Approved Product List for Homeland Security, which shall be published by the Department of Homeland Security.

§ 25.8 Confidentiality and protection of intellectual property.

The Secretary, in consultation with the Office of Management and Budget and appropriate Federal law enforcement and intelligence officials, and in a manner consistent with existing protections for sensitive or classified information, shall establish confidentiality protocols for maintenance and use of information submitted to the Department under the SAFETY Act and this Part. Such protocols shall, among other things, ensure that the Department will utilize all appropriate exemptions from the Freedom of Information Act.

§ 25.9 Definitions.

Act of Terrorism—The term ''act of terrorism'' means any act that—

(1) Is unlawful;

(2) Causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(3) Uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

Assistant Secretary—The term ''Assistant Secretary'' means the Assistant Secretary for Plans, Programs, and Budget of the Department of Homeland Security Directorate of Science and Technology, or such other official of such Directorate as may be designated from time to time by the Under Secretary.

Certification—The term ''Certification'' means (unless the context requires otherwise) a certification that a qualified anti-terrorism technology for which a Designation has been issued will perform as intended, conforms to the Seller's specifications, and is safe for use as intended.

Contractor—The term ''contractor'' of a Seller means any person or entity with whom or with which the Seller has entered into a contract relating to the manufacture, sale, use, or operation of anti-terrorism technology for which a Designation is issued (regardless of whether such contract is entered into before or after the issuance of such Designation), including, without limitation, an independent laboratory or other entity engaged in testing or verifying the safety, utility, performance, or effectiveness of such technology, or the conformity of such technology to the Seller's specifications.

Designation—The term ''Designation'' means a designation of a qualified anti-terrorism technology under the SAFETY Act issued by the Under Secretary under authority delegated by the Secretary of Homeland Security.

Loss—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss (which is a component of loss of or damage to property).

Noneconomic damages—The term ''noneconomic damages'' means damages for losses for physical and emotional pain, suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

Physical harm—The term ''physical harm'' as used in the Act shall mean a physical injury to the body that caused, either temporarily or permanently, partial or total physical disability, incapacity or disfigurement. In no event shall physical harm include mental pain, anguish, or suffering, or fear of injury.

Qualified Anti-Terrorism Technology (QATT)—The term '''qualified anti-terrorism technology''' means any product, equipment, service (including support services), device, or technology (including information technology) designed, developed, modified, or procured for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism or limiting the harm such acts might otherwise cause, for which a Designation has been issued under this Part.

SAFETY Act or Act—The term ''SAFETY Act'' or ''Act'' means the Support Anti-terrorism by Fostering Effective Technologies Act of 2002, enacted as Subtitle G of Title VIII of the Homeland Security Act of 2002, Public Law 107–296.

Seller—The term ''Seller'' means any person or entity to whom or to which (as appropriate) a Designation has been issued under this Part (unless the context requires otherwise).

Under Secretary—The term ''Under Secretary'' means the Under Secretary for Science and Technology of the Department of Homeland Security.

Dated: October 10, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–26217 Filed 10–10–03; 4:15 pm]

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Vol. 68, No. 200

Thursday, October 16, 2003

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Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
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FEDERAL REGISTER PAGES AND DATE, OCTOBER

56521–56764 1
56765–57318 2
57319–57606 3
57607–57782 6
57783–58008 7
58009–58260 8
58261–58574 9
58575–59078 10
59079–59304 14
59305–59512 15
59513–59704 16

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7710 56521
7711 58251
7712 58253
7713 58255
7714 58257
7715 58259
7716 58573
7717 59079
7718 59305
7719 59513
7720 59515
7721 59517
Administrative Orders:
Presidential Determinations:
No. 2003–40 57319
No. 2003–41 58261

5 CFR

575 56665
870 59081
890 56523
892 .....56523, 56525

6 CFR

25 59684

7 CFR

272 59519
275 59519
301 .....56529, 59082, 59091, 59307
905 59446
930 57321
945 59524
956 57324
993 57783
1206 58552
1220 57326
Proposed Rules:
58 57382
301 59548
923 58636
946 58638
1000 59554
1001 59554
1005 59554
1006 59554
1007 59554
1030 59554
1032 59554
1033 59554
1124 59554
1126 59554
1131 59554
1135 59554
1206 58556

9 CFR

1 58575
2 58575
3 58575
94 59527
113 57607
Proposed Rules:
113 57638

10 CFR

Ch. 1 58792
30 57327
40 57327
70 57327
72 57785
Proposed Rules:
40 59346
52 57383
72 57839

