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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE125; Special Conditions No. 35–003–SC

Special Conditions: Hamilton Sundstrand, Model 54H60–77E Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: The FAA is issuing special conditions for the Hamilton Sundstrand model 54H60–77E constant speed propeller. This four-bladed propeller will have a dual acting digital electro-hydraulic propeller control system, which is a novel or unusual design feature. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 1, 2003. The FAA must receive comments on or before January 30, 2004.

ADDRESSES: Mail or deliver comments on these special conditions to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attention: Rules Docket NE125, 12 New England Executive Park, Burlington, Massachusetts, 01803–5299. You must identify the docket number NE125 at the beginning of your comments, and you should submit two copies of your comments. You may review the public docket containing comments to these special conditions in person at the Office of the Regional Counsel between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7116; fax (781) 238–7199; e-mail: *jay.turnberg@faa.gov*.

SUPPLEMENTARY INFORMATION:

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has previously been subject to the public comment process with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective on December 1, 2003.

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective December 1, 2003; however; the FAA invites interested parties to submit comments on the special conditions. You must identify the docket number NE125 at the beginning of your comments, and you should submit two copies of your comments. The FAA will consider all comments received by the closing date. The FAA may change these special conditions in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. The docket will contain a report summarizing each substantive public contact with FAA personnel concerning this proposal. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. NE125.'' The postcard will be dated-stamped and returned to the commenter.

Background

On February 24, 2003, Hamilton Sundstrand applied for an amendment to Type Certificate No. P906 to include the new 54H60–77E propeller. The model 54H60–77E, which is a derivative of the model 54H currently approved under Type Certificate P906, uses a dual acting digital electro-hydraulic propeller control system (EPCS).

Digital electronic control introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions address the following airworthiness issues for the Hamilton Sundstrand 54H60–77E propeller:

1. Safety assessment.
2. Propeller control system.

These special conditions contain the additional safety standards necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Hamilton Sundstrand must show that the 54H60–77E meets the applicable provisions of the regulations incorporated by reference in Type Certificate No. P906 or the applicable regulations in effect on the date of application for the change to the model 54H. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in P906 are Civil Air Regulation (CAR) part 14, as amended in December 15, 1959.

In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. Hamilton Sundstrand has elected to show compliance with part 35, as amended through Amendment 7, dated December 28, 1995, for the 54H60–77E.

If the Administrator finds that the applicable airworthiness regulations (*i.e.,* 14 CFR part 35) do not contain adequate or appropriate safety standards for the 54H60–77E because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

As appropriate, special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 14 CFR 21.101(a)(1).

Novel or Unusual Design Features

The 54H60–77E will incorporate the following novel or unusual design features: dual acting digital electro-hydraulic propeller control system. Digital electronic control introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These special conditions address the following airworthiness issues for the Hamilton Sundstrand 54H60–77E propeller:

1. Safety assessment.
2. Propeller control system.

These special conditions contain the additional safety standards necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

The existing type certified Hamilton Sundstrand 54H model propeller as described in FAA Type Certification Data Sheet P906, amendment 7, uses a mechanical governor in the propeller control system. This mechanical control system senses propeller speed and adjusts the pitch by directing hydraulic oil to the propeller actuator to increase or decrease pitch to maintain the propeller at the correct RPM and to absorb the engine power.

The Hamilton Sundstrand EPCS replaces the current mechanical control system with a digital electronic governor in the propeller control. The digital electronic governor is designed to operate a hydro-mechanical interface to direct hydraulic oil to the propeller actuator to increase or decrease pitch. The digital electronic control logic commands speed governing, synchrophasing, and failure monitoring and provides beta scheduling. Digital electronic control introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects.

Safety Assessment

The special conditions require the applicant to conduct a safety assessment of the propeller in conjunction with the requirements for evaluating the digital electro-hydraulic control system. A safety assessment is necessary due to the increased complexity of these propeller designs and related control systems. The ultimate objective of the safety assessment requirement is to ensure that the collective risk from all propeller failure conditions is acceptably low. The basis is the concept that an acceptable total propeller design risk is achievable by managing the individual risks to acceptable levels. This concept emphasizes reducing the risk of an event proportionally with the severity of the hazard it represents.

The special conditions are written at the propeller level for a typical aircraft. The typical aircraft may be the aircraft intended for installation of the propeller. It is advised that the propeller applicant have an understanding of the intended aircraft, not to show compliance with this requirement, but to design a propeller that will be acceptable for the intended aircraft. For example, a part 25 aircraft may require different failure effects and probability of failure than a part 23 aircraft. Showing compliance with the requirement without consideration of the intended aircraft may result in a propeller that cannot be installed on the intended aircraft.

Propeller Control System

Currently, part 35 does not adequately address propellers with combined mechanical, hydraulic, digital, and electronic control systems. Propeller mechanical control systems certified under the existing requirements incorporate a mechanical governor that senses propeller speed and adjusts the pitch to absorb the engine power to maintain the propeller at the selected rotational speed. Propellers with digital electronic control components perform the same basic function but use software, electronic circuitry, and electro-hydraulic actuators. The electronic control systems may also incorporate additional functions such as failure monitoring, synchrophasing, and beta scheduling. This addition of electronics to the control system may introduce new failure modes that can result in hazardous propeller effects.

Applicability

As discussed above, these special conditions apply to the model 54H60–77E propeller. Should Hamilton Sundstrand apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 14 CFR § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of propellers. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the propeller.

The substance of these special conditions has previously been subjected to the notice and comment period and has been derived without substantive change from those previously issued. The FAA has determined that prior public notice and comment are unnecessary and that good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective December 1, 2003. The FAA is, however, requesting comments to allow interested parties to submit views that may not have been submitted in response to the prior opportunity for comment described above.

List of Subjects in 14 CFR Part 35

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Hamilton Sundstrand model 54H60–77E propeller.

In addition to the requirements of part 35, the following requirements apply to the propeller.

(a) *Definitions.* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the propeller:

(1) Propeller. The propeller is defined by the components listed in the type design.

(2) Propeller system. The propeller system consists of the propeller plus all

the components necessary for its functioning, but not necessarily included in the propeller type design.

(3) Hazardous propeller effects. The following are regarded as hazardous propeller effects:

(i) A significant overspeed of the propeller.

(ii) The development of excessive drag.

(iii) Thrust in the opposite direction to that commanded by the pilot.

(iv) A release of the propeller or any major portion of the propeller.

(v) A failure that results in excessive unbalance.

(vi) The unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(4) Major propeller effects. The following are regarded as major propeller effects.

(i) An inability to feather.

(ii) An inability to command a change in propeller pitch.

(iii) A significant uncommanded change in pitch.

(iv) A significant uncontrollable torque or speed fluctuation.

(b) *Safety analysis.*

(1)(i) Perform an analysis of the propeller system to assess the likely consequence of all failures that can reasonably be expected to occur. This analysis must consider the following:

(A) The propeller system in a typical installation. When the analysis depends on representative components, assumed interfaces, or assumed installed conditions, the analysis must state the assumptions.

(B) Consequential secondary failures and latent failures.

(C) Multiple failures referred to in paragraph (b)(4) of these special conditions or that result in hazardous propeller effects.

(ii) Summarize those failures that could result in major propeller effects or hazardous propeller effects, together with an estimate of the probability of occurrence of those effects.

(iii) Show that hazardous propeller effects are not predicted to occur at a rate in excess of that defined as extremely remote (probability of 10^{-7} or less per propeller flight hour). As the estimated probability for individual failures may be insufficiently precise to enable the applicant to assess the total rate for hazardous propeller effects, compliance may be shown by demonstrating that the probability of a hazardous propeller effect arising from any individual failure can be predicted to be not greater than 10^{-8} per propeller flight hour. Probabilities of this low order of magnitude may be demonstrated through reliance on engineering judgment and previous experience combined with sound design and test philosophies.

(2) The Administrator may, if significant doubt exists, require testing to verify any assumption as to the effects of failures or likely combination of failures.

(3) If the primary failure of certain single elements (for example, blades) cannot be sensibly estimated in numerical terms, and if the failure of such elements is likely to result in hazardous propeller effects, then compliance may be shown by meeting the prescribed integrity requirements of part 35 and these special conditions. The safety analysis must state these instances.

(4) If reliance is placed on a system or device, such as safety devices, feathering and overspeed systems, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures, to prevent a failure from progressing to hazardous propeller effects, the analysis must include the possibility of a safety system failure in combination with a basic propeller failure. If items of a safety system are outside the control of the propeller manufacturer, the safety analysis must state assumptions with respect to the reliability of these parts, and the installation and operation instructions required under § 35.3 must identify these assumptions.

(5) If the safety analysis depends on one or more of the following items, the analysis must state and appropriately substantiate those items.

(i) Performance of mandatory maintenance actions at stated intervals required for certification and other maintenance actions. This includes verifying the serviceability of items that could fail in a latent manner. These maintenance intervals must be published in the appropriate propeller manuals. Additionally, if errors in maintenance of the propeller system could lead to hazardous propeller effects, the appropriate procedures must be published in the appropriate propeller manuals.

(ii) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate propeller manuals.

(iii) The provisions of specific instrumentation not otherwise required.

(iv) A fatigue assessment.

(6) If applicable, the safety analysis must include the assessment of indicating equipment, manual and automatic controls, governors and propeller control systems, synchrophasers, synchronizers, and propeller thrust reversal systems.

(c) *Propeller control system.* The requirements of this section apply to any system or component that controls, limits, or monitors propeller functions.

(1) Design, construct, and validate the propeller control system to show that:

(i) The propeller control system, operating in normal and alternative operating modes and transition between operating modes, performs the intended functions throughout the declared operating conditions and flight envelope.

(ii) The propeller control system functionality is not adversely affected by the declared environmental conditions, including temperature, electromagnetic interference (EMI), high intensity radiated fields (HIRF) and lightning. Document the environmental limits to which the system has been satisfactorily validated in the appropriate propeller manuals.

(iii) A method is provided to indicate that an operating mode change has occurred if flight crew action is required. In such an event, provide operating instructions in the appropriate manuals.

(2) Design and construct the propeller control system so that, in addition to compliance with paragraph (b) of these special conditions, Safety analysis:

(i) A level of integrity consistent with the intended aircraft is achieved.

(ii) A single failure or malfunction of electrical or electronic components in the control system does not cause a hazardous propeller effect.

(iii) Failures or malfunctions directly affecting the propeller control system in a typical aircraft, such as structural failures of attachments to the control, fire, or overheat, do not lead to a hazardous propeller effect.

(iv) The loss of normal propeller pitch control does not cause a hazardous propeller effect under the intended operating conditions.

(v) The failure or corruption of data or signals shared across propellers does not cause a major or hazardous propeller effect.

(3) Design and implement electronic propeller control system imbedded software by a method approved by the Administrator that is consistent with the criticality of the performed functions and minimizes the existence of software errors.

(4) Design and construct the propeller control system so that the failure or corruption of aircraft-supplied does not result in hazardous propeller effects.

(5) Design and construct the propeller control system so that the loss, interruption, or abnormal characteristic

of aircraft-supplied electrical power does not result in hazardous propeller effects. Describe the power quality requirements in the appropriate manuals.

(6) Specify the propeller control system description, characteristics, and authority, in both normal operation and failure conditions, and the range of control of other controlled functions, in the appropriate propeller manuals.

Issued in Burlington, Massachusetts, on November 10, 2003.

Francis A. Favara,

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

[FR Doc. 03–28676 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–91–AD; Amendment 39–13366; AD 2003–03–15 R1]

RIN 2120–AA64

Airworthiness Directives; Various Boeing and McDonnell Douglas Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to various Boeing and McDonnell Douglas transport category airplanes, that currently requires revising the Airplane Flight Manual (AFM) to advise the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning horn sounds. The actions specified by that AD are intended to prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane. This amendment removes certain requirements for certain airplanes and revises the direction to the flightcrew to don oxygen masks as a first and immediate step when the cabin altitude warning occurs, rather than ''when the cabin altitude warning horn sounds.'' This action is intended to address the identified unsafe condition.

DATES: Effective December 22, 2003.

ADDRESSES: Information pertaining to this admendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW, Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: *Boeing Airplane Models:* Don Eiford, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone (425) 917–6465; fax (425) 917–6590.

McDonnell Douglas Airplane Models: Joe Hashemi, Aerospace Engineer, Flight Test Branch, ANM–160L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5380; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2003–03–15, amendment 39–13039 (68 FR 4892, January 31, 2003), which is applicable to various Boeing and McDonnell Douglas transport category airplanes, was published in the **Federal Register** on July 9, 2003 (68 FR 40823). That action proposed to revise the wording of the existing AD to remove reference to the word ''Emergency'' when specifying ''Crew Oxygen Mask—ON/100%.'' That action also proposed to revise the existing AD to specify that the words ''If the cabin altitude warning occurs'' be used rather than the words, ''If the cabin altitude warning horn sounds.''

Comments

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

Request To Revise the Applicability of the Notice of Proposed Rulemaking (NPRM)

One commenter notes that the existing AD requires flightcrew action to don oxygen masks as a first and immediate step, ''when the cabin altitude warning horn sounds,'' and that the NPRM proposes to revise the wording to ''when the cabin altitude warning occurs.'' The commenter suggests that, since the NPRM addresses those airplanes that may not have a warning horn, it should exclude those airplanes that do not have warning horns.

The FAA does not agree with the commenter's request. For those airplanes that are equipped with warning horns, we are not changing the AFM revision required by AD 2003–13–15. While no further action is required by this revised AD for those airplanes, it is still necessary for this AD to apply to them to continue to require the appropriate AFM revision.

Request To Clarify Table 2

One commenter notes that Table 2 of the NPRM does not address McDonnell Douglas Model DC–8 series airplanes, as currently specified in AD 2003–03–15. The commenter assumes that the information for Model DC–8 series airplanes should also be included in Table 2 of the NPRM.

We agree with the commenter. Although those airplanes were included in the applicability of the NPRM, we inadvertently did not include Model DC–8 series airplanes in Table 2 of the NPRM. We have revised Table 2 of the AD to include those airplanes in this AD.

Editorial Changes

In Table 2 of paragraph (a) of the NPRM, we noted several instances where the word ''mask'' should have been plural. We have revised the AD to reflect the word ''masks.''

Conclusion

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

Changes to Labor Rate

After the NPRM was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 6,956 airplanes (5,179 Boeing airplanes and 1,777 McDonnell Douglas airplanes) of the affected design in the worldwide fleet. The FAA estimates that 3,601 airplanes (2,392 Boeing airplanes and 1,209 McDonnell Douglas airplanes) of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required 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 $234,065, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–13039 (68 FR 4892, January 31, 2003), and by adding a new airworthiness directive (AD), amendment 39–13366, to read as follows:

2003–03–15 R1 Transport Category Airplanes: Amendment 39–13366. Docket 2003–NM–91–AD. Revises AD 2003–03–15, Amendment 39–13039.

Applicability: The airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—AFFECTED AIRPLANE MODELS

Airplane manufacturer	Airplane model
Boeing	707 series airplanes.
	720 series airplanes.
	727 series airplanes.
	737–100 series airplanes.
	737–200 series airplanes.
	737–200C series airplanes.
	737–300 series airplanes.
	737–400 series airplanes.
	737–500 series airplanes.
	747–100 series airplanes.
	747–100B series airplanes.
	747–100B SUD series airplanes.
	747–200B series airplanes.
	747–200F series airplanes.
	747–200C series airplanes.
	747–300 series airplanes.
	747SR series airplanes.
	747SP series airplanes.
McDonnell Douglas.	DC–8–11 airplanes.
	DC–8–12 airplanes.
	DC–8–21 airplanes.
	DC–8–31 airplanes.
	DC–8–32 airplanes.
	DC–8–33 airplanes.
	DC–8–41 airplanes.
	DC–8–42 airplanes.
	DC–8–43 airplanes.
	DC–8–51 airplanes.
	DC–8–52 airplanes.
	DC–8–53 airplanes.
	DC–8F–54 airplanes.
	DC–8–55 airplanes.
	DC–8F–55 airplanes.
	DC–8–61 airplanes.
	DC–8–61F airplanes.
	DC–8–62 airplanes.
	DC–8–62F airplanes.
	DC–8–63 airplanes.
	DC–8–63F airplanes.
	DC–8–71 airplanes.
	DC–8–71F airplanes.
	DC–8–72 airplanes.
	DC–8–72F airplanes.
	DC–8–73 airplanes.
	DC–8–73F airplanes.
	DC–9–11 airplanes.
	DC–9–12 airplanes.
	DC–9–13 airplanes.
	DC–9–14 airplanes.
	DC–9–15 airplanes.
	DC–9–15F airplanes.
	DC–9–21 airplanes.
	DC–9–31 airplanes.
	DC–9–32 airplanes.
	DC–9–32 (VC–9C) airplanes.
	DC–9–32F airplanes.
	DC–9–32F (C–9A, C–9B) airplanes.
	DC–9–33F airplanes.
	DC–9–34 airplanes.
	DC–9–34F airplanes.
	DC–9–41airplanes.
	DC–9–51 airplanes.
	DC–9–81 (MD–81) airplanes.
	DC–9–82 (MD–82) airplanes.
	DC–9–83 (MD–83) airplanes.
	DC–9–87 (MD–87) airplanes.
	MD–88 airplanes.
	MD–90–30 airplanes.
	DC–10–10 airplanes.
	DC–10–10F airplanes.
	DC–10–15 airplanes.
	DC–10–30 airplanes.
	DC–10–30F airplanes.
	DC–10–30F (KC–10A, KDC–10) airplanes.
	DC–10–40 airplanes.
	DC–10–40F airplanes.
	MD–10–10F airplanes.
	MD–10–30F airplanes.
	MD–11 airplanes.
	MD–11F airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent incapacitation of the flightcrew due to lack of oxygen, which could result in loss of control of the airplane, accomplish the following:

Revision to the Airplane Flight Manual

(a) Within 90 days after the effective date of this AD: For the applicable airplane models listed in the ''For—'' column of Table 2 of this AD, revise the procedures regarding donning oxygen masks in the event of rapid depressurization, as contained in the Emergency Procedures section of the FAA-approved Airplane Flight Manual (AFM), by replacing the text in the ''Replace—'' column of Table 2 of this AD with the information in the applicable figure referenced in the ''With the Information In—'' column of Table 2 of this AD. This may be accomplished by recording the AD number of this AD on the applicable figure and inserting it into the AFM. Table 2 and Figures 1 through 9 follow:

TABLE 2.—AFM REVISIONS

For—	Replace—	With the information in—
Boeing Model 707, 720, and 727 series airplanes.	*"RAPID DEPRESSURIZATION* ..... Oxygen Masks & Regulators ON, 100% ALL"	Figure 1 of this AD.
Boeing Model 737–100, –200, and –200C series airplanes.	*"RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.). PRIMARY Oxygen Masks & Regulators—ON, 100%"	Figure 2 of this AD.
Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP series airplanes.	*"RAPID DEPRESSURIZATION* (With airplane altitude above 14,000 feet M.S.L.). RECALL Oxygen Masks & Regulators—ON, 100%"	Figure 3 of this AD.
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, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8F–54, DC–8–55, DC–8F–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, and DC–8–73F airplanes.	*"RAPID DEPRESSURIZATION* ..... *Phase I and II* Crew oxygen masks—ON"	Figure 4 of this AD.
McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 airplanes.	*"RAPID DECOMPRESSION/EMERGENCY DESCENT* ..... *Phase I and II* Manual Pressurization Control FULL FORWARD AND MANUALLY LOCKED Note: Manual Pressurization control forces may be high, apply forces as required Crew Oxygen Masks—ON"	Figure 5 of this AD.
McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 airplanes.	*"RAPID DECOMPRESSION/EMERGENCY DESCENT* ..... Phase I and II Manual Pressurization Control—FULL FORWARD AND MANUALLY LOCKED Note: Manual Pressurization control forces may be high, apply forces as required Crew Oxygen Masks—ON/EMERGENCY/100%"	Figure 6 of this AD.
McDonnell Douglas Model MD–90–30 airplanes.	*"RAPID DECOMPRESSION* ..... OXY MASKS—ON/100%/EMERGENCY"	Figure 7 of this AD.
McDonnell Douglas DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F airplanes.	*"RAPID DEPRESSURIZATION/EMERGENCY DESCENT* ..... *Recall* Cabin OUTFLOW VALVE—VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED) Oxygen Masks—100% (if required)"	Figure 8 of this AD.
McDonnell Douglas MD–10–10F, MD–10–30F, MD–11, and MD–11F airplanes.	*"CABIN ALTITUDE* ..... Memory Item Outflow Valve—Verify Closed"	Figure 9 of this AD.

Figure 1

For Boeing Model 707, 720, and 727 Series Airplanes:

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION

If the cabin altitude warning horn sounds:

Oxygen Masks & Regulators ON, 100%, ALL"

The rest of the steps under this heading in the AFM are unchanged.

Figure 2

For Boeing Model 737–100, –200, and –200C Series Airplanes:

Insert the information in this figure into the "Emergency Procedures" section of the FAA-approved Airplane Flight Manual.

"CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION

If the cabin altitude warning horn sounds:

PRIMARY

Oxygen Masks & Regulators ON, 100%"

The rest of the steps under this heading in the AFM are unchanged.

Figure 3

For Boeing Model 737–300, 737–400, 737–500, 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200F, 747–200C, 747–300, 747SR, and 747SP Series Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION

If the cabin altitude warning horn sounds: RECALL

Oxygen Masks & Regulators	ON, 100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 4

For 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, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8F–54, DC–8–55, DC–8F–55, DC–8–61, DC–8–61F, DC–8–62, DC–8–62F, DC–8–63, DC–8–63F, DC–8–71, DC–8–71F, DC–8–72, DC–8–72F, DC–8–73, and DC–8–73F Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING/RAPID DEPRESSURIZATION

Phase I and II
If the cabin altitude warning occurs:

Crew oxygen masks	ON/100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 5

For McDonnell Douglas Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34, DC–9–34F, DC–9–41, and DC–9–51 Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING/RAPID DEPRESSURIZATION/EMERGENCY DESCENT

Phase I and II
If a cabin altitude warning occurs:

Crew Oxygen Masks	ON/100%
Manual Pressurization Control	FULL FORWARD AND MANUALLY LOCKED''

Note: Manual Pressurization control forces may be high, apply forces as required.''

The rest of the steps under this heading in the AFM are unchanged.

Figure 6

For McDonnell Douglas Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87), and MD–88 Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING/RAPID DEPRESSURIZATION/EMERGENCY DESCENT

Phase I and II

If the cabin altitude warning occurs:

Crew Oxygen Masks	ON/100%
Manual Pressurization Control	FULL FORWARD AND MANUALLY LOCKED

Note: Manual Pressurization control forces may be high, apply forces as required.''

The rest of the steps under this heading in the AFM are unchanged.

Figure 7

For McDonnell Douglas MD–90–30 Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION

If the cabin altitude warning occurs:

OXY MASKS	ON/100%''

The rest of the steps under this heading in the AFM are unchanged.

Figure 8

For McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A, KDC–10), DC–10–40, and DC–10–40F Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR RAPID DEPRESSURIZATION/EMERGENCY DESCENT

Recall

If the cabin altitude warning occurs:

Oxygen Masks	ON/100%
Cabin OUTFLOW VALVE ..	VERIFY CLOSED (CLOSE ELECTRICALLY OR MANUALLY IF NOT CLOSED)''

The rest of the steps under this heading in the AFM are unchanged.

Figure 9

For McDonnell Douglas Model MD–10–10F, MD–10–30F, MD–11, and MD–11F Airplanes:

Insert the information in this figure into the ''Emergency Procedures'' section of the FAA-approved Airplane Flight Manual.

''CABIN ALTITUDE WARNING OR CABIN ALTITUDE

If the cabin altitude warning occurs:

MEMORY ITEM

Oxygen Masks	ON/100%
Outflow Valve	Verify Closed''

The rest of the steps under this heading in the AFM are unchanged.

Alternative Methods of Compliance

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

Effective Date

(c) This amendment becomes effective on December 22, 2003.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28494 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 20

RIN 2900–AL42

Board of Veterans' Appeals: Rules of Practice; Use of Supplemental Statement of the Case

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs' (VA) Board of Veterans' Appeals Rules of Practice to eliminate the requirement that an appellant must file a timely Substantive Appeal with respect to issues covered in a Supplemental Statement of the Case that were not in the original Statement of the Case. This change is required to conform the Rules of Practice to recent changes in VA's Appeals Regulations.

DATES: *Effective Date:* November 17, 2003.

Applicability Date: This amendment applies to appeals for which a notice of disagreement was filed on or after November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 565–5978.

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals (Board) is an administrative body that decides appeals from denials by agencies of original jurisdiction (AOJs) of claims for veterans' benefits. The AOJ is typically one of VA's 57 regional offices administered by the Veterans Benefits Administration (VBA).

A claimant begins the appellate process by filing a Notice of Disagreement (NOD) with the AOJ. Following receipt of the NOD, the AOJ furnishes the appellant with a Statement of the Case (SOC). The SOC provides a

summary of the evidence considered in the case relating to the issue or issues covered in the NOD, a summary of the applicable laws and regulations with appropriate citations, and a discussion of how the laws and regulations affected the determination of the appellant's claim. Generally, a Supplemental Statement of the Case (SSOC) is furnished to the appellant when additional pertinent evidence is received after the SOC, when there was a material defect in the SOC, or when, for any other reason, the SOC is inadequate. (These bases apply to SSOCs as well as SOCs.)

Recently, we amended 38 CFR 19.31, part of VA's Appeals Regulations relating to the SSOC. 67 FR 3099, 3104 (January 23, 2002). As amended, that rule provides that a SSOC will not be used to announce the AOJ's decision on an issue not previously addressed in a SOC or to respond to a notice of disagreement on a newly appealed issue that was not addressed in the SOC. The purpose of that change was to help eliminate confusion on the part of appellants as to whether they must respond to a SSOC.

We are amending Rule 302(c) (38 CFR 20.302(c)) and Rule 501(c) (38 CFR 20.501(c)) of the Board's Rules of Practice for the purpose of creating uniformity of practice and procedure and to ensure that there is no misunderstanding as to whether an appellant needs to respond to a SSOC. Currently, Rules 302(c) and 501(c) provide, in pertinent part, that an appellant need not respond to a SSOC to perfect an appeal unless the SSOC covers issues that were not included in the original SOC. Those Rules further provide that, if a SSOC covers issues that were not included in the original SOC, an appellant must file a Substantive Appeal with respect to those issues within 60 days in order to perfect an appeal with respect to the additional issues. The changes made to 38 CFR 19.31 render the foregoing requirements superfluous and create the risk of causing confusion to the appellant and VA adjudicators.

Accordingly, we are amending Rule 302(c) and Rule 501(c) to eliminate the language relating to responding to ''new issues'' in Supplemental Statements of the Case.

Administrative Procedure Act

This final rule concerns agency organization, procedure or practice and, pursuant to 5 U.S.C. 553, is exempt from notice and comment requirements.

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 final rule will have no such effect on State, local, or tribal governments, or the private sector.

Paperwork Reduction Act

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

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a 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. This rule will affect VA beneficiaries and will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirement of sections 603 and 604.

List of Subjects in 38 CFR Part 20

Administrative practice and procedure, Authority delegations (Government agencies), Claims, Lawyers, Legal services, Veterans.

Approved: September 10, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 20 is amended as follows:

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

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

Authority: 38 U.S.C. 501(a) and as noted in specific sections.

■ 2. In § 20.302, paragraph (c) is amended by removing ''appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case.'' from the third sentence and adding, in its place, ''appeal.''; and by removing the fourth sentence.

■ 3. In § 20.501, paragraph (c), is amended by removing ''appeal, unless the Supplemental Statement of the Case covers issues that were not included in the original Statement of the Case.'' from the third sentence and adding, in its place, ''appeal.''; and by removing the fourth sentence.

[FR Doc. 03–28615 Filed 11–14–03; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7586–6]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Follansbee Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III, is publishing a direct final notice of deletion of the Follansbee, Superfund Site (Site), located north of the city of Follansbee, West Virginia, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the State of West Virginia, through the West Virginia Department of Environmental Protection, because EPA has determined that all appropriate response actions under CERCLA have been completed and, therefore, further remedial action pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective January 16, 2004 unless EPA receives adverse comments by December 17, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Anthony C. Iacobone, Remedial Project Manager (RPM) 3HS23, *iacobone.anthony@epa.gov,* U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5237 or 1–800–352–1973.

Information Repositories: Comprehensive information about the Site is available for viewing and copying

at the Site information repositories located at: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5364, Monday through Friday 8 a.m. to 4:30 p.m.; Follansbee City Library, 844 Main Street, Follansbee, WV 26037, (304) 527–0860, Monday through Thursday 11 a.m. to 7 p.m., Friday and Saturday 9 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT:

Anthony C. Iacobone, Remedial Project Manager (RPM) 3HS23, *iacobone.anthony@epa.gov,* U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5237 or 1–800–352–1973.

SUPPLEMENTARY INFORMATION:

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I. Introduction

EPA Region III is publishing this direct final notice of deletion of the Follansbee Superfund Site from the NPL.

The EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions if conditions at a deleted site warrant such action.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective January 16, 2004 unless EPA receives adverse comments by December 17, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and the deletion will not take effect. Alternatively, EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Follansbee Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a Site from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;
ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or
iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Consistent with § 300.425(e) of the NCP, EPA proposes deletion of this Site because no further response action is appropriate under CERCLA, as laid out in EPA's policy entitled ''The National Priorities List for Uncontrolled Hazardous Waste Sites; Deletion Policy for Resource Conservation and Recovery Act (''RCRA'') Facilities.'' Published in the **Federal Register** on March 20, 1995 (60 FR 14641), this policy sets forth the following criteria, all of which should be met, and their general application for deleting RCRA facilities from the NPL:

1. If evaluated under EPA's current RCRA/NPL deferral policy the site would be eligible for deferral from listing on the NPL;
2. The CERCLA site is currently being addressed by RCRA corrective action authorities under an existing enforceable order or permit containing corrective action provisions;
3. Response under RCRA is progressing adequately; and
4. Deletion would not disrupt an ongoing CERCLA response action.

Under this policy EPA has determined that the Site is eligible for deletion form the NPL.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA determined that no further response under CERCLA is necessary due to the fact that the Site is being investigated and cleaned up using RCRA authorities.
(2) West Virginia concurred with deletion of the Site from the NPL.
(3) Concurrently with the publication of this direct final notice of deletion, a notice of the availability of the parallel notice of intent to delete published today in the ''Proposed Rules'' section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to appropriate federal, state, and local government officials and other interested parties. The newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.
(4) The EPA placed copies of documents supporting the deletion in the Site information repositories identified above.
(5) If adverse comments are received within the 30-day public comment period on this notice or the companion notice of intent to delete also published in today's **Federal Register**, EPA will publish a timely notice of withdrawal of this direct final notice of deletion before its effective date or will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

Site Description

The Follansbee Site is located in the northern panhandle of West Virginia along the east bank of the Ohio River in Brooke County, just north of the city of Follansbee, West Virginia. The Site is roughly rectangular with the approximate dimensions of 3,000 feet in a northwest-southeast direction and 500 feet perpendicular to the river. The Site occupies 34 acres. The Site is bounded

to the north, south, and east by a coke-making facility which is owned and operated by the Wheeling-Pittsburgh Steel Corporation. The Site is bounded to the west by the Ohio River.

The Site consists of process and storage facilities for the manufacture of coal tar by-products. Contamination at the Site is due to leaking tanks, spills, surface impoundments and poor operation practices. The Site is underlain by three geological formations (a Perched Zone, an Alluvial Aquifer and a Bedrock Aquifer), each of which is contaminated with polycyclic aromatic hydrocarbons (PAHs), volatile organic compounds (VOCs) such as benzene and toluene, and heavy metals. In addition, the Bedrock Aquifer is contaminated with as much as seven feet of a coal tar Dense Non-Aqueous Phase Liquid (DNAPL).

The Site is located in a heavily industrialized area within one mile of several population centers. There are an estimated 5,900 people living within a 3-mile radius of the Site. The City of Follansbee obtains potable water from a radial collector well and a surface water intake located approximately 1.5 miles downstream of the Site. Fifty private residential wells are within a 3-mile radius, and there are public wells located five miles downstream of the Site.

Site History

American Tar Products Company began operations at the Site in 1914. Since then, there have been many physical changes to the processing facilities, as well as changes in plant ownership. The Site, however, has always operated as a coal-tar processing plant. The northern portion of the property is highly contaminated with coal tar constituents which have migrated through the groundwater into the bedrock. The Site was proposed for inclusion on the NPL in December 1982 and was listed in September 1983.

Response Actions

As noted below, the Follansbee Site is currently being addressed by a series of RCRA Interim Measures under an existing enforceable order. The response under RCRA is progressing adequately as detailed below. Deletion of the Site from the NPL will not disrupt the possibility of any further CERCLA response action. As such, EPA intends to delete the listing of this Site from the NPL under CERCLA based on deferral to RCRA.

In October 1990, EPA and Beazer East (Beazer) the former owner/operator of the Follansbee Site, entered into a RCRA section 3008(h) Administrative Order on Consent (AOC), Docket No. RCRA–III–037CA, requiring Beazer East to conduct a RCRA Facility Investigation (RFI) and to prepare a Corrective Measures Study (CMS). A draft RFI report was submitted to EPA in May 1994 and subsequently found to be deficient by EPA. Beazer then developed a new work plan which enabled it to gather additional information to sufficiently supplement the 1994 RFI report. As a result, in June 2000 the final RFI report was approved subject to additional sediment sampling by Beazer. Beazer is currently operating two interim pump and treat systems to control contaminated groundwater migration.

The first system installed in 1983 by Beazer involves the operation of five groundwater recovery wells to provide hydraulic containment for portions of the shallow perched zone aquifer. The recovered groundwater is processed in an on-site wastewater treatment plant prior to being discharged to the Ohio River. The effect of this system has been to prevent releases into the neighboring Wheeling-Pittsburgh Steel Corporation coal pits as well as to mitigate historical plant seeps to the banks of the Ohio River. EPA has required that Beazer provide a demonstration of the effectiveness of this system. Beazer is presently completing additional field investigations to fulfill this objective.

The second system, initiated pursuant to the 1990 RCRA, Order began operation in April 1999. This system provides for the collection of DNAPL coal tar product from the bedrock wells on-site. To date, the DNAPL removal program has been successful. This system will remain in operation until it is no longerr technically feasible to remove DNAPL from this area of the Site.

Beazer has been conducting the RFI in a phased approach which resulted in the submission of a comprehensive RFI report in 1994. EPA provided technical comments on this report. Beazer responded to these comments by performing additional field work to better characterize the Site and to address certain identified data gaps. The work has included the installation of additional wells, performance of additional sampling and analysis, and evaluation of the existing shallow zone pump and treat system.

On June 26, 2000, EPA conditionally approved the RFI report subject to additional sediment sampling by Beazer. The river sediment sampling was completed in January 2001 and EPA received those results in August 2001. Actions taken as a result of this sampling will be at the discretion of the EPA Region III RCRA program. Additionally, Beazer will submit an interim measures program report regarding the performance of the DNAPL removal program and the performance of the shallow groundwater pump and treat system. Both interim measures are expected to be components of the final RCRA remedy at the Site.

Pursuant to the 1990 RCRA Consent Order and the1984 Consent Decree (*United States of America and State of West Virginia* v. *Koppers Company Inc. and Wheeling-Pittsburgh Steel Corp.* Civil Action No. 83–0127–W(k) WV–1984), Beazer submitted a work plan to EPA on July 24, 2002. EPA approved this work plan on July 30, 2002. The work to be performed under this plan will expand the groundwater monitoring activity at the Site to provide useful data allowing EPA to document the effectiveness of current and future remedial activities.

EPA completed construction activities at the Follansbee Site in accordance with *Close Out Procedures for National Priority List Sites* (OSWER Directive 9320.2–09A–9) on July 25, 2003. EPA's Superfund Division conducted a Pre-Final Inspection on June 17, 2003 and determined that the contractors have constructed a remedy in accordance with the Interim Measures specified by EPA, and no further Superfund response is anticipated.

Exposure Pathways

Human exposure to contaminated soils is being prevented due to the Site being largely paved and secured. Koppers Industries (Koppers), the current Site owner, developed and submitted a plan to EPA in February of 1998 to increase the extent of paved area at the Site. Koppers also provides a full time security staff which limits access to the property.

The area in the vicinity of the Site is serviced by municipal water supplies which obtain water from the Ohio River and from wells near the river. The nearest surface water intake and the municipal wells are located about 1.5 miles downstream from the Site. Three industrial wells are located within one mile of the Site but are not used for potable purposes. As supported by Site characterization data, there is no evidence that the Site contamination has impacted private or municipal water supplies due to the remoteness of the water supply wells and the surface water intakes as well as the substantial dilution effect of the Ohio River.

Operation and Maintenance

Operation and Maintenance of all systems at the Site will be performed by Beazer under the direction of EPA.

Five-Year Review

No five-year review is required since no remedy has been selected under CERCLA section 121. Future response actions at the Site are expected to be taken pursuant to RCRA authority.

Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion of the Site from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with concurrence of the State of West Virginia, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions under CERCLA are necessary and that the Site meets the criteria for deleting RCRA Sites from the NPL. (60 FR 14641 dated March 20, 1995).