12 CFR

3 56530
204 57788
208 56530
225 56530
325 56530
559 57790
562 57790
563 57790
567 56530
702 56537
704 56537
712 56537
723 56537
742 56537
910 59308
913 59308
Proposed Rules:
3 56568
208 56568
225 56568
325 56568
567 56568
701 56586
708a 56589
741 56586

13 CFR

102 59091
120 .....56553, 57960
121 59309

14 CFR

23 .....58009, 59098, 59099
25 59095
39 .....57337, 57339, 57343, 57346, 57609, 57611, 58263, 58265, 58268, 58271, 58273, 58578, 58581, 59101, 59104, 59106, 59109, 59531, 59532
71 .....57347, 58011, 58582, 59112, 59113, 59148
97 .....57347, 57349
Proposed Rules:
25 58042

39 .....56591, 56594, 56596, 56598, 56792, 56794, 56796, 56799, 56801, 57392, 57394, 57639, 58044, 58046, 58050, 58283, 58285, 58287, 58289, 58291, 59136, 59138, 59139, 59347, 59349, 59555
73.....58052

15 CFR

303.....56555

16 CFR

1000.....57799

17 CFR

4.....59113
30.....58583
230.....57760
239.....57760
270.....57760
274.....57760
275.....56692
279.....56692
Proposed Rules:
239.....58226
274.....58226
275.....58226

19 CFR

12.....58371
Proposed Rules:
191.....56804

20 CFR

604.....58540

21 CFR

1.....58894, 58974
20.....58894
172.....57799, 57957
347.....58273
520.....57351
522.....56765
529.....57613
1300.....57799
1301.....58587
1309.....57799
1310.....57799
Proposed Rules:
1.....56600
356.....57642

22 CFR

120.....57352

24 CFR

598.....57604
599.....57604
982.....57804
Proposed Rules:
203.....58006

25 CFR

Proposed Rules:
514.....58053

26 CFR

1.....56556, 59114
Proposed Rules:
301.....59557

27 CFR

73.....58600
Proposed Rules:
9.....57840, 57845

29 CFR

403.....58374
408.....58374
4022.....59315
4044.....59315

30 CFR

935.....57352
938.....56765, 57805
Proposed Rules:
914.....59352
917.....57398

33 CFR

100 .....58011, 58013, 58603
110.....58015
117 .....57356, 57614, 58018, 59114, 59316, 59535
147.....59116
165 .....57358, 57366, 57368, 57370, 57616, 58015, 58604, 58606, 59118, 59538
334.....57624
Proposed Rules:
100.....58640
117.....58642, 59143
334.....57642

37 CFR

2.....56556
260.....57814
Proposed Rules:
201.....58054

38 CFR

3.....59540
Proposed Rules:
17.....56876, 59557
36.....58293

39 CFR

111.....56557, 58273
224.....56557
230.....57372
261.....56557
262.....56557
263.....56557
264.....56557
265.....56557
266.....56557
267.....56557
268.....56557

40 CFR

52 .....58019, 58276, 58608, 59121, 59123, 59318, 59321, 59327
60.....59328
62.....57518, 58613
63.....58172, 58615
80.....56776, 57815
81.....57820
239.....57824
258.....57824, 59333
271.....59542
Proposed Rules:
30.....57850, 59563
31.....57850, 59563
33.....57850, 59563
35.....57850, 59563
40.....57850, 59563
52 .....58055, 58295, 58644, 59145, 59146, 59355, 59356
60.....58838
62.....58646
70.....58055
71.....58055
80.....56805, 57851
82.....56809
131.....58758
141.....58057
142.....58057
143.....58057
228.....58295
239.....57855
258.....57855
261.....56603
271.....59563
300.....57855

41 CFR

101–6.....56560
101–8.....57730

42 CFR

409.....58756
411.....58756
412.....57732
413.....57732, 58756
440.....58756
483.....58756
488.....58756
489.....58756

44 CFR

59.....59126
61.....59126
65.....57625
67.....57825, 57828
Proposed Rules:
61.....59146
62.....59146
67.....57856

47 CFR

1.....58629, 59127
5.....59335
24.....57828
25 .....58629, 59127, 59128
52.....56781
64.....56764, 59130
73.....57829
74.....59131
76.....59336
78.....59131
Proposed Rules:
73 .....56810, 56811, 57861