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective January 16, 2004 unless EPA receives adverse comments by December 17, 2003 on this notice or the parallel notice of intent to delete published in the ''Proposed Rules'' section of today's **Federal Register**. If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of deletion before the effective date of the deletion and it will not take effect. Alternatively, EPA will, as appropriate prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Donald S. Welsh,

Regional Administrator, Region III.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended under West Virginia by removing ''Follansbee Site, Follansbee, WV.''

[FR Doc. 03–28574 Filed 11–14–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–P–7628]

Changes in Flood Elevation Determinations

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

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Map(s) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director of the Emergency Preparedness and Response Directorate reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act

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

Regulatory Flexibility Act

The Mitigation Division Director of the Emergency Preparedness and

Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

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

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Arkansas:					
Benton (Case No. 02–06–152P).	Unincorporated Areas.	Aug. 29, 2003; Sept. 5, 2003; *Benton County Daily Record*.	The Honorable Gary D. Black, Judge, Benton County, 215 East Central, Bentonville, AR 72712.	Dec. 5, 2003	050419
Lonoke (Case No. 03–06–676P).	City of Cabot	Aug. 20, 2003; Aug. 27, 2003; *Cabot Star-Herald*.	The Hon. Mickey D. Stumbaugh, Mayor, City of Cabot, 101 N. Second Street, P.O. Box 1113, Cabot, AR 72023.	Nov. 26, 2003	050309
Washington (Case No. 02–06–2147P).	City of Springdale	Aug. 20, 2003; Aug. 27, 2003; *The Morning News*.	The Honorable Jerre Van Hoose, Mayor, City of Springdale, 201 Spring Street, Springdale, AR 72764.	Nov. 26, 2003	050219
Illinois:					
Will (Case No. 03–05–0430P).	Village of Mokena	Aug. 7, 2003; Aug. 14, 2003; *The Lincoln Way Sun*.	The Honorable Robert Chiszar, Mayor, Village of Mokena, 11004 Carpenter Street, Mokena, IL 60448.	Nov. 13, 2003	170705
Will (Case No. 03–05–2575P).	Village of Plainfield.	Sept. 10, 2003; Sept. 17, 2003; *The Enterprise*.	The Honorable Richard Rock, Mayor, Village of Plainfield, 24000 W. Lockport Street, Plainfield, IL 60544.	Aug. 20, 2003	170771
Will (Case No. 03–05–0430P).	Unincorporated Areas.	Aug. 7, 2003; Aug. 14, 2003; *The Lincoln Way Sun*.	Mr. Joseph Mikan, Will County Executive, 302 North Chicago Street, Joliet, IL 60432.	Nov. 13, 2003	170695
Indiana:					
Marion (Case No. 03–05–1461P).	City of Indianapolis.	Sept. 22, 2003; Sept. 29, 2003; *The Indianapolis Star*.	The Honorable Barthen Peterson, Mayor, City of Indianapolis, 200 East Washington Street, Suite 2501, City-County Building, Indianapolis, IN 46204.	Dec. 29, 2003	180159
Kansas:					
Sedgwick (Case No. 03–07–883P).	City of Derby	Sept. 5, 2003; Sept. 12, 2003; *The Derby Reporter*.	The Honorable Dion Avello, Mayor, City of Derby, Derby City Hall, 611 Mulberry Road, Derby, KS 67037.	Dec. 12, 2003	200323
Riley (Case No. 03–07–497P).	City of Manhattan	Sept. 5, 2003; Sept. 12, 2003; *The Manhattan Mercury*.	The Honorable Mark Taussig, Mayor, City of Manhattan, City Hall, 1101 Poyntz Avenue, Manhattan, KS 66502–5497.	Dec. 12, 2003	200300
Johnson (Case No. 02–07–1011P).	City of Olathe	Jan. 21, 2003; Jan. 28, 2003; *The Olathe News*.	The Honorable Michael Copeland, Mayor, City of Olathe, 126 South Cherry, Olathe, KS 66061.	Apr. 29, 2003	200173
Michigan:					
Ingham Eaton, & Clinton (Case No. 03–05–1475P).	City of Lansing	Sept. 5, 2003; Sept. 12, 2003; *Lansing State Journal*.	The Honorable Tony Benavides, Mayor, City of Lansing, 9th Floor, City Hall, 124 W. Michigan Avenue, Lansing, MI 48933.	Dec. 12, 2003	260090
Jackson (Case No. 02–05–3653P).	Township of Summit.	Sept. 23, 2003; Sept. 30, 2003; *Jackson Citizen Patriot*.	Mr. Russ Youngdahl, Supervisor, Township of Summit, 2121 Ferguson Road, Jackson, MI 49203.	Sept. 2, 2003	260575
Missouri:					
St. Louis (Case No. 03–07–106P).	City of Hazelwood	Sept. 1, 2003; Sept. 8, 2003; *St. Louis Post Dispatch*.	The Honorable T.R. Carr, Mayor, City of Hazelwood, 415 Elm Grove Lane, Hazelwood, MO 63042–1917.	Aug. 19, 2003	290357
New Mexico:					
Bernalillo (Case No. 03–06–1002P).	City of Albuquerque.	Aug. 29, 2003; Sept. 5, 2003; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Aug. 15, 2003	350002
Bernalillo (Case No. 03–06–445P).	City of Albuquerque.	Sept. 19, 2003; Sept. 26, 2003; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Sept. 8, 2003	350002
Bernalillo (Case No. 03–06–445P).	Unincorporated Areas.	Sept. 19, 2003; Sept. 26, 2003; *Albuquerque Journal*.	Mr. Tom Rutherford, Chairman, Bernalillo County, One Civic Plaza, N.W., Albuquerque, NM 87102.	Sept. 8, 2003	350001
Dona Ana (Case No. 03–06–1210P).	City of Las Cruces.	Sept. 1, 2003; Sept. 8, 2003; *Las Cruces Sun News*.	The Hon. William M. Mattiace, Mayor, City of Las Cruces, P.O. Box 20000, Las Cruces, NM 88004.	Aug. 15, 2003	355332
Ohio:					

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Lorain (Case No. 03–05–0530P).	City of Avon	Sept. 24, 2003; Oct. 1, 2003; *The Morning Journal*.	The Honorable James A. Smith, Mayor, City of Avon, 36080 Chester Road, Avon, OH 44011–1588.	Sept. 15, 2003	390348
Oklahoma:					
Comanche (Case No. 03–06–076P).	City of Lawton	Aug. 1, 2003; Aug. 8, 2003; *The Lawton Constitution*.	The Honorable Cecil E. Powell, Mayor, City of Lawton, 103 Southwest 4th Street, Lawton, OK 73501.	July 18, 2003	400049
Oklahoma, (Case No. 03–06–1389P).	City of Oklahoma City.	Aug. 20, 2003; Aug. 27, 2003 *The Daily Oklahoman*.	The Honorable Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102.	Aug. 1, 2003	405378
Tulsa (Case No. 03–06–1939P).	City of Tulsa	Sept. 23, 2003; Sept. 30, 2003; *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, City Hall, 200 Civic Center, Tulsa, OK 74103.	Dec. 30, 2003	405381
Texas:					
Taylor And Jones (Case No. 03–06–198P).	City of Abilene	Aug. 18, 2003; Aug. 25, 2003; *The Abilene Reporter-News*.	The Honorable Grady Barr, Mayor, City of Abilene, P.O. Box 60, Abilene, TX 79604.	Nov. 24, 2003	485450
Tarrant (Case No. 03–06–1010P).	City of Arlington ..	Aug. 13, 2003; Aug. 20, 2003; *Arlington Morning-News*.	The Honorable Robert Cluck, Mayor, City of Arlington, 101 West Abram Street, Arlington, TX 76004.	July 22, 2003	485454
Jefferson (Case No. 02–06–2312P).	City of Beaumont	Aug. 13, 2003; Aug. 20, 2003; *Beaumont Enterprise*.	The Honorable Evelyn M. Lord, Mayor, City of Beaumont, P.O. Box 3827, Beaumont, TX 77704.	Nov. 19, 2003	485457
Tarrant (Case No. 03–06–1203P).	City of Fort Worth	Aug. 13, 2003; Aug. 20, 2003; *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Nov. 19, 2003	480596
Tarrant (Case No. 03–06–276P).	City of Fort Worth	Aug. 22, 2003; Aug. 29, 2003; *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Nov. 28, 2003	480596
Tarrant (Case No. 03–06–1206P).	City of Fort Worth	Aug. 22, 2003; Aug. 29, 2003; *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Nov. 28, 2003	480596
Tarrant (Case No. 03–06–1202P).	City of Fort Worth	Aug. 29, 2003; Sept. 5, 2003; *The Star Telegram*.	The Hon. Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102–6311.	Dec. 5, 2003	480596
Williamson (Case No. 03–06–695P).	City of Georgetown.	Aug. 20, 2003; Aug. 27, 2003; *Williamson County Sun*.	The Honorable Gary Nelon, Mayor, City of Georgetown, P.O. Box 409, Georgetown, TX 78627.	Nov. 26, 2003	480668
Tarrant (Case No. 03–06–1214P).	City of Hurst	July 25, 2003; Aug. 1, 2003; *The Star Telegram*.	The Honorable William D. Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054–3302.	Oct. 31, 2003	480601
Kaufman (Case No. 03–06–1932P).	Unincorporated Areas.	Sept. 9, 2003; Sept. 16, 2003; *The Terrell Tribune*.	The Honorable Wayne Gent, Judge, Kaufman County, 100 West Mulberry Street, Kaufman, TX 75142.	Dec. 16, 2003	480411
Hays (Case No. 03–06–1537P).	City of Kyle	Sept. 3, 2003; Sept. 10, 2003; *The Kyle Eagle*.	The Honorable James L. Adkins, Mayor, City of Kyle, 102 Briarwood Circle, Kyle, TX 78640.	Aug. 18, 2003	481108
Dallas (Case No. 03–06–1543P).	City of Mesquite ..	Aug. 28, 2003; Sept. 4, 2003; *Mesquite Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Dec. 4, 2003	485490
Bexar (Case No. 03–06–683P).	City of San Antonio.	July 24, 2003; July 31, 2003; *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283–3966.	July 14, 2003	480045
Bexar (Case No. 02–06–1947P).	City of San Antonio.	Jan. 24, 2003; Jan. 31, 2003; *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	May 2, 2003	480045
Kaufman (Case No. 03–06–1932P).	City of Terrell	Sept. 9, 2003; Sept. 16, 2003; *The Terrell Tribune*.	The Honorable Frances Anderson, Mayor, City of Terrell, 201 East Nash Street, Terrell, TX 75160.	Dec. 16, 2003	480416
Williamson (Case No. 03–06–695P).	Unincorporated Areas.	Aug. 20, 2003; Aug. 27, 2003; *Williamson County Sun*.	The Honorable John C. Doerfler, Judge, Williamson County, 710 Main Street, Suite 201, Georgetown, TX 78626.	Nov. 26, 2003	481079
Wisconsin:					
Washington (Case No. 03–05–1465P).	Village of Germantown.	Aug. 20, 2003; Aug. 27, 2003; *Germantown Banner-Press*.	Mr. Charles J. Hargan, President, Village of Germantown, P.O. Box 337, Germantown, WI 53022.	Aug. 11, 2003	550472

Dated: November 4, 2003.

(Catalogue of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28639 Filed 11–14–03; 8:45 am]

BILLING CODE 9910–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

Changes in Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Modified Base (1% annual-chance) Flood Elevations (BFEs) are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified BFEs are indicated on the table below and revise the Flood Insurance Rate Maps ((FIRMs) in effect for the listed communities prior to this date.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

The modified BFEs are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection.

The modifications are made pursuant to Section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

These modified BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in BFEs are in accordance with 44 CFR 65.4.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

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

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
California:					
Alameda (Case No. 02–09–542P) (FEMA Docket No. P7624).	City of Hayward ..	Feb. 21, 2003, Feb. 28, 2003; *The Daily Review*.	The Hon. Roberta Cooper, Mayor, City of Hayward, 777 B Street, Hayward, CA 94541.	Feb. 10, 2003	065033
Illinois:					
Will (Case No. 02–05–3078P) (FEMA Docket No. P7624).	Village of Bolingbrook.	Apr. 10, 2003, Apr. 17, 2003; *The Bolingbrook Sun*.	The Honorable Roger Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, IL 60440.	July 17, 2003	170812

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Will (Case No. 03–05–0143P) (FEMA Docket No. P7626).	Village of Frankfort.	Apr. 17, 2003, Apr. 24, 2003; *The Daily Southtown*.	The Hon. Raymond Rossi, Mayor, Village of Frankfort, 432 West Nebraska Street, Frankfort, IL 60423.	Mar. 26, 2003	170701
Kane (Case No. 03–05–1473P) (FEMA Docket No. P7626).	City of Geneva	Apr. 23, 2003, Apr. 30, 2003; *Kane County Chronicle*.	The Honorable Kevin R. Burns, Mayor, City of Geneva, 22 South First Street, Geneva, IL 60134.	July 30, 2003	170325
Cook (Case No. 02–05–2981P) (FEMA Docket No. P7622).	Village of Orland Park.	Jan. 30, 2003, Feb. 6, 2003; *The Orland Township Messenger*.	The Hon. Daniel McLaughlin, Mayor, Village of Orland Park, Village Hall, 14700 South Ravinia Avenue, Orland Park, IL 60462.	Jan. 15, 2003	170140
Will (Case No. 02–05–3980P) (FEMA Docket No. P7626).	Village of Plainfield.	Apr. 23, 2003, Apr. 30, 2003; *The Enterprise*.	The Honorable Richard Rock, Mayor, Village of Plainfield, 530 West Lockport Street, Suite 206, Plainfield, IL 60544.	July 30, 2003	170771
Kane (Case No. 03–05–1474P) (FEMA Docket No. P7626).	Village of South Elgin.	May 19, 2003, May 26, 2003; *The Courier News*.	Mr. James W. Hansen, II, Village President, Village of South Elgin, 10 North Water Street, South Elgin, IL 60177.	Apr. 17, 2003	170332
Cook (Case No. 02–05–1847P) (FEMA Docket No. P7622).	Village of Wheeling.	Jan. 16, 2003, Jan. 23, 2003; *The Wheeling Countryside*.	Mr. Gregory Klatecki, President, Village of Wheeling, 255 West Dundee Road, Wheeling, IL 60090–4726.	Dec. 27, 2002	170173
Will (Case No. 02–05–3980P) (FEMA Docket No. P7626).	Unincorporated Areas.	Apr. 23, 2003, Apr. 30, 2003; *The Enterprise*.	Mr. Joseph Mikan, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	July 30, 2003	170695
Indiana:					
Lake (Case No. 02–05–3080P) (FEMA Docket No. P7626).	City of Crown Point.	May 1, 2003, May 8, 2003; *Crown Point Star*.	The Hon. James D. Metros, Mayor, City of Crown Point, 101 North East Street, Crown Point, IN 46307.	Apr. 7, 2003	180128
Lake (Case No. 03–05–0072P) (FEMA Docket No. P7626).	Unincorporated Areas.	May 15, 2003, May 22, 2003; *Crown Point Star*.	Mr. Wilbur Cox, Director, Lake County Planning Commission, 2293 North Main Street, Lake County Government Center, Crown Point, IN 46307.	Aug. 21, 2003	180126
Lake (Case No. 02–05–3647P) (FEMA Docket No. P7622).	Town of Schererville.	Jan. 16, 2003, Jan. 23, 2003; *The Times*.	Mr. Richard Krame, City Manager, Town of Schererville, 833 West Lincoln Highway, Suite B20W, Schererville, IN 46375.	Jan. 27, 2003	180142
Iowa:					
Johnson (Case No. 02–07–356P) (FEMA Docket No. P7624).	City of Iowa City	Apr. 11, 2003, Apr. 18, 2003; *Iowa City Press-Citizen*.	The Hon. Ernest W. Lehman, Mayor, City of Iowa City, 410 East Washington Street, Iowa City, IA 52240.	July 18, 2003	190171
Kansas:					
Johnson (Case No. 03–07–494P) (FEMA Docket No. P7626).	City of Olathe	May 14, 2003, May 21, 2003; *The Olathe News*.	The Hon. Michael Copeland, Mayor, City of Olathe, 100 West Santa Fe, Olathe, KS 66061.	Apr. 28, 2003	200173
Johnson (Case No. 03–07–477P) (FEMA Docket No. P7626).	City of Overland Park.	May 22, 2003, May 29, 2003; *The Sun Newspapers*.	The Honorable Ed Eilert, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	Apr. 23, 2003	200174
Johnson (Case No. 02–07–792P) (FEMA Docket No. P7626).	City of Overland Park.	June 19, 2003, June 26, 2003; *The Sun Newspapers*.	The Honorable Ed Eilert, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, KS 66212.	Sept. 25, 2003	200174
Crawford (Case No. 02–07–785P) (FEMA Docket No. P7624).	City of Pittsburg	Feb. 21, 2003, Feb. 28, 2003; *The Morning Sun*.	The Honorable Allen Gill, Mayor, City of Pittsburg, 201 West 4th Street, Pittsburg, KS 66762.	Feb. 10, 2003	200072
Johnson (Case No. 03–07–492P) (FEMA Docket No. P7626).	City of Prairie Village.	June 3, 2003, June 10, 2003; *The Legal Record*.	The Hon. Ronald L. Shaffer, Mayor, City of Prairie Village, 7700 Mission Road, Prairie Village, KS 66208–4230.	Apr. 11, 2003	200175
Sedgwick (Case No. 02–07–250P) (FEMA Docket No. P7622).	City of Wichita	Jan. 6, 2003, Jan. 13, 2003; *The Wichita Eagle*.	The Honorable Bob Knight, Mayor, City of Wichita, City Hall, 455 North Main, Wichita, KS 67202.	Dec. 6, 2002	200328
Louisiana:					
St. Charles Parish (Case No. 03–06–127P) (FEMA Docket No. P7626).	Unincorporated Areas.	June 4, 2003, June 11, 2003; *St. Charles Herald*.	Mr. Albert D. Laque, St. Charles Parish President, P.O. Box 302, Hahnville, LA 70057.	May 2, 2003	220160
Michigan:					
Macomb (Case No. 02–05–1637P) (FEMA Docket No. P7624).	Township of Macomb.	Mar. 20, 2003, Mar. 27, 2003; *The Macomb Daily*.	Mr. John D. Brennan, Township Supervisor, 54111 Broughton Road, Macomb, MI 48042.	June 26, 2003	260445
Macomb (Case No. 02–05–1639P) (FEMA Docket No. P7626).	Township of Macomb.	May 13, 2003, May 20, 2003; *The Macomb Daily*.	Mr. John D. Brennan, Township Supervisor, 54111 Broughton Road, Macomb, MI 48042.	May 19, 2003	260445
Oakland (Case No. 03–05–1456P) (FEMA Docket No. P7626).	City of Novi	June 12, 2003, June 19, 2003; *The Novi News*.	The Honorable Richard Clark, Mayor, City of Novi, 45175 West 10 Mile Road, Novi, MI 48375.	May 21, 2003	260175

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Minnesota:					
Ramsey (Case No. 02–05–0197P) (FEMA Docket No. P7622).	City of New Brighton.	Jan. 15, 2003, Jan. 22, 2003; *New Brighton-Mounds*.	The Honorable Steve Larson, Mayor, City of New Brighton, 803 Old Highway 8 N.W., View Bulletin New Brighton, MN 55112.	Apr. 23, 2003	270380
Missouri:					
Platte (Case No. 03–07–479P) (FEMA Docket No. P7626).	City of Kansas City.	May 23, 2003, May 30, 2003; *Kansas City Star*.	The Honorable Kay Barnes, Mayor, City of Kansas City, City Hall, 29th Floor, 414 East 12th Street, Kansas City, MO 64106.	Aug. 29, 2003	290173
Platte (Case No. 03–07–480P) (FEMA Docket No. P7626).	City of Riverside	May 23, 2003, May 30, 2003; *Kansas City Star*.	The Honorable Betty Burch, Mayor, City of Riverside, 2950 Northwest Vivion Road, Riverside, MO 64150.	Aug. 29, 2003	290296
St. Louis (Case No. 02–07–172P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 16, 2003, Jan. 23, 2003; *St. Louis Post Dispatch*.	Mr. Buzz Westfall, County Executive, St. Louis County, 41 South Central Avenue, St. Louis, MO 63105.	Apr. 24, 2003	290327
Nebraska:					
York (Case No. 02–07–661P) (FEMA Docket No. P7626).	City of York	May 21, 2003, May 28, 2003; *York News-Times*.	The Honorable Greg Adams, Mayor, City of York, P.O. Box 276, York, NE 68467.	Aug. 27, 2003	310237
New Mexico:					
Bernalillo (Case No. 02–06–2143P) (FEMA Docket No. P7622).	City of Albuquerque.	Jan. 24, 2003, Jan. 31, 2003; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	Jan. 8, 2003	350002
Bernalillo (Case No. 03–06–439P) (FEMA Docket No. P7626).	City of Albuquerque.	June 2, 2003, June 9, 2003; *Albuquerque Journal*.	The Honorable Martin Chavez, Mayor, City of Albuquerque, P.O. Box 1293, Albuquerque, NM 87103.	May 14, 2003	350002
Bernalillo (Case No. 02–06–2143P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 24, 2003, Jan. 31, 2003; *Albuquerque Journal*.	Mr. Tim Cummins, Bernalillo County Commissioner, One Civic Plaza, N.W., Albuquerque, NM 87102.	Jan. 8, 2003	350001
North Carolina:					
(Case No. 03–04–133P) (FEMA Docket No. P7626).	Town of Cary	Apr. 3, 2003, Apr. 10, 2003; *The Cary News*.	Mr. William B. Coleman, Jr., Town Manager, Town of Cary, Town Hall Building A, 316 N. Academy Street, Cary, NC 27512–8005.	July 10, 2003	370238
Ohio:					
Franklin (Case No. 02–05–3227P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 9, 2003, Jan. 16, 2003; *The Columbus Dispatch*.	Mr. Dewey R. Stokes, President, Franklin County, Board of Commissioners, 373 South High Street, 26th Floor, Columbus, OH 43215–6304.	Jan. 14, 2003	390167
Lorain (Case No. 02–05–1839P) (FEMA Docket No. P7622).	City of North Ridgeville.	Feb. 19, 2003, Feb. 26, 2003; *The Chronicle Telegram*.	The Honorable Deanna Hill, Mayor, City of North Ridgeville, 7307 Avon Belden Road, North Ridgeville, OH 44039.	May 28, 2003	390352
Warren (Case No. 02–05–3976P) (FEMA Docket No. P7626).	City of Springboro	Apr. 10, 2003, Apr. 17, 2003; *The Star Press*.	The Hon. John Agenbroad, Mayor, City of Springboro, 320 West Central Avenue, Springboro, OH 45066.	July 17, 2003	390564
Montgomery (Case No. 02–05–3230P) (FEMA Docket No. P7624).	City of Vandalia ..	Mar. 5, 2003, Mar. 12, 2003; *Dayton Daily News*.	The Honorable Bill Loy, Mayor, City of Vandalia, 333 James Bohanon Drive, Vandalia, OH 45377.	Feb. 21, 2003	390418
Oklahoma:					
Tulsa (Case No. 01–06–839P) (FEMA Docket No. P7622).	City of Broken Arrow.	Jan. 8, 2003, Jan. 15, 2003; *Broken Arrow Ledger*.	The Honorable James Reynolds, Mayor, City of Broken Arrow, P.O. Box 610, Broken Arrow, OK 74013.	Apr. 16, 2003	400236
Oklahoma, Canadian Cleveland, McClain, Pottawatomie (Case No. 03–06–693P) (FEMA Docket No. P7624).	City of Oklahoma City.	Mar. 20, 2003, Mar. 27, 2003; *The Daily Oklahoman*.	The Hon. Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102.	Feb. 25, 2003	405378
Oklahoma, Canadian, Cleveland, McClain, Pottawatomie (Case No. 03–06–696P) (FEMA Docket No. P7624).	City of Oklahoma City.	Mar. 20, 2003, Mar. 27, 2003; *The Daily Oklahoman*.	The Hon. Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, McClain, Oklahoma City, OK 73102.	Feb. 26, 2003	405378
Oklahoma, Canadian, Cleveland, McClain, Pottawatomie (Case No. 03–06–433P) (FEMA Docket No. P7622).	City of Oklahoma City.	Feb. 20, 2003, Feb. 27, 2003; *The Daily Oklahoman*.	The Hon. Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102.	Jan. 9, 2003	405378
Oklahoma (Case No. 02–06–1547P) (FEMA Docket No. P7622).	City of Oklahoma City.	Jan. 17, 2003, Jan. 24, 2003; *The Daily Oklahoman*.	The Hon. Kirk Humphreys, Mayor, City of Oklahoma City, 200 North Walker, 3rd Floor, Oklahoma City, OK 73102.	Apr. 25, 2003	405378

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Rogers (Case No. 03–06–012P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 9, 2003, Jan. 16, 2003; *Claremore Daily Progress*.	Mr. Gerry Payne, Chairman, Rogers County, Board of Commissioners, 219 South Missouri, Claremore, OK 74017.	Dec. 9, 2002	405379
Tulsa (Case No. 02–06–225P) (FEMA Docket No. P7626).	City of Tulsa	Apr. 23, 2003, Apr. 30, 2003; *Tulsa World*.	The Honorable Bill LaFortune, Mayor, City of Tulsa, 200 Civic Center, Tulsa, OK 74103.	Apr. 14, 2003	405381
Wagoner (Case No. 03–06–012P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 9, 2003, Jan. 16, 2003; *The Wagoner Tribune*.	Mr. Allan Farley, Chairman, Wagoner County, Board of Commissioners, 307 East Cherokee Street, Wagoner, OK 74467.	Dec. 9, 2002	400215
Wagoner (Case No. 02–06–1643P) (FEMA Docket No. P7626).	Unincorporated Areas.	Apr. 24, 2003, May 1, 2003; *The Wagoner Tribune*.	Mr. Allan Farley, Chairman, Wagoner County, Board of Commissioners, 307 East Cherokee Street, Wagoner, OK 74467.	Apr. 4, 2003	400215
Texas:					
Collin (Case No. 02–06–375P) (FEMA Docket No. P7622).	City of Allen	Jan. 10, 2003, Jan. 17, 2003; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	Apr. 18, 2003	480131
Collin (Case No. 03–06–436P) (FEMA Docket No. P7624).	City of Allen	Apr. 3, 2003, Apr. 10, 2003; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	Mar. 19, 2003	480131
Collin (Case No. 02–06–1097P) (FEMA Docket No. P7626).	City of Allen	May 1, 2003, May 8, 2003; *The Allen American*.	The Honorable Stephen Terrell, Mayor, City of Allen, 305 Century Parkway, Allen, TX 75013.	Aug. 6, 2003	480131
Johnson (Case No. 02–06–2441P) (FEMA Docket No. P7622).	City of Burleson	Jan. 8, 2003, Jan. 15, 2003; *The Burleson Star*.	The Honorable Byron Black, Mayor, City of Burleson, 141 West Renfro, Burleson, TX 76028.	Apr. 16, 2003	485459
Dallas (Case No. 02–06–2053P) (FEMA Docket No. P7626).	City of Carrollton	May 2, 2003, May 9, 2003; *Northwest Morning News*.	The Honorable Mark Stokes, Mayor, City of Carrollton, 1945 E. Jackson Road, Carrollton, TX 75006.	Apr. 3, 2003	480167
Dallas (Case No. 02–06–1259P) (FEMA Docket No. P7624).	City of Dallas	Apr. 3, 2003, Apr. 10, 2003; *Dallas Morning News*.	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, Dallas, TX 75201.	Mar. 13, 2003	480171
Dallas (Case No. 03–06–447P) (FEMA Docket No. P7626).	City of Dallas	May 1, 2003, May 8, 2003; *Dallas Morning News*.	The Honorable Laura Miller, Mayor, City of Dallas, 1500 Marilla Street, Dallas, TX 75201.	Apr. 3, 2003	480171
Hidalgo (Case No. 03–06–153P) (FEMA Docket No. P7626).	City of Edinburg	May 28, 2003, June 4, 2003; *Edinburg Daily Review*.	The Honorable Richard Garcia, Mayor, City of Edinburg, P.O. Box 1079, Edinburg, TX 78450–1079.	Sept. 3, 2003	480338
El Paso (Case No. 03–06–107P) FEMA Docket No. P7626).	City of El Paso	May 21, 2003, May 28, 2003; *El Paso Times*.	The Hon. Raymond Caballero, Mayor, City of El Paso, Two Civic Center Plaza, El Paso, TX 79901.	May 2, 2003	480214
Tarrant (Case No. 03–06–411P) (FEMA Docket No. P7626).	City of Euless	Apr. 17, 2003, Apr. 24, 2003; *The Star Telegram*.	The Honorable May Saleh, Mayor, City of Euless, 201 North Ector Drive, Euless, TX 76039–3595.	Apr. 2, 2003	480593
Dallas (Case No. 02–06–2308P) (FEMA Docket No. P7624).	City of Farmers Branch.	Feb. 21, 2003, Feb. 28, 2003; *Northwest Morning News*.	The Honorable Bob Phelps, Mayor, City of Farmers Branch, P.O. Box 819010, Farmers Branch, TX 75234.	Feb. 7, 2003	480174
Fort Bend (Case No. 02–06–376P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 22, 2003, Jan. 29, 2003; *Fort Bend Star*.	The Hon. James Adolphus, Judge, Fort Bend County, 301 Jackson Street, Suite 719, Richmond, TX 77469.	Dec. 31, 2002	480228
Tarrant (Case No. 02–06–2441P) (FEMA Docket No. P7622).	City of Fort Worth	Jan. 8, 2003, Jan. 15, 2003; *The Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	Jan. 13, 2003	480596
Denton (Case No. 03–06–040P) (FEMA Docket No. P7622).	City of Fort Worth	Jan. 24, 2003, Jan. 31, 2003; *The Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	May 2, 2003	480596
Tarrant (Case No. 02–06–1714P) (FEMA Docket No. P7626).	City of Fort Worth	Apr. 17, 2003, Apr, 24, 2003; *The Star Telegram*.	The Honorable Kenneth Barr, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	July 24, 2003	480596
Collin (Case No. 03–06–043P) (FEMA Docket No. P7626).	City of Frisco	June 12, 2003, June 19, 2003; *Frisco Enterprise*.	The Honorable Mike Simpson, Mayor, City of Frisco, P.O. Box 1100, Frisco, TX 75034.	May 23, 2003	480134
Dallas (Case No. 02–06–1259P) (FEMA Docket No. P7624).	City of Garland	Apr. 3, 2003, Apr, 10, 2003; *Garland Morning News*.	The Honorable Bob Day, Mayor, City of Garland, P.O. Box 469003, Garland, TX 75046–9002.	Mar. 13, 2003	485471
Tarrant (Case No. 02–06–1719P) (FEMA Docket No. P7626).	City of Grapevine	Apr. 17, 2003, Apr, 24, 2003; *The Grapevine Sun*.	The Hon. William D. Tate, Mayor, City of Grapevine, 200 S. Main Street, P.O. Box 95104, Grapevine, TX 76051.	Apr. 3, 2003	480598
Harris (Case No. 01–06–2046P) (FEMA Docket No. P7622).	Unincorporated Areas.	Jan. 10, 2003, Jan. 17, 2003; *Houston Chronicle*.	The Honorable Robert Eckels, Judge, Harris County, 1001 Preston Street, Suite 911, Houston, TX 77002.	Apr. 18, 2003	480287
Harris (Case No. 02–06–584P) (FEMA Docket No. P7626).	Unincorporated Areas.	May 14, 2003, May 21, 2003; *The Houston chronicle*.	The Honorable Robert Eckels, Harris County Judge, 1001 Preston, Suite 911, Houston, TX 77002.	Apr. 18, 2003	480287
Hidalgo (Case No. 03–06–153P) (FEMA Docket No. P7626).	Unincorporated Areas.	May 28, 2003, June 4, 2003; *Edinburg Daily Review*.	The Honorable Raman Garcia, Judge, Hidalgo County, P.O. Box 1356, Edinburg, TX 78540–1356.	Sept. 3, 2003	480334

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Dallas (Case No. 02–06–2421P) (FEMA Docket No. P7622).	Town of Highland Park.	Jan. 22, 2003, Jan. 29, 2003; *Park Cities Morning News*.	The Hon. William D. White, Jr., Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205.	Jan. 3, 2003	480178
Dallas (Case No. 03–06–1009P) (FEMA Docket No. P7626).	Town of Highland Park.	May 21, 2003, May 28, 2003; *Park Cities Morning News*.	The Hon. William D. White, Jr., Mayor, Town of Highland Park, 4700 Drexel Drive, Highland Park, TX 75205.	Apr. 30, 2003	480178
Harris (Case No. 02–06–584P) (FEMA Docket No. P7626).	City of Houston	May 14, 2003, May 21, 2003; *The Houston Chronicle*.	The Honorable Lee P. Brown, Mayor, City of Houston, P.O. Box 1562, Houston, TX 77251.	Apr. 18, 2003	480296
Tarrant (Case No. 02–06–2049P) (FEMA Docket No. P7624).	City of Hurst	Feb. 21, 2003, Feb. 28, 2003; *The Star Telegram*.	The Hon. William D. Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	Jan. 31, 2003	480601
Tarrant (Case No. 02–06–236P) (FEMA Docket No. P7626).	City of Hurst	Apr. 22, 2003, Apr. 29, 2003; *The Star Telegram*.	The Hon. William D. Souder, Mayor, City of Hurst, 1505 Precinct Line Road, Hurst, TX 76054.	July 29, 2003	480601
Hays (Case No. 02–06–2442P) (FEMA Docket No. P7626).	City of Kyle	Apr. 23, 2003, Apr. 30, 2003; *The Kyle Eagle*.	The Hon. James L. Adkins, Mayor, City of Kyle, 102 Briarwood Circle, Kyle, TX 78640.	Apr. 2, 2003	481108
Dallas (Case No. 02–06–2623P) (FEMA Docket No. P7626).	City of Lancaster	June 12, 2003, June 19, 2003; *Lancaster Today*.	The Honorable Joe Tillotson, Mayor, City of Lancaster, P.O. Box 940, Lancaster, TX 75146.	Sept. 18, 2003	480182
Williamson (Case No. 02–06–938P) (FEMA Docket No. P7624).	City of Leander	Apr. 16, 2003, Apr. 23, 2003; *Hill Country News*.	The Honorable Larry Barnett, Mayor, City of Leander, P.O. Box 319, Leander, TX 78646.	Mar. 13, 2003	481536
Liberty (Case No. 01–06–1554P) (FEMA Docket No. P7626).	City of Liberty	May 21, 2003, May 28, 2003; *The Vindicator*.	The Hon. Bruce E. Halstead, Mayor, City of Liberty, 1829 Sam Houston, Liberty, TX 77575.	Aug. 27, 2003	480441
Liberty (Case No. 01–06–1554P) (FEMA Docket No. P7626).	Unincorporated Areas.	May 21, 2003, May 28, 2003; *The Vindicator*.	The Honorable Lloyd Kirkham, Judge, Liberty County, 1923 Sam Houston, Suite 201, Liberty, TX 77575.	Aug. 27, 2003	480438
Gregg & Harrison (Case No. 02–06–1841P) (FEMA Docket No. P7626).	City of Longview	May 15, 2003, May 22, 2003; *Longview News Journal*.	The Honorable Earl Roberts, Mayor, City of Longview, P.O. Box 1952, Longview, TX 75606.	Aug. 21, 2003	480264
Dallas (Case No. 02–06–1259P) (FEMA Docket No. P7624).	City of Mesquite	Apr. 3, 2003, Apr. 10, 2003; *Mesquite Morning News*.	The Honorable Mike Anderson, Mayor, City of Mesquite, P.O. Box 850137, Mesquite, TX 75185.	Mar. 13, 2003	485490
Williamson (Case No. 03–06–679P) (FEMA Docket No. P7626).	City of Round Rock.	Apr. 17, 2003, Apr. 24, 2003; *Round Rock Leader*.	The Honorable Nyle Maxwell, Mayor, City of Round Rock, 221 East Main Street, Round Rock, TX 78664.	Apr. 2, 2003	481048
Bexar (Case No. 02–06–2307P) (FEMA Docket No. P7622).	City of San Antonio.	Jan. 30, 2003, Feb. 6, 2003; *San Antonio Express News*.	The Honorable Ed Garza, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	May 8, 2003	480045
Bexar, Comal & Guadalupe (Case No. 02–06–432P) (FEMA Docket No. P7624).	City of Schertz	Feb. 13, 2003, Feb. 20, 2003; *The Herald*.	The Honorable Hal Baldwin, Mayor, City of Schertz, P.O. Box Drawer 1, Schertz, TX 78154.	Feb. 3, 2003	480269
Bexar, Comal & Guadalupe (Case No. 02–06–1684P) (FEMA Docket No. P7624).	City of Schertz	Apr. 17, 2003, Apr. 24, 2003; *The Herald*.	The Honorable Hal Baldwin, Mayor, City of Schertz, P.O. Box Drawer 1, Schertz, TX 78154.	Mar. 21, 2003	480269
Bexar (Case No. 02–06–1684P) (FEMA Docket No. P7624).	City of Selma	Apr. 17, 2003, Apr. 24, 2003; *The Herald*.	The Honorable Jim Parma, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	Mar. 21, 2003	480046
Bexar (Case No. 02–06–1838P) (FEMA Docket No. P7622).	City of Selma	Jan. 23, 2003, Jan. 30, 2003; *The Herald*.	The Honorable James Parma, Mayor, City of Selma, 9375 Corporate Drive, Selma, TX 78154.	May 1, 2003	480046
Tarrant (Case No. 02–06–2441P) (FEMA Docket No P7622).	Unincorporated Areas.	Jan. 8, 2003, Jan. 15, 2003; *The Star Telegram*.	The Hon. Tom Vandergriff, Tarrant County Judge, 100 East Weatherford, Fort Worth, TX 76196.	Jan. 13, 2003	480582
Tarrant (Case No. 03–06–152P) (FEMA Docket No. P7626).	Unincorporated Areas.	May 21, 2003, May 28, 2003; *The Star Telegram*.	The Hon. Tom Vandergriff, Tarrant County Judge, 100 East Weatherford Street, Fort Worth, TX 76196.	Aug. 27, 2003	480582
Bexar (Case No. 02–06–1838P) (FEMA Docket No. P7622).	City of Universal City.	Jan. 23, 2003, Jan. 30, 2003; *The Herald*.	The Hon. Wesley D. Becken, Mayor, City of Universal City, P.O. Box 3008, Universal City, TX 78148.	May 1, 2003	480049
Williamson (Case No. 02–06–938P) (FEMA Docket No. P7624).	Unincorporated Areas.	Apr. 16, 2003, Apr. 23, 2003; *Williamson County Sun*.	The Hon. John C. Doerfler, Judge, Williamson County, 710 Main Street, Georgetown, TX 78626.	Mar. 13, 2003	481079
Wisconsin:					
Richland (Case No. 02–05–3964P) (FEMA Docket No. P7626).	City of Richland Center.	June 19, 2003, June 26, 2003; *The Richland Observer*.	The Honorable Rita Kidd, Mayor, City of Richland Center, 450 South Main Street, Richland Center, WI 53581.	May 29, 2003	555576

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 4, 2003.

Anthony S. Lowe,

Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 03–28638 Filed 11–14–03; 8:45 am]

BILLING CODE 6718–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ♦Elevation in feet (NAVD) modified
Iowa	La Porte City (City) Black Hawk County (FEMA Docket No. P7633).	Cedar River	Approximately 2100 feet downstream of La Porte Road.	♦814
			Approximately 6,500 feet upstream of La Porte Road.	♦815
Iowa	La Porte City (City) Black Hawk County (FEMA Docket No. P7633).	Wolf Creek	Approximately 2,100 feet downstream of Illinois Central Gulf Railroad.	♦815
			Approximately 7,550 feet upstream of Main Street.	♦824
		Wolf Creek Overflow	Approximately 2,700 feet downstream of Illinois Central Gulf Railroad.	♦815

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD) modified ♦Elevation in feet (NAVD) modified
			Approximately 1,7500 feet upstream of Commercial Street.	♦823
Maps are available for inspection at City Hall, 202 Main Street, La Porte City, Iowa.				
Minnesota	Jackson (City) Jackson County (FEMA Docket No. P7637).	West Fork Des Moines River.	At the corporate limit, approximately 2,000 feet downstream of the confluence of Nelson Creek.	*1,304
			At the corporate limit, about 3,200 feet downstream of Interstate 90.	*1,314
Maps are available for inspection at City Hall, 80 West Ashley Street, Jackson, Minnesota.				
Ohio	Dublin (City) Franklin County (FEMA Docket No. P7633).	North Fork Indian Run	Approximately 100 feet upstream of confluence with Indian Run and South Fork Indian Run.	*799
			At county boundary, approximately 1,00 feet upstream of Wareham Drive.	*923
		South Fork Indian Run	Approximately 40 feet upstream from confluence with Indian Run and North Fork Indian Run.	*799
			Approximately 400 feet upstream of confluence with Indian Run and North Fork Indian Run.	*818
			Approximately 300 feet downstream of Post Road.	*923
			Just downstream of Post Road	*927
		Indian Run	Approximately 50 feet upstream of North High Street culvert.	*781
			At confluence of North Fork Indian Run and South Fork Indian Run.	*799
Maps are available for inspection at the Dublin Engineering Building, 5800 Shier-Rings Road, Dublin, Ohio.				
Wisconsin	Fond du Lac County (Unincorporated Areas) (FEMA Docket No. P7633).	Anderson Creek	Approximately 200 feet upstream of U.S. Highway 45.	*750
			Just upstream of Melody Lane Crossing about 150 feet east of Pioneer Road.	*802
		Mosher Creek	Just upstream of U.S. Highway 45	*750
			Just downstream of Rolling Meadows Drive.	*780
Maps are available for inspection at the Municipal Office, City/County Government Center, 160 South Macy Street, Fond du Lac, Wisconsin.				
Wisconsin	North Fond du Lac (Village) Fond du Lac County (FEMA Docket No. P7633).	Anderson Creek	Approximately 1,150 feet upstream of Minnesota Avenue.	*772
			Approximately 1.3 miles upstream of Minnesota Avenue.	*782
		Mosher Creek	At the eastern corporate limit, approximately 2,000 feet downstream of Marcoe Street.	*753
			Approximately 50 feet downstream of Rolling Meadows Drive.	*780
		Lake Winnebago	Shoreline	*750
Maps are available for inspection at the Village Municipal Office, 16 Garfield Street, North Fond du Lac, Wisconsin.				

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 4, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28636 Filed 11–14–03; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

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

ACTION: Final rule.

SUMMARY: Base (1% annual-chance) Flood Elevations and modified Base Flood Elevations (BFEs) are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the FIRM is available for inspection as indicated in the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of BFEs and modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and 44 CFR part 67.

The Federal Emergency Management Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended to read as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

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

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
Scioto River:		
Approximately 260 feet upstream of Trabue Road	*743	FEMA Docket No. P7617, Franklin County, OH, City of Columbus, Village of Marble Cliff, City of Upper Arlington
Approximately 870 feet downstream of Frank Road/Highway 104	*714	City of Grandview Heights
Barnes Ditch:		
At the confluence of Scioto River and Barnes Ditch	*735	City of Columbus, OH
Approximately 800 feet upstream of McKinley Avenue	*736	
Dry Run:		
At confluence of Scioto River and Dry Run	*729	FEMA Docket No. P7617 City of Columbus, OH
Just downstream of culvert at Conrail crossing	*729	

ADDRESSES

Franklin County, Ohio

Maps are available for inspection at 280 East Broad Street, 2nd Floor, Columbus, Ohio.

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD) modified	Communities affected
City of Columbus, Ohio		
Maps are available for inspection at the Development Regulation Division, 757 Carolyn Avenue, Columbus, Ohio.		
City of Grandview Heights		
Maps are available for inspection at 1016 Grandview Avenue, Grandview Heights, Ohio.		
Village of Marble Cliffs, Ohio		
Maps are available for inspection at 1600 Fernwood Avenue, Columbus, Ohio.		
City of Upper Arlington		
Maps are available for inspection at 3600 Tremont Road, Upper Arlington, Ohio.		

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 4, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28637 Filed 11–14–03; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 001005281–0369–02; I.D. 111203A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

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

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the northern Florida west coast subzone. This closure is necessary to protect the Gulf king mackerel resource.

DATES: The closure is effective 12 noon local time, November 13, 2003, through June 30, 2004.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, telephone 727–570–5727, fax 727–570–5583, e-mail *Mark.Godcharles@noaa.gov*.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, on April 30, 2001 (66 FR 17368, March 30, 2001) NMFS implemented a commercial quota of 2.25 million lb (1.02 million kg) for the eastern zone (Florida) of the Gulf migratory group of king mackerel. That quota is further divided into separate quotas for the Florida east coast subzone and the northern and southern Florida west coast subzones. On April 27, 2000, NMFS implemented the final rule (65 FR 16336, March 28, 2000) that divided the Florida west coast subzone of the eastern zone into northern and southern subzones, and established their separate quotas. The quota implemented for the northern Florida west coast subzone is 168,750 lb (76,544 kg)(50 CFR 622.42(c)(1)(i)(A)(2)(ii)).

Under 50 CFR 622.43(a)(3), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of the **Federal Register**. NMFS has determined that the commercial quota of 168,750 lb (76,544 kg) for Gulf group king mackerel in the northern Florida west coast subzone was reached on November 12, 2003. Accordingly, the commercial fishery for king mackerel in the northern Florida west coast subzone is closed at 12 noon, local time, November 13, 2003, through June 30, 2004, the end of the fishing year.

The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4′ N. lat. (a line directly east from the Miami-Dade County, FL boundary). The Florida west coast subzone is further divided into northern and southern subzones. The northern subzone is that part of the Florida west coast subzone that is between 26°19.8′ N. lat. (a line directly west from the Lee/Collier County, FL boundary) and 87deg;31′06'' W. long. (a line directly south from the Alabama/Florida boundary).

NMFS previously determined that the commercial quota for king mackerel from the western zone of the Gulf of Mexico was reached and closed that segment of the fishery on September 24, 2003 (68 FR 55554, September 26, 2003). Thus, with this closure, all commercial fisheries for Gulf group king mackerel in the EEZ are closed from the U.S./Mexico border through the northern Florida west coast subzone through June 30, 2004.

Except for a person aboard a charter vessel or headboat, during the closure, no person aboard a vessel for which a commercial permit for king mackerel has been issued may fish for Gulf group king mackerel in the EEZ in the closed zones or subzones. A person aboard a vessel that has a valid charter vessel/headboat permit for coastal migratory pelagic fish may continue to retain king mackerel in or from the closed zones or subzones under the bag and possession limits set forth in 50 CFR 622.39(c)(1)(ii) and (c)(2), provided the vessel is operating as a charter vessel or headboat. A charter vessel or headboat that also has a commercial king mackerel permit is considered to be operating as a charter vessel or headboat when it carries a passenger who pays a fee or when there are more than three persons aboard, including operator and crew.

During the closure, king mackerel from the closed zones or subzones taken in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the closed zones or subzones that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

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)(3)(B) as such prior notice and opportunity for public comment is unnecessary and contrary to the public interest. Such procedures would be unnecessary because the rule itself already has been subject to notice and comment, and all that remains is to notify the public of the closure. Allowing prior notice and opportunity for public comment is contrary to the public interest because of the need to immediately implement this action in order to protect the fishery since the capacity of the fishing fleet allows for rapid harvest of the quota. Prior notice and opportunity for public comment will require time and would potentially result in a harvest well in excess of the established quota.

For the aforementioned reasons, the AA also finds good cause to waive the 30 day delay in the effectiveness of this action under 5 U.S.C. 553(d)(3).

This action is taken under 50 CFR 622.43(a) and is exempt from review under Executive Order 12866.

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

Dated: November 12, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–28656 Filed 11–12–03; 2:31 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021101264–3016–02; I.D. 110703B]

Fisheries of the Northeastern United States; Atlantic Herring Fishery; Total Allowable Catch Harvested for Period 2 Management Area 1A

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

ACTION: Closure of directed fishery for Management Area 1A.

SUMMARY: NMFS announces that 95 percent of the Atlantic herring total allowable catch (TAC) allocated to Management Area 1A (Area 1A) for fishing year 2003 is projected to be harvested by November 19, 2003. Therefore, effective 0001 hours, November 19, 2003, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring harvested from Area 1A per trip or calendar day until January 1, 2004, when the 2004 TAC becomes available. Regulations governing the Atlantic herring fishery require publication of this notification to advise vessel and dealer permit holders that 95 percent of the Atlantic herring TAC allocated to Area 1A for the 2003 fishing year has been harvested, and no TAC is available for the directed fishery for Atlantic herring harvested from Area 1A.

DATES: Effective 0001 hrs local time, November 19, 2003, through 2400 hrs local time, December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Don Frei, Fisheries Management Specialist, at (978) 281–9221.

SUPPLEMENTARY INFORMATION: Regulations governing the Atlantic herring fishery are found at 50 CFR part 648. The regulations require annual specification of optimum yield, domestic and foreign fishing, domestic and joint venture processing, and management area TACs. The 2003 TAC allocated to Area 1A for Period 2 (68 FR 6088, February 6, 2003 and corrected at 68 FR 16731, April 7, 2003) is 54,000 mt (119,049,621 lb).

The regulations at 50 CFR 648.202 require the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor the Atlantic herring fishery in each of the four management areas designated in the Fishery Management Plan for the Atlantic Herring Fishery and, based upon dealer reports, state data, and other available information, to determine when the harvest of Atlantic herring is projected to reach 95 percent of the annual TAC allocated. When such a determination is made, NMFS is required to publish notification in the **Federal Register** notifying vessel and dealer permit holders that, effective upon a specific date, vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of herring per trip or calendar day from the specified management area for the remainder of the closure period.

The Regional Administrator has determined, based upon dealer reports and other available information, that 95 percent of the total Atlantic herring TAC allocated to Area 1A for the 2003 fishing year is projected to be harvested by November 19, 2003. Therefore, effective 0001 hrs local time, November 19, 2003, federally permitted vessels may not fish for, catch, possess, transfer or land more than 2,000 lb (907.2 kg) of Atlantic herring harvested from Area 1A per trip or calendar day through December 31, 2003. Vessels may transit an area that is limited to the 2,000–lb (907.2–kg) limit with more than 2,000 lb (907.2 kg) of herring on board, providing all fishing gear is stowed and not available for immediate use, as required by § 648.23(b). A vessel may land herring in an area that is limited to the 2,000–lb (907.2–kg) limit specified in § 648.202(a) with more than 2,000 lb (907.2 kg) of herring on board, providing such herring were caught in an area or areas not subject to the 2,000–lb (907.2–kg) limit and providing all fishing gear is stowed and not available for immediate use as required by § 648.23(b). Effective November 19, 2003, federally permitted dealers are also advised that they may not purchase Atlantic herring from federally permitted Atlantic herring vessels that harvest more than 2,000 lb (907.2 kg) of Atlantic herring from Area 1A through December 31, 2003, 2400 hrs local time.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

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

Dated: November 10, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–28655 Filed 11–12–03; 2:31 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 221
Monday, November 17, 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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–267–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes. This proposal would require replacement of 3-switch and 4-switch overhead fire extinguisher control panels with new, improved panels. This action is necessary to prevent the inadvertent release of the fire switch pushbutton on the overhead fire extinguisher control panel with the switch guard closed, which could result in an uncommanded engine shutdown. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002 NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–267–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–267–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–267–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–300 series airplanes. The LBA advises that the airplane manufacturer identified a design problem with the switch guard for the fire switch pushbutton on the overhead fire extinguisher control panel. The procedure that uses the switch guard to reset the fire switch pushbutton does not force the pushbutton into the locked position, and the spring force of the pushbutton works against the switch guard. A slight lifting of the switch guard during flight, due to g-forces, could cause the switch guard to open and inadvertently release the pushbutton, and activate the engine shutdown function. Such conditions could result in an uncommanded engine shutdown.

Explanation of Relevant Service Information

Dornier has issued Service Bulletins SB–328J–26–156 and SB–328J–26–161, both dated February 26, 2002, which describe procedures for replacing the 3-switch and 4-switch overhead fire extinguisher control panels with new, improved control panels; and operational testing of the newly installed control panels. The procedures described in the two service bulletins are similar. The serial numbers listed in the effectivity of each service bulletin are different because SB–328J–26–161 addresses airplanes with a 3-switch panel and SB–328J–26–156 addresses airplanes with a 4-switch panel. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. Dornier Service Bulletin SB–328J–26–156 refers

to Smiths Aerospace Service Bulletin 371–01, dated February 20, 2002, as an additional source of service information for accomplishment of the actions. Dornier Service Bulletin SB–328J–26–161 refers to Smiths Aerospace Service Bulletin 370–01, dated February 20, 2002, as an additional source of service information for accomplishment of the actions. The LBA classified the Dornier service bulletins as mandatory and issued German airworthiness directives 2002–251, dated September 5, 2002; and 2002–335, dated October 17, 2002, to ensure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 19 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed replacement of the overhead fire extinguisher control panel, and that the average labor rate is $65 per work hour. Required parts would be provided by the parts manufacturer at no cost to operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,235, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH): Docket 2002–NM–267–AD.

Applicability: Model 328–300 series airplanes as listed in Dornier Service Bulletins SB–328J–26–156 and SB–328J–26–161, both dated February 26, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inadvertent release of the fire switch pushbutton on the overhead fire extinguisher control panel with the switch guard closed, which could result in an uncommanded engine shutdown, accomplish the following:

Replacement of Overhead Fire Extinguisher Control Panel and Follow-on Actions

(a) Within 16 months after the effective date of this AD: Replace the overhead fire extinguisher control panels with new, improved fire extinguisher control panels, by accomplishing all of the actions specified in Paragraphs 2.A, 2.B(1) through (4) inclusive, and 2.C, of the Accomplishment Instructions of Dornier Service Bulletin SB–328J–26–156 or SB–328J–26–161, both dated February 26, 2002; as applicable.

Note 1: Dornier Service Bulletins SB–328J–26–156 and SB–328J–26–161 refer to Smiths Aerospace Service Bulletins 371–01 and 370–01, respectively, both dated February 20, 2002, as additional sources of service information for accomplishment of the required actions.

Parts Installation

(b) As of the effective date of this AD, no person may install fire extinguisher control panels manufactured by Smiths Aerospace having part numbers 715740–1 or 715355–1 on any airplane.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in German airworthiness directives 2002–251, dated September 5, 2002; and 2002–335, dated October 17, 2002.

Issued in Renton, Washington, on November 10, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28610 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–153–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319 and A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A319 and A320 series airplanes. This proposal would require a modification and replacement affecting the center and wing fuel tanks. All affected airplanes would require modification of the wiring of the fuel quantity indicating probes of the center and wing fuel tanks. Some affected airplanes would also require replacement of the high-level sensors of the additional center fuel tank with new, improved sensors. These actions are necessary to prevent overheating of the fuel probes due to a short circuit, and fuel leakage due to inadequate expansion of the area within the additional center fuel tank. Such conditions could result in fuel vapors or fuel contacting an ignition source and/or consequent fire/explosion in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–153–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–153–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–153–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A319 and A320 series airplanes. The DGAC advises that investigations done by the manufacturer have revealed a potential risk of a 28-volt direct current short circuit, external to the fuel tank, of fuel quantity indicating (FQI) wiring installed in harnesses that contain wiring for other power systems. This short circuit could lead to overheating of the fuel probes and risk of an explosion. In addition, testing of the additional center fuel tank revealed that compliance with Joint Aviation Regulation 25.0989, which requires a 2% expansion of the center fuel tank, could not be attained due to sagging of the bladder. To correct this deficiency a new, improved high-level sensor has been developed that is longer and senses the fuel at a lower level, which reduces the fuel volume and allows for the 2% expansion. Overheating of the fuel probes due to a short circuit, and fuel leakage due to inadequate expansion of the area within the additional center fuel tank, could result in fuel vapors or fuel contacting an ignition source, and/or consequent fire/explosion in the center fuel tank.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–28–1087, Revision 02, dated June 10, 2003, which describes procedures for modification of the wiring of the FQI probes of the center and wing fuel tanks. The modification includes the following:

- Installation of fused adaptors for the FQI probes of the center tanks.
- Installation of fused plug connectors for the FQI probes of the wing tanks.
- Installation of fused adapters between the external wiring harness and the in-tank wiring of the connectors on the center fuel tank wall.
- Operational testing of the refuel/defuel system, a leak test, a test of the pressure switch of the fuel transfer pump, and an operational test of the individual motor of the transfer valve, and repair if necessary.

Airbus also has issued Service Bulletin A320–28–1086, Revision 01, dated October 23, 2002, applicable to certain Airbus Model A319–115 and –133 series airplanes. The service bulletin describes procedures for replacement of the existing high-level sensors with new, improved sensors. The replacement includes installation of new, improved sensors, bonding leads, and a placard. Procedures are provided for operational tests of the additional center fuel tanks following the installation, and repair if necessary.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–220(B) R1, dated October 15, 2003, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

The FAA estimates that 468 airplanes of U.S. registry would be affected by this proposed AD.

It would take between 10 and 22 work hours per airplane to accomplish the proposed modification, at an average labor rate of $65 per work hour. Required parts would cost between $670 and $5750 per airplane. Based on these figures, the cost impact of the modification proposed by this AD is estimated to be between $617,760 and $3,360,240, or between $1,320 and $7,180 per airplane.

Should an operator be required to do the replacement of the high-level sensors, it would take about 80 work hours, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the cost impact of the replacement proposed by this AD is estimated to be $5,200 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2002–NM–153–AD.

Applicability: Model A319 and A320 series airplanes; certificated in any category; as listed in Airbus Service Bulletin A320–28–1087, Revision 02, dated June 10, 2003; and Airbus Service Bulletin A320–28–1086, Revision 01, dated October 23, 2002.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the fuel probes due to a short circuit, and fuel leakage due to inadequate expansion of the area within the additional center fuel tank, which could result in fuel vapors or fuel contacting an ignition source and/or consequent fire/explosion in the center fuel tank, accomplish the following:

Modification/Replacement

(a) Within 4,000 flight hours or 30 months after the effective date of this AD, whichever is first: Do the applicable actions specified in paragraphs (a)(1) and (a)(2) of this AD. Accomplishment of the modification before the effective date of this AD per Airbus Service Bulletin A320–28–1087, dated July 17, 2001; or Revision 01, dated March 3, 2003; or accomplishment of the replacement before the effective date of this AD per Airbus Service Bulletin A320–28–1086, dated November 30, 1999; as applicable; is considered acceptable for compliance with the corresponding action specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes defined in Airbus Service Bulletin A320–28–1087, Revision 02, dated June 10, 2003: Modify the wiring of the fuel quantity indicating probes of the center and wing fuel tanks by doing all the actions specified in paragraphs 3.A. through 3.D. (including operational testing and any applicable repair) of the Accomplishment Instructions of the service bulletin. Do the actions per the service bulletin. Any applicable repair must be done before further flight.

(2) For airplanes defined in Airbus Service Bulletin A320–28–1086, Revision 01, dated October 23, 2002: Prior to or concurrent with accomplishment of paragraph (a)(1) of this AD, replace the high-level sensors of the additional center fuel tanks by doing all the actions specified in paragraphs 3.A through 3.D. (including operational testing and any applicable repair) of the Accomplishment Instructions of the service bulletin. Do the actions per the service bulletin. Any applicable repair must be done before further flight.

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, is authorized to approve alternative methods of compliance for this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–220(B) R1, dated October 15, 2003.

Issued in Renton, Washington, on November 10, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28609 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–120–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–401 and –402 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–401 and –402 airplanes. This proposal would require modifying the wiring of the rudder trim switch, inspecting all wiring on the back of the aileron/rudder trim control panel for chafing, and replacing any chafed wiring with new wiring. This action is necessary to prevent a short circuit on the aileron/rudder trim control panel that could cause a runaway condition of the rudder trim actuator, which could result in reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–120–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Douglas Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7506; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–120–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–120–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–401 and –402 airplanes. TCCA advises that an incident of runaway of the rudder trim actuator occurred immediately following take-off. Investigation revealed a discrepancy in the wiring of the rudder trim control switch on the aileron/rudder trim control panel. This resulted in the rudder trim control switch being constantly enabled. In the event of a short-circuit of a wire, this condition, if not corrected, could result in a runaway condition of the rudder trim actuator and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Alert Service Bulletin A84–27–13, Revision ''B,'' dated January 12, 2002. That service bulletin describes procedures for modifying the wiring of the rudder trim switch, and performing a one-time general visual inspection of all wiring on the back of the aileron/rudder trim control panel for chafing, and replacement of any chafed wiring with new wiring. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2002–15, dated February 20, 2002, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed rule would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 12 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per

work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $780, or $65 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 2002–NM–120–AD.

Applicability: Model DHC–8–401 and –402 airplanes; certificated in any category; serial numbers 4005, 4006, 4008 through 4016 inclusive, and 4018 through 4058 inclusive.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short circuit on the aileron/rudder trim control panel that could cause a runaway condition of the rudder trim actuator, which could result in reduced controllability of the airplane, accomplish the following:

Modification, Inspection, and Corrective Action

(a) Within 90 days after the effective date of this AD, do the actions in paragraphs (a)(1) and (a)(2) of this AD, per the Accomplishment Instructions of Bombardier Alert Service Bulletin A84–27–13, Revision ''B,'' dated January 12, 2002.

(1) Modify the wiring of the rudder trim switch.

(2) Before further flight after accomplishing the modification required by paragraph (a)(1) of this AD: Perform a one-time general visual inspection of all wiring on the back of the aileron/rudder trim control panel for chafing. Before further flight, replace any chafed wiring with new wiring.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Previously Accomplished Actions

(b) Modifications and inspections accomplished before the effective date of this AD per Bombardier Alert Service Bulletin A84–27–13, Revision ''A,'' dated January 9, 2002, are acceptable for compliance with the corresponding actions required by paragraph (a) of this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install aileron/rudder trim control panel having part number 82410608–005 on any airplane, unless the control panel has been modified and inspected per the requirements of this AD.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–15, dated February 20, 2002.

Issued in Renton, Washington, on November 10, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28608 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–70 and –70F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8–70 and –70F series airplanes. This proposal would require repetitive inspections for cracking of the lower cargo doorjamb corners, and corrective action if necessary. For certain airplanes, this proposal would provide for optional terminating action for certain repetitive inspections. For certain other airplanes, this proposal would require modification of the lower cargo doorjamb corners. This action is necessary to detect and correct cracking in the lower cargo doorjamb corners, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 2, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–133–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-*

nprmcomment@faa.gov. Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–133–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from 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 FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

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:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–133–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001-NM–133-AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fatigue cracks in the fuselage skin in the lower cargo doorjamb corners on McDonnell Douglas Model DC–8–70 and –70F series airplanes. These cracks were discovered during inspections conducted as part of the Supplemental Inspection Document (SID) program required by AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993). The cracks were found in areas that extend beyond the inspection areas of AD 93–01–15. Investigation revealed that the cracking was caused by fatigue-related stress. Such fatigue cracking, if not corrected, could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Explanation of Relevant Service Information

We have reviewed and approved McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001, which describes procedures for various repetitive inspections for cracking of the lower cargo doorjamb corners, and corrective action if necessary. The service bulletin divides the effectivity into four groups of airplanes, based on the modification status of the lower cargo doorjamb corners. The service bulletin also describes procedures for certain airplanes for a modification of the lower cargo doorjamb corners, which, if accomplished, would eliminate the need for certain repetitive inspections. The manufacturer issued Revision 01 to revise the compliance schedules for certain inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

We have identified Revision 01 of the service bulletin as an alternative method of compliance (AMOC) with the requirements of paragraphs (a), (b), and (c) of AD 93–01–15.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. The proposed AD would also require that operators send us a report of the results of each inspection.

Differences Between the Proposed AD and the Service Bulletin

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require that those repairs be done per an FAA-approved method, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative whom we have authorized to make such findings.

Cost Impact

There are about 264 airplanes of the affected design in the worldwide fleet. We estimate that 244 airplanes of U.S. registry would be affected by this proposed AD.

The proposed pre-modification inspections, if required, would take about 24 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these proposed actions is estimated to be $1,560 per airplane, per inspection cycle.

The modification, if accomplished, would take about 520 work hours per airplane, at an average labor rate of $65 per work hour. The parts would cost about $25,000. Based on these figures, the cost impact of this action is estimated to be $58,800 per airplane.

The proposed post-modification inspections would take about 40 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of these proposed actions is estimated to be $634,400, or $2,600 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the

time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket 2001–NM–133–AD.

Applicability: Model DC–8–70 and –70F series airplanes, certificated in any category, as listed in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the lower cargo doorjamb corners, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 1: This AD is related to AD 93–01–15, amendment 39–8469, and will affect Principal Structural Elements (PSEs) 53.08.042 and 53.08.043 of the DC–8 Supplemental Inspection Document (SID), Report L26–011, Volume II, Revision 7, dated April 1993.

Group 1 Airplanes: Inspections and Optional Terminating Action

(a) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001:

(1) Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, perform applicable inspections for cracking of the lower cargo doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin.

(i) If no crack is detected during any inspection required by this paragraph: Repeat the inspections within the intervals specified in paragraph 1.E. of the service bulletin.

(ii) If any crack is detected during any inspection required by this paragraph: Repair before further flight in accordance with the Accomplishment Instructions of the service bulletin.

(2) Modification of the lower cargo doorjamb corners in accordance with the Accomplishment Instructions of the service bulletin terminates the repetitive inspection requirement of paragraph (a)(1)(i) of this AD.

(3) For airplanes repaired or modified in accordance with paragraph (a)(1)(ii) or (a)(2) of this AD: Within 17,000 landings after the repair or modification, perform an eddy current inspection for cracks of the doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin (Drawing SN08530001). Repeat the inspection at intervals not to exceed 4,400 landings.

Group 2 Airplanes: Modification

(b) For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001:

(1) Within 2,000 landings or 3 years after the effective date of this AD, whichever occurs first, modify the lower cargo doorjamb corners in accordance with the Accomplishment Instructions of the service bulletin.

(2) Within 17,000 landings after the modification required by paragraph (b)(1) of this AD, perform applicable inspections for cracking of the doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections at intervals not to exceed 4,400 landings.

Group 3 and Group 4 Airplanes: Inspections

(c) For airplanes identified as Group 3 and Group 4 in McDonnell Douglas Service Bulletin DC8–53–078, Revision 01, dated January 25, 2001: Within 17,000 landings following accomplishment of the modification specified in the service bulletin, perform applicable inspections for cracking of the lower cargo doorjamb corners, in accordance with the Accomplishment Instructions of the service bulletin. Repeat the inspections at intervals not to exceed 4,400 landings.

All Airplanes: Repair Following Post-Modification Inspections

(d) If any cracking is detected during any inspection required by paragraph (a)(3), (b)(2), or (c) of this AD: Repair before further flight in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Los Angeles ACO, to make such findings. For a repair method to be approved, the approval must specifically refer to this AD.

Credit for Prior Accomplishment

(e) Inspections done before the effective date of this AD in accordance with McDonnell Douglas Service Bulletin DC8–53–078, dated February 6, 1996, are acceptable for compliance with the applicable inspections required by this AD.

(f) Inspections and repairs specified in this AD of areas of PSEs 53.08.042 and 53.08.043 are acceptable for compliance with the applicable requirements of paragraphs (a), (b), and (c) of AD 93–01–15. The remaining areas of the affected PSEs must be inspected and repaired as applicable, in accordance with AD 93–01–15.

Report

(g) At the applicable time specified in paragraph (g)(1) or (g)(2) of this AD: Submit a report of the findings (both positive and negative) of each inspection required by this AD to the Manager, Los Angeles ACO. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) For an inspection done after the effective date of this AD: Submit the report within 10 days after the inspection.

(2) For an inspection done before the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(h)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing DER who has been authorized by the Manager, Los Angeles ACO, to make such findings.

Issued in Renton, Washington, on November 10, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28607 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–107–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–111, –211, –212, and –231 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, –212, and –231 series airplanes. This proposal would require repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair as necessary. This proposal would also provide an optional terminating action for the repetitive inspections. This action is necessary to detect and correct fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at the frame 36 adjacent to the longitudinal beams, which could result in reduced structural integrity and possible rapid decompression of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by December 17, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain ''Docket No. 2001–NM–107–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2001–NM–107–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–107–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A320–111, –211, –212, and –231 series airplanes. The DGAC advises that during fatigue tests, cracking was detected around the fasteners attaching the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane. Investigation revealed that the damage was caused by high loads in this area. Such cracking, if not corrected, could result in reduced structural integrity and possible rapid decompression of the airplane.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002. This service bulletin describes procedures for repetitive inspections for fatigue cracking around the fasteners attaching the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane; and repair if necessary. This service bulletin permits flight with cracks of specific lengths.

Airbus Service Bulletin A320–53–1030, Revision 01, includes procedures for the following actions:

- Repetitive rotating probe inspections on airplanes with a center fuel tank, or repetitive detailed inspections on airplanes without a center fuel tank, for cracking of the fastener holes that attach the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams.
- For certain airplanes on which cracking of specific lengths is found, installation of the applicable repair/modification kit (including modification of the pressure panel and longitudinal beams by removing material, inspection of bolt holes for cracking, repair of cracked areas, cold expansion of the bolt holes, and installation of a doubler).

Airbus Service Bulletin A320–53–1029, Revision 01, includes procedures for modifying the pressure panels located at frame 36 (including drilling

and reaming fastener holes to the oversize start diameter, performing rotating probe inspections to detect cracking around fasteners holes, repairing cracked areas, and cold expanding the fastener holes). Accomplishment of this service bulletin on airplanes on which no cracking is detected eliminates the need for the repetitive inspections specified in Airbus Service Bulletin A320–53–1030, Revision 01. Installation of any repair/modification kit in accordance with the Accomplishment Instructions of either service bulletin eliminates the need for the repetitive inspections of the repaired/modified area specified in Airbus Service Bulletin A300–53–1030, Revision 01.

Accomplishment of the actions specified in Airbus Service Bulletin A300–53–1030, Revision 01, is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–531–155(B), dated December 27, 2000, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in Airbus Service Bulletin A300–53–1030, Revision 01, described previously, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Consistent with the findings of the DGAC, the proposed AD would allow repetitive inspections to continue in lieu of the terminating action, provided no cracking is found during any inspection. In making this determination, we considered that long-term continued operational safety in this case will be adequately ensured by repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between the Service Information and the Proposed AD

Although the service bulletins specify that operators may contact the manufacturer for disposition of certain repair conditions, this proposal would require operators to repair those conditions per a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

No Flight With Cracks

Unlike Airbus Service Bulletin A300–53–1030, Revision 01, this proposed AD would not permit further flight if any cracking is detected, regardless of crack length, around the fasteners that attach the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane. We have determined that, because of the safety implications and consequences associated with such cracking, any cracking must be repaired before further flight.

Cost Impact

The FAA estimates that 24 airplanes of U.S. registry would be affected by this proposed AD.

For airplanes without a center fuel tank, it would take approximately 1 work hour per airplane to accomplish the proposed detailed inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed detailed inspection is estimated to be $65 per airplane, per inspection cycle.

For airplanes with a center fuel tank, it would take approximately 2 work hours per airplane to accomplish the proposed rotating probe inspection at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to $130 per airplane, per inspection cycle.

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

Should an operator elect to perform the optional terminating action, it would take approximately 12 work hours per airplane to accomplish the proposed cold work modification, at an average labor rate of $65 per work hour. The cost of required parts is $650. Based on these figures, the cost impact of the optional terminating action is estimated to be $1,430 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket 2001–NM–107–AD.

Applicability: Model A320–111, –211, –212, and –231 series airplanes having manufacturer serial numbers 0002 through 0107 inclusive; certificated in any category; except those airplanes on which Airbus Modification 21202/K1432 has been incorporated in production, or Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, has been incorporated in service.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking around the fasteners connecting the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane, which could result in reduced structural integrity and possible rapid decompression of the airplane, accomplish the following:

Inspection and Follow-On Actions

(a) Prior to the accumulation of 30,000 total flight cycles, do a rotating probe inspection on airplanes with a center fuel tank, or a detailed inspection on airplanes without a center fuel tank, to detect cracking around the fasteners that attach the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002.

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

(b) If no cracks are detected by the inspection required by paragraph (a) of this AD, repeat the applicable inspection thereafter at intervals not to exceed 6,000 flight cycles for airplanes without a center fuel tank, and at intervals not to exceed 18,000 flight cycles for airplanes with a center fuel tank.

Corrective Actions

(c) If any cracking is detected during any inspection required by paragraph (a) of this AD, before further flight, repair the affected structure by accomplishing all applicable actions in accordance with paragraphs 3.B. through 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1030, Revision 01, dated May 21, 2002. Repeat the applicable inspection thereafter at intervals not to exceed 6,000 flight cycles for airplanes without a center fuel tank, and at intervals not to exceed 18,000 flight cycles for airplanes with a center fuel tank. For any area where cracking is repaired, the repair constitutes terminating action for the repetitive inspection of that area.

Note 2: Airbus Service Bulletin A320–53–1030 references Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, as an additional source of service information for certain repairs.

(d) If any service bulletin specifies to contact the manufacturer for appropriate action: Before further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate or the Direction Gale de l'Aviation Civile (or its delegated agent).

Optional Terminating Action

(e) Modification of the structure around the fasteners that attach the pressure panel to the flexible bracket at frame 36, adjacent to the longitudinal beams on the left and right sides of the airplane, by accomplishing all applicable actions in accordance with paragraphs 3.A. through 3.E of the Accomplishment Instructions of Airbus Service Bulletin A320–53–1029, Revision 01, dated April 29, 2002, constitutes terminating action for this AD.

Credit for Actions Done per Previous Issue of Service Bulletins

(f) Accomplishment of the required actions before the effective date of this AD in accordance with Airbus Service Bulletin A320–53–1030, dated January 5, 2000; or Airbus Service Bulletin A320–53–1029, dated January 5, 2000; is considered acceptable for compliance with the applicable requirements of paragraphs (a), (b), and (c) of this AD.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–531–155(B), dated December 27, 2000.

Issued in Renton, Washington, on November 10, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–28606 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

Proposed Modification of the Los Angeles Class B Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings.

SUMMARY: This notice announces four fact-finding informal airspace meetings to solicit information from airspace users, and others, concerning a proposal to revise the Class B airspace at Los Angeles, CA. The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

DATES: The informal airspace meetings will be held on Tuesday, January 20, 2004; Thursday, January 22, 2004; Tuesday, January 27, 2004; and Thursday, January 29, 2004; beginning at 7 p.m. Comments must be received on or before February 29, 2004.