48 CFR

Ch. 1.....56668, 56689
1.....56669
2 .....56669, 56676, 56681
4 .....56669, 56676, 56679
5.....56676
6.....56676
7.....56676
8.....56688
9.....56676
10.....56676, 56681
12 .....56676, 56681, 56682
13.....56669, 56681
14.....56676
19.....56676, 56681
22.....56676
24.....56688
25 .....56676, 56681, 56684, 56685
31.....56686
32.....56669, 56682
34.....56676
35.....56676
36.....56676
52 .....56669, 56682, 56684, 56685
202.....56560, 58631
204.....58631
211.....58631
212.....58631
213.....56560
226.....56561
237.....56563
243.....58631
252 .....56560, 56561, 58631
1817.....57629
Proposed Rules:
16.....56613
39.....56613, 59447
511.....59510
552.....59510

49 CFR

171.....57629
172.....57629
173.....57629
175.....57629
176.....57629
177.....57629
178.....57629
179.....57629
544.....59132
575.....59249
1503.....58281

50 CFR

17 .....56564, 57829, 59337
21.....58022
32.....57308
622.....57375
635.....56783, 59546
648.....58037, 58281
660.....57379
679 .....56788, 57381, 57634, 57636, 57837, 58037, 58038, 59345, 59546
697.....56789
Proposed Rules:
17.....57643, 57646
300.....58296
402.....58298
622.....57400, 59151
648.....56811
660.....59358
679.....59564

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 16, 2003

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

Classical swine fever; disease status change—

East Anglia; published 10-16-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Claims; electronic submission; published 8-15-03

HOMELAND SECURITY DEPARTMENT

Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act); implementation; published 10-16-03

NUCLEAR REGULATORY COMMISSION

Production and utilization facilities; domestic licensing:

Combustible gas control in containment; published 9-16-03

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:

Design of dry cask independent spent fuel storage installations and monitored retrievable storage installations; siting; published 9-16-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 9-11-03

Boeing; published 9-11-03

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Chronic lymphocytic leukemia; presumptive service connection; published 10-16-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Wildlife; 2004-2005; subsistence taking; comments due by 10-24-03; published 8-19-03 [FR 03-21121]

AGRICULTURE DEPARTMENT

Farm Service Agency

Program regulations:

Direct farm loan programs; appraisals; comments due by 10-20-03; published 8-21-03 [FR 03-21422]

Guaranteed farm loan program; comments due by 10-20-03; published 8-19-03 [FR 03-21040]

AGRICULTURE DEPARTMENT

Rural Business-Cooperative Service

Program regulations:

Direct farm loan programs; appraisals; comments due by 10-20-03; published 8-21-03 [FR 03-21422]

AGRICULTURE DEPARTMENT

Rural Housing Service

Program regulations:

Direct farm loan programs; appraisals; comments due by 10-20-03; published 8-21-03 [FR 03-21422]

AGRICULTURE DEPARTMENT

Rural Utilities Service

Program regulations:

Direct farm loan programs; appraisals; comments due by 10-20-03; published 8-21-03 [FR 03-21422]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Atlantic blue and white marlin; recreational landings limit; comments due by 10-24-03; published 9-17-03 [FR 03-23764]

Northeastern United States fisheries—

Atlantic surf clam and ocean quahog; comments due by 10-23-03; published 8-25-03 [FR 03-21609]

DEFENSE DEPARTMENT

Acquisition regulations:

Multiyear contracting authority revisions; comments due by 10-20-03; published 8-21-03 [FR 03-21309]

Production surveillance and reporting; comments due by 10-20-03; published 8-21-03 [FR 03-21312]

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Coordination of benefits between TRICARE and the Department of Veterans Affairs; comments due by 10-20-03; published 8-19-03 [FR 03-21012]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Asbestos; comments due by 10-20-03; published 9-18-03 [FR 03-23846]

Air pollution control; new motor vehicles and engines:

Compression-ignition marine engines at or above 30 liters per cylinder; emission standards; correction; comments due by 10-20-03; published 9-19-03 [FR 03-23849]

Compression-ignition marine engines at or above 30 liters per cylinder; emission standards

Correction; comments due by 10-20-03; published 9-19-03 [FR 03-23848]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

New Mexico; comments due by 10-20-03; published 9-18-03 [FR 03-23747]

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 10-22-03; published 9-22-03 [FR 03-24003]

Air quality planning purposes; designation of areas:

Arizona; comments due by 10-22-03; published 9-22-03 [FR 03-24002]

Environmental statements; availability, etc.:

Coastal nonpoint pollution control program—

Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Americans with Disabilities Act; implementation—

Individuals with hearing and speech disabilities; telecommunications relay services and speech-to-speech services; comments due by 10-24-03; published 8-25-03 [FR 03-21615]

FEDERAL TRADE COMMISSION

Industry guides:

Tire advertising and labeling guides; comments due by 10-24-03; published 8-25-03 [FR 03-21681]

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:

Respiratory assist devices with bi-level capacity and back-up rate; payment; comments due by 10-21-03; published 8-22-03 [FR 03-21443]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

California; comments due by 10-22-03; published 9-22-03 [FR 03-24016]

Oregon; comments due by 10-20-03; published 9-5-03 [FR 03-22564]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Wildlife; 2004-2005; subsistence taking; comments due by 10-24-

03; published 8-19-03 [FR 03-21121]

Endangered and threatened species:

Scimitar-horned oryx, addax, and dama gazelle; comments due by 10-22-03; published 7-24-03 [FR 03-18841]

Migratory bird hunting:

Resident Canada goose populations; management; comments due by 10-20-03; published 8-21-03 [FR 03-21268]

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Pennsylvania; comments due by 10-22-03; published 9-22-03 [FR 03-23986]

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Expeditious adjudication of appeals; comments due by 10-20-03; published 9-18-03 [FR 03-23857]

PERSONNEL MANAGEMENT OFFICE

Employment:

Executive branch employees detailed to legislative branch; guidelines; comments due by 10-24-03; published 9-9-03 [FR 03-22904]

Intergovernmental Personnel Act Mobility Programs:

Federal Government and State, local, and Indian Tribal governments, higher education institutions, etc.; temporary employee assignments; comments due by 10-21-03; published 8-22-03 [FR 03-21417]

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old-age, survivors, and disability insurance—

Earnings; annual test for retirement beneficiaries; comments due by 10-24-03; published 8-25-03 [FR 03-21613]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; comments due by 10-20-03; published 9-18-03 [FR 03-23832]

Boeing; comments due by 10-20-03; published 9-4-03 [FR 03-22496]

Bombardier; comments due by 10-22-03; published 9-22-03 [FR 03-23933]

Eurocopter France; comments due by 10-21-03; published 8-22-03 [FR 03-21522]

McCauley Propeller Systems, Inc.; comments due by 10-20-03; published 8-21-03 [FR 03-21519]

McCauley Propeller Systems, Inc.; correction; comments due by 10-20-03; published 9-8-03 [FR C3-21519]

McDonnell Douglas; comments due by 10-23-03; published 9-8-03 [FR 03-22709]

Saab; comments due by 10-20-03; published 9-19-03 [FR 03-23939]

Airworthiness standards:

Special conditions—

Douglas Models DC-8-61, -61F, -63, -63F, -71, -71F, -72, -72F, -73, and -73F airplanes; comments due by 10-20-03; published 9-19-03 [FR 03-23970]

Class D and Class E airspace; comments due by 10-23-03; published 9-12-03 [FR 03-23298]

TRANSPORTATION DEPARTMENT

Federal Motor Carrier Safety Administration

Hazardous materials:

Hazardous materials transportation—

Safety permits; comments due by 10-20-03; published 8-19-03 [FR 03-20887]

TRANSPORTATION DEPARTMENT

National Highway Traffic Safety Administration

Insurer reporting requirements:

Insurers required to file reports; list; comments due by 10-25-03; published 10-14-03 [FR 03-25659]

Motor vehicle safety standards:

Rear impact protection; road construction controlled horizontal discharge trailer; exclusion from standard; comments due by 10-20-03; published 9-19-03 [FR 03-23960]

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:

Automated Clearing House; Federal agency participation; comments due by 10-20-03; published 8-21-03 [FR 03-21203]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Modified accelerated cost recovery system property; changes in use; depreciation; comments due by 10-20-03; published 7-21-03 [FR 03-18325]

Real estate mortgage investment conduits; Section 446 application with respect to inducement fees; comments due by 10-20-03; published 7-21-03 [FR 03-18212]

Retirement plans; cash or deferred arrangements and matching or employee contributions; comments due by 10-22-03; published 7-17-03 [FR 03-17755]

Securities in an S corporation; prohibited allocations; cross-reference; comments due by 10-20-03; published 7-21-03 [FR 03-18211]

TREASURY DEPARTMENT

Privacy Act; implementation; comments due by 10-22-03; published 9-22-03 [FR 03-24055]

TREASURY DEPARTMENT

Alcohol and Tobacco Tax and Trade Bureau

Alcoholic beverages:

Flavored malt beverages; comments due by 10-21-03; published 6-2-03 [FR 03-13670]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 2152/P.L. 108–99

To amend the Immigration and Nationality Act to extend for an additional 5 years the special immigrant religious worker program. (Oct. 15, 2003; 117 Stat. 1176)

Last List October 15, 2003

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