ADDRESSES: (1) The meeting on Tuesday, January 20, 2004, will be held at the Embassy Suites Los Angeles South—Imperial Ballroom, 1440 E. Imperial Avenue, El Segundo, CA, 90245. Directions: Take the 405 Freeway to the 105 Freeway, go west to Freeway end. Then turn left at California Street. The hotel is on the left. (2) The meeting on Thursday, January 22, 2004, will be held at the James Monroe High School—Odens Hall/Multi Purpose Room, 9229 Haskell Avenue, North Hills, CA, 91343. Directions: Take the 405 Freeway to Nordhoff Street, turn left and go two blocks to Haskell Avenue. High school is on the right. (3) The meeting on Tuesday, January 27, 2004, will be held at the Riverside Marriot Hotel—Grand Ball Room, 3400 Market Street, Riverside, CA, 92501. Directions: Take 60 East, then take the exit for Market Street and turn right. The hotel is ½ mile on the left. (4) The meeting on Thursday, January 29, 2004, will be held at the Costa Mesa Neighborhood Community Center, 1845 Park Avenue, Costa Mesa, CA, 92627. Directions: Take the 55 Freeway south and turn right on 19th Street. Go two lights and turn left on Park Avenue. The facility is on the right.

Comments: Send or deliver comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Federal Aviation Administration, PO Box 92007, Los Angeles, CA, 90009–2007.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, AWP–520, FAA, Western-Pacific Regional Office, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

The following procedures will be used to facilitate the meeting:

(a) The meetings will be informal in nature and will be conducted by one or

more representatives of the FAA Western-Pacific Region. Representatives from the FAA will present a formal briefing on the proposed modifications to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation.

(b) The meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) The meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present *three* copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded. However, a summary of the comments made at the meeting will be filed in the docket.

Agenda for the Meetings

- Opening Remarks and Discussion of Meeting Procedures.
- Briefing on Background of the Class B Proposal.
- Public Presentations and Comments.
- Closing Comments.

Issued in Washington, DC, on November 4, 2003.

Paul B. Gallant,

Acting, Manager, Airspace and Rules Division.

[FR Doc. 03–28528 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2003–15411; Airspace Docket No. 02–ANM–15]

RIN 2120–AA66

Establishment of Restricted Area 4601 A, B, C, and D, Bearpaw; MT

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish new restricted areas (R–4601 A, B, C, and D) in the vicinity of Bearpaw, MT, as part of a Montana Air National Guard (MANG) training initiative. The MANG has requested the airspace be established to improve current air-to-ground training efficiency for the 120th Fighter Wing (120th FW).

DATES: Comments must be received on or before January 16, 2004.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2003–15411, and Airspace Docket No. 02–ANM–15) and be submitted in triplicate to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You may also submit comments through the Internet at *http://dms.dot.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2003–15411, and Airspace Docket No. 02–ANM–15.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register's** Web page at *http://www.gpoaccess.gov/fr/index.html.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see address in ''Comments Invited'' section) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 1601 Lind Avenue, #14, SW., Renton, WA 98055.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

History

Air National Guard units must be capable of responding to a variety of needs, wartime situations, and peacekeeping missions that were formerly assigned to the active duty Air Force. To respond to these situations rapidly and effectively, Air National Guard units must train to the same standards established for the active duty Air Force, including weapons delivery training at air-to-ground training ranges. The establishment of a training range in Montana would result in time and cost savings to the 120th FW. The 120th FW currently conducts most of its air-to-ground training at the Utah Test and Training Range. A ''local'' training range (within a distance of 150 nautical miles from Great Falls) would save at least 41 minutes of flying time for each mission while increasing the amount of time spent training on that mission by 38 minutes. By reducing distance traveled to conduct air-to-ground training the efficiency and effectiveness of training would be enhanced.

The Proposal

The FAA is proposing an amendment to 14 Code of Federal Regulations (CFR) part 73 (part 73) to establish R–4601 A, B, C, and D, in the vicinity Bearpaw, MT, as part of a MANG training initiative. The proposed training range would be located beneath Hays Military Operations Area (MOA) where the MANG, 120th FW currently conducts

training with F–16 aircraft. The proposed airspace would consist of area ''A,'' a three by five statute mile impact area from the surface to 300 feet above ground level (AGL) for inert (nonexplosive) training munitions; area ''B,'' a 300 feet AGL to FL 180 area; area ''C, ''FL 180 to FL 270; and area ''D,'' FL 270 to FL 310. This airspace would total approximately 22 by 18 statute miles.

Section 73.46 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8L dated October 7, 2003.

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

Environmental Review

This proposal will be subject to the appropriate environmental analysis in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.46 [Amended]

2. § 73.46 is amended as follows:

* * * * *

R–4601A, Bearpaw, MT (New)

Boundaries. Beginning at (lat. 48°03′33″ N, long. 108°57′07″ W); (lat. 48°03′33″ N, long. 109°03′36″ W); (lat. 48°06′09″ N, long. 109°03′36″ W); (lat. 48°06′09″ N, long. 108°57′07″ W); to point of beginning.

Designated altitudes. Surface up to, but not including, 300 feet AGL.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

R–4601B, Bearpaw, MT (New)

Boundaries. Beginning at (lat. 47°56′00″ N, long. 108°54′00″ W); (lat. 47°56′00″ N, long. 109°17′00″ W); (lat. 48°15′00″ N, long. 109°17′00″ W); (lat. 48°15′00″ N, long. 108°54′00″ W); to point of beginning.

Designated altitudes. 300 feet AGL up to, but not including, FL 180.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

R–4601C, Bearpaw, MT (New)

Boundaries. Beginning at (lat. 47°56′00″ N, long. 108°54′00″ W); (lat. 47°56′00″ N, long. 109°17′00″ W); (lat. 48°15′00″ N, long. 109°17′00″ W); (lat. 48°15′00″ N, long. 108°54′00″ W); to point of beginning.

Designated altitudes. FL 180 to FL 270.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

R–4601D, Bearpaw, MT (New)

Boundaries. Beginning at (lat. 47°56′00″ N, long. 108°54′00″ W); (lat. 47°56′00″ N, long. 109°17′00″ W); (lat. 48°15′00″ N, long. 109°17′00″ W); (lat. 48°15′00″ N, long. 108°54′00″ W); to point of beginning.

Designated altitudes. FL 270 to FL 310.

Time of designation. Intermittent by NOTAM.

Controlling agency. FAA, Salt Lake City ARTCC.

Using agency. 120th FW, Montana Air National Guard, Great Falls International Airport, MT.

* * * * *

Issued in Washington, DC, on November 7, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–28617 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW–FRL–7587–3]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Exclusion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA is proposing to grant a petition submitted by American Chrome & Chemicals L.P. (ACC) to exclude (or delist) certain dewatered sludge from the production of chrome oxide green pigments (K006) generated at its Corpus Christi, Texas facility from the lists of hazardous wastes.

The EPA used the Delisting Risk Assessment Software (DRAS) in the evaluation of the impact of the petitioned waste on human health and the environment.

The EPA bases its proposed decision to grant the petition on an evaluation of waste-specific information provided by the petitioner. This proposed decision, if finalized, would conditionally exclude the petitioned waste, the dewatered sludge, from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA).

If finalized, the EPA would conclude that ACC's petitioned waste is nonhazardous with respect to the original listing criteria and will substantially reduce the likelihood of migration of constituents from this waste. The EPA would also conclude that their process minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

DATES: The EPA will accept comments until January 2, 2004. The EPA will stamp comments received after the close of the comment period as ''late.'' These late comments may not be considered in formulating a final decision. Your requests for a hearing must reach the EPA by December 2, 2003. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Please send three copies of your comments. You should send two copies to the Section Chief of the Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division, (6PD–C), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. You should send a third

copy to Wade Wheatley, Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality (TCEQ), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: ''F–03–TXDEL–ACC'' You may submit your comments electronically to *peace.michelle@epa.gov*.

You should address requests for a hearing to the Director, Carl Edlund, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Michelle Peace (214) 665–7430.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

I. Overview Information
A. What action is the EPA proposing?
B. Why is the EPA proposing to approve this delisting?
C. How will ACC manage the waste if it is delisted?
D. When would the EPA finalize the proposed delisting?
E. How would this action affect states?
II. Background
A. What is the history of the delisting program?
B. What is a delisting petition, and what does it require of a petitioner?
C. What factors must the EPA consider in deciding whether to grant a delisting petition?
III. The EPA's Evaluation of the Waste Information and Data
A. What waste did ACC petition the EPA to delist?
B. Who is ACC and what process does it use to generate the petitioned waste?
C. How did ACC sample and analyze the waste in this petition?
D. What were the results of ACC's analysis?
E. How did the EPA evaluate the risk of delisting this waste?
F. What did the EPA conclude about ACC's analysis?
G. What other factors did the EPA consider in its evaluation?
H. What is the EPA's Final evaluation of this delisting petition?
IV. Next Steps
A. With what conditions must the petitioner comply?
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V. Public Comments
A. How may I as an interested party submit comments?
B. How may I review the docket or obtain copies of the proposed exclusions?
VI. Regulatory Impact
VII. Regulatory Flexibility Act
VIII. Paperwork Reduction Act
IX. Unfunded Mandates Reform Act
X. Executive Order 13045
XI. Executive Order 13084
XII. National Technology Transfer and Advancement Act
XIII. Executive Order 13132 Federalism

I. Overview Information

A. What Action Is the EPA Proposing?

The EPA is proposing to grant ACC's petition to have its dewatered sludge (chromic oxide) excluded, or delisted, from the definition of a hazardous waste, subject to certain verification and monitoring conditions.

B. Why Is the EPA Proposing To Approve This Delisting?

ACC's petition requests a delisting for a listed hazardous waste. ACC does not believe that the petitioned waste meets the criteria of K006 for which the EPA listed it. ACC also believes no additional constituents or factors could cause the waste to be hazardous. The EPA's review of this petition included consideration of the original listing criteria, and the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). *See* section 3001(f) of RCRA, 42 U.S.C. 6921(f), and 40 CFR 260.22 (d)(1)–(4) (hereinafter all sectional references are to 40 CFR unless otherwise indicated). In making the initial delisting determination, the EPA evaluated the petitioned waste against the listing criteria and factors cited in §§ 261.11(a)(2) and (a)(3). Based on this review, the EPA agrees with the petitioner that the petition waste is nonhazardous with respect to the original listing criteria. (If the EPA had found, based on this review, that the waste remained hazardous based on the factors for which the waste was originally listed, the EPA would have proposed to deny the petition.) The EPA evaluated the waste with respect to other factors or criteria to assess whether there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The EPA considered whether the waste is acutely toxic, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and waste variability. The EPA believes that the petitioned waste does not meet the listing criteria and thus should not be a listed waste. The EPA's proposed decision to delist waste from ACC's facility is based on the information submitted in support of this rule, including descriptions of the wastes and analytical data from the Corpus Christi, Texas facility.

C. How Will ACC Manage the Waste if It Is Delisted?

For the past 12 years, ACC's dewatered sludge (chromic oxide) has been transferred off-site for treatment/disposal at Texas Ecologists, Inc. a nondedicated, off-site, land-based hazardous waste unit in Robstown, Texas. The waste management method used for the wastewater sludge at Texas Ecologists, Inc. is landfilling. The most recent transfer of the petitioned waste to Texas Ecologists was October 17, 2000.

ACC originally proposed to dispose of the dewatered sludge in an on-site surface impoundment. However, because the DRAS model cannot accommodate ACC's site specific parameters for the surface impoundment scenario, accurate estimates of potential ground water risks could not be made. Therefore, ACC has determined that the delisted waste will be disposed of in a non-hazardous waste landfill. If the delisting exclusion is finalized, ACC will dispose of the petitioned waste, dewatered sludge, at a Subtitle D solid waste landfill.

D. When Would the EPA Finalize the Proposed Delisting?

RCRA section 3001(f) specifically requires the EPA to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, the EPA will not grant the exclusion until it addresses all timely public comments (including those at public hearings, if any) on this proposal.

RCRA section 3010(b)(1) at 42 USCA 6930(b)(1), allows rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if finalized, would reduce the existing requirements for persons generating hazardous wastes.

The EPA believes that this exclusion should be effective immediately upon final publication because a six-month deadline is not necessary to achieve the purpose of section 3010(b), and a later effective date would impose unnecessary hardship and expense on this petitioner. These reasons also provide good cause for making this rule effective immediately, upon final publication, under the Administrative Procedure Act, 5 U.S.C. 553(d).

E. How Would This Action Affect States?

Because the EPA is issuing this exclusion under the Federal RCRA delisting program, only states subject to Federal RCRA delisting provisions would be affected. This would exclude

two categories of states: States having a dual system that includes Federal RCRA requirements and their own requirements, and states which have received authorization from the EPA to make their own delisting decisions.

The EPA allows states to impose its own non-RCRA regulatory requirements that are more stringent than the EPA's, under section 3009 of RCRA, 42 U.S.C. 6929. These more stringent requirements may include a provision that prohibits a Federally issued exclusion from taking effect in the state. Because a dual system (that is, both Federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, the EPA urges petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

The EPA has also authorized some states (for example, Louisiana, Georgia, Illinois) to administer a RCRA delisting program in place of the Federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states unless that state makes the rule part of its authorized program. If ACC transports the petitioned waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state.

II. Background

A. What Is the History of the Delisting Program?

The EPA published an amended list of hazardous wastes from nonspecific and specific sources on January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA. The EPA has amended this list several times and published it in §§ 261.31 and 261.32.

The EPA lists these wastes as hazardous because: (1) they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (that is, ignitability, corrosivity, reactivity, and toxicity) or (2) they meet the criteria for listing contained in § 261.11(a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be hazardous.

For this reason, §§ 260.20 and 260.22 provide an exclusion procedure, called delisting, which allows persons to prove that the EPA should not regulate a specific waste from a particular generating facility as a hazardous waste.

B. What Is a Delisting Petition, and What Does It Require of a Petitioner?

A delisting petition is a request from a facility to the EPA or an authorized state to exclude wastes from the list of hazardous wastes. The facility petitions the Agency because it does not consider the wastes hazardous under RCRA regulations.

In a delisting petition, the petitioner must show that wastes generated at a particular facility do not meet any of the criteria for which the waste was listed. The criteria for which the EPA lists a waste are in Part 261 and further explained in the background documents for the listed waste.

In addition, under § 260.22, a petitioner must prove that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and present sufficient information for the EPA to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste. (*See* part 261 and the background documents for the listed waste.) Generators remain obligated under RCRA to confirm whether their waste remains nonhazardous based on the hazardous waste characteristics even if the EPA has ''delisted'' the waste.

C. What Factors Must the EPA Consider in Deciding Whether To Grant a Delisting Petition?

Besides considering the criteria in § 260.22(a) and Section 3001(f) of RCRA, 42 U.S.C. 6921(f), and in the background documents for the listed wastes, the EPA must consider any factors (including additional constituents) other than those for which we listed the waste if a reasonable basis exists that these additional factors could cause the waste to be hazardous.

The EPA must also consider as hazardous waste mixtures containing listed hazardous wastes and wastes derived from treating, storing, or disposing of listed hazardous waste. *See* § 261.3(a)(2)(iii) and (iv) and (c)(2)(i), called the ''mixture'' and ''derived-from'' rules, respectively. These wastes are also eligible for exclusion and remain hazardous wastes until excluded. See 66 FR 27266 (May 16, 2001).

III. The EPA's Evaluation of the Waste Information and Data

A. What Waste Did ACC Petition the EPA To Delist?

On April 17, 2002, ACC petitioned the EPA to exclude from the list of hazardous waste contained in § 261.32, the dewatered sludge generated from its facility located in Corpus Christi, Texas. The waste, the EPA Hazardous Waste No. K006, falls under the classification of listed waste because of the ''derived-from'' rule in § 261.3. Specifically, in its petition, ACC requested that the EPA grant an exclusion for 1450 cubic yards per year of dewatered sludge resulting from its process of manufacturing chromic oxide. The resulting waste is listed, in accordance with the ''derived-from'' rule.

ACC's wastewater sludge contains approximately 11% solids. The petitioned waste is only the dewatered portion of the sludge, not the entire sludge (solids and wastewater) that is generated from the current wastewater treatment process. Currently, ACC discharges the wastewater sludge through Outfall 201, into an on-site storage tank. The discharge is permitted by Texas Commission on Environmental Quality (TCEQ) through a Texas Pollution Discharges Elimination System (TPDES) Permit No. 003490 (EPA NPDES Permit No. TX0004685).

B. Who Is ACC and What Process Does It Use To Generate the Petitioned Waste?

The ACC facility is located in an industrial/commercial setting in the western portion of the City of Corpus Christi, Nueces County, Texas. ACC produces various grades of chromic oxide at their Corpus Christi, Texas facility. Chromic oxide is produced through the chemical reaction of sodium dichromate and ammonium sulfate. The produced chromic oxide is washed to create the desired purity of the final product. The sludge generated from this process is listed hazardous waste and identified as K006. The facility operates 24 hours per day, 7 days per week, 365 days per year with the exception of periodic planned shutdowns for routine maintenance.

C. How Did ACC Sample and Analyze the Waste in This Petition?

To support its petition, ACC submitted:

(1) historical information on past waste generation and management practices;

(2) results of the total constituent list for 40 CFR part 264, appendix IX

volatiles, semivolatiles, metals, pesticides, herbicides, and PCBs;

(3) results of the constituent list for appendix IX on Toxicity Characteristic Leaching Procedure (TCLP) extract;

(4) results from total oil and grease analyses; and

(5) multiple pH testing of the petitioned waste.

D. What Were the Results of ACC's Analyses?

The EPA believes that the descriptions of the ACC hazardous waste process and analytical characterization in conjunction with the proposed verification testing requirements (as discussed later in this document), provide a reasonable basis to grant ACC's petition for an exclusion of the petitioned waste. The EPA believes the data submitted in support of the petition show the dewatered sludge is non-hazardous. Analytical data for the petitioned waste samples were used in the Delisting Risk Assessment Software (DRAS). The EPA has reviewed the sampling procedures used by ACC and has determined they satisfy the EPA criteria for collecting representative samples of the variations in constituent concentrations in the dewatered wastewater sludge. The data submitted in support of the petition show that constituents in ACC's waste are presently below health-based levels used in the delisting decision-making. The EPA believes that ACC has successfully demonstrated that the petitioned waste is non-hazardous.

E. How Did the EPA Evaluate the Risk of Delisting This Waste?

For this delisting determination, the EPA used such information gathered to identify plausible exposure routes (*i.e.*, ground water, surface water, air) for hazardous constituents present in the petitioned waste. The EPA determined that disposal in a Subtitle D landfill is the most reasonable, worst-case disposal scenario for ACC's petitioned waste. The EPA applied the DRAS described in 65 FR 58015 (September 27, 2000) and 65 FR 75637 (December 4, 2000), to predict the maximum allowable concentrations of hazardous constituents that may be released from the petitioned waste after disposal and determined the potential impact of the disposal of ACC's petitioned waste on human health and the environment. A copy of this software can be found on the World Wide Web at *http://www.epa.gov/earth1r6/6pd/rcra_c/pd-o/dras.htm.* In assessing potential risks to ground water, the EPA used the maximum estimated waste volumes and the maximum reported extract concentrations as inputs to the DRAS program to estimate the constituent concentrations in the ground water at a hypothetical receptor well down gradient from the disposal site. Using the risk level (carcinogenic risk of 10^{-5} and non-cancer hazard index of 0.1), the DRAS program can back-calculate the acceptable receptor well concentrations (referred to as compliance-point concentrations) using standard risk assessment algorithms and Agency health-based numbers. Using the maximum compliance-point concentrations and the EPA Composite Model for Leachate Migration with Transformation Products (EPACMTP) fate and transport modeling factors, the DRAS further back-calculates the maximum permissible waste constituent concentrations not expected to exceed the compliance-point concentrations in ground water.

The EPA believes that the EPACMTP fate and transport model represents a reasonable worst-case scenario for possible ground water contamination resulting from disposal of the petitioned waste in a landfill, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. The use of some reasonable worst-case scenarios results in conservative values for the compliance-point concentrations, and ensures that the waste, once removed from hazardous waste regulation, will not pose a significant threat to human health or the environment.

The DRAS also uses the maximum estimated waste volumes and the maximum reported total concentrations to predict possible risks associated with releases of waste constituents through surface pathways (*e.g.*, volatilization or wind-blown particulate from the landfill). The DRAS uses the risk level, the health-based data and standard risk assessment and exposure algorithms to predict maximum compliance-point concentrations of waste constituents at a hypothetical point of exposure. Using fate and transport equations, the DRAS uses the maximum compliance-point concentrations and back-calculates the maximum allowable waste constituent concentrations (or ''delisting levels'').

In most cases, because a delisted waste is no longer subject to hazardous waste control, the EPA is generally unable to predict, and does not presently control, how a petitioner will manage a waste after delisting. Therefore, the EPA currently believes that it is inappropriate to consider extensive site-specific factors when applying the fate and transport model. The EPA does control the type of unit where the waste is disposed. The waste must be disposed in the type of unit the fate and transport model evaluates.

The EPA also considers the applicability of ground water monitoring data during the evaluation of delisting petitions. In this case, ACC has never directly disposed of this material in an on-site solid waste landfill, so no representative data exists. Therefore, the EPA has determined that it would be unnecessary to request ground water monitoring data.

The EPA believes that the descriptions of ACC's hazardous waste process and analytical characterization provide a reasonable basis to conclude that the likelihood of migration of hazardous constituents from the petitioned waste will be substantially reduced so that short-term and long-term threats to human health and the environment are minimized.

The DRAS results which calculate the maximum allowable concentration of chemical constituents in the waste along with the data summary of the detected constituents are presented in Table I. Based on the comparison of the DRAS results and maximum TCLP concentrations, the petitioned waste should be delisted because no constituents of concern exceed the delisting concentrations.

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WASTEWATER SLUDGE [1]

Constituent	Total constituent analyses (mg/kg)	TCLP concentration (mg/L)	Maximum allowable TCLP concentration from DRAS (mg/L)
Arsenic	74.3	*0.00495	0.0377
Barium	21.8	*5	100
Chromium	113,000	0.644	5
Thallium	23	*0.05	0.355

TABLE I.—MAXIMUM TOTAL AND TCLP CONSTITUENT CONCENTRATIONS OF THE DEWATERED WASTEWATER SLUDGE [1]—Continued

Constituent	Total constituent analyses (mg/kg)	TCLP concentration (mg/L)	Maximum allowable TCLP concentration from DRAS (mg/L)
Zinc	38.8	*0.1	1130

[1] These levels represent the highest concentration of each constituent found in any one sample. These levels do not necessarily represent the specific levels found in one sample.
*Denotes that the constituent was not detected at the noted detection limit

F. What Did the EPA Conclude About ACC's Analysis?

The EPA concluded, after reviewing ACC's processes that no other hazardous constituents of concern, other than those for which ACC tested, are likely to be present or formed as reaction products or by products in ACC's waste. In addition, on the basis of explanations and analytical data provided by ACC, pursuant to § 260.22, the EPA concludes that the petitioned waste does not exhibit any of the characteristics of ignitability, corrosivity, or reactivity. *See* §§ 261.21, 261.22, and 261.23, respectively.

G. What Other Factors Did the EPA Consider in Its Evaluation?

During the evaluation of ACC's petition, the EPA also considered the potential impact of ACC's petitioned waste via non-ground water routes (*i.e.*, air emission and surface runoff). With regard to airborne dispersion in particular, the EPA believes that exposure to airborne contaminants from ACC's petitioned waste is unlikely. Therefore, no appreciable air releases are likely from the petitioned waste under any likely disposal conditions. The EPA evaluated the potential hazards resulting from the unlikely scenario of airborne exposure to hazardous constituents released from ACC's petitioned waste in an open landfill. The results of this worst-case analysis indicated that there is no substantial present or potential hazard to human health and the environment from airborne exposure to constituents from ACC's petitioned waste. A description of the EPA's assessment of the potential impact of ACC's petitioned waste, regarding airborne dispersion of waste contaminants, is presented in the RCRA public docket for this proposed rule, F–03–TXDEL–ACC.

The EPA also considered the potential impact of the petitioned waste via a surface water route. The EPA believes that containment structures at municipal solid waste landfills can effectively control surface water runoff, as the Subtitle D regulations (See 56 FR 50978, October 9, 1991) prohibit pollutant discharges into surface waters. Furthermore, the concentrations of any hazardous constituents dissolved in the runoff will tend to be lower than the levels in the TCLP leachate analyses reported in this action due to the acidic medium used for extraction in the TCLP. The EPA believes that, in general, leachate derived from the waste is unlikely to directly enter a surface water body without first traveling through the saturated subsurface where dilution and attenuation of hazardous constituents will also occur. Leachable concentrations provide a direct measure of solubility of a toxic constituent in water and are indicative of the fraction of the constituent that may be mobilized in surface water as well as ground water.

Based on the reasons discussed above, the EPA believes that the contamination of surface water through runoff from the waste disposal area is very unlikely. Nevertheless, the EPA evaluated the potential impacts on surface water if ACC's petitioned waste were released from a municipal solid waste landfill through runoff and erosion. See the RCRA public docket for this proposed rule for further information on the potential surface water impacts from runoff and erosion. The estimated levels of the hazardous constituents of concern in surface water would be well below health-based levels for human health, as well as below the EPA Chronic Water Quality Criteria for aquatic organisms (USEPA, OWRS, 1987). The EPA, therefore, concluded that the petitioned waste would not present potential hazard to human health and the environment via the surface water exposure pathway.

H. What Is the EPA's Final Evaluation of This Delisting Petition?

The descriptions of ACC's hazardous waste process and analytical characterization, with the proposed verification testing requirements (as discussed later in this notice), provide a reasonable basis for the EPA to grant the exclusion. The data submitted in support of the petition show that constituents in the waste are below the maximum allowable leachable concentrations (*see* Table I). We believe ACC's process will substantially reduce the likelihood of migration of hazardous constituents from the petitioned waste. ACC's process also minimizes short-term and long-term threats from the petitioned waste to human health and the environment.

The EPA has reviewed the sampling procedures used by ACC and has determined they satisfy the EPA criteria for collecting representative samples of variable constituent concentrations in the petitioned sludge. The data submitted in support of the petition show that constituents in ACC's petitioned waste are presently below the compliance point concentrations used in the delisting decision-making and would not pose a substantial hazard to the environment.

The EPA believes that ACC has successfully demonstrated that the petitioned waste is non-hazardous, and therefore, proposes to grant an exclusion to ACC, in Corpus Christi, Texas, for the dewatered sludge described in its petition. The EPA's decision to exclude this waste is based on descriptions of the treatment activities and characterization of the petitioned waste.

If we finalize the proposed rule, the Agency will no longer regulate the petitioned waste under parts 262 through 268 and the permitting standards of part 270.

IV. Next Steps

A. With What Conditions Must the Petitioner Comply?

The petitioner, ACC, must comply with the requirements in 40 CFR part 261, appendix IX, Table 2 as amended by this notice. The text below gives the rationale and details of those requirements.

(1) Delisting Levels

This paragraph provides the levels of constituents for which ACC must test the leachate from the dewatered sludge, below which the waste would be considered nonhazardous.

The EPA selected the set of constituents specified in Paragraph (1)

of 40 CFR part 261, appendix IX, Table 2, based on information in the petition. We compiled the list from the composition of the waste, descriptions of ACC's treatment process, previous test data provided for the waste, and the respective health-based levels used in delisting decision-making. These delisting levels correspond to the allowable levels measured in the TCLP extract of the waste.

(2) Waste Holding and Handling

The purpose of this paragraph is to ensure that any dewatered sludge which might contain hazardous levels of constituents are managed and disposed of in accordance with Subtitle C of RCRA. Holding the petitioned waste until characterization is complete will protect against improper handling of hazardous material. If the EPA determines that the data collected under this Paragraph do not support the data provided in the petition, the exclusion will not cover the petitioned waste. The exclusion is effective when we sign it, but the disposal cannot begin until the verification sampling is completed. The dewatered sludge must pass paint filter test as described in EPA SW–846, Method 9095 before it is allowed to be shipped off-site. ACC must maintain a record of the date and the actual volume of the dewatered sludge removed from the tank according to the requirements in Paragraph (5).

(3) Verification Testing Requirements

ACC shall conduct verification testing each time it is ready to evacuate the tank sludge for disposal. Four (4) representative composite samples for verification shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) of 40 CFR part 261, appendix IX, Table 2. The results from each event should be submitted to EPA within 10 days of receiving the results.

If EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. The EPA will notify ACC of the decision in writing within two weeks of receiving this information.

(4) Changes in Operating Conditions

Paragraph (4) would allow ACC the flexibility of modifying its processes (for example, changes in equipment or change in operating conditions) to improve its treatment process. ACC must prove the effectiveness of the modified process by testing and request approval from the EPA. ACC must manage wastes generated during the new process demonstration as hazardous waste until it receives a written approval from the EPA and the delisting levels specified in Paragraph (1) are satisfied.

If the proposed exclusion is made final, it will apply only to 1450 cubic yards of dewatered sludge, generated annually at the ACC's facility after successful verification testing.

ACC must manage waste volumes greater than 1450 cubic yards of petitioned waste as hazardous until the EPA grants a new exclusion.

When this new exclusion becomes final, ACC's management of the waste covered by this petition would be relieved from Subtitle C jurisdiction. ACC must ensure that it delivers the waste to an off-site storage, treatment, or disposal facility that has a state permit, license, or registration to manage municipal or industrial solid waste.

The EPA would require ACC to file a new delisting petition under any of the following circumstances:

(a) If it significantly alters the manufacturing process treatment system except as described in Paragraph (4)

(b) If it uses any new manufacturing or production process(es), or significantly changes from the current process(es) described in its petition; or

(c) If it makes any changes that could affect the composition or type of waste generated.

(5) Data Submittals

To provide appropriate documentation that ACC's facility is properly treating the waste, ACC must compile, summarize, and keep delisting records on-site for a minimum of five years. They must keep all analytical data obtained through Paragraph (3) including quality control information for five years. Paragraph (5) requires that ACC furnish these data when the EPA or the State of Texas request them for inspection.

(6) Reopener

The purpose of Paragraph (6) is to require ACC to disclose new or different information related to a condition at the facility or disposal of the waste if it is pertinent to the delisting. ACC must also use this procedure if the verification sampling testing fails to meet the delisting levels found in Paragraph 1. This provision will allow the EPA to reevaluate the exclusion if a source provides new or additional information to the Agency. The EPA will evaluate the information on which it based the decision to see if it is still correct, or if circumstances have changed so that the information is no longer correct or would cause the EPA to deny the petition if presented.

This provision expressly requires ACC to report differing site conditions or assumptions used in the petition in addition to failure to meet the verification testing conditions within 10 days of discovery. If the EPA discovers such information itself or from a third party, it can act on it as appropriate. The language being proposed is similar to those provisions found in RCRA regulations governing no-migration petitions at § 268.6.

The EPA believes that it has the authority under RCRA and the Administrative Procedures Act (APA), 5 U.S.C. 551 (1978) *et seq.*, to reopen a delisting decision. The EPA may reopen a delisting decision when we receive new information that calls into question the assumptions underlying the delisting.

The Agency believes a clear statement of its authority in delistings is merited in light of Agency experience. *See* Reynolds Metals Company at 62 FR 37694 (July 14, 1997) and 62 FR 63458 (December 1, 1997) where the delisted waste leached at greater concentrations in the environment than the concentrations predicted when conducting the TCLP, thus leading the Agency to repeal the delisting. If an immediate threat to human health and the environment presents itself, the EPA will continue to address these situations case by case. Where necessary, the EPA will make a good cause finding to justify emergency rulemaking. *See* APA section 553 (b).

(7) Notification Requirements

In order to adequately track wastes that have been delisted, the EPA is requiring that ACC provide a one-time notification to any state regulatory agency through which or to which the delisted waste is being carried. ACC must provide this notification within 60 days of commencing this activity.

B. What Happens if ACC Violates the Terms and Conditions?

If ACC violates the terms and conditions established in the exclusion, the Agency will start procedures to withdraw the exclusion. Where there is an immediate threat to human health and the environment, the Agency will evaluate the need for enforcement activities on a case-by-case basis. The Agency expects ACC to conduct the appropriate waste analysis and comply with the criteria explained above in Paragraph (1) of this exclusion.

V. Public Comments

A. How May I as an Interested Party Submit Comments?

The EPA is requesting public comments on this proposed decision. Please send three copies of your comments. Send two copies to Section Chief, Corrective Action and Waste Minimization Section, Multimedia Planning and Permitting Division (6PD–C), Environmental Protection Agency (EPA), 1445 Ross Avenue, Dallas, Texas 75202. Send a third copy to Industrial Hazardous Waste Permits Division, Technical Evaluation Team, Texas Commission on Environmental Quality (TCEQ), P.O. Box 13087, Austin, Texas, 78711–3087. Identify your comments at the top with this regulatory docket number: ''F–03–TXDEL–ACC.'' You may submit your comments electronically to *peace.michelle@epa.gov.*

You should submit requests for a hearing to Carl Edlund, Director, Multimedia Planning and Permitting Division (6PD), Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202.

B. How May I Review the Docket or Obtain Copies of the Proposed Exclusion?

You may review the RCRA regulatory docket for this proposed rule at the Environmental Protection Agency Region 6, 1445 Ross Avenue, Dallas, Texas 75202. It is available for viewing in the EPA Freedom of Information Act Review Room from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Call (214) 665–6444 for appointments. The public may copy material from any regulatory docket at no cost for the first 100 pages, and at fifteen cents per page for additional copies.

VI. Regulatory Impact

Under Executive Order 12866, the EPA must conduct an ''assessment of the potential costs and benefits'' for all ''significant'' regulatory actions.

The proposal to grant an exclusion is not significant, since its effect, if promulgated, would be to reduce the overall costs and economic impact of the EPA's hazardous waste management regulations. This reduction would be achieved by excluding waste generated at a specific facility from the EPA's lists of hazardous wastes, thus enabling a facility to manage its waste as nonhazardous.

Because there is no additional impact from this proposed rule, this proposal would not be a significant regulation, and no cost/benefit assessment is required. The Office of Management and Budget (OMB) has also exempted this rule from the requirement for OMB review under section (6) of Executive Order 12866.

VII. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (that is, small businesses, small organizations, and small governmental jurisdictions). No regulatory flexibility analysis is required, however, if the Administrator or delegated representative certifies that the rule will not have any impact on a small entities.

This rule, if promulgated, will not have an adverse economic impact on small entities since its effect would be to reduce the overall costs of the EPA's hazardous waste regulations and would be limited to one facility. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VIII. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2050–0053.

IX. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, which was signed into law on March 22, 1995, the EPA generally must prepare a written statement for rules with Federal mandates that may result in estimated costs to state, local, and tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year.

When such a statement is required for the EPA rules, under section 205 of the UMRA EPA must identify and consider alternatives, including the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The EPA must select that alternative, unless the Administrator explains in the final rule why it was not selected or it is inconsistent with law.

Before the EPA establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must develop under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, giving them meaningful and timely input in the development of the EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising them on compliance with the regulatory requirements.

The UMRA generally defines a Federal mandate for regulatory purposes as one that imposes an enforceable duty upon state, local, or tribal governments or the private sector.

The EPA finds that this delisting decision is deregulatory in nature and does not impose any enforceable duty on any State, local, or tribal governments or the private sector. In addition, the proposed delisting decision does not establish any regulatory requirements for small governments and so does not require a small government agency plan under UMRA section 203.

X. Executive Order 13045

The Executive Order 13045 is entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This order applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because this is not an economically significant regulatory action as defined by Executive Order 12866.

XI. Executive Order 13084

Because this action does not involve any requirements that affect Indian tribes, the requirements of section 3(b) of Executive Order 13084 do not apply.

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on

those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments.

If the mandate is unfunded, the EPA must provide to the Office Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to have ''meaningful and timely input'' in the development of regulatory policies on matters that significantly or uniquely affect their communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

XII. National Technology Transfer and Advancement Act

Under section 12(d) if the National Technology Transfer and Advancement Act, the Agency is directed to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by the EPA, the Act requires that Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards.

This rule does not establish any new technical standards and thus, the Agency has no need to consider the use of voluntary consensus standards in developing this final rule.

XIII. Executive Order 13132 Federalism

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

Under section 6 of Executive Order 13132, the EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or the EPA consults with state and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one facility.

Lists of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Authority: Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: November 6, 2003.

Bill Luthans,

Acting Director, Multimedia Planning and Permitting Division.

For the reasons set out in the preamble, 40 CFR part 261 is to be amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 2 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste description
*	*	* * * * *
American Chrome & Chemicals.	Corpus Christi, Texas.	Dewatered sludge (the EPA Hazardous Waste No. K006) generated at a maximum generation of 1450 cubic yards per calendar year after [publication date of the final rule] and *disposed* in a Subtitle D landfill. ACC must implement a verification program that meets the following Paragraphs: (1) Delisting Levels: All leachable constituent concentrations must not exceed the following levels (mg/l). The petitioner must use the method specified in 40 CFR 261.24 to measure constituents in the waste leachate. Dewatered wastewater sludge: Arsenic-0.0377; Barium-100.0; Chromium-5.0; Thallium-0.355; Zinc-1130.0. (2) Waste Holding and Handling: (A) ACC is a 90 day facility and does not have a RCRA permit, therefore, ACC must store the dewatered sludge following the requirements specified in 40 CFR 262.34, or continue to dispose of as hazardous all dewatered sludge generated, until they have completed verification testing described in Paragraph (3), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the dewatered sludge that do not exceed the levels set forth in Paragraph (1) are non-hazardous. ACC can manage and dispose the non-hazardous dewatered sludge according to all applicable solid waste regulations.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(C) If constituent levels in a sample exceed any of the delisting levels set in Paragraph (1), ACC must retreat the batches of waste used to generate the representative sample until it meets the levels. ACC must repeat the analyses of the treated waste. (D) If the facility does not treat the waste or retreat it until it meets the delisting levels in Paragraph (1), ACC must manage and dispose the waste generated under Subtitle C of RCRA. (E) The dewatered sludge must pass paint filter test as described in SW 846, Method 9095 before it is allowed to leave the facility. ACC must maintain a record of the actual volume of the dewatered sludge to be disposed of-site according to the requirements in Paragraph (5). (3) Verification Testing Requirements: ACC must conduct verification testing each time it decides to evacuate the tank contents. Four (4) representative composite samples shall be collected from the dewatered sludge. ACC shall analyze the verification samples according to the constituent list specified in Paragraph (1) and submit the analytical results to EPA within 10 days of receiving the analytical results. If the EPA determines that the data collected under this Paragraph do not support the data provided for the petition, the exclusion will not cover the generated wastes. The EPA will notify ACC the decision in writing within two weeks of receiving this information. (4) Changes in Operating Conditions: If ACC significantly changes the process described in its petition or starts any processes that may or could affect the composition or type of waste generated as established under Paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), they must notify the EPA in writing; they may no longer handle the wastes generated from the new process as nonhazardous until the test results of the wastes meet the delisting levels set in Paragraph (1) and they have received written approval to do so from the EPA. (5) Data Submittals: ACC must submit the information described below. If ACC fails to submit the required data within the specified time or maintain the required records on-site for the specified time, the EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in Paragraph 6. ACC must: (A) Submit the data obtained through Paragraph 3 to the Section Chief, Corrective Action and Waste Minimization Section, Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733, Mail Code, (6PD–C) within the time specified. (B) Compile records of operating conditions and analytical data from Paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when the EPA or the State of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by the EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by the EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener: (A) If, anytime after disposal of the delisted waste, ACC possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or ground water monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the verification testing of the waste does not meet the delisting requirements in Paragraph 1, ACC must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If ACC fails to submit the information described in paragraphs (5),(6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment. (D) If the Division Director determines that the reported information does require Agency action, the Division Director will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed Agency action is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information.

TABLE 2.—WASTE EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste description
		(E) Following the receipt of information from the facility described in paragraph (6)(D) or (if no information is presented under paragraph (6)(D)) the initial receipt of information described in paragraphs (5), (6)(A) or (6)(B), the Division Director will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: ACC must do the following before transporting the delisted waste: Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any State Regulatory Agency to which or through which they will transport the delisted waste described above for disposal, 60 days before beginning such activities. If ACC transports the excluded waste to or manages the waste in any state with delisting authorization, ACC must obtain delisting authorization from that state before it can manage the waste as nonhazardous in the state. (B) Update the one-time written notification if they ship the delisted waste to a different disposal facility. (C) Failure to provide the notification will result in a violation of the delisting variance and a possible revocation of the Exclusion.
*	*	* * * * *

[FR Doc. 03–28650 Filed 11–14–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7586–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Proposed notice of intent to delete the Follansbee Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Follansbee Superfund Site (Site), Follansbee, WV, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of West Virginia, through the Department of Environmental Protection, have determined that all appropriate response actions under CERCLA have been completed. However, this deletion does not preclude future actions under Superfund.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Follansbee Superfund Site without prior notice of intent to delete because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on this notice of intent to delete or the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules section of this **Federal Register**.

DATES: Comments concerning this Site must be received by December 17, 2003.

ADDRESSES: Written comments should be addressed to: David Polish, Community Involvement Coordinator, U.S. EPA 3HS43, 1650 Arch Street, Philadelphia, PA 19103–2029, *polish.david@epa.gov,* (215) 814–3227.

INFORMATION REPOSITORIES: Repositories have been established to provide detailed information concerning this decision at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–5364, Monday through Friday 8 a.m. to 4:30 p.m. Follansbee City Library, 844 Main Street, Follansbee, WV 26037, (304) 527–0860, Monday through Thursday 11 a.m. to 7 p.m., Friday and Saturday 9 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: Anthony C. Iacobone, Remedial Project Manager, U.S. EPA 3HS23, 1650 Arch Street, Philadelphia, PA 19103–2029, *iacobone.anthony@epa.gov,* (215) 814–5237.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final Notice of Deletion which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 03–28575 Filed 11–14–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7576]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, FEMA, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. As a result, a regulatory flexibility analysis has not been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet (NGVD) •Elevation in feet (NAVD)	
				Existing	Modified
Massachusetts	North Reading (Town), Middlesex County.	Martins Brook	At Park Street	*71	*74
			At outlet of Martins Pond	*83	*80
		Skug River	At confluence with Martins Pond	*83	*80
			Approximately 150 feet upstream of the corporate limits.	*83	*84
		Martins Pond	At its outlet into Martins Brook	*83	*80
			At confluence of Skug River	*83	*80
		Bear Meadow	At Haverhill Street	None	*72
		Brook	Approximately 1,125 feet upstream of Haverhill Street.	None	*74

Maps available for inspection at the North Reading Town Hall, 235 North Street, North Reading, Massachusetts.

Send comments to Mr. James P. Muldoon, Chairman of the Town of North Reading Board of Selectmen, North Reading Town Hall, 235 North Street, North Reading, Massachusetts 01864.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: November 5, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28633 Filed 11–14–03; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7641]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	
Hutchins Creek:			
Just downstream of Langdon Drive	*400	*399	Dallas County, TX. (Unincorporated Areas).
Approximately 915 feet upstream of North JJ Lemmon Street	None	*484	City of Hutchins.
Rawlins Creek:			
Approximately 100 feet downstream of the confluence of Stream 4B4	*395	*396	Dallas County. (Unincorporated Areas).
Approximately 2,350 feet upstream of South Miller Ferry Road	*491	*490	City of Hutchins.
Stream 4B4:			
Approximately 500 feet upstream of the confluence with Rawlins Creek	*395	*396	Dallas County. (Unincorporated Areas).
Approximately 425 feet upstream of North Denton Street	None	*469	City of Hutchins.

ADDRESSES:

City of Hutchins, Dallas County, Texas

Maps are available for inspection at Gross and Associates Real Estate, 206 North Pacific Street, Hutchins, Texas.

Source of flooding and location of referenced elevation	*Elevation in feet (NGVD)		Communities affected
	Existing	Modified	

Send comments to The Honorable Artis Johnson, Mayor, City of Hutchins, P.O. Box 500, Hutchins, Texas 75141.

Unincorporated Areas of Dallas County, Texas

Maps are available for inspection at the Dallas County Records Building, 509 Main Street, Dallas, Texas.

Send comments to The Honorable Lee F. Jackson, Judge, Dallas County, Administration Building, 411 Elm Street, 2nd Floor, Dallas, Texas 75202.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: November 4, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28634 Filed 11–14–03; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7639]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Emergency Preparedness and Response Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of the Emergency Preparedness and Response Directorate has resolved any appeals resulting from this notification.

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Emergency Preparedness and Response Directorate certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

Executive Order 12612, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform. This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

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

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	Range of BFEs Elevation in feet *(NGVD)	
				Existing	Modified
MI	Vassar (City), Tuscola County.	Cass River	.....	*634	*639

Maps are available for inspection at City Hall, 287 East Huron Avenue, Vassar, Michigan.

Send comments to The Honorable Scott Atkins, City Manager, City of Vassar, 287 East Huron Avenue, Vassar, Michigan 48768.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. *(NGVD) ◊(NAVD)	
				Existing	Modified
TX	Ingleside (City), San Patricio County.	McCampbell Slough	Approximately 0.6 mile downstream of FM 3512.	None	*9
			Approximately 580 feet upstream of State Highway 361 (Highland Street).	None	*13

Maps are available for inspection at Ingleside City Hall, 2671 San Angelo Drive, Ingleside, Texas.

Send comments to The Honorable William Vaden, Mayor, City of Ingleside, 2671 San Angelo Avenue, P.O. Drawer 400, Ingleside, Texas 78362–0400.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet. *(NGVD) ◊(NAVD)	
				Existing	Modified
TX	San Patricio County, (Unincorporated Areas).	McCampbell Slough	Approximately 230 feet downstream of State Highway 35 (Wheeler Avenue).	None	*8
			Approximately 1.2 miles upstream of FM 3512.	None	*11

Maps are available for inspection at the San Patricio County Health Department, Environmental Division, 300 North Rachal Avenue, Sinton, Texas.

Send comments to The Honorable Terry Simpson, Judge, San Patricio County, 400 West Sinton Street, Room 109, Sinton, Texas 78387–3825.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance'')

Dated: November 4, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–28635 Filed 11–14–03; 8:45 am]

BILLING CODE 9110–12–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1801, 1803 Through 1809, 1811, and 1812

RIN 2700–AC65

Re-Issuance of NASA FAR Regulations Consistent With the Federal Acquisition Regulations System Guidance and Policy

AGENCY: National Aeronautics and Space Administration.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the NASA FAR Supplement (NFS) by removing from the Code of Federal Regulations (CFR) those portions of the NFS containing information that consists of internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. This proposed rule is consistent with the guidance and policy in FAR Part 1 regarding what comprises the Federal Acquisition Regulations System and requires publication for public comment. The NFS document will continue to contain both information requiring codification in the CFR and internal Agency guidance in a single document that is available on the Internet. This proposed rule will reduce the administrative burden and time associated with maintaining the NFS by only publishing in the **Federal Register** for codification in the CFR material that is subject to public comment.

DATES: Comments should be submitted on or before January 16, 2004, to be considered in formulation of the final rule.

ADDRESSES: Interested parties should submit written comments to Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK), Washington DC 20546 or via the Internet at *Celeste.M.Dalton@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA, Office of Procurement, Contract Management Division (Code HK); (202) 358 1645; e-mail: *Celeste.M.Dalton@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently, the NASA FAR Supplement (NFS) contains information to implement or supplement the FAR. This information contains NASA's policies, procedures, contract clauses, solicitation provisions, and forms that govern the contracting process or otherwise control the relationship between NASA and contractors or prospective contractors. The NFS also contains information that consists of

internal Agency administrative procedures and guidance that does not control the relationship between NASA and contractors or prospective contractors. Regardless of the nature of the information, as a policy, NASA has submitted to the Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) and published in the **Federal Register** all changes to the NFS. FAR 1.101 states in part that the ''Federal Acquisition Regulations System consists of the Federal Acquisition Regulation (FAR), which is the primary document, and agency acquisition regulations that implement or supplement the FAR. The FAR System does not include internal agency guidance of the type described in 1.301(a)(2).'' FAR 1.301(a)(2) states in part ''an agency head may issue or authorize the issuance of internal agency guidance at any organizational level (*e.g.*, designations and delegations of authority, assignments of responsibilities, work-flow procedures, and internal reporting requirements).'' Further, FAR 1.303 states that issuances under FAR 1.301(a)(2) need not be published in the **Federal Register**. Based on the foregoing, NASA is not required to publish and codify internal Agency guidance.

This proposed rule will modify the existing practice by only publishing those regulations which may have a significant effect beyond the internal operating procedures of the Agency or have a significant cost or administrative impact on contractors or offerors.

The NFS will continue to integrate into a single document both regulations subject to public comments and internal Agency guidance and procedures that do not require public comment. Those portions of the NFS that require public comment will continue to be amended by publishing changes in the Federal Register. NFS regulations that require public comment are issued as Chapter 18 of Title 48, CFR. Changes to portions of the regulations contained in the CFR, along with changes to internal guidance and procedures, will be incorporated into the NASA-maintained Internet version of the NFS through Procurement Notices (PNs). The single official NASA-maintained version of the NFS will remain available on the Internet. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

This proposed rule will result in savings in terms of the number of rules subject to publication in the **Federal Register** and provide greater responsiveness to internal administrative changes.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities with the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because this proposed rule would only remove from the CFR information that is considered internal Agency administrative procedures and guidance. The information removed from the CFR will continue to be made available to the public via the Internet.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes do not impose recordkeeping or information collection requirements which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR parts 1801, 1803 through 1809, 1811, and 1812

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR parts 1801, 1803 through 1809, 1811, and 1812 are proposed to be amended as follows:

1. The authority citation for 48 CFR parts 1801, 1803 through 1809, 1811, and 1812 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Revise section 1801.105–1 to read as follows:

1801.105–1 Publication and code arrangement.

(b)(i) The NFS is an integrated document that contains both acquisition regulations that require public comment and internal Agency guidance and procedures that do not require public comment. NASA personnel must comply with all regulatory and internal guidance and procedures contained in the NFS.

(ii) NFS regulations that require public comment are issued as chapter 18 of title 48, CFR.

(iii) The single official NASA-maintained version of the NFS is on the Internet *(http://www.hq.nasa.gov/office/procurement/regs/nfstoc.htm).*

PART 1801—[AMENDED]

3. Amend part 1801 by removing subparts 1801.2, 1801.3, 1801.4, 1801.6, and 1801.7.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

4. Amend part 1803 by removing sections 1803.101, 1803.101–1, 1803.101–2, 1803.104–4, and 1803.104–7; and subparts 1803.2, 1803.3, 1803.5, 1803.6, 1803.7, and 1803.8.

PART 1804—ADMINISTRATIVE MATTERS

5. Amend part 1804 by removing section 1804.103, subparts 1804.2, 1804.5, 1804.6, 1804.8, 1804.9, 1804.70, 1804.71, 1804.72, and 1804.73.

PART 1805—PUBLICIZING CONTRACT ACTIONS

6. Amend part 1805 by—

(a) Removing subparts 1805.1 and 1805.2;

(b) In section 1805.303, removing paragraphs (a)(i)(A), (a)(i)(B), (a)(ii), and (a)(iii);

(c) Removing sections 1805.303–70 and 1805.303–71; and

(d) Removing subparts 1805.4 and 1805.5.

PART 1806—COMPETITION REQUIREMENTS

7. Amend part 1806 by—

(a) In section 1806.202, removing paragraph (b); and

(b) Removing section 1806.202–70 and subparts 1806.3 and 1806.5.

PART 1807—ACQUISITION PLANNING

8. Amend part 1807 by—

(a) Removing sections 1807.103, 1807.104, 1807.105, and 1807.170;

(b) Revising section 1807.107–70;

(c) Removing subparts 1807.2, 1807.3, 1807.5, 1807.70, and 1807.71;

(d) Revising section 1807.7200; and

(e) Removing sections 1807.7202, 1807.7203, 1807.7204, and 1807.7205.

Revised sections 1807.107–70 and 1807.7200 read as follows:

1807.107–70 Orders against Federal Supply Schedule contracts or other indefinite-delivery contracts awarded by another agency.

The FAR and NFS requirements for justification, review, and approval of bundling of contract requirements also apply to an order from a Federal Supply Schedule contract or other indefinite-delivery contract awarded by another agency if the requirements consolidated under the order meet the definition of ''bundling'' at FAR 2.101.

* * * * *

1807.7200 Policy.

(a) As required by the Business Opportunity Development Reform Act of 1988, it is NASA policy to—

(1) Prepare an annual forecast and semiannual update of expected contract opportunities or classes of contract opportunities for each fiscal year;

(2) Include in the forecast contract opportunities that small business concerns, including those owned and controlled by socially and economically disadvantaged individuals, may be capable of performing; and

(3) Make available such forecasts to the public.

(b) The annual forecast and semiannual update are available on the NASA Acquisition Internet Service *(http://www.hq.nasa.gov/office/procurement/).*

PART 1808—REQUIRED SOURCES OF SUPPLIES AND SERVICES

9. Amend part 1808 by removing sections 1808.003, 1808.003–70, 1808.003–71, 1808.003–72, 1808.003–73, subparts 1808.1, 1808.4, 1808.6, 1808.7, section 1808.802, and subpart 1808.11.

PART 1809—CONTRACTOR QUALIFICATIONS

10. Amend part 1809 by removing sections 1809.106, 1809.106–1, 1809.106–2, 1809.106–3, 1809.106–70, 1809.200, 1809.202, 1809.203, 1809.203–70, 1809.203–71, paragraphs (b)(i) and (b)(ii) in section 1809.206–1, 1809.404, 1809.405, 1809.405–1, 1809.405-2, 1809.406, 1809.406–3, 1809.407, 1809.407–3, 1809.408, 1809.470, 1809.470–1, 1809.470–2, 1809.470–3, 1809.500, 1809.503, and 1809.506.

PART 1811—DESCRIBING AGENCY NEEDS

11. Amend part 1811 by removing section 1811.002, subpart 1811.1, sections 1811.403, 1811.403–70, 1811.404, and subparts 1811.5 and 1811.6.

PART 1812—ACQUISITION OF COMMERCIAL ITEMS

12. Amend part 1812 by removing subpart 1812.1, and sections 1812.302 and 1812.404.

[FR Doc. 03–28551 Filed 11–14–03; 8:45 am]

BILLING CODE 7510–01–P

Notices

Federal Register

Vol. 68, No. 221

Monday, November 17, 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

Office of the Secretary

Privacy Act; System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of revision of Privacy Act systems of records and proposed new routine uses.

SUMMARY: Notice is hereby given that the United States Department of Agriculture (USDA) is proposing to change the USDA Privacy Act System of Records by re-designating a USDA Office of Outreach system of records as a USDA Farm Service Agency (FSA) system. The system is being added numerically, editorial and clarification amendments are noted, and new routine uses are being added to the system.

DATES: This notice will be adopted without further publication in the **Federal Register** on December 29, 2003, unless modified by a subsequent notice to incorporate comments received from the public. Comments must be received by the contact person listed below on or before December 17, 2003, to be assured consideration.

ADDRESSES: Interested persons may submit written comments to Ronald W. Holling, Assistant to the Director, Office of Business and Program Integration, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501, (202) 720–8530; e-mail *Ronald.Holling@usda.gov*. The public may inspect comments received on this notice Monday-Friday, except holidays, between 8:15 a.m. and 4:45 p.m. in Room 4704–S at the above address.

FOR FURTHER INFORMATION CONTACT: Ronald W. Holling, Assistant to the Director, Office of Business and Program Integration, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501, (202) 720–8530; e-mail *Ronald_Holling@usda.gov*.

SUPPLEMENTARY INFORMATION: This notice concerns a Privacy Act system of records currently maintained by the USDA Office of Outreach. Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA hereby takes the following action: Transfer of responsibility for the Privacy Act System of records for the Minority Farm Register from USDA's Office of Outreach to FSA and addition of new routine uses.

The Register is a voluntary list of minority farm or ranch operators, landowners, tenants and others with farming or ranching interest. It is being created in an effort to address the decline of minority-owned farms. Minority farmers and their advocates called for the creation of a register at USDA Civil Rights Action Team public forums in early 1997 because of the decline in the amount of farm land owned by minorities, especially African-Americans. Register participants will receive USDA program information to help sustain or increase present ownership levels.

The Register will be used and administered by FSA's Office of Outreach to expand its Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. The Office of Outreach will use the Register to provide detailed individual information or summary information about all participants to Government agencies, minority-serving educational institutions, and community-based organizations engaged in farm land outreach and assistance efforts. The Register will enable those organizations to disseminate to minority farm owners and operators the most comprehensive information about FSA programs and services, including commodity programs, conservation programs, disaster assistance programs, farm loan programs, and price support programs. Minority farm operators who currently do not own any land are encouraged to participate so they may also receive information on targeted programs to include possible land ownership.

Most U.S. farm land is already defined by geographic location, by owner, and by operator in records maintained by FSA. For those people for whom FSA maintains current records, participation in the Register will only require signature of the Minority Farm Register permission form. If a minority farm land operator and/or owner whose information is not already on file wishes to be included on the Register, he or she will provide name, address, phone number, Social Security Number, farm location, race, ethnicity and gender on the Minority Farm Register permission form. Names and addresses will be the only required information. Providing Social Security Numbers, phone numbers, race, ethnicity and gender will be completely voluntary. The permission form will be issued in Spanish and English. Informational registration materials will be distributed to local, State and Federal community-based organizations, educational institutions and other groups serving minority clientele.

Pursuant to the Privacy Act, 5 U.S.C. 552a, USDA hereby takes the following action:

(1) *USDA/FSA–15, ''Voluntary Minority Farm Register File.''* This system is being added numerically, editorial and clarification amendments are noted, and new routine uses are being added to the system. A Report on New System, required by 5 U.S.C. 552a(r), as implemented by OMB Circular A_130, was sent to the Chairman, Committee on Governmental Affairs, United States Senate, the Chairman, Committee on Government Reform and Oversight, House of Representatives, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget.

Signed at Washington, DC, on November 4, 2003.

Ann M. Veneman,

Secretary.

USDA/FSA–15

SYSTEM NAME:

Voluntary Minority Farm Register File (Automated), USDA/FSA–15.

SYSTEM LOCATION:

Deputy Administrator for Field Operations, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Minority farm land owners, operators and other producers who voluntarily request to be covered.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system includes name, address, phone number, Social Security Number,

farm location and race/ethnicity/gender coding provided by the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

7 U.S.C. 7901 *et seq.*; 15 U.S.C. 714 *et seq.*; and 16 U.S.C. 3831 *et seq.*

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records contained in this system may be disclosed as follows:

(1) Records in the system will be disclosed and distributed to community-based organizations, educational institutions and government agencies assisting minorities with land retention and acquisition to ensure that USDA programs available for assisting farmers are widely publicized and accessible to all.

(2) USDA will disclose information in the system to a court or adjudicative body in a proceeding when:

(a) The agency or any component thereof;

(b) Any employee of the agency in his or her official capacity;

(c) Any employee of the agency in his or her individual capacity where the agency has agreed to represent the employee; or

(d) The U.S. Government is a party to litigation or has an interest in such litigation and, by careful review, determines that the records are both relevant and necessary to the litigation and the use of such records is therefore deemed by the agency to be for a purpose compatible with the purpose for which the agency collected the records.

(3) When a record on its face, or in conjunction with other records, indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto, disclosure may be made to the appropriate agency, whether Federal, foreign, State, local, or tribal, or other public authority responsible for enforcing, investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto, if the information disclosed is relevant to any enforcement, regulatory, investigative or prospective responsibility of the receiving entity.

(4) USDA will disclose information in the system to a Member of Congress or to a Congressional staff member in response to an inquiry from the Congressional office made at the written request of the constituent about whom the record is maintained.

(5) Records from this system of records may be disclosed to the National Archives and Records Administration or to the General Services Administration for records management inspections conducted under 44 U.S.C. 2904 and 2906.

(6) USDA will disclose information in the system to agency contractors, grantees, experts, consultants or volunteers who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(m); and

(7) USDA will disclose to members of Congress the names and addresses of producers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and Department computer systems at applicable location as set out above under the heading ''System Location.''

RETRIEVABILITY:

Records are indexed by individual name, identification number, farm number, tax identification number, Social Security number and type of loan.

SAFEGUARDS:

Records, both paper and electronic, are accessible only to authorized personnel and are maintained in offices that are locked during non-duty hours. Access to these records is limited to authorized FSA personnel and representatives. Records stored in computer files are protected by passwords and other electronic security systems.

RETENTION AND DISPOSAL:

The Minority Farm Register will be recreated at biennial intervals to update name and address information and to ensure the inclusion of any changes in farm land ownership recorded in FSA records. A letter will be sent to all Register participants. The letter will clarify that there is no need for action if name, address or farm land circumstances have not changed. The Farm Service Agency will maintain a master file of each generation of the Voluntary Minority Farm Register electronically. Program documents will be destroyed within 10 years after end of participation.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Administrator for Field Operations, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501.

NOTIFICATION PROCEDURE:

An individual may request information regarding this system of records, or information as to whether the system contains records pertaining to the individual, from the System Manager listed above.

RECORD ACCESS PROCEDURES:

An individual may obtain information about a record in the system that pertains to such individual by submitting a written request to the above listed System Manager. The envelope and letter should be marked ''Privacy Act Request.'' A request for information pertaining to an individual should contain: name, address, ZIP code, name of system of record (Minority Farm Register), year of records in question, and any other pertinent information to help identify the file.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager, and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain: name, address, ZIP code, name of system of record (Minority Farm Register), year of records in question, and any other pertinent information to help identify the file.

RECORD SOURCE CATEGORIES:

Information in this system comes only from the individuals who voluntarily sign up for the Register and who are the subjects of the files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–28592 Filed 11–14–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–075–2]

Public Meeting; Plant Protection and Quarantine Stakeholders

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service will hold a public meeting for the purpose of exchanging information on our Plant Protection and Quarantine (PPQ) programs with stakeholders that are affected by our programs. This notice provides additional information about the agenda for the meeting, which is now being finalized.

DATES: The meeting will be held December 9 and 10, 2003.

ADDRESSES: The meeting will be held at the Melrose Hotel, 2430 Pennsylvania Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Henstridge, Special Assistant to the Deputy Administrator, Plant Protection and Quarantine, Room 302–E Whitten Building, 14th Street and Independence Avenue SW., Washington, DC 20250; (202) 720–1737; e-mail *paula.henstridge@aphis.usda.gov*; or Mr. Michael Lidsky, Assistant Director for Regulatory Coordination, Plant Health Programs, 4700 River Road Unit 141, Riverdale, MD 20737 (301) 734–5762; e-mail *michael.a.lidsky@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service's Plant Protection and Quarantine (PPQ) unit protects and safeguards the Nation's plant resources through programs and activities to prevent the introduction and spread of plant pests and noxious weeds. On September 5, 2003, APHIS published a notice in the **Federal Register** (68 FR 52736, Docket No. 03–075–1) announcing that PPQ plans to hold a public meeting on December 9 and 10, 2003, to exchange information with stakeholders. We believe that such an information exchange is particularly timely as PPQ moves forward from the operation of certain agricultural quarantine and inspection activities, which have been transferred to the newly established Customs and Border Protection function of the Department of Homeland Security.

We solicited comments for 30 days regarding suggestions for topics for discussion at the meeting. A total of five comments were received. Commenters raised issues concerning whether APHIS needs to establish a process for seeking comment from stakeholders prior to discussions with the North American Plant Protection Organization (NAPPO) or the International Plant Protection Convention (IPPC), and whether permit requirements for exotic and domestic microbial plant pathogens affect the cost and quality of research on important pathogens. Other commenters raised issues about the accessibility of operational work plans pertaining to imports; making details available about risk mitigation early on in the risk assessment process; expanding, via the stakeholder registry, notifications on proposed actions of international standard-setting bodies such as NAPPO and the IPPC; and the agency's plans with regard to the revision of the regulations for importing nursery stock. The agency believes that these topics are appropriate for discussion at one of the following five workshop sessions that are planned for December 10:

- Pest Risk Assessments—Models, Process, and Participation
- Import Permits and Export Certification—Service, Standardization, Security, and Automation
- Developing Strategic Approaches to Exports
- The Stakeholder Role in the Department of Homeland Security
- Integrating Federal, State, Tribal, and Industry Players/Partners in the Incident Command System

The agency is also planning a separate presentation with regard to strategies for revising the nursery stock regulations.

In addition to the workshops and presentation referenced above, the following topics are on the agenda for the meeting: An overview of the PPQ mission and structure as well as the year in review; governmental perspectives on the relationships between PPQ, State cooperators and Tribal governments; future priorities in plant quarantine programs; an industry perspective on needs and emerging pest threats; the view from Congress; the partnership with Department of Homeland Security and how the shared mission is being accomplished; how the harnessing of information, collection of data, and use of improved response models is transforming plant health; a budget update and outlook; the harmonization of regulatory approaches for the regulations for importing nursery stock and the regulations for importing fruits and vegetables; and an update on import and export issues.

We request that all persons wishing to attend the meeting preregister on the PPQ Web site, *http://www.aphis.usda.gov/ppq/stakeholders/meeting/index.html*. There is no registration fee. Attendance will be guaranteed to the first 100 persons who preregister by November 30, 2003. Persons who preregister should indicate which one of the five concurrent workshops they would like to attend. Those without access to the Internet may preregister by contacting Ms. Linda Toran at (301) 734–5307. A tentative final agenda has now been posted on the Web site referenced above.

The Melrose Hotel is setting aside a number of rooms at the conference rate. When reserving a room, please specify that you would like the USDA/APHIS rate. The telephone number for the hotel is (202) 955–6400 or toll free (800) 635–7673. The hotel's Web site is *http://www.melrosehotelwashingtondc.com*.

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

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–28624 Filed 11–14–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 57–2003]

Foreign-Trade Zone 219—Yuma, AZ; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Yuma County Airport Authority, Inc., grantee of Foreign-Trade Zone 219, requesting authority to expand FTZ 219, Yuma, Arizona, to include an additional site within the San Luis Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 3, 2003.

FTZ 219 was approved by the Board on April 2, 1997 (Board Order 874, 62 FR 17580, 4/10/97), and expanded on April 5, 2001 (Board Order 1161, 66 FR 19422, 4/16/01), and on February 7, 2003 (Board Order 1267, 68 FR 9047, 2/27/03). The zone project currently consists of two sites in Yuma: *Site 1* (125 acres) within the Yuma International Airport complex, 2191 East 32nd Street; and, *Site 2* (95 acres)—Yuma Commerce Center, approximately 5 miles east of the Yuma International Airport on Business Loop Interstate 8.

The applicant is now requesting authority to expand the general-purpose zone to include an additional site (75 acres) in Yuma County: *Proposed Site 3* (75 acres)—Big Industrial, LLC, warehouse facility, located at 10793 W. County 20½ Street, Somerton. This action will also formally terminate Subzone 219A (Meadowcraft) which closed in 2001 and subsequently sold

the property to Big Industrial, LLC. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is January 16, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the Yuma Main Library, 350 South 3rd Avenue, Yuma, Arizona 85364.

Dated: November 4, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–28670 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 58–2003]

Foreign-Trade Zone 134—Chattanooga, TN, Request for Manufacturing Authority; Sofix Corporation (Black Colorformer Chemicals)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Chattanooga Chamber Foundation, grantee of FTZ 134, on behalf of Sofix Corporation (Sofix), requesting authority to manufacture black colorformer chemicals under FTZ procedures within FTZ 134—Site 2. The application was formally filed on November 4, 2003.

The Sofix facility (42,000 sq. ft. of production area and 17,500 sq. ft. of warehouse space) is located at 2800 Riverport Road, Chatanooga, Tennessee, within Site 2 of FTZ 134. The plant (32 employees) produces black colorformer chemicals, known generically as Spiro Phathalide Xanthene (HTSUS 2932.29.30, 7.2%). Foreign-sourced materials include ACME (HTSUS 2922.29.60, 7.2%) and benzoic acid (HTSUS 2922.50.35, 7.2%) and will account for some 50–60 percent of finished product value.

Zone procedures would exempt Sofix from Customs duty payments on foreign materials used in production for export. Some 60 percent of the plant's shipments are currently exported. On domestic shipments, the company would be able to defer duty on foreign-sourced inputs until formal Customs entry is made. Zone procedures would also exempt Sofix from Customs duty payments on foreign materials used in certain production resulting in scrap or waste (some 5 percent by weight). The application also indicates that Sofix may realize logistical/procedural benefits from subzone status. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

The closing period for their receipt is January 16, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 2, 2004).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address Number 1 listed above, and at the U.S. Customs and Border Protection Office, Port of Chattanooga, 5959 Shallowford Road, Suite 429–0, Chattanooga, TN 37421.

Dated: November 4, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–28671 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–809]

Certain Hot-Rolled Carbon Steel Flat Products from South Africa: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: On July 9, 2003, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa (68 FR 40903). The review covers shipments of this merchandise to the United States for the period May 3, 2001 through August 31, 2002, by Iscor Ltd. (Iscor), Saldanha Steel Ltd. (Saldanha) and Highveld Steel & Vanadium Corp. Ltd. (Highveld).

We gave interested parties an opportunity to comment on our preliminary results. We received a case brief from the United States Steel Corporation (USS), and Nucor Corporation (Nucor) filed a letter in support of the case brief of USS. Iscor and Saldanha (Iscor/Saldanha),[1] and Highveld filed rebuttal comments. Based on our analysis of comments, we have made no changes to the preliminary results. For the final dumping margins see the ''Final Results of Review'' section below.

EFFECTIVE DATE: November 17, 2003.

[1] In the final determination of the antidumping investigation, the Department determined that Iscor and Saldanha were affiliated, and should be treated as a single entity for purposes of the investigation. *See Notice of Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from South Africa*, 66 FR 48242 (Sept. 19, 2001) (LTFV investigation). This was based on information on the public record of the contemporaneous countervailing duty investigation of hot-rolled products from South Africa that (1) Iscor is a 50 percent shareholder in Saldanha, and is in a position to exercise control of Saldanha's assets, and (2) both companies produce the subject merchandise. In this review, the Department requested that, if the circumstances had not changed, the two parties file a combined response. Although Iscor/Saldanha did not file any response, the December 30, 2002 letter declining to respond to the questionnaire was filed jointly.

FOR FURTHER INFORMATION CONTACT: Scot Fullerton or Elfi Blum, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–1386 or (202) 482–0197, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the Department published the preliminary results of its administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from South Africa. *See Certain Hot-Rolled Carbon Steel Flat Products from South Africa: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 40903 (July 9, 2003) (*Preliminary Results*). In the *Preliminary Results*, we based the dumping margins for Iscor/Saldanha and Highveld on total adverse facts available (AFA). We gave interested parties an opportunity to comment on our preliminary results. We received a case brief from the United States Steel Corporation (USS) on August 8, 2003. Nucor Corporation (Nucor) also filed a letter in support of the case brief of USS on August 8, 2003. Iscor, Saldanha (Iscor/Saldanha) and Highveld filed rebuttal comments on August 15, 2003. On August 8, 2003, USS requested a hearing in this case. A hearing was held on September 17, 2003. The Department has now completed this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Antidumping Duty Order

For purposes of this review, the products covered are certain hot-rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal, and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of this review. Specifically included within the scope of this review are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this review, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products in which: (i) Iron predominates, by weight, over each of the other contained elements; (ii) the carbon content is 2 percent or less, by weight; and (iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this review unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this review:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, ASTM specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron and Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearings steels, as defined in the HTS.
- Tool steels, as defined in the HTS.
- Silico-manganese (as defined in the HTS) or silicon electrical steel with a silicon level exceeding 2.25 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).
- Non-rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTS.

The merchandise subject to this review is classified in the HTS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90. Certain hot-rolled flat-rolled carbon steel flat products covered by this review, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTS subheadings are provided for convenience and U.S. Customs and Border Protection (CBP) purposes, the written description of the merchandise under review is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the *Issues and Decision Memorandum from Joseph A Spetrini, Deputy Assistant Secretary for Import Administration, to James J. Jochum, Assistant Secretary for Import Administration: Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Certain Hot-Rolled Carbon Steel Flat Products from South Africa: May 3, 2001 through August 31, 2002,* dated November 6, 2003 *(Decision*

Memo), which is hereby adopted by this notice.

A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memo,* is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B–099 of the main Commerce Building. In addition, a complete version of the *Decision Memo* can be accessed directly on the Web at *http://ia.ita.doc.gov.* The paper copy and electronic version of the *Decision Memo* are identical in content.

Application of Facts Available

In the *Preliminary Results,* we applied facts available to Iscor/Saldanha and Highveld pursuant to sections 776(a)(1) and (2) of the Act because Iscor/Saldanha's and Highveld's stated decision not to participate in the review constitutes a refusal to provide the information necessary to conduct the Department's antidumping analysis, pursuant to section 776(a)(2)(A) of the Act. Moreover, respondents' non-participation significantly impedes the review process. *See* section 776(a)(2)(C) of the Act.

Furthermore, we used an adverse inference and applied AFA pursuant to section 776(b) of the Act because we determined that Iscor/Saldanha and Highveld had failed to cooperate to the best of their ability by refusing to respond to the Department's questionnaire, making it impossible for the Department to perform any company-specific analysis or calculate dumping margins, if any, for the period of review (POR). After analyzing the comments received, we continue to find that the use of AFA is warranted for exports of subject merchandise to the United States by Iscor/Saldanha and Highveld in these final results. For a complete discussion, *see* the *Decision Memo.* As AFA, the Department is assigning the rate of 9.28 percent. This rate was derived from the petition, and was the only rate in the notice of initiation of investigation. *See* 67 FR 65336. It is also the rate applied in the final determination of the investigation of sales at less-than-fair-value (LTFV) because we found in the investigation that the parties did not cooperate to the best of their ability and we applied AFA (*see Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from South Africa,* 66 FR 37002 (July 16, 2001)). It is the rate currently in effect for all exporters. As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

Section 776(c) of the Act provides that when the Department relies on the facts otherwise available and relies on ''secondary information,'' the Department shall, to the extent practicable, corroborate that information from independent sources reasonably at the Department's disposal. The SAA clarifies that the petition is ''secondary information,'' and states that ''corroborate'' means to determine that the information used has probative value. *See* Statement of Administrative Action, URAA, H.R. Doc. 316, Vol 1, 103d Cong. (1994) (SAA) at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. We have previously examined the 9.28 percent rate and found it to be reliable. *See Memorandum from Doug Campau to Barbara Tillman, Preliminary Determination of Certain Hot-Rolled Carbon Steel Flat Products From South Africa: Corroboration of Secondary Information,* dated April 23, 2001, and placed on the record of this review on June 30, 2003.

As part of the corroboration process, we have re-examined the information used as facts available in the investigation. For purposes of this administrative review, we have reviewed the petition and the administrative record, and found no reason to believe that the reliability of this information should be called into question.

Further, the Department considers information reasonably at its disposal to determine whether a margin continues to have relevance. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the selected margin and determine an appropriate margin. *See e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996) *(Flowers from Mexico).* We found the AFA rate from the LTFV investigation in this case to be relevant and reliable, and therefore corroborated for purposes of this administrative review. Accordingly, we determine that the information from the petition remains the most appropriate basis for AFA.

When circumstances warrant, the Department may diverge from its standard practice of selecting as the AFA rate the highest rate in any segment of the proceeding and calculate the AFA rate pursuant to section 776(b) of the Act. For example, in *Flowers from Mexico,* the Department did not use the highest margin in that case as best information available (the predecessor to facts available) because the margin was based on another company's aberrational business expense that resulted in an unusually high margin. *See Flowers from Mexico* at 6814. In other cases, the Department did not apply a margin, because that figure was subsequently discredited, or the facts did not support such a usage. *See also Allegheny Ludlum Corp., et al.* v. *United States,* Slip Op 03–89 (July 24, 2003 at 22–26, *currently on appeal,* and *D & L Supply Co.* v. *United States,* 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated). None of these unusual circumstances are present here. Moreover, the rate selected is the rate currently applicable to all exporters.

Accordingly, we determine that the highest rate from any segment of this administrative proceeding (*i.e.*, the rate of 9.28 percent from the determination of sales at LTFV) is in accord with the requirement of section 776(c) of the Act that secondary information be corroborated (*i.e.*, that it have probative value).

Final Results of Review

As a result of our review, we determine the antidumping margins for Iscor/Saldanha and Highveld, based on total AFA, to be as follows:

Manufacturer/Exporter	Time Period	Margin (percent)
Iscor/Saldanha	05/03/01–08/31/02	9.28
Highveld	05/03/01–08/31/02	9.28

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to CBP within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respect to all shipments of certain hot-rolled carbon steel flat products from South Africa entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(C) of the Act: (1) For Iscor/Saldanha and Highveld, the cash deposit rate will be the rate indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 9.28 percent. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO as explained in the administrative order itself. 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 sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(3)(A) and 777(i)(1) of the Act.

Dated: November 6, 2003.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix

List of Issues

Comment 1: There Has Been Continued Injurious Dumping & Lack of Cooperation by Respondents.

Comment 2: The Statute and the Department's Practice Require It to Recalculate the Margin: The Margins Should Reflect Current Industry/Market Conditions and Trading Practices.

Comment 3: The Department Should Recalculate the Margin to Update It to the POR.

Comment 4: The Cases Cited in the Preliminary Results Provide No Basis for the Department's Determination.

[FR Doc. 03–28669 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[(A–489–805), (C–489–806)]

Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews: Certain Pasta From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Changed Circumstances Antidumping and Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce has received information sufficient to warrant the initiation of changed circumstances administrative reviews of the antidumping and countervailing duty orders on certain pasta from Turkey. Based on this information, we preliminarily determine that Tat Konserve Sanayi A.S. is the successor-in-interest to Pastavilla Makarnacilik Sanayi ve Ticaret A.S., for purposes of determining antidumping and countervailing duty liabilities. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 17, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie Brown (Countervailing) or Lyman Armstrong (Antidumping), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4987 or (202) 482–3601, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department of Commerce (''the Department'') published in the **Federal Register** the antidumping and countervailing duty orders on pasta from Turkey (61 FR 38545–38547). On September 24, 2003, Tat Konserve Sanayi A.S. (''Tat''), submitted information stating that Tat is the successor-in-interest to Pastavilla Makarnacilik Sanayi ve Ticaret A.S. (''Pastavilla''), and, as such, Tat is entitled to receive the same antidumping and countervailing duty treatment accorded Pastavilla.

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Scope Rulings

The Department has issued the following scope ruling to date:

(1) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances is within the scope of the antidumping and countervailing duty orders. On May 24, 1999, we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing or labeled up to (and including) five pounds four

ounces is within the scope of the antidumping and countervailing duty orders. *See Memorandum from John Brinkmann to Richard Moreland,* dated May 24, 1999, in the case file in the Central Records Unit, main Commerce building, room B–099 (''CRU'').

Initiation of Changed Circumstances

In November 2002, Koc Group, a Turkish conglomerate, and Pastavilla's parent company, announced its intent to reorganize and merge its four food-producing subsidiaries. On June 25, 2003, the Shareholders' General Assemblies for Tat and Pastavilla approved the merger. The merger plan called for three of the Koc Group companies to be merged into a fourth Koc Group company, Tat, a tomato products producer. The companies merged into Tat included: Pastavilla, a pasta producer; Maret Marmara Besicilik ve Et Sanayi ve Ticaret A.S., a meat processor; and Sek Süt Endustrisi Kurumu, a dairy products producer. On that same day, Tat's General Assembly approved amendments to Tat's articles of incorporation to include the operations of the merged companies. Therefore, the reorganization of the Koc companies was completed on June 25, 2003.

In the course of this reorganization, Tat acquired Pastavilla as an ongoing concern, *i.e.*, Tat took over Pastavilla's factory, operations, management, trade names (Pastavilla; Lunch & Dinner; and Kartal), and also all of Pastavilla's liabilities. Tat then began producing pasta using the same products, from the same suppliers, the same personnel and equipment, and selling them under the same brand names, to the same customers through the same channels, using the same management team as its predecessor, Pastavilla. On September 24, 2003, Tat advised the Department of the details of the reorganization, and requested that the Department conduct a changed circumstances review to determine that Tat is the successor-in-interest to Pastavilla.

Based on the information provided by Tat, and in accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (''the Act'') and 19 CFR 351.216(d) of the Department's regulations, the Department has determined that there is a sufficient basis to initiate a changed circumstances review to determine whether Tat is the successor-in-interest to Pastavilla.

Preliminary Results

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, e.g., Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460 (May 13, 1992) (''*Canadian Brass*''). While no one or several of these factors will necessarily provide a dispositive indication, the Department will generally consider the new company to be the successor to the previous company if its resulting operation is not materially dissimilar to that of its predecessor. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944 (February 14, 1994) and *Canadian Brass*, 57 FR 20460. Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former company, the Department will assign the new company the cash deposit rate of its predecessor.

We preliminarily determine that Tat is the successor-in-interest to Pastavilla. In its September 24, 2003 submission, Tat provided evidence illustrating that its production continues with the same equipment, the same management, the same raw materials purchased from the same suppliers, and the same production process, as Pastavilla. Tat also provided evidence that it continues to sell the same products to the same customers to which Pastavilla previously sold. Documentation attached to Tat's September 24, 2003 submission supports its claims that the acquisition of Pastavilla resulted in little or no changes in the production facilities, supplier relationships, customer base, or management. This documentation consisted of: (1) An independent valuation report which included, *inter alia*, Pastavilla's land, factory and trademark names; (2) Pastavilla's and Tat's Shareholders' General Assemblies and Board of Directors approval of the merger; (3) the merger agreement; (4) amendments to Tat's articles of incorporation; (5) Tat and Pastavilla's price lists; (6) Pastavilla's supplier lists, including Tat's list of affiliates; (6) Pastavilla's distributer lists; (7) Pastavilla, Koc Group, and Tat's sales history, and product catalogs; and (8) other documents supporting the transfer of assets and liabilities from Pastavilla to Tat. The documentation described above demonstrates that: (1) Substantially all employees of Pastavilla, including management, have been transferred to Tat; (2) the business was sold as a going concern; and (3) there was little to no change in management structure, supplier relationships, production facilities, or customer base.

When it concludes that expedited action is warranted, the Department may publish the notice of initiation and preliminary results in a changed circumstances review concurrently. *See* 19 CFR 221(c)(3)(ii). The Department has determined that such action is warranted in this instance because Tat has provided *prima facie* evidence that it is the successor-in-interest to Pastavilla.

For these reasons, we preliminarily find that Tat is the successor-in-interest to Pastavilla and, thus, should receive the same antidumping and countervailing duty treatment with respect to certain pasta from Turkey as the former Pastavilla.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held no later than 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing, if one is requested, should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, in accordance with 19 CFR 351.216(e), including the results of its analysis of issues raised in any written comments.

We are issuing and publishing these results and notice in accordance with sections 751(b)(1) and 777(i)(1) and (2) of the Act and section 19 CFR 351.216.

Dated: November 10, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–28672 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–817, C–427–815, C–475–827, C–475–823, C–475–825, C–475–821, C–401–804, C–475–812]

Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act; Countervailing Measures Concerning Certain Steel Products From the European Communities

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of implementation under section 129 of the Uruguay Round Agreements Act; countervailing measures concerning certain steel products from the European communities.

SUMMARY: On January 8, 2003, the Dispute Settlement Body of the World Trade Organization adopted the report of the Appellate Body in *United States—Countervailing Measures Concerning Certain Products from the European Communities,* WT/DS212/AB/R (December 9, 2002). Consistent with the Appellate Body's findings, and pursuant to section 129(b)(2) of the Uruguay Round Agreements Act, the Department of Commerce applied its modified privatization methodology with respect to the twelve countervailing duty determinations, involving certain steel products originating in various member states of the European Communities, at issue in the WTO dispute. The Department of Commerce is now implementing its ''Section 129 Determinations'' with respect to eight of those twelve determinations.

EFFECTIVE DATE: November 7, 2003.

FOR FURTHER INFORMATION CONTACT: John Brinkmann (French and Italian determinations), Robert Copyak (German determination), or Dana Mermelstein (all other determinations), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4126, (202) 482–2209, (202) 482–1391, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (2003). Finally, citation to ''section 129'' refers to section 129 of the Uruguay Round Agreements Act (''URAA''), codified at 19 U.S.C. 3538.

Background

On January 8, 2003, the Dispute Settlement Body (''DSB'') of the World Trade Organization (''WTO'') adopted the report of the WTO Appellate Body in *United States—Countervailing Measures Concerning Certain Products from the European Communities,* WT/DS212/AB/R (December 9, 2002) (''*Certain Products*''). To implement the DSB findings in Certain Products, the Department changed its methodology for analyzing a privatization in the context of the countervailing duty (''CVD'') law. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act,* 68 FR 37125 (June 23, 2003) (''*Modification Notice*'').

Subsequently, pursuant to section 129(b)(2) of the URAA,[1] the Department applied this modification with respect to twelve countervailing duty determinations involving certain steel products originating in various member states of the European Communities. Section 129(b)(2) provides that ''[n]otwithstanding any provision of the Tariff Act of 1930 * * *,'' within 180 days of a written request from the U.S. Trade Representative, the Department shall issue a determination that would render its actions not inconsistent with an adverse finding of a WTO panel or the Appellate Body. 19 U.S.C. 3538(b)(2). The Statement of Administrative Action accompanying the URAA (the ''SAA''), H.R. Doc. No. 103–316, Vol. 1 (1994) at 1025, 1027, variously refers to such a determination by the Department as a ''new,'' ''second,'' and ''different'' determination.

On October 24, the Department issued twelve Section 129 Determinations.[2] *See* ''Issues and Decision Memorandum for the Section 129 Determination: *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon Quality Steel Plate from France*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum for the Section 129 Determination: *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''*Issues and Decision Memorandum for the Section 129 Determination: Corrosion-Resistant Carbon Steel Flat Products from France; Final Results of Expedited Sunset Review of Countervailing Duty Order*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memo: Section 129 Determination: *Final Results of Full Sunset Review of Cut-to-Length Carbon Steel Plate from Germany*'' from Melissa Skinner, Office Director, Office of AD/CVD Enforcement VI, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements: *Certain Cut-to-Length Carbon-Quality Steel Plate from Italy*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act:*Countervailing Duty Administrative Review: Grain-Oriented Electrical Steel from Italy*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Final Affirmative Countervailing Duty Determination: Stainless Steel Plate in Coils from Italy*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet*

[1] Section 129 of the URAA is the applicable provision governing the nature and effect of determinations issued by the Department to implement findings by WTO panels and the Appellate Body.

[2] Copies of the ''Issues and Decision Memoranda'' detailing our Section 129 Determinations in each proceeding are available online at *http://ia.ita.doc.gov/* as well as in the Department's Central Records Unit in room B–099, 14th Street and Constitution Avenue, NW., Washington, DC 20230. All issues raised in the comments and rebuttal comments submitted by the parties concerning these Section 129 Determinations are addressed in these Issues and Decision Memoranda.

and Strip in Coils from Italy'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum for the Determination under Section 129 of the Uruguay Round Agreements Act: *Final Affirmative Countervailing Duty Determination: Stainless Steel Wire Rod from Italy*'' from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum: Section 129 Determination: *Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from Spain*'' from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum: Section 129 Determination: *Final Results of the 1994 Administrative Review of Certain Cut-to-Length Carbon Steel Plate from Sweden*'' from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003; ''Issues and Decision Memorandum: Section 129 Determination: *Final Results of Expedited Sunset Review of Cut-to-Length Carbon Steel Plate from the United Kingdom*'' from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, Group III, to James J. Jochum, Assistant Secretary for Import Administration, signed October 24, 2003.

Subsequent to the Department's issuance of the Section 129 Determinations and pursuant to section 129(b)(3) of the URAA, the U.S. Trade Representative consulted with the Department and the Congressional committees concerning these determinations. Then, by letter dated November 7, 2003, the U.S. Trade Representative requested the Department, pursuant to section 129(b)(4) of the URAA, to implement the Section 129 Determinations with respect to the eight determinations that did not involve sunset reviews under section 751(c) of the Act.

Implementation

Section 129(c)(1)(B) of the URAA expressly provides that a determination under section 129 applies only with respect to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date on which the USTR directs the Department to implement that determination. In other words, as the SAA clearly provides, ''such determinations have prospective effect only.'' SAA at 1026. Thus, ''relief available under subsection 129(c)(1) is distinguishable from relief in an action brought before a court or a NAFTA binational panel, where * * * retroactive relief may be available.'' *Id.*

Because the U.S. Trade Representative declined to direct the Department to implement the revised determinations with regard to the four sunset reviews involved in the WTO dispute, we are not implementing these Section 129 Determinations. *See* sections 129(b)(4) and 129(c)(1)(B) of the URAA.

We are, however, implementing the remaining Section 129 Determinations as follows. With respect to the five countervailing duty orders noted immediately below, we are revising the cash deposit rates for certain companies to reflect the impact that privatization had on non-recurring, allocable subsidies. Thus, in accordance with section 129(c)(1)(B) of the URAA, we will instruct U.S. Customs and Border Protection (''CBP'') to collect cash deposits of estimated countervailing duties in the percentage detailed below of the f.o.b. invoice price on all shipments of the companies noted below, entered, or withdrawn from warehouse, for consumption on or after November 7, 2003. In addition, three of the five cases noted below involve determinations in investigations. The ''all others'' cash deposit rates for these three cases shall be revised as follows.

Case #	Order	Company	Deposit (%)
C–401–804	Cut-to-Length Carbon Steel Plate from Sweden	SSAB	0.0
C–475–812	Grain-Oriented Electrical Steel from Italy	AST	1.07
C–475–823	Stainless Steel Plate in Coils from Italy	AST	1.62
		All Others	1.62
C–475–825	Stainless Steel Sheet and Strip in Coils from Italy	AST	1.62
		All Others	1.61
C–475–827	Cut-to-Length Carbon Steel Plate from Italy	ILVA/ILT	3.44
		All Others	3.44

With respect to the countervailing duty orders on certain cut-to-length carbon quality steel plate from France (C–427–817) and stainless steel sheet and strip in coils from France (C–427–815), consistent with our Section 129 Determinations, we are revoking those orders in whole. Accordingly, we will instruct CBP to discontinue suspension of liquidation under those orders of all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 7, 2003.

With respect to the countervailing duty order on stainless steel wire rod from Italy (C–475–821), consistent with our Section 129 Determination, we are revoking this order with respect to the company CAS. Accordingly, we will instruct CBP to discontinue suspension of liquidation under this order of all of CAS's shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after November 7, 2003. The ''all others'' cash deposit rate under this order will be revised to 1.28 percent.

This notice of implementation is issued and published in accordance with section 129(c)(2)(A) of the URAA.

Dated: November 7, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–28668 Filed 11–14–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 031110276–3276–01]

Notice of Intent To Prepare an Environmental Impact Statement for the Construction of an Office/ Laboratory/Classroom Facility for the Canaan Valley Institute

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) for the construction of an Office/ Laboratory/Classroom Facility for the Canaan Valley Institute (CVI); request for comments.

SUMMARY: NOAA is the lead agency funding and overseeing the proposed action and preparation of this EIS by CVI for construction of an office/ laboratory/classroom facility near the town of Davis, West Virginia. In accordance with the National Environmental Policy Act of 1969, this notice also initiates the public scoping process for the preparation of the EIS to examine potential issues and identify key resource impacts.

DATES: Written comments on the intent to prepare an EIS will be accepted for thirty days following publication of this notice. At least one public scoping meeting will be scheduled in early 2004. An announcement, notifying the public of the meeting dates, times, and locations, will be made once the meeting is scheduled. Both agency personnel and the public will be invited to attend this meeting. The dual purpose of this meeting will be to identify the scope of issues that will be addressed in the EIS and to solicit public input relating to the scope of studies for the construction of the facility and its access road.

ADDRESSES: To submit comments, request further information, request a detailed map of the proposed sites and roadway access alternatives, and/or have your name added to the EIS mailing list, contact Jim Rawson, Canaan Valley Institute, PO Box 673, Davis, WV 26260; Telephone (304) 463–4739; Fax (304) 463–4759 or Bruce Hicks, NOAA Air Resources Laboratory, Route: R/ARL, SSMC3 Rm. 3152, 1315 East West Highway, Silver Spring, MD 20910–3282; Telephone (301) 713–0684 x136; Fax (301) 713–0119.

SUPPLEMENTARY INFORMATION: Canaan Valley Institute (CVI) will construct a new facility on their property to be utilized as their headquarters. This facility is proposed to include office, laboratory, classroom, and conference room space, as well as some outdoor interpretive areas. This project would be funded through a NOAA grant. The new headquarters would include a view of the Canaan Valley, which is important for both visitor experience and interpretation potential, *e.g.*, an informational viewing area for the Canaan Valley Wildlife Refuge. In addition, a two-lane road is proposed to be constructed to access this facility from either State Route 93 or State Route 32. The entire CVI property is approximately 3,200 acres and primarily deciduous forest. The proposed project would disturb approximately four acres for construction of the headquarters facility and an additional 5–10 acres for an access road.

Several key environmental features exist within or adjacent to the CVI property. The federally endangered Appalachian Northern Flying Squirrel (*Glaucomys sabrinus fuscus)* has known habitat in the southwestern corner of the project area. The Canaan Valley National Wildlife Refuge borders the eastern edge of the project area. This refuge contains the largest freshwater wetland in central and southern Appalachia and is known habitat for the Appalachian Northern Flying Squirrel and the federally threatened Cheat Mountain salamander (*Plethodon nettingi*). The Monongahela National Forest is located south-southwest of the CVI property and provides habitat for nine federally listed threatened or endangered species. Two of the five streams within or near the CVI property (Blackwater River and Beaver Creek) are classified as High Quality by the West Virginia Department of Environmental Protection. CVI, partnering with West Virginia University and other entities, is undertaking a long-term study of an area of drainage near the center of the CVI property. This study, along with other activities, may be integrated into the Long Term Ecological Research program. Another drainage, Wymer Run, the municipal water supply for the nearby town of Davis, is located in the center of the property.

At least three alternative site locations and five access alternatives will be developed and are expected to be analyzed to evaluate the environmental impacts, costs, and ability to meet project needs of each. The public involvement plan for this project will give citizens, public officials, community stakeholders, and other organizations and groups a medium to obtain information regarding the project as well as provide input and get involved with the project. This plan will include general public meetings, public officials workshops, and neighborhood and special purpose meetings. The public involvement requirements for Environmental Justice as required by Title VI of the Civil Rights Act of 1964 and Executive Order (EO) 12868 will be addressed. In addition, the public may also be informed about the project through news releases, project newsletters, or the CVI Web site, *www.canaanvi.org.* Input obtained by this process will be used throughout the entire process of project development of defining alternatives, options, and mitigation.

Background Information: CVI is made up of a diverse team of scientists, landscape ecologists, economists and business professionals, watershed resource specialists, geographic information systems analysts, software developers, community and program developers, grant writers, and a highly skilled support staff. Their mission is to aid stakeholders in their efforts to implement locally determined solutions to problems that threaten the sustainability of their watersheds and communities.

Dated: November 10, 2003.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 03–28665 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–KC–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 110503A]

Vessel Monitoring Systems; Approved Mobile Transmitting Units for use in the Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery

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

ACTION: Notification of approval of VMS systems.

SUMMARY: This document provides notice of vessel monitoring systems (VMS) approval by NOAA for use by vessels participating in the Pacific Coast groundfish fishery and sets forth relevant features of the VMS.

ADDRESSES: To obtain copies of the list of NOAA approved VMS mobile transmitting units and NOAA approved VMS communications service providers,

or information regarding the status of VMS systems being evaluated by NOAA for approval, write to NOAA Fisheries Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

To submit a completed and signed checklist, mail or fax it to NOAA Enforcement, 7600 Sand Point Way NE; Seattle, WA 98115; fax (206)526–6528.

For more addresses regarding approved VMS, see the **SUPPLEMENTARY INFORMATION** section, under the heading ''VMS Provider Addresses''.

FOR FURTHER INFORMATION CONTACT: For current listing information contact Mark Oswell, Outreach Specialist, phone 301–427–2300, fax 301–427–2055. For questions regarding VMS installation, activation checklists, and status of evaluations, contact Jonathan Pinkerton, National VMS Program Manager, phone 301–427–2300, fax 301–427–2055. For questions regarding the checklist, contact Joe Albert, Northwest Divisional VMS Program Manager, phone 206–526–6133.

The public may acquire this notice, installation checklist, and relevant updates via the ''fax-back'' service, or by contacting Joe Albert, Northwest Divisional VMS Program Manager, Northwest Division, phone (206) 526–6133.

SUPPLEMENTARY INFORMATION:

I. VMS Mobile Transceiver Units

A. INMARSAT-C Transceivers

The Inmarsat-C satellite communications VMS transmitting units that meet the minimum technical requirements for the Pacific Coast groundfish fishery are the Thrane & Thrane Fishery ''Capsat'' (part number TT–3022D-NMFS) and the Thrane & Thrane Fishery ''Mini-C'' (part number TT–3026–NMFS). The address for the Thrane & Thrane distributor (LandSea Systems) dealer contact is provided under the heading VMS Provider Addresses.

Thrane & Thrane TT–3022D-NMFS Features: The transceiver consists of an integrated GPS/Inmarsat-C unit in the wheelhouse and an antenna mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by LandSea Systems personnel.

Automatic GPS position reporting starts after transceiver nstallation and power activation onboard the vessel. The unit is a car-radio-sized transceiver using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The outside antenna, model TT–3005M, is a compact omni-directional Inmarsat-C/GPS antenna, providing operation down to +/-15 deg. angles.

A configuration option is available to automatically send position reports to a private address, such as a fleet management company. Another available option is the ability to send and receive private e-mail and other messages with the purchase and installation of an input device such as a laptop, personal computer, or message display terminal.

Thrane & Thrane TT–3026–NMFS features: The transceiver consists of an integrated GPS/Inmarsat-C unit mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by LandSea Systems personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is an integrated transceiver/antenna/GPS design using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The TT–3026–NMFS provides operation down to +/-15 degree angles. Although the unit has the capability of two-way communication to send and receive private e-mail and other messages; it can only use this capability when additional equipment not required by NMFS is purchased (i.e., a laptop, personal computer, or message display terminal). A configuration option is available to automatically send position reports to a private address, such as a fleet management company.

A vessel owner wishing to purchase either of these systems may contact the entity identified under the heading VMS Provider Addresses for Thrane & Thrane TT–3022D-NMFS and TT–3026–NMFS. The owner should identify himself or herself as a vessel owner in the ''Pacific Coast groundfish fishery.'' The Thrane & Thrane transceiver set the vessel owner purchases will be configured for the Pacific Coast groundfish fishery.

To use the TT–3022–NMFS or the TT–3026–NMFS, the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C ''Registration for Service Activation for Maritime Mobile Earth Station.'' The owner should consult with LandSea Systems when completing this form.

LandSea Systems personnel will perform the following before shipment: (a) configure the transceiver according to OLE specifications for the Pacific Coast groundfish fishery; (b) download the predetermined NMFS position reporting and broadcast command identification numbers into the unit; (c) test the unit to ensure operation when installation has been completed on the vessel; and (d) forward the Inmarsat service provider and the transceiver identifying information to OLE.

B. INMARSAT D+ Transceivers

The Inmarsat-D+ satellite communications VMS transmitting unit that meets the minimum technical requirements for the Pacific Coast groundfish fishery is the Satamatics SAT–101 (model number SAT–101 NMFS/PCG). The address for the Satamatics contact is provided under the heading VMS Provider Addresses.

Satamatics–101 NMFS/PCG Features: The transceiver is part of a bundled service provided by Satamatics that includes the transceiver and the satellite airtime. The transceiver is delivered as a complete kit including main unit, antenna, antenna mount, cabling, power connector and detailed installation manual. The main unit is an integrated GPS receiver and Inmarsat-D+ transmitter receiver measuring 4.375in. x 6.75in. x 1.5 in. For the VMS environment, it is enclosed in a secure ruggedized outer box so that it can be mounted inside the superstructure or hull of the vessel or externally in any location sheltered from ''green seas.'' Prime power to the unit is a floating 9.6 to 30 Vdc. The main unit includes a back up, re-chargeable battery. The antenna is small and lightweight measuring 4.375in. diameter and 1.5 in. high and weighing 0.5 lbs. The transceiver is factory pre-configured for NMFS VMS requirements for each fishery for ''plug and play'' installation and operation requiring no specialized training or expertise.

Automatic GPS position reporting can start immediately after transceiver installation and power activation onboard the vessel. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power

shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

Satamatics provides a one-stop shop for easy purchase and commissioning of transceiver and satellite airtime. A vessel owner wishing to purchase the model number SAT 101- NMFS/PCG can purchase a bundled package of transceiver and satellite airtime directly from Satamatics using a self-serve web site or by contacting Satamatics as listed in the VMS Provider Addresses.

Satellite commissioning service is instantaneous via a self-service web page or through Satamatics Support anytime after the receipt of the transceiver. This eliminates delays and paperwork. Satamatics will forward the transceiver identifying information to OLE. Although the VMS package has been designed for an easy, low cost self-install, Satamatics provides a support web site and contact line for fishermen.

C. ORBCOMM Transceivers

The ORBCOMM satellite communications VMS transmitting units that meet the minimum technical requirements for the Pacific Coast groundfish fishery is the Stellar ST2500G (part number ST2500G-NMFS). The address for ORBCOMM and Stellar Value Added Resellers (VAR) and their regional sales outlets around the country are provided under the heading VMS Provider Addresses.

Stellar ST2500G-NMFS Features: The transceiver consists of an integrated GPS/ORBCOMM Satellite Communicator mounted in the wheelhouse and antennas mounted atop the vessel. The unit is pre-configured and tested for NMFS VMS operations (with an emergency alarm switch (non-GMDSS)). Satellite commissioning services are provided by several VMS providers.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is a 4 in x 8in x 2in transceiver powered by any 12 to 32 VDC power supply. It is factory configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port) which allows for port stays without power drain or unit shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The ST2500G has an omni-directional VHF antenna, providing operation from +/-5 degrees above the horizon anywhere on earth.

A configuration option is available to automatically send position reports to a private e-mail address or to a secure web site where the data is provided on a map and in tabular form. Another available option is the ability to send and receive private e-mail from a PC or Laptop personal computer or from specific hand held devices. A complete list of devices, supported operating systems and available software solutions are described by each VMS provider.

A vessel owner wishing to purchase the Stellar ST2500G transceiver will be required to complete an ORBCOMM ''Provisioning'' form via the web. If assistance is required, the owner may consult with the VAR or one of the entities identified under the heading VMS Provider Addresses for the ST2500G-NMFS when completing this form. The unit purchased by the vessel owner will be configured specifically for the Pacific Coast groundfish fishery.

The ORBCOMM VMS VAR will perform the following before shipment: (a) configure the transceiver according to OLE specifications for the Pacific Coast groundfish fishery; (b) download the predetermined NMFS position reporting applications into the unit; (c) test the unit to ensure proper operation prior to shipping; (d) forward the service provider and the transceiver identifying information to OLE and test the unit when the installation has been completed on the vessel.

II. Communications Service Providers

OLE has approved the below-listed communications service providers: Orbcomm, Satamatics, Telenor, and Xantic satellite communications services for the Pacific Coast groundfish fishery.

A. Orbcomm

It is recommended that the vessel owner keep for his or her records and that the VAR have on record the following identifying information: (a) signed and dated receipts and contracts; (b) satellite communicator identification number; (c) VAR customer number, (Identification number/unit surname name combination); (d) e-mail address of satellite communicator (*surname@ORBCOMM.net*); (e) owner name; (f) vessel name; and (g) vessel documentation or registration number.

Pursuant to 50 CFR 635.69(d), OLE will provide an installation and activation checklist which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by experienced crew, a VAR or by an electronics specialist. All installation costs are paid by the owner.

The owner may confirm the Stellar ST2500G-NMFS operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a fishing trip under VMS. OLE does not regard the fishing vessel as meeting the requirements of 50 CFR 635.69 until position reports are automatically received. For confirmation purposes, contact the NOAA Enforcement, 7600 Sand Point Way NE; Seattle, WA 98115, at (206) 526–6133.

ESL Sat-Ex Satellite Services/ ORBCOMM

ORBCOMM is a store-and-forward data messaging service allowing users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. ORBCOMM supports a wide variety of applications including Plain Text Internet e-mail, position and weather reporting, and remote equipment monitoring and control. Mariners can use ORBCOMM free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system. VMS Services are being sold through specific ORBCOMM VARS.

Features offered: Customer Service supports the security and privacy of vessel accounts and messages with the following: (a) password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. (OLE requires VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by OLE.

ORBCOMM provides customer service through its VARS to establish and support two-way transmission of transceiver unit configuration commands between the transceiver and land-based control center. This supports OLE's message needs and, optionally, fishermen's private e-mail needs.

The owner should refer to and follow the configuration, installation, and service activation procedures for the Stellar ST2500G-NMFS satellite communicator.

B. Satamatics/INMARSAT-D+

Satamatics provides tracking and monitoring solutions globally using Inmarsat-D+. Satamatics is able to provide end to end bundled services using a combination of its satellite gateways that it designed, built, owns and maintains and its own D+ transceiver line that it designed and

manufactures. The marine solution certified for NMFS VMS is similar to that being used in other VMS applications around the world and in the Secure Ship Alert System recently mandated by the International Maritime Organization to combat security threats.

Satamatics provides a one-stop shop for service and transceiver for easy purchase and commissioning. Vessel owners wishing to use the Satamatics solution to meet the Pacific Coast groundfish fishery VMS requirement can purchase a bundled package of transceiver and airtime directly from Satamatics using a self-serve web site or contacting Satamatics as listed in the VMS Provider Addresses.

Satellite commissioning service is instantaneous via a self-service web page or through Satamatics Support anytime after the receipt of the transceiver. This eliminates delays and paperwork. Satamatics will forward the transceiver identifying information to OLE. Although the VMS service package has been designed for easy commissioning via the web, Satamatics provides a support line for fishermen as well.

Billing for satellite airtime is separated between accounts for the vessel owner and OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

C. INMARSAT-C Communications Providers

It is recommended that the vessel owner keep for his or her records and that Telenor and Xantic have on record the following identifying information: (a) Signed and dated receipts and contracts; (b) transceiver serial number; (c) Telenor or Xantic customer number, user name and password; (d) e-mail address of transceiver; (e) Inmarsat identification number; (f) owner name; (g) vessel name; (h) vessel documentation or registration number; and (i) mobile earth station license (FCC license).

Pursuant to 50 CFR 635.69(d), OLE will provide an installation and activation checklist which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to OLE. Installation can be performed by experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm the TT–3022–NMFS or TT–3026–NMFS operation and communications service to ensure that position reports are automatically sent to and received by OLE before leaving on a fishing trip under VMS. OLE does not regard the fishing vessel as meeting the requirements of 50 CFR 635.69 until position reports are automatically received. For confirmation purposes, contact the NOAA Fisheries Office for Law Enforcement, 7600 Sand Point Way NE; Seattle, WA 98115, at (206) 526–6133.

C1. Telenor Satellite Services

Inmarsat-C is a store-and-forward data messaging service. Inmarsat C allows users to send and receive information virtually anywhere in the world, on land, at sea, and in the air. Inmarsat-C supports a wide variety of applications including Internet e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use Inmarsat-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. Telenor Vessel Monitoring System Services is being sold through LandSea Systems, Inc. For the LandSea and Telenor addresses, look under the heading ''VMS Provider Addresses''.

C2. Xantic

Xantic is a provider Vessel Monitoring Services to the fishing industry. By installing an approved OLE Imarsat-C transceiver on the vessel, fishermen can send and receive E-mail, to and from land, transceiver automatically sends vessel position reports to OLE, and is fully compliant with the International Coast Guard Search and Rescue Centers. XANTIC Vessel Monitoring System Services are being sold through LandSea Systems, Inc. For the LandSea and XANTIC addresses, look under the heading VMS Provider Addresses.

Telenor and XANTIC Features offered through LandSea Systems: Customer Service supports the security and privacy of vessel accounts and messages with the following: (a) password authentication for vessel owners or agents and for OLE to prevent unauthorized changes or inquiries; and (b) separation of private messages from OLE messages. (OLE requires VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the OLE. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from OLE operations center is paid for by NOAA.

LandSea Systems provides customer service for Telenor and XANTIC users to support and establish two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports OLE's message needs and, optionally, fishermen's private message needs.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company. The vessel can send and receive private e-mail and other messages when the transceiver has such an input device as a laptop or personal computer attached.

Vessel owners wishing to use Telenor or XANTIC services will need to purchase an Inmarsat-C transceiver approved for the fishery. The owner will need to complete an Inmarsat-C system use contract with Telenor or XANTIC, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Telenor or XANTIC's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

III. VMS Provider Addresses

For ORBCOMM and Stellar ST2500G-NMFS information, contact: ORBCOMM, LLC; 21700 Atlantic Boulevard; Dulles, VA 20166 USA. *www.ORBCOMM.com* for Vessel Management on the home page.

Call 800–ORBCOMM (USA); Phone: 703–433–6300; Fax: 703–433–6400 Satamatics/INMARSAT D+ bundled VMS solution of satellite airtime and SAT–101 NMFS/PCG transceiver: go to *www.nmfs.satamaticsusa.com*; call 877–SAT-MATD (877–728–6383) fax 360–246 7263 e-mail *nmfs@satamaticsusa.com*. Thrane & Thrane TT–3022–NMFS or TT–3026–NMFS, contact Ken Ravenna, Marine Products, LandSea Systems, Inc.,509 Viking Drive, Suite K, L & M, Virginia Beach, VA 23452; voice: 757–463–9557; fax: 757–463–9581, e-mail: *KCR@LandSeaSystems.com*; website: *http://www.landseasystems.com*.

For Telenor or XANTIC information, contact LandSea Systems Inc., Donna Sherman, 509 Viking Drive, Suite K, L, M, Virginia Beach, VA 23452; voice: 757–463–9557; fax: 757–463–9581; e-mail: *irtime@landseasystems.com*. Telenor and XANTIC Customer Service, LandSea Systems, Inc., 509 Viking Drive Suite, K, L & M, Virginia Beach, VA 23452; voice: 757–463–9557; fax: 757–463–9581, e-mail: *KCR@LandSeaSystems.com*. Telenor

Alternate Contact: Courtney Coleman, Manager COMSAT-C Services Marketing, 6560 Rock Spring Dr., Bethesda, MD 20817; phone: 301–838–7720; e-mail: *courtney.coleman@telenor-usa.com*. Xantic Alternate contacts: Folef Hooft Graafland, 6100 Hollywood Boulevard, Suite 410, Hollywood, FL 33024; voice: (954) 962–9908 Ext. 11; fax: (954) 962–1164; Cellular:(954) 214–2609; e-mail: *folef.hooftgraafland@XANTIC.net*; Andre Cortese, 1211 Connecticut Ave., NW, Suite 504, Washington, DC 20036; telephone number: 202–785–5615; e-mail: *andre.cortese@XANTIC.net*; Bobbie Thach, 1211 Connecticut Ave, NW Suite 504, Washington, DC 20036; voice: (202) 785–5614; fax: (202) 785–5616; e-mail: *bobbie.thach@XANTIC.net*.

IV. Additional Information

OLE is constantly evaluating new and emerging technologies for inclusion in the VMS program. Additional units may be approved for use in the Pacific Coast groundfish fishery at a later date.

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

Dated: November 12, 2003.

Bruce C. Morehead,

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

[FR Doc. 03–28663 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111003C]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Ecosystems Committee and Executive Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, December 2, through Thursday, December 4, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Sheraton Suites, 422 Delaware Avenue, Wilmington, DE; telephone: 302–654–8300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: On Tuesday, December 2, the Ecosystems Committee will meet from 10 a.m. until noon. The Council will meet from 1 p.m. to 5 p.m. On Wednesday, December 3, the Executive Committee will meet from 8 a.m. to 9 a.m. The Council will meet from 9 a.m. to 10 a.m. The Council, together with the Atlantic States Marine Fisheries Commission's (ASMFC) Summer Flounder, Scup, and Black Sea Bass Board, will meet from 10 a.m. until 5 p.m. On Thursday, December 4, the Council will meet from 8 a.m. until 4 p.m.

Agenda items for the Council's committees and the Council itself are: Review the committee charge regarding ecosystem-based management, habitat, GRAs, etc., and determine the need for advisors; Review the effect of the New England Council's action and likely schedule of events on Groundfish Amendment 13; Address the exclusion of limited access vessels and develop the Council position on NMFS' proposed action on Scallop Amendment 10; Review Delaware's Artificial Reef Plan: Review the Monkfish Committee's action regarding changes to management for 2004/05 fishing year, and adopt default measures or recommend new measures for 2004/05 fishing year; Review committees 2004 planned actions and schedules, and review committee advisory panel status; Review and adopt Framework 4 to the Squid, Mackerel, and Butterfish Framework 4 (Meeting 2) which extends the Illex squid moratorium; Review and discuss the Monitoring Committees' recommendations, review and discuss the Advisory Panels' recommendations, and develop and approve recreational management measures for 2004 for summer flounder, scup, and black sea bass; Hear a presentation of the Council's Communications Plan; Receive and hear committee and organizational reports, and act on any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during these meetings. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 12, 2003.

Richard W. Surdi,

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

[FR Doc. E3–00272 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111003B]

South Atlantic Fishery Management Council (Council); Public Meeting

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

ACTION: Notice of the Southeastern Data, Assessment, and Review (SEDAR) Workshops for Atlantic and Gulf King Mackerel.

SUMMARY: The SEDAR assessment of the South Atlantic and Gulf King mackerel will consist of a series of three workshops, a Data Review Workshop, an Assessment Workshop, and a Review Workshop.

DATES: The Data Workshop will take place December 1–5, 2003; the Assessment Workshop will take place February 16–20, 2004; and the Review Workshop will take place April 5–9, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The three workshops will be held at NOAA Fisheries' Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149, phone: (305) 361–4200.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: The workshops will take place: December 1–5, 2003; February 16–20; 2004; and April 5–9, 2004.

The South Atlantic Fishery Management Council, in conjunction with NOAA Fisheries, has implemented the SEDAR process, a multi-step method for determining the status of fish stocks. SEDAR includes three workshops: (1) Data Workshop, (2) Stock Assessment Workshop, and (3) Review Workshop. The product of the Data Workshop and the Stock Assessment Workshop is a stock assessment report. This report is then peer reviewed at the Review Workshop, and a final consensus report and an advisory report are prepared that includes strengths and weaknesses in the stock assessment and recommendations to fishery managers for future data and research needs. The process includes data collectors, biologists, fishermen, environmental representatives, database managers, stock assessment scientists, and Council members and staff.

Atlantic and Gulf King Mackerel SEDAR Workshop Schedule

December 1–5, 2003—SEDAR Data Workshop

December 1, 2003, 2 p.m.–6 p.m.; December 2–4, 2003, 8:30 a.m.–5 p.m.; and December 5, 2003, 8:30 a.m.–3 p.m.

An assessment data set will be developed during the Data Workshop for Atlantic and Gulf King mackerel. The assessment data set will include catch statistics, fishery sampling, independent monitoring, life history, and logbook information.

February 16–20, 2004—SEDAR Assessment Workshop

February 16, 2004, 2 p.m.–6 p.m.; February 17–19, 2004, 8:30 a.m.–5:30 p.m.; and February 20, 2004, 8:30 a.m.–12 noon

Using the data set resulting from the Data Workshop, participants will develop population models, evaluate the status of the stock, and create a report for review.

April 5–8, 2004—SEDAR Review Workshop

April 5, 2004, 2 p.m.–5 p.m. and April 6–8, 2004, 8:30 a.m.–5 p.m.

The Review Workshop involves a peer review of the report created from the earlier two workshops. Two reports will be produced: (1) a consensus report and (2) an advisory report.

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**) at least 5 business days prior to each workshop.

Dated: November 12, 2003.

Richard W. Surdi,

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

[FR Doc. E3–00249 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111003A]

Marine Mammals; File No. 1048–1717

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

ACTION: Notice of public meeting.

SUMMARY: NMFS will hold a public meeting regarding the scientific research proposed by Dr. Peter J. Stein, Scientific Solutions, Inc., Nashua, New Hampshire, in an application for a scientific research permit and analyzed in a draft environmental assessment.

DATES: The meeting will be held on November 20, 2003 at 1 pm.

ADDRESSES: The meeting will be held at the NOAA Silver Spring Metro Center Complex, Room 1W611, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Tammy Adams or Steve Leathery, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 5, 2003, notice was published in the **Federal Register** (68 FR 62563) that a request for a scientific research permit had been submitted by Dr. Stein to conduct studies to validate and improve the ability of short-range high-frequency whale-finder sonar systems to detect marine mammals without adversely affecting them. A draft Environmental Assessment (EA) was prepared to examine whether significant environmental impacts could result from issuance of the proposed scientific research permit. Comments on the application and/or the draft EA must be received by December 5, 2003. NMFS will hold a public meeting to inform interested parties of the proposed research and solicit comments on the application and accompanying draft EA. Please be advised that a valid government-issued photo-identification will be required for entry through building security.

Special Accommodations

This meeting is accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tyrone Stuckey or Dee Jenkins, 301–713–2289 (voice) or 301–713–0376 (fax), at least five business days before the scheduled meeting date.

Dated: November 10, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–28664 Filed 11–14–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Mandatory Declassification Review Addresses

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: Pursuant to the Information Security Oversight Office's Classified National Security Information Directive No. 1, this notice provides Department of Defense addresses to which Mandatory Declassification Review requests may be sent. This notice benefits the public in advising them where to send such requests for declassification review.

FOR FURTHER INFORMATION CONTACT: Mr. Charlie Talbott, 703–697–4325.

The following chart identifies the offices to which mandatory declassification review requests should be addressed:

OSD/JS: Washington Headquarters Services, Director Freedom of Information & Security Review, RM 2C757, 1155 Defense Pentagon, Washington, DC 20301–1155.

Army: Department of the Army, Declassification Activity, Attn: TAPC–PDD, Suite 509, 4600 N. Fairfax Drive, Arlington, VA 22203–1553.

Navy: Department of the Navy, Chief of Naval Operations, N09B11, RM 1D469, 2000 Navy Pentagon, Washington, DC 20350–2000.

Air Force: Department of the Air Force, 11 CS/SCSR (MDR), 1000 Air Force Pentagon, Washington, DC 20330–1000.
Marine: Commandant of the Marine Corps, U.S. Marine Corps, 2 Navy Annex, Room 1010, Washington, DC 20830–1775.
DARPA: Defense Advance Research Project Agency, 3701 North Fairfax Dr., Arlington, VA 22203–1714.
DCAA: Director, Defense Contract Audit Agency, Attn: CPS, 8725 John J. Kingman Rd., Ste. 2135, Ft. Belvoir, VA 22060–6219.
DIA: Defense Intelligence Agency, Attn: D A N–1A, Rm E4–234, Washington, DC 20340–5100.
DISA: Defense Information Systems Agency, Attn: Security Division, MPS 6, 5111 Leesburg Pike, Ste. 100, Falls Church, VA 22041.
DSS: Defense Security Service, Office of FOIA & Privacy, 1340 Braddock Place, Alexandria, VA 22314–1651.
DLA: Defense Logistics Agency, Attn: DLA/DSS–S, 8725 John J. Kingman Rd., Ste. 2533, Ft. Belvoir, VA 22060–6221.
NIMA: National Imagery and Mappin Agency, 4600 Sangamore Rd., Mail Stop D–10, Bethesda, Md. 20816–5000.
NSA: National Security Agency, Information Policy Office, DC323 Room S2CW113, Suite 6884, Bldg SAB2, 9800 Savage Road, Ft. George G. Mead, MD 20755–6248.
DTRA: Defense Threat Reduction Agency, Attn: SCR, 8725 John J. Kingman Rd, Ft. Belvoir, VA 22060–6201.
EUCOM: U.S. European Command, (HQ USEUCOM), Attn: ECJ1–AX (FOIA Officer), SMSgt Greg Outlaw, USAF, Unit 30400, APO, AE 09131.
SOUTHCOM: U.S. Southern Command, Attn: Mr. Marco T., Villalobos, SCJ1–A (FOIA), 3511 NW 91st Avenue, Miami, FL 33172–1217.
SOCOM: U.S. Special, Operations Command, Attn: Kathryn Meeks, SOCS–SJS–SI (FOIA), 7701 Tampa Point Boulevard, MacDill AFB, FL 33621–5323.
CENTCOM: U.S. Central Command, Attn: Jacqueline J. Scott, CCJ6–DM, 7115 South Boundary Blvd, MacDill AFB, FL 33621–5101.
NORTHCOM: U.S. Northern Command, HQNORAD, USNORTHCOM/CSM, Attn: Lynn Bruns, 250 Vandenberg Street, Suite B016, Peterson Air Force, Base, CO, 80914–3804.
JFCOM: U.S. Joint Forces Command, Attn: Ms. Joyce Neidlinpa, Code J024, 1562 Mitscher Ave, Suite 200, Norfolk, VA 23511–2488.
PACOM: U.S. Pacific Command, Attn: Maureen Jones, USPACOM FOIA Coordinator (J042), Administrative support, Division, Joint Secretariat, Box 28, Camp Smith, HI 96861–5025.
STRATCOM: U.S. Strategic Command, Attn: CL1731 (FOIA), 901 SAC blvd, STE 1E5, Offutt AFB, NE 68113–6653.
TRANSCOM: U.S. Transportation Command, Chief, Resources Information Communications and Records Management, Attn: TCJ6–RII, 508 Scott Drive, Bldg 1961, Scott AFB, IL 62225–5357.

Dated: November 7, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–28580 Filed 11–14–03; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming outbrief on Technology for Machine-to-Machine ISR Integration. The purpose of the meeting is to allow the SAB leadership to advise SAF/AQ an outbrief of the study. This meeting will be closed to the public.

DATES: November 20, 2003.

ADDRESSES: Pentagon (SAF/AQ), Room 4E964, Washington, DC 20330.

FOR FURTHER INFORMATION CONTACT: Paul Hazell, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–28588 Filed 11–14–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming outbrief on Technology for Machine-to-Machine ISR Integration. The purpose of the meeting is to allow the SAB leadership to advise J8 an outbrief of the study. This meeting will be closed to the public.

DATES: November 20, 2003.

ADDRESSES: Pentagon (J8), Room 1E962, Washington DC 20330.

FOR FURTHER INFORMATION CONTACT: Paul Hazell, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–28589 Filed 11–14–03; 8:45 am]

BILLING CODE 5001–5–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Federal Interagency Coordinating Council, Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to health services for young children with disabilities and their families. This meeting was originally scheduled for September 18, 2003, but was cancelled due to the threat of Hurricane Isabel. The meeting will be open and accessible to the general public.

Date and Time: FICC Meeting: Thursday, December 11, 2003, from 9 a.m. to 4:30 p.m.

ADDRESSES: American Institutes for Research, 1000 Thomas Jefferson Street, NW., Conference Rooms B & C, 2nd Floor Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3).

Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their

families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.,* interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3090, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–28587 Filed 11–14–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Coal Council

AGENCY: Department of Energy.

ACTION: Notice of charter renewal.

SUMMARY: Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with title 41 of the Code of Federal Regulation, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Coal Council has been renewed for a two-year period ending November 1, 2005. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on a continuing basis regarding general policy matters relating to coal issues.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the coal industry, including large and small companies, and commercial and residential consumers. The Council also has diverse members who represent interests outside the coal industry, including environmental interests, labor, research, and academia. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will continue to operate in accordance with the provisions of the Federal Advisory Committee Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at (202) 586–3279.

Issued at Washington, DC, on November 7, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–28625 Filed 11–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; National Petroleum Council

AGENCY: Department of Energy.

ACTION: Notice of charter renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463) and in accordance with title 41 of the Code of Federal Regulation, section 102–3.65, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the National Petroleum Council has been renewed for a two-year period ending November 1, 2005. The Council will continue to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industry.

SUPPLEMENTARY INFORMATION: Council members are chosen to assure a well-balanced representation from all sections of the country, all segments of the petroleum industry, and from large and small companies. The Council also has diverse members who represent interests outside the petroleum industry, including environmental labor, academia, research and environmental organizations, and State utilty regulatory commissions. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act and implementing regulations.

The renewal of the Council has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Council will operate in accordance with the Federal Advisory Act and implementing regulations.

FOR FURTHER INFORMATION CONTACT: Rachel M. Samuel at (202) 586–3279.

Issued at Washington, DC, on November 7, 2003.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 03–28626 Filed 11–14–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–5–004]

Algonquin Gas Transmission Company; Notice of Compliance Filing

October 9, 2003.

Take notice that on October 1, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets included in Appendix A to the filing, proposed to be effective: (1) On November 1, 2003, or, if service does not commence on November 1, 2003, such later date as the facilities constructed for the HubLine Mainline are placed into service, and (2) on April 1, 2004 for certain sheets previously filed, as designated in Appendix A.

Algonquin asserts that the purpose of this filing is to comply with the Commission's Orders issued in the above-captioned docket on December 21, 2001, as amended June 4, 2002, in which the Commission approved

Algonquin's amended application for a certificate of public convenience and necessity authorizing the construction of certain pipeline facilities including the facilities referred to as the HubLine Mainline. Algonquin states that the revised tariff sheets reflect the rates for the HubLine Mainline service as approved by the Commission, as well as removal of all references to the Fore River Lateral from the rate sheets, Rate Schedule AFT-CL, and the form of service agreement. Specifically with regard to the HubLine Mainline rate, the tariff sheets reflect a maximum reservation rate of $1.8607 per Dth, or $0.0612 per Dth on a 100% load factor basis, as approved by the Commission.

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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 eLibrary (e-Filing) link.

Protest Date: October 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00252 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–091]

ANR Pipeline Company; Notice of Negotiated Rate Filing

November 7, 2003.

Take notice that on October 31, 2003, ANR Pipeline Company (ANR) tendered for filing and approval one new negotiated rate service agreement and amendments to eight existing negotiated rate service agreements between ANR and Wisconsin Gas Company, and amendments to two existing negotiated rate service agreements between ANR and Wisconsin Electric Power Company. ANR also included in its filing an Amended and Restated Delivery Pressure Agreement, which relates to the tendered service agreements.

ANR requests that the Commission accept and approve the subject negotiated rate agreement and amendments to be effective November 1, 2003.

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'' 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 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00217 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–1–000]

ANR Pipeline Company; Notice of Filing

October 9, 2003.

Take notice that on October 1, 2003, ANR Pipeline Company (ANR), 9 E Greenway Plaza, Houston, Texas 77046, filed with the Federal Energy Regulatory Commission (Commission) pursuant to Section 7(C) of the Natural Gas Act, and Subpart A of the Commission's Regulations its application to install an additional 6,000 horsepower of electric powered compression at its Weyauwega Compressor Station in Waupaca County, Wisconsin, referred to as its North Leg Project. ANR states that its North Leg Project will effectively replace ANR's reliance on upstream Viking Gas Transmission Company (Viking) capacity for flowing volumes of 107,217 dekatherms per day at ANR's Marshfield receipt point. ANR states that its North Leg Project involves the construction of electric compression only, with no pipeline looping proposed, and is consistent with its settlement with Viking in Docket No. CP00–391–000.[1] ANR estimates that the cost of the North Leg Project to be approximately $13,519,310. ANR also seeks approval of pro-forma FERC Gas Tariff sheets concerning its proposed Electric Power Cost tracking mechanism, all as more fully described in the application. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's website at http://www.ferc.gov using the ''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.

Any questions regarding the application may be directed to Kevin P. Erwin, Senior Counsel, ANR Pipeline Company, Nine E. Greenway Plaza, Suite 1866, Houston, Texas, 77048, at (832) 676–5501, with fax at (832) 676–2251.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project

[1] ANR Pipeline Company, 95 FERC ¶ 63,019 (2001).

should, on or before the comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. Comments and protests 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 website under the ''e-Filing'' link. The Commission strongly encourages intervenors to file electronically.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, Commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and ion landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important to file comments or to intervene as early in the process as possible.

Comment Date: October 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00255 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–22–000]

CenterPoint Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

October 9, 2003.

Take notice that on October 2, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 685, to be effective November 1, 2003.

CEGT states that the purpose of this filing is to submit a non-conforming service agreement.

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.

Comment Date: October 14, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00269 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1340–000]

Chanaramble Power Partner LLC; Notice of Filing

October 3, 2003.

Take notice that on September 15, 2003, Chanaramble Power Partners LLC filed an initial rate schedule to sell power at market-based rates.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00278 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–7–001]

Colorado Interstate Gas Company; Notice of Compliance Filing

November 7, 2003.

Take notice that on October 30, 2003, Colorado Interstate Gas Company (CIG) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, to become effective November 30, 2003.

Tenth Revised Sheet No. 230A
Seventh Revised Sheet No. 230B
First Revised Sheet No. 230C

CIG states that these tariff sheets are filed to establish a recovery methodology for electricity commodity expenses related to new electric air compression facilities on the CIG system in compliance with the Commission's February 28, 2003, order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such 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. 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 (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 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 eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00218 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–142–004 and CP01–260–003]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

October 9, 2003.

Take notice that on October 1, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing, filed the following revised tariff sheet to its FERC Gas tariff, Second Revised Volume No. 1, bearing a proposed effective date of November 1, 2003:

Fifth Revised Sheet No. 500B

On December 20, 2002, the Commission issued an Order Issuing Certificate, Grant Abandonment Authority, and Vacating Certificate in the above-referenced proceedings (the Certificate Order). Ordering Paragraph D provided that, [w]ithin 30 days before the commencement of service, Columbia must file its executed service agreements as discussed in the body of this order. Ordering Paragraph E provided that, [b]etween 30 and 60 days before commencement of service, Columbia must file a revised tariff sheet adding its project service agreements to its list of non-conforming service agreements in its tariff.

Columbia states that the appropriate non-conforming provision have been removed, and the FTS Service Agreements are now in a form approved by the Commission in the Certificate Order.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected 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.

Protest Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00253 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–005]

Dauphin Island Gathering Partners; Notice of Tariff Filing

October 9, 2003.

Take notice that on October 3, 2003, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below to become effective October 1, 2003:

Fifteenth Revised Sheet No. 9
Twelfth Revised Sheet No. 10

Dauphin Island states that these tariff sheets reflect changes to Maximum Daily Quantities (MDQ's) and shipper names.

Dauphin Island states that copies of the filing are being served contemporaneously on all participants listed on the service list in this proceeding and on all persons who are

required by the Commission's regulations to be served with the application initiating these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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 (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 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.

Protest Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00266 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–053]

Dominion Transmission, Inc.; Notice of Negotiated Rate Filing

November 7, 2003.

Take notice that on October 31, 2003, Dominion Transmission Inc. (DTI) submitted the following revised tariff sheet, for inclusion in its FERC Gas Tariff, Third Revised Volume No. 1, disclosing a recently negotiated rate transaction. DTI requests an effective date of November 1, 2003, for its proposed tariff sheet.

Fourth Revised Sheet No. 1406

DTI states that copies of the filing have been sent to DTI's customers and interested state commissions. DTI also states that copies of its filing are available for public inspection during regular business hours in a convenient form and place, at DTI's offices at 120 Tredegar St, Richmond, VA 23219.

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'' (FERRIS). 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***Federal Register** 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00292 Filed 11–14–03; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–415–016]

East Tennessee Natural Gas Company; Notice of Compliance Filing

October 9, 2003.

Take notice that on September 30, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as a part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to be effective on the later of November 1, 2003 or the in-service date of the facilities constructed under the Patriot Project:

Twenty-Sixth Revised Sheet No. 4
Fourth Revised Sheet No. 4A

East Tennessee asserts that the purpose of this filing is to comply with the Commission's order issued on November 20, 2002, in Docket Nos. CP01–415–000, *et al.*, in which the Commission approved East Tennessee's amended application for a certificate authorizing the construction of certain pipeline facilities referred to as the Patriot Project. East Tennessee states that the revised tariff sheets reflect the rates for the Patriot Project service as approved by the Commission in the November 20, 2002 order. Specifically, the tariff sheets reflect a maximum reservation rate of $10.156/dth and a daily demand rate of $0.3339/dth.

East Tennessee states that copies of its filing have been mailed to all affected customers of East Tennessee and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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 eLibrary (e-Filing) link.

Protest Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00271 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–21–000]

Eastern Shore Natural Gas Company; Notice of Tariff Filing

October 9, 2003.

Take notice that on October 6, 2003, Eastern Shore Natural Gas Company (ESNG) 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, with an effective date of November 1, 2003.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules FSS and SST. The costs of the above referenced storage service comprises the rates and charges payable under ESNG's Rate Schedule CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule CFSS.

ESNG states that copies of the filing have been served upon its 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 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 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00268 Filed 11–14–01; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–336–020]

El Paso Natural Gas Company; Notice of Compliance Filing

October 9, 2003.

Take notice that on October 6, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, Second Sub First Revised Sheet No. 113D, with an effective date of September 1, 2003.

El Paso states that the tariff sheet is being filed to implement the capacity allocation changes in compliance with the Commission's August 29, 2003 order in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. 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 (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 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.

Protest Date: October 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00264 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–420–002]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

November 7, 2003.

Take notice that on October 31, 2003, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing the following tariff sheet proposed to become effective December 1, 2003:

Thirteenth Revised Sheet No. 120

Iroquois states that this sheet is submitted in compliance with the Commission's Orders issued in Docket No. RP03–420–000 on June 27, 2003 and August 29, 2003. The tariff sheet included herewith reflects the change required by the Commission.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00287 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR04–1–000]

Kinder Morgan Border Pipeline, L.P.; Notice of Petition for Rate Approval

October 9, 2003.

Take notice that on October 1, 2003, Kinder Morgan Border Pipeline, L.P. (KMBorder), an intrastate pipeline company, filed a petition for rate approval pursuant to Section 284.123(b)(2) of the Commission's Regulations.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 with the Secretary of the Commission on or before the date as indicated below. 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 petition for rate approval 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 I the docket number field to access the document. For assistant, call (202) 208–3676 or for TTY, (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: October 22, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00263 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–7–000]

New England Gas Company, a Division of Southern Union Company; Notice Of Application

October 9, 2003.

Take notice that on October 3, 2003, New England Gas Company (NEGASCO), 100 Weybosset Street, Providence, Rhode Island 02903, a division of Southern Union Company, filed in Docket No. CP04–7–000, an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination, a declaration that NEGASCO qualifies as a local distribution company (LDC) and a waiver of the regulatory requirements under the NGA and the Natural Gas Policy Act (NGPA), all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field 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.

NEGASCO requests a service area determination to include the facilities necessary to connect NEGASCO's facilities in Rhode Island to those of Yankee Gas Services Company (Yankee Gas) in Connecticut in order to obtain additional pipeline supply to alleviate capacity shortfalls on the Algonquin pipeline. NEGASCO states that the enlarged service area would enable it to enlarge, extend and interconnect its distribution facilities with those of Yankee Gas without losing its status as a local distribution customer. NEGASCO proposes to construct approximately 75 feet of 8'' diameter distribution main from Westerly, RI, into the state of Connecticut in order to accomplish the interconnection with Yankee Gas.[1] NEGASCO states that it meets the four criteria for a service area determination, that it is a local distribution company (LDC) serving customers within a single state, that it makes only incidental sales for resale, that its operations are regulated by the appropriate state authority, that it does not have an extensive transmission system and that its operations do not have a significant impact on neighboring distribution companies.

Any questions regarding the application should be directed to James Moriarty or Regina Pace, Fleischman and Walsh, L.L.P., 1919 Pennsylvania Ave, NW., Washington, DC 20006, (202) 939–7900.

NEGASCO explains that the proposed service area determination would not change NEGASCO's services or operations. NEGASCO also requests a declaration that it qualifies as an LDC for the purposes of Section 311 of the NGPA and a waiver of all reporting and accounting requirements applicable to natural gas companies under the NGA and the NGPA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

[1] Yankee Gas has concurrently filed in CP04–2–00, an application requesting a Blanket Certificate under Section 284.224 of the Commission's Regulations authorizing the transportation of natural gas in interstate commerce.

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 30, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00258 Filed 11–14–03; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1337–000]

Northeast Utilities Service Company; Notice of Filing

October 3, 2003.

Take notice that on September 15, 2003, Northeast Utilities Service Company (NUSCO) on behalf of its operating company affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company and Holyoke Water Power Company (the NU Companies) submitted for filing a fourth amendment to the Settlement Agreement approved by the Commission in Northeast Utilities Service Company, 88 FERC ¶ 61,006 (the Settlement) to extend the rates, terms and conditions of the Settlement for an additional period of thirty days commencing on September 14, 2003.

NUSCO states that it does not consider this filing to constitute a rate change within the meaning of 18 CFR 35.13. To the extent that the Commission disagrees, NUSCO requests that the Commission waive the requirements of 18 CFR 35.13.

NUSCO states that a copy of this filing has been mailed to the service list. NUSCO requests an effective date of September 14, 2003 and requests any waivers of the Commission's regulations that may be necessary to permit such an effective date.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00275 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–398–000]

Northern Natural Gas Company; Notice of Informal Settlement Conference

October 20, 2003.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Wednesday, October 22, 2003, and if necessary, 9 a.m. on Thursday, October 23, 2003, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Michael Cotleur (202) 502–8519 or cell phone number (301) 964–1260, e-mail *michael.cotleur@ferc.gov.*

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00281 Filed 11–14–03;8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–597–001]

Northwest Pipeline Corporation; Notice of Compliance Filing

October 9, 2003.

Take notice that on October 3, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective as indicated:

Effective October 1, 2003

Substitute Second Revised Sheet No. 5-C
Substitute Twenty-First Revised Sheet No. 14

Effective November 1, 2003

Substitute Third Revised Sheet No. 5-C

Northwest states that this filing complies with the Commission's Order dated September 30, 2003, to correct a typographical error on Sheet No. 14 concerning the fuel reimbursement factor for Rate Schedules LS–1, LS–2F and LS–2I. Northwest also states that this filing corrects a typographical error in a footnote to the Evergreen Expansion Project shippers' incremental rates.

Northwest states that a copy of this filing has been served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document.

For assistance, 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.

Protest Date: October 15, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00267 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–398–004 and RP01–34–006]

Overthrust Pipeline Company; Notice of Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, pursuant to 18 CFR 154.7 and 154.203, and in compliance with the Commission's Order on Rehearing and Compliance Filing issued March 4, 2003 (March 4 Order), in Docket Nos. RP00–398–001,002, 003 and RP01–34–004, Overthrust Pipeline Company (Overthrust) tenders for filing, to be effective December 1, 2003, proposed tariff sheets to First Revised Volume No. 1-A of its FERC Gas Tariff that are listed as follows:

First Revised Volume No. 1–A
First Revised Sheet No. 78J
First Revised Sheet No. 78K

Overthrust states that in the March 4 Order, the Commission granted Overthrust an extension of time until December 1, 2003, to implement segmentation on a self-implementing basis through the nomination process and to allow segmenting shippers access to receipt and delivery points outside the flow path described by the service agreement's receipt and delivery points. The Commission's March 4 Order directed Overthrust to file revised tariff sheets 30 days prior to December 1, 2003, to implement those changes. This filing is tendered to comply with the Commission's March 4 Order.

Overthrust states that a copy of this filing has been served upon its customers and the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00285 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1338–000]

Pacific Gas and Electric Company; Notice of Filing

October 3, 2003.

Take notice that on September 15, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a Wholesale Distribution Tariff (WDT) Service Agreement and an Interconnection Agreement (IA) between PG&E and Hercules Municipal Utility.

PG&E states that the Service Agreement is submitted pursuant to the PG&E WDT and permits PG&E to recover the ongoing costs for service required over PG&E's distribution facilities. PG&E states that the IA provides the terms and conditions for the continued interconnection of the Electric Systems of Hercules Municipal Utility and PG&E.

PG&E has requested certain waivers for a proposed effective date of September 1, 2003. PG&E states that copies of this filing have been served upon Hercules Municipal Utility, the California Independent System Operator Corporation and the California Public Utilities Commission.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00276 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1339–000]

Pacific Gas and Electric Company; Notice of Filing

October 3, 2003.

Take notice that on September 15, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing a Wholesale Distribution Tariff (WDT) Service Agreement and an Interconnection Agreement (IA) between PG&E and McAllister Ranch Irrigation District (MRID).

PG&E states that the Service Agreement is submitted pursuant to the PG&E WDT and permits PG&E to recover the ongoing costs for service required over PG&E's distribution

facilities. PG&E states that the IA provides the terms and conditions for the continued interconnection of the Electric System of MRID and PG&E.

PG&E states that copies of this filing have been served upon MRID, the California Independent System Operator Corporation and the California Public Utilities Commission.

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.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00277 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–31–001]

Paiute Pipeline Company; Notice of Compliance Filing

November 7, 2003.

Take notice that on October 31, 2003, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective November 1, 2003:

Eleventh Revised Sheet No. 10
Fifth Revised Sheet No. 21
Third Revised Sheet No. 22
Eleventh Revised Sheet No. 161

Paiute states that the purpose of this filing is to comply with the Commission's Order issued July 14, 2003, in Docket No. CP03–31–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such 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. 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 (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 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 eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00293 Filed 11–14–03; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–397–007 and RP01–33–007]

Questar Pipeline Company; Notice of Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, Pursuant to 18 CFR 154.7, and the Commission's Order issued August 27, 2002, in Docket Nos. RP00–397, *et al.* (August 27 Order), Questar Pipeline Company (Questar) tendered for filing and acceptance, the following tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff to be effective December 1, 2003.

First Revised Volume No. 1

Fourth Revised Sheet No. 41
Ninth Revised Sheet No. 45
Eleventh Revised Sheet No. 46
Ninth Revised Sheet No. 71
Fifth Revised Sheet No. 71A
Third Revised Sheet No. 75D
Fourth Revised Sheet No. 99J

In this filing Questar states that it filed tariff sheets to implement its Phase II segmentation proposal to be effective December 1, 2003, as directed by the August 27 Order in Docket Nos. RP00–397, *et al.*

Questar states that a copy of this filing has been served upon its customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00284 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–128]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 7, 2003.

Take notice that on October 30, 2003, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests the Commission to approve a negotiated rate arrangement between Tennessee and Louis Dreyfus Energy Services, L.P. Tennessee requests that the Commission grant such approval effective November 1, 2003.

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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00289 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–129]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests the Commission to approve a negotiated rate arrangement between Tennessee and Tennessee Valley Authority. Tennessee requests that the Commission grant such approval effective November 1, 2003.

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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00290 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–130]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Tariff Filing

November 7, 2003.

Take notice that on October 31, 2003, Tennessee Gas Pipeline Company (Tennessee), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing its Negotiated Rate Tariff Filing.

Tennessee's filing requests the Commission to approve a negotiated rate arrangement between Tennessee and NJR Energy Services Company. Tennessee requests that the Commission grant such approval effective November 1, 2003.

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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,

Secretary .

[FR Doc. E3–00291 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–426–016]

Texas Gas Transmission, LLC; Notice of Filing of Negotiated Rate Agreement

November 7, 2003.

Take notice that on October 30, 2003, Texas Gas Transmission, LLC (Texas Gas), submitted for filing the tariff sheets listed below for incorporation into its FERC Gas Tariff, Second Revised Volume No. 1:

First Revised Sheet No. 51
First Revised Sheet No. 56

Texas Gas states that the purpose of this filing is to propose revised tariff sheets in order to delete references to negotiated rate and/or non-conforming service agreements which have expired, or which have been modified to eliminate the non-conforming language.

Texas Gas states that copies of this filing are being mailed to all parties on the official service list in this docket, to Texas Gas's official service list, to Texas Gas's jurisdictional customers, and to 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'' (FERRIS). 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 ''eFiling'' link.

Magalie R. Salas,
Secretary.
[FR Doc. E3–00286 Filed 11–14–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–204–002]

Transcontinental Gas Pipe Line Corporation; Notice of Filing

October 9, 2003.

Take notice that on October 2, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 40Z.01, to be effective November 1, 2003.

Transco states that the purpose of the instant filing is to set forth under Rate Schedule FT the initial recourse reservation rate surcharge applicable to service provided on the Trenton Woodbury Expansion Project approved in Docket No. CP02–204–000.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. 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 eLibrary (e-Filing) link.

Protest Date: October 17, 2003 .

Magalie R. Salas,
Secretary.
[FR Doc. E3–00254 Filed 11–14–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–3–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

October 9, 2003.

Take notice that on October 3, 2003, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing in Docket No. CP04–3–000 an application in abbreviated form, pursuant to Section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for an order permitting and approving abandonment of the interruptible transportation service provided to the City of Lawrenceville, Georgia under Transco's Rate Schedule X–258, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Transco states that it does not propose to abandon any facilities pursuant to the instant application. Transco further states that no service to any of its other customers will be affected by the abandonment authorizations requested herein.

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 on or before the date as indicated below. 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.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a protest or petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or to be represented at the hearing.

Intervention and Protest Date: October 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00257 Filed 11–14–03; 8:45 am

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–461–003]

Western Gas Interstate Company; Notice of Compliance Filing

October 9, 2003.

Take notice that on October 7, 2003, Western Gas Interstate Company (WGI), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets in compliance with the Commission's September 17, 2003 Order in this proceeding. The proposed effective date of the tariff sheets is November 1, 2003.

Substitute First Revised Sheet No. 230B
Sixth Revised Sheet No. 247

WGI states that the purpose of the filing is to: (1) Eliminate certain duplicative tariff language found on both Sheet Nos. 230B and 230C; and (2) incorporate various standards adopted by the North American Energy Standards Board for Title Transfer Tracking, netting and trading, and e-mail notification.

WGI states that copies of this filing were served on its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such 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. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, 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.

Protest Date: October 20, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00265 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket EL03–235–000]

Western Interconnect, L.L.C.; Notice of Filing

October 16, 2003.

Take notice that on September 30, 2003, Western Interconnect, L.L.C. (WI, L.L.C.) filed with the Federal Energy Regulatory Commission, pursuant to section 385.207 of the Commission's Rules of Practice and Procedure, 18 CFR 35.207, a petition for Declaratory Order seeking confirmation of their proposal to establish a Regional Transmission Organization (RTO) that covers the entire Western Interconnect.

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 30, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00274 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–480–002]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

November 7, 2003.

Take notice that on October 30, 2003, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets with an effective date of November 19, 2003:

Substitute Third Revised Sheet No. 70
Seventh Revised Sheet No. 72

WIC states that these tariff sheets implement the pro forma tariff provisions accepted by the Commission in WIC's gas quality settlement at Docket No. RP03–480–001.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and

Regulations. All such 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. 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 (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 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 eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00288 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–2–000]

Yankee Gas Services Company; Notice of Filing

October 9, 2003.

Take notice that on October 3, 2003, Yankee Gas Services Company (Yankee Gas) filed, pursuant to Section 284.224 of the Commission's Regulations, an application for a blanket certificate of public convenience and necessity authorizing the transportation of natural gas in interstate commerce to the same extent and in the same manner that intrastate pipelines are authorized to engage in such activities pursuant to Subpart C of Part 284 of the Commission Regulations.

Yankee Gas states that a copy of its application has been served on the Connecticut Department of Public Utility Control.

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, N.E., Washington, D.C. 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 on or before the date as indicated below. 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.

Comment Date: October 16, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00256 Filed 11–14–01; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG04–10–000, et al.]

Eurus Combine Hille I, LLC, et al.; Electric Rate and Corporate Filings

November 6, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Eurus Combine Hille I, LLC

[Docket No. EG04–10–000]

Take notice that on October 31, 2003, Eurus Combine Hille I LLC (Applicant) filed with the Federal Energy Regulatory Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to Part 365 of the Commission's regulations. Applicant states that it intends to construct, own and operate a wind generating station with a nominal aggregate generating capacity of up to 41 MW in the County of Umatilla, Oregon.

Comment Date: November 21, 2003.

2. Tucson Electric Power Company

[Docket No. ER98–1150–002]

Take notice that on October 31, 2003, Tucson Electric Power Company tendered for filing a triennial market power analysis in compliance with the Commission's Order in Docket No. ER98–1150–000, Tucson Electric Power Co., 82 FERC ¶ 61,141 (1998).

Comment Date: November 21, 2003.

3. New England Power Pool ISO New England Inc.

[Docket No. ER02–2330–019]

Take notice that on October 30, 2003, New England Power Pool, ISO New England Inc. and the New England Conference of Public Utilities Commissioners (collectively, the Joint Movants), tendered for filing a Joint Request With Respect to Nodal Pricing in New England.

The Joint Movants state that copies of the filing have been served on each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: November 20, 2003.

4. Superior Electric Power Corporation

[Docket No. ER03–1289–001]

Take notice that on October 31, 2003, Superior Electric Power Corporation (SEPC) tendered for filing its revised tariff sheet canceling FERC Electric Tariff, Original Volume No. 1, Original Sheet No. 1, supplementing its filing of September 4, 2003 in Docket No. ER03–1289–000.

Comment Date: November 21, 2003.

5. Utility Management Corporation

[Docket No. ER04–30–001]

Take notice that on October 29, 2003, Utility Management Corporation (Utility Management) tendered for filing an amendment to the Notice of Cancellation of its Market-Based Rate Schedule, filed in Docket No. ER04–30–000.

Comment Date: November 19, 2003.

6. Pacific Gas and Electric Company

[Docket No. ER04–109–000]

Take notice that on October 31, 2003, Pacific Gas and Electric Company (PG&E tendered for filing proposed changes to rates and terms in its Transmission Owner (TO) Tariff, along with cost support for PG&E specific rates associated with the Tariff. PG&E requests that its filing be made effective as of January 1, 2004. PG&E states that this filing proposes changes to its transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff.

PG&E states that copies of this filing have been served upon the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: November 21, 2003.

7. New England Power Pool

[Docket No. ER04–110–000]

Take notice that on October 31, 2003, the New England Power Pool (NEPOOL) Participants tendered for filing proposed changes to Restated NEPOOL Agreement, NEPOOL Open Access Transmission Tariff and NEPOOL Market Rule 1 (the Ninety-Ninth Agreement). NEPOOL states that the changes proposed by the Ninety-Ninth Agreement are intended to address various issues raised by the potential participation by End Users in the NEPOOL Market. NEPOOL requests that the Ninety-Ninth Agreement become effective upon the later of (1) January 1, 2004 or (2) the date that a ruling by the Commission that end user participation in the NEPOOL Market will not jeopardize the exempt wholesale generator status of any Participant becomes final and non-appealable.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: November 21, 2003.

8. California Power Exchange Corporation

[Docket No. ER04–111–000]

Take notice that on October 31, 2003, the California Power Exchange Corporation (CalPX) tendered for filing its Rate Schedule for the period January 1, 2004 through June 30, 2004. CalPX states that it files this Rate Schedule pursuant to the Commission's Orders of August 8, 2002 (100 FERC ¶ 61,178) in Docket No. ER02–2234–000, and April 1, 2003 (103 FERC ¶ 61,001) issued in Docket Nos. EC03–20–000 and 001, which require CalPX to make a new rate filing every six months to recover current expenses. CalPX states that the Rate Schedule covers expenses projected for the period January 1, 2004 through June 30, 2004, and CalPX requests an effective date of January 1, 2004.

CalPX states that it has served copies of the filing on its participants, on the California ISO, and on the California Public Utilities Commission.

Comment Date: November 21, 2003.

9. KeySpan Generation LLC

[Docket No. ER04–112–000]

Take notice that on October 31, 2003, KeySpan Generation LLC (KeySpan Generation), submitted a rate filing for changes in rate schedules, pursuant to 18 CFR 35.13, between KeySpan Generation and the Long Island Power Authority (LIPA) under the Power Supply Agreement (PSA). KeySpan Generation states that the PSA between KeySpan Generation and LIPA is for a term of fifteen years and that KeySpan Generation and LIPA are entering the seventh Contract Year, commencing January 1, 2004. KeySpan Generation states, as required by Appendix A of the PSA, this filing supports the calculation of the revenue requirement for services that KeySpan Generation will provide to LIPA for the seventh Contract Year. In this filing, KeySpan Generation states it is proposing rates, terms and conditions for its sale and delivery of electric capacity, energy and ancillary services to LIPA under the PSA, which will be in effect in the seventh through twelfth Contract Years. KeySpan Generation requests an effective date of January 1, 2004.

KeySpan states that copies of the filing were served upon LIPA and the New York State Public Service Commission.

Comment Date: November 21, 2003.

10. New England Power Pool

[Docket No. ER04–113–000]

Take notice that on October 31, 2003, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to permit NEPOOL to expand its membership to include D. E. Shaw Plasma Power, L.L.C. (Plasma Power), and to terminate the membership of Northeast Generation Services (NGS). The Participants Committee requests a November 1, 2003 effective date for the termination of NGS and a January 1, 2004 effective date for the commencement of participation in NEPOOL by Plasma Power.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: November 21, 2003.

11. ISO New England Inc.

[Docket No. ER04–114–000]

Take notice that on October 31, 2003, ISO New England Inc. (the ISO) tendered for filing under Section 205 of the Federal Power Act changes to its Capital Funding tariff. The ISO requests that the changes to the Capital Funding Tariff be allowed to go into effect on January 1, 2004.

ISO states that copies of the transmittal letter were served upon each non-Participant entity that is a customer under the NEPOOL Open Access Transmission Tariff, as well as on the governors and utility regulatory agencies of the six New England States, and the New England Conference of Public Utility Commissioners. ISO further states that NEPOOL Participants were also served with the entire filing electronically and the entire filing is posted on the ISO's Web site (*http://www.iso-ne.com*).

Comment Date: November 21, 2003.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00251 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–9–000, et al.]

Exelon Generating Company, LLC, et al.; Electric Rate and Corporate Filings

November 5, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Exelon Generation Company, LLC, AmerGen Energy Company, LLC, British Energy Investment Ltd.

[Docket No. EC04–9–000]

Take notice that on October 30, 2003, Exelon Generation Company, LLC (Exelon Generation), AmerGen Energy Company, LLC (AmerGen), and British Energy Investment Ltd. (BEIL and collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to Section 203 of the Federal Power Act for authorization to transfer indirect ownership of jurisdictional facilities and for expedited action. Applicants state that BEIL will transfer its 50 percent indirect ownership in AmerGen to Exelon Generation. Applicants further state that the transaction will have no adverse effect on competition, rates or regulation. Applicants request privileged treatment of certain material submitted with the filing.

Comment Date: November 20, 2003.

2. FPL Energy New Mexico Wind, LLC and FPL Energy American Wind, LLC

[Docket No. EC04–10–000]

Take notice that on October 30, 2003, pursuant to Section 203 of the Federal Power Act, FPL Energy New Mexico, LLC, and FPL Energy American Wind, LLC, on their own behalf and on behalf of their affected subsidiaries (jointly, the Applicants) filed a joint application for approval of an intracorporate reorganization.

Applicants state that a copy of the application has been served on the public utility commissions in the states where the facilities are located. The Applicants have requested waivers of the Commission's regulations so that the filing may become effective at the earliest possible date, but no later than December 1, 2003.

Comment Date: November 20, 2003.

3. Caledonia Generating, LLC, Cogentrix Energy Power Marketing, Inc., Cogentrix Lawrence County, LLC, Green Country Energy, LLC, Logan Generating Company, L.P., Pittsfield Generating Company, L.P., Quachita Power, LLC, Rathdrum Power, LLC, Southaven Power, LLC, Cogentrix Energy, Inc., GS Power Holdings, LLC

[Docket Nos. EC04–11–000, ER01–1383–003, ER95–1739–020, ER01–1819–002, ER99–2984–003, ER95–1007–016, ER98–4400–005, ER00–2235–002, ER99–3320–001, ER00–710–001, ER99–411–001, ER95–471–001, ER94–306–000, ER95–246–002, and ER00–922–001]

Take notice that on October 30, 2003, Caledonia Generating, LLC (Caledonia), Cogentrix Energy Power Marketing, Inc. (CEPM), Cogentrix Lawrence County, LLC (Cogentrix Lawrence), Green Country Energy, LLC (Green Country), Logan Generating Company, L.P. (Logan), Pittsfield Generating Company, L.P. (Pittsfield), Quachita Power, LLC (Quachita), Rathdrum Power, LLC (Rathdrum), and Southaven Power, LLC (Southaven) (together, Project Companies), Cogentrix Energy, Inc. (Cogentrix), and GS Power Holdings, LLC (GS Power Holdings) (collectively, Applicants) filed with the Federal Energy Regulatory Commission a joint application pursuant to Section 203 of the Federal Power Act and notice of change in status with respect to the transfer of indirect upstream membership interests in Project Companies from Cogentrix to GS Power Holdings.

Comment Date: November 20, 2003.

4. GenWest, LLC

[Docket No. EG04–9–000]

Take notice that on October 30, 2003, GenWest, LLC (GenWest) filed with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

GenWest states that it will develop, own and operate a 590 MW electric generating facility located at Apex, Nevada, and sell electric energy exclusively at wholesale. GenWest's principal business offices are located at 400 North 5th Street, Phoenix, Arizona.

Comment Date: November 20, 2003.

5. Denver City Energy Associates, L.P.

[Docket No. ER97–4084–008]

Take notice that on October 17, 2003, Denver City Energy Associates, L.P. (DCE) submitted for filing its triennial market power analysis in compliance with the Commission's October 17, 1997 Order. DCE also filed with the Commission a notice of change in status in connection with the transfer of equity interests in DCE to EIF Mustangs Holdings I, LLC, a subsidiary of Energy Investors Funds Group.

Comment Date: November 14, 2003.

6. New England Power Pool

[Docket No. ER03–1290–001]

Take notice that on October 30, 2003, the New England Power Pool (NEPOOL) Participants and the New York Independent System Operator, Inc. (NYISO) supplemented their September 3, 2003 filing of an Emergency Energy Transactions Agreement (Agreement) between the NEPOOL Participants and NYISO: (1) to formally designate the Agreement as NEPOOL and NYISO Rate Schedules; and (2) to include the formal Notice of Cancellation of the transaction that the Agreement replaces. NEPOOL states that the supplement makes no substantive change to the original filing and the NEPOOL Participants and NYISO renew their request for a September 4, 2003 effective date for the Agreement.

NEPOOL states that copies of the filing were sent to same entities that received the original filing, which includes the governors and the electric utility regulatory agencies for New York and the six New England states which comprise the NEPOOL Control Area, and the New England Conference of Public Utilities Commissioners, Inc.

Comment Date: November 20, 2003.

7. Ameren Services Company

[Docket No. ER04–99–000]

Take notice that on October 30, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement between Ameren Services and Ameren Energy Marketing Company (Service Agreement No. 583). Ameren Services states that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Ameren Energy Marketing Company pursuant to Ameren's Open Access Tariff.

Comment Date: November 20, 2003.

8. Ameren Services Company

[Docket No. ER04–100–000]

Take notice that on October 30, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service and an unexecuted Network Operating Agreement between Ameren Services and Ameren Energy Marketing Company (Service Agreement No. 582). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to Ameren Energy Marketing Company pursuant to Ameren's Open Access Tariff.

Comment Date: November 20, 2003.

9. Ameren Services Company

[Docket No. ER04–101–000]

Take notice that on October 30, 2003, Ameren Services Company (ASC) tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service between ASC and Ameren Energy. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission services to Ameren Energy pursuant to

Ameren's Open Access Transmission Tariff.

Comment Date: November 20, 2003.

10. Portland General Electric Company

[Docket No. ER04–103–000]

Take notice that on October 30, 2003, Portland General Electric Company (PGE) tendered for filing Amendatory Agreement No. 1 to the 1997 Pacific Northwest Coordination Agreement (1997 PNCA).

PGE also states that a copy of the filing was served upon the parties to the 1997 PNCA.

Comment Date: November 20, 2003.

11. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER04–106–000]

Take notice that on October 30, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Attachment P (List of Grandfathered Agreements) of the Midwest ISO Open Access Transmission Tariff (OATT), FERC Electric Tariff, Second Revised Volume No. 1 in order to reflect: (1) The addition or deletion of certain grandfathered agreements; (2) updated termination provisions of certain grandfathered agreements; (3) corrected Rate Schedules of certain grandfathered agreements; and (4) clean-up, in general, of its Attachment P. The Midwest ISO requests an effective date of October 31, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. Midwest ISO states it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filings to FERC'' for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: November 20, 2003.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00250 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–1398–001, et al.]

South Carolina Electric & Gas Company, et al.; Electric Rate and Corporate Filings

November 7, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. South Carolina Electric & Gas Company

[Docket No. ER03–1398–001]

Take notice that on November 4, 2003, South Carolina Electric & Gas Company (SCE&G) filed with the Federal Energy Regulatory Commission an Answer/Amendment to the protest filed by Columbia Energy LLC (Columbia Energy) in reference to documents filed by SCE&G on September 29, 2003, constituting the agreement between SCE&G and Columbia Energy for the interconnection of the Columbia Energy facilities located at Columbia, SC, with the SCE&G transmission system (the Interconnection Agreement). The Answer included, for the first time, support for the Operations and Maintenance fee (O&M) in the Interconnection Agreement, as well as the justification for treating the interconnection facilities as direct assignment facilities whose costs are the responsibility of Columbia Energy.

Comment Date: November 24, 2003.

2. California Independent System Operator Corporation

[Docket No. ER04–115–000]

Take notice that on October 31, 2003, California Independent System Operator Corporation (ISO) pursuant to Section 205 of the Federal Power Act and Section 35 of the Commission Regulations, submitted for filing revisions of its Grid Management Charge (GMC) rate formula. ISO states that the GMC is the rate through which it recovers administrative and operating costs, including the cost incurred in establishing the ISO prior to the commencement of operations. The ISO requests an effective date of January 1, 2004 for the revised GMC rate.

Comment Date: November 21, 2003.

3. Southern California Edison Company

[Docket No. ER04–122–000]

Take notice, that on October 31, 2003, Southern California Edison Company (SCE) tendered for filing revisions to its Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6, and to certain Existing Transmission Contracts to reflect a change to SCE's Reliability Services Rates.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator Corporation, the California Electricity Oversight Board, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and the wholesale customers that have loads in SCE's historic control area but are not Participating Transmission Owners in the California Independent System Operator.

Comment Date: November 21, 2003.

4. FPL Energy 251 Wind, LLC

[Docket No. ER04–124–000]

Take notice that on October 31, 2003, FPL Energy 251 Wind, LLC (FPLE 251) tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16. FPLE 251 states it is succeeding to rate schedules of ZWHC LLC.

Comment Date: November 21, 2003.

5. Indiana Michigan Power Company

[Docket No. ER04–125–000]

Take notice that on October 31, 2003, Indiana Michigan Power Company

(I&M) tendered for filing with the Commission revised electric service agreements with the following customers: City of Mishawaka, Indiana; Village of Paw Paw, Michigan; Town of Avilla, Indiana; City of Bluffton, Indiana; City of Garrett, Indiana; City of Gas City, Indiana; Town of New Carlisle, Indiana; City of Niles, Michigan; Town of Warren, Indiana; and City of South Haven, Michigan. I&M states that the revised agreements, which are designated as Third Revised Service Agreement Nos. 2, 3 and 14 through 21, respectively, extend the term of the current service agreements for an additional two years, through December 31, 2005, and make certain other agreed upon revisions.

I&M requests an effective date of January 1, 2004, for the revised service agreements. I&M further states that a copy of its filing was served upon counsel for the ten (10) customers, the Indiana Utility Regulatory Commission and the Michigan Public Service Commission.

Comment Date: November 21, 2003.

6. FPL Energy Cabazon Wind, LLC

[Docket No. ER04–126–000]

Take notice that on October 31, 2003, FPL Energy Cabazon Wind, LLC (FPLE Cabazon) tendered for filing a Notice of Succession pursuant to Section 35.16 of the Commission's regulations, 18 CFR 35.16. FPLE Cabazon is succeeding to rate schedules of Cabazon Power Partners LLC.

Comment Date: November 21, 2003.

7. FPL Energy Green Power Wind, LLC

[Docket No. ER04–127–000]

Take notice that on October 31, 2003, FPL Energy Green Power Wind, LLC tendered for filing an application for authorization to sell energy and capacity at market-based rates pursuant to section 205 of the Federal Power Act.

Comment Date: November 21, 2003.

8. Illinois Power Company

[Docket No. ER04–128–000]

Take notice that on October 31, 2003, Illinois Power Company (Illinois Power) tendered for filing First Revised Interconnection and Operating Agreement entered into by Illinois Power and Corn Belt Energy Generation Cooperative (Service Agreement No. 335). Illinois Power requests an effective date of October 3, 2003.

Comment Date: November 21, 2003.

9. American Electric Power Service Corporation

[Docket No. ER04–129–000]

Take notice that on October 31, 2003, American Electric Power Service Corporation (AEPSC) as agent for Public Service Company of Oklahoma (PSO) tendered for filing pursuant to Section 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of a Contract for Electric Service between PSO and The City of Collinsville, Oklahoma (Collinsville) under PSO FERC Rate Schedule No. 237 (Power Agreement). AEPSC requests that this Power Agreement be terminated because Collinsville cancelled the contract and electric service was discontinued on September 29, 2003. The Power Agreement was accepted for filing by the Commission in Docket ER93–435–000. AEPSC requests an effective date of October 1, 2003 for the cancellation.

AEPSC states that it has served copies of the filing upon the party listed in Exhibit 1 and the affected state regulatory commissions.

Comment Date: November 21, 2003.

10. Public Service Company of New Hampshire

[Docket No. ER04–130–000]

Take notice that on October 31, 2003, Public Service Company of New Hampshire (PSNH), tendered for filing a new Interconnection and Delivery Service Agreement with the Town of Wolfeboro (Wolfeboro), pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's regulations on rate schedule modifications. In addition, PSNH states that it submitted a Notice of Cancellation of PSNH's FERC Electric Rate Schedule No. 135 for the sale of partial requirements power service and delivery service to Wolfeboro, which terminates by its own terms on October 31, 2003.

PSNH states that copies of this filing were served upon Wolfeboro, the Office of the Attorney General for the State of New Hampshire, the Executive Director and Secretary of the New Hampshire Public Utilities Commission and the State of New Hampshire Office of Consumer Advocate. PSNH requests an effective date for the Interconnection and Delivery Service Agreement of November 1, 2003, and an effective date for the cancellation of FERC Rate Schedule No. 135 of October 31, 2003.

Comment Date: November 21, 2003.

11. New York State Electric & Gas Corporation

[Docket No. ER04–131–000]

Take notice that on October 31, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing an amendment to its Rate Schedule No. 229 providing for the termination of service to certain delivery points effective as of the end of October 31, 2003. NYSEG requests a waiver of the Commission's notice requirements and that the amendment be made effective as of November 1, 2003.

NYSEG states that copies of the amendment have been served on the New York State Public Service Commission and the New York Power Authority and its affected customers.

Comment Date: November 21, 2003.

12. Wolverine Power Supply Cooperative, Inc.

[Docket No. ER04–132–000]

Take notice that on October 31, 2003, Wolverine Power Supply Cooperative, Inc. (Wolverine) tendered for filing proposed changes in its First Revised Rate Schedule FERC No. 4. Wolverine states that the proposed changes amend First Revised Rate Schedule FERC No. 4 by revising, deleting or adding specific rates and provisions respecting Wolverine's wholesale sales of power and energy to Wolverine's distribution cooperative members.

Wolverine states that copies of this filing were served on the public utility's customers, and the Michigan Public Service Commission.

Comment Date: November 21, 2003.

13. Duke Energy Oakland, LLC

[Docket No. ER04–133–000]

Take notice that on October 31, 2003, Duke Energy Oakland, LLC (DEO) pursuant to 16 U.S.C. § 824d, and 18 CFR 35.13, tendered for filing certain revisions to Rate Schedules A and B of DEO's Reliability Must Run (RMR) Agreement with the California Independent System Operator (CAISO) for contract year 2004 and an informational filing.

DEO requests an effective date of January 1, 2004 for these revisions. DEO states that copies of the filing have been served upon the CAISO, Pacific Gas & Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 21, 2003.

14. Duke Energy South Bay, LLC

[Docket No. ER04–134–000]

Take notice that on October 31, 2003, Duke Energy South Bay, LLC (DESB), pursuant to 16 U.S.C. § 824d, and 18 CFR 35.13, tendered for filing certain revisions to Rate Schedules A and B of DESB's Reliability Must Run Agreement with the California Independent System Operator (CAISO) for contract year 2004 and an informational filing.

DESB requests an effective date of January 1, 2004 for these revisions.

DESB states that copies of the filing have been served upon the CAISO, San Diego Gas & Electric Company, the Public Utilities Commission of the State of California, and the Electricity Oversight Board of the State of California.

Comment Date: November 21, 2003.

15. Eurus Combine Hills I LLC

[Docket No. ER04–135–000]

Take notice that on October 31, 2003, Eurus Combine Hills I LLC (Eurus Combine) applied to the Commission for acceptance of Eurus Combine's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission regulations.

Comment Date: November 21, 2003.

16. PJM Interconnection, L.L.C.

[Docket No. ER04–136–000]

Take notice that on October 31, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing a notice of cancellation for an interconnection service agreement (ISA) between PJM and Conectiv Delmarva Generation, Inc. that has terminated.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: November 21, 2003.

17. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–137–000]

Take notice that on October 31, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to First Revised Service Agreement No. 5 under Deseret's FERC Electric Tariff, Original Volume No. 1 (Original Sheets Nos. 150A through 150H). The filing consists of an Amendment to the Agreement for Large Industrial Rate between Deseret and one of its members, Moon Lake Electric Association Inc. (Moon Lake), for the benefit of Moon Lake's industrial customer, QEP.

Deseret states that copies of this filing have been served upon Deseret's members cooperatives.

Comment Date: November 21, 2003.

18. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–138–000]

Take notice that on October 31, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing an amendment to First Revised Service Agreement No. 5 under Deseret's FERC Electric Tariff, Original Volume No. 1 (Original Sheets Nos. 279 through 296). The filing consists of an Amendment to the Agreement for Large Industrial Rate between Deseret and one of its members, Moon Lake Electric Association, Inc. (Moon Lake) for the benefit of Moon Lake's industrial customer, QEP. Deseret requests an effective date of November 1, 2003.

Deseret states that copies of this filing have been served upon Deseret's member cooperatives.

Comment Date: November 21, 2003.

19. Michigan Electric Transmission Company, LLC

[Docket No. ER04–139–000]

Take notice that on October 31, 2003, Michigan Electric Transmission Company, LLC (METC) submitted proposed amendments to the following agreements: (1) Project I Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan South Central Power Agency, dated November 20, 1980; (2) Campbell Unit No. 3 Transmission Ownership and Operating Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc., dated August 15, 1980; (3) Campbell Unit No. 3 Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan Public Power Agency, dated October 1, 1979; (4) Belle River Transmission Ownership and Operating Agreement Between Consumers Power Company and Michigan Public Power Agency, dated December 1, 1982; and (5) Wolverine Transmission Ownership and Operating Agreement Between Consumers Power Company and Wolverine Power Supply Cooperative, Inc., dated July 27, 1992 (collectively, the Customers and the Operating Agreements.). The proposed amendments are intended to allow for the reimbursement to METC for certain Midwest Independent Transmission System Operator, Inc. costs and annual charges associated with the load of the Customers. METC requests an effective date of November 1, 2003 for the proposed amendments.

Comment Date: November 21, 2003.

20. Pacific Gas and Electric Company

[Docket No. ER04–141–000]

Take notice that on October 31, 2003, Pacific Gas and Electric Company (PG&E) submitted rate schedule sheet revisions, to become effective January 1, 2004, to its Reliability Must-Run Service Agreement with the California Independent System operator Corporation (ISO) for Humboldt Bay Power Plant (PG&E First Revised Rate Schedule FERC No. 208). PG&E states that this filing revises portions of the rate schedule and adjusts the applicable rates.

PG&E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board and the California Public Utility Commission.

Comment Date: November 21, 2003.

21. Pacific Gas and Electric Company

[Docket No. ER04–142–000]

Take notice that on October 31, 2003, Pacific Gas and Electric Company (PG&E) made an informational filing under its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (ISO) for Helms Power Plant (PG&E First Revised Rate Schedule FERC No. 207), Humboldt Bay Power Plant (PG&E First Revised Rate Schedule FERC No. 208), Hunters Point Power Plant (PG&E First Revised Rate Schedule FERC No. 209), San Joaquin Power Plant (PG&E First Revised Rate Schedule FERC No. 211), and Kings River Watershed (PG&E Rate Schedule FERC No. 226).

PG&E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: November 21, 2003.

22. Pacific Gas and Electric Company

[Docket No. ER04–143–000]

Take notice that on October 31, 2003, Pacific Gas and Electric Company (PG&E) submitted an annual rate update filing, including rate schedule sheet revisions, to become effective January 1, 2004, to its Reliability Must-Run Service Agreements with the California Independent System Operator Corporation (ISO) for Helms Power Plant (PG&E First Revised Rate Schedule FERC No. 207), Humboldt Bay Power Plant (PG&E First Revised Rate Schedule FERC No. 208), Hunters Point Power Plant (PG&E First Revised Rate Schedule FERC No. 209), San Joaquin Power Plant (PG&E First Revised Rate Schedule FERC No. 211) and Kings River Power Plant (PG&E Rate Schedule FERC No. 226). This filing revises portions of these rate schedules and adjusts the applicable rates as required under the RMR Agreements.

PG& E states that copies of this filing have been served upon the ISO, the California Electricity Oversight Board, and the California Public Utilities Commission.

Comment Date: November 21, 2003.

23. New York Independent System Operator, Inc.

[Docket No. ER04–144–000]

Take notice that on October 31, 2003, the New York System Operator, Inc. (NYISO) tendered for filing proposed revisions to its Market Administration and Control Area Services Tariff (Services Tariff) designed to extend the current methodology and rate used to calculate payments for Voltage Support Service through the end of calendar year 2004. The NYISO has requested that the Commission make the filing effective on January 1, 2004.

The NYISO states it has served a copy of this filing on all persons that have executed Service Agreements under the NYISO Services Tariff or the NYISO Open Access Transmission Tariff, on the New York Public Service Commission, and on the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: November 21, 2003.

24. Power-Link Systems, Ltd. d/b/a First Choice Energy

[Docket No. ER04–145–000]

Take notice that on October 31, 2003, Power-Link Systems, Ltd., d/b/a/ First Choice Energy (First Choice) tendered for filing a Notice of Cancellation of its market-based rate tariff effective October 31, 2003. First Choice states that it is no longer conducting business.

Comment Date: November 21, 2003.

Standard Paragraph

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 ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00273 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–1273–009]

Center Creek; Notice of the Draft Environmental Assessment as a Basis for Any Order Issued on the License Application

October 9, 2003.

Take notice that the draft environmental assessment issued on August 26, 2003, for Center Creek Hydroelectric Project FERC No. 1273–009 will serve as the final National Environmental Policy Act (NEPA) document and a basis for any license order on the application.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Energy Projects has reviewed the application for license for the Center Creek Hydroelectric Project located on Center Creek, in Iron County, Utah, and prepared a draft Environmental Assessment (EA) for the project. The project occupies 21.43 acres of United States lands administered by the Bureau of Land Management.

The draft EA issued on August 26, 2003, contains Commission staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

We received one comment from the U.S. Fish and Wildlife Service in support of our recommendation in the draft EA. Therefore the draft EA will serve as our final NEPA document and as a basis for any order issued on the license application.

For further information, contact Gaylord Hoisington at (202) 502–6032 or *gaylord.hoisington@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00259 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Meeting on the Draft Environmental Impact Statement for the Freeport LNG Project

November 7, 2003.

On December 9, 2003, the staff of the Federal Energy Regulatory Commission (Commission) will conduct a public meeting to receive comments on the draft environmental impact statement (DEIS) for the Freeport LNG Project.

The meeting will be held at the Lake Jackson Civic Center, which is located at 333 Highway 332 East in Lake Jackson, Texas. The meeting will start at 7 p.m.

The Executive Summary of the DEIS, which was unintentionally omitted from the recently issued DEIS, is being mailed to everyone on the environmental mailing list and the service list for this project.

For additional information, please contact the Commission's Office of External Affairs at 1–866–208–FERC.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00243 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–056]

Georgia Power Company; Notice of Availability of Environmental Assessment

October 9, 2003.

In accordance with the National Environmental Policy Act of 1969 and

the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects' staff has prepared an Environmental Assessment (EA) for an application requesting Commission approval to permit Georgia Power Company (licensee) to construct a non-project electric transmission line that will cross a portion of the lands and waters of the Wallace Dam Project. The Wallace Dam Project is located on the Oconee and Altahama Rivers in Putnam, Morgan, Oglethorpe, Greene and Hancock Counties, Georgia.

The EA contains the staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the proposal would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room, or it 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 (866) 208–3676 or contact *FERCOnLineSupport@ferc.gov*. For TTY, contact (202) 502–8659.

For further information, contact Rebecca Martin at 202–502–6012.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00261 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 178–017.

c. *Date filed:* April 14, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Kern Canyon Hydroelectric Project.

f. *Location:* On the Kern River, near the Town of Bakersfield, Kern County, California. The project occupies approximately 11.26 acres of public land located within the Sequoia National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)—825(r).

h. *Applicant Contact:* Mr. Randal S. Livingston, Pacific Gas and Electric Company, Power Generation, Mail Code N11E, P.O. Box 770000, San Francisco, CA 94177 (415) 973–7000.

i. *FERC Contact:* Allison Arnold, (202) 502–6346 or *allison.arnold@ferc.gov*.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The Kern Canyon Hydroelectric Project consists of: (1) An existing 150-foot-long and 23-foot-high dam; (2) an existing 3-acre reservoir having a usable capacity of 27-acre-feet; (3) a 1.58-mile-long horseshoe shaped tunnel; (4) a 520-foot-long steel penstock varying in diameter from 96 inches to 90 inches; (5) a powerhouse containing one generating unit with an installed capacity of 9,540 kilowatts; (6) existing transmission facilities; and (7) appurtenant facilities. The project is estimated to generate an average of 67.6 gigawatthours annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

The Commission directs, pursuant to § 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in

accordance with 18 CFR 4.34(b), and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00244 Filed 11–14–03; 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 and Protest

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2114–116.

c. *Date Filed:* October 29, 2003.

d. *Applicant:* Public Utility District No. 2 of Grant County, WA.

e. *Name of Project:* Priest Rapids Hydroelectric Project.

f. *Location:* On the Columbia River in portions of Grant, Yakima, Kittitas, Douglas, Benton, and Chelan counties, Washington. The project occupies federal lands managed by the U.S. Bureau of Land Management, U.S. Bureau of Reclamation, U.S. Department of Energy, U.S. Department of the Army, and U.S. Fish and Wildlife Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ms. Laurel Heacock, Licensing Manager, Public Utility District No. 2 of Grant County, 30 C Street S.W., Ephrata, Washington 98823, telephone (509) 754–6622.

i. *FERC Contact:* Charles Hall, telephone (202) 502–6853, e-mail *Charles.Hall@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The project includes two developments with a total authorized capacity of 1,755 megawatts (MW) as follows:

(a) The Wanapum development consisting of a dam 186.5 feet high and 8,637 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 14,680 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 900 MW, transmission lines, and appurtenant facilities.

(b) The Priest Rapids development consisting of a dam 179.5 feet high and 10,103 feet long with upstream fish passage facilities, a reservoir with an approximate surface area of 7,725 acres, a powerhouse with ten turbine-generator units with a total nameplate capacity of 855 MW, transmission lines, and appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00245 Filed 11–14–03; 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 and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2601–007.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Bryson Hydroelectric Project.

f. *Location:* The Bryson Project is located on the Oconaluftee River in Swain County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power. 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents

with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Bryson Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Oconaluftee River. The project consists of the following features: (1) A 341-foot-long, 36-foot-high concrete multiple arch dam, consisting of, from left to right facing downstream, (a) a concrete, non-overflow section, (b) two gravity spillway sections, each surmounted by a 16.5-foot-wide by 16-foot-high Tainter gate, and (c) an uncontrolled multiple-arch spillway with four bays; (2) a 1.5-mile-long, 38-acre impoundment at elevation 1828.41 mean sea level (msl); (3) two intake bays, each consisting of an 8.5-foot-diameter steel intake pipe with a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse having a brick and concrete superstructure and concrete substructure, containing two turbine/generating units, having a total installed capacity of 980 kilowatts (kW); (5) a switchyard, with three single-phased transformers; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5,534,230 kilowatt hours (kWh). Duke Power uses the Bryson Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00246 Filed 11–14–03;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 and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2602–005.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Dillsboro Hydroelectric Project.

f. *Location:* The Dillsboro Project is located on the Tuckasegee River in Jackson County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power. 526 South Church Street, P.O. Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Dillsboro Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Tuckasegee River, which is dependent on Duke Power's East Fork (FERC No. 2698) and West Fork (FERC No. 2686) Tuckasegee River projects. The Dillsboro Project consists of the following features: (1) A 310-foot-long, 12-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) a concrete, non-overflow section, (b) a 14-foot-long uncontrolled spillway section, (c) a 20-foot-long spillway section with two 6-foot-wide spill gates, (d) a 197-foot-long uncontrolled spillway section, (e)

an 80-foot-long intake section, and (f) a concrete, non-overflow section; (2) a 0.8-mile-long, 15-acre impoundment at elevation 1972.00 msl; (3) two intake bays, each consisting of a reinforced concrete flume and grated trashracks having a clear bar spacing varying from 2.0 to 3.38 inches; (4) a powerhouse having a reinforced concrete substructure and a wood/steel superstructure, containing two turbine/generating units, having a total installed capacity of 225 kW; (5) a switchyard, with three single-phased transformers; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 912, 330 Kwh. Duke Power uses the Dillsboro Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00247 Filed 11–14–03; 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 and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 2603–012.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Franklin Hydroelectric Project.

f. *Location:* The Franklin Project is located on the Little Tennessee River in Macon County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power. 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Franklin Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Little Tennessee River. The Franklin Project consists of the following features: (1) A 462.5-foot-long, 35.5-foot-high concrete masonry dam, consisting of, from left to right facing downstream, (a) a 15-foot-long non-overflow section, (b) a 54-foot-long ungated Ogee spillway, (c) a 181.5-foot-long gated spillway section, having six gated, ogee spillway bays, (d) a 54-foot-long ungated Ogee spillway, (e) a 25-foot-long non-overflow section, and (f) a 70-foot-long non-overflow section; (2) a 4.6-mile-long, 174-acre impoundment at elevation 2000.22 msl; (3) three intake bays, each consisting of a flume and grated trashracks having a clear bar spacing of 3 inches; (4) a powerhouse having a reinforced concrete substructure and a brick superstructure, containing two turbine/generating units, having a total installed capacity of 1.040 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 5.313.065 kWh. Duke Power uses the Franklin Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances

related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00248 Filed 11–14–03; 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 Soliciting Comments, Motions To Intervene, and Protests

October 9, 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.

b. *Project No:* 2067–021.

c. *Date Filed:* July 30, 2003.

d. *Applicant:* Oakdale & San Joaquin Irrigation Districts.

e. *Name of Project:* Tulloch.

f. *Location:* The project is located on the Stanislaus River, in Tuolumne and Calavaras Counties, California. This proposal will not affect any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Steve Felte, General Manager, Tri-Dam Project, P.O. Box 1158, Pinecrest, California 95364, (209) 965–3996.

i. *FERC Contact:* Any questions on this notice should be addressed to Mrs. Jean Potvin at (202) 502–8928, or e-mail address: *jean.potvin@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–2067–021) 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 at *http://www.ferc.gov* under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of Request:* The licensee proposes to permit the following within the project boundary: (1) A 3,000 square foot dock to be used for boat and jet ski rentals and boat lift slips; (2) the addition of a bumper boat rental and corral style dock for recreation at the water surface; (3) reconfiguration and modernization of the existing fueling dock; (4) the addition of a new graded access area for fishermen with a picnic facility (constructed) and (5) the addition of a breakwater to be located around the boat rental and refueling area. The following upgrades are being purposed above the 515-foot elevation outside of the project boundary: (1) The addition of five new rental cabins (constructed); (2) the addition of one new cabana (constructed); (3) the addition of nine new campsites and the connector driveway to each, in a blue oak woodland between Tulloch Dam Road and cabins #1–5, south of the marshy wetland.

l. *Location of the Application:* This filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 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, 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 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.

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. E3–00260 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, and Soliciting Additional Study Requests, and Establishing Procedural Schedule for Licensing and a Deadline for Submission of Final Amendments

October 20, 2003.

Take notice that the following hydroelectric application has been filed

with the Commission and is available for public inspection.

a. *Type of Application:* Minor license (subsequent).

b. *Project No.:* 620–009.

c. *Date filed:* October 3, 2003.

d. *Applicant:* NorQuest Seafoods, Inc.

e. *Name of Project:* Chignik Hydroelectric Project.

f. *Location:* The project is located along Indian Creek, in Lake and Peninsula Borough counties, near the town of Chignik, Alaska. The project occupies 58 acres of Federal land managed by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Ron Soule, NorQuest Seafoods, Inc., 5245 Shilshole Avenue NW., Seattle, Washington, 98107–4833, (206) 281–7022. Daniel Hertrich, Polarconsult Alaska, Inc., 1503 W 33rd Avenue # 310, Anchorage, Alaska, 99503, (907) 258–2420.

i. *FERC Contact:* John Mudre, (202) 502–8902 or *john.mudre@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than December 3, 2003, and serve a copy of the request on the applicant.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

l. This application is not ready for environmental analysis at this time.

m. The existing project consists of a 16.5-foot-high timber dam at the outlet of Upper Lake (a.k.a. Indian Lake), creating a reservoir with a surface area of approximately 20.4 acres at the maximum reservoir elevation of 431 feet (local datum), a channel spillway, a 7,700-foot-long, 8-inch-diameter wood-stave and steel pipeline, a 60-kilowatt generating unit inside the applicant's fish cannery, the generator leads, and appurtenant facilities. No new facilities or changes in operation are proposed.

n. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are initiating consultation with the *Alaska State Historic Preservation Officer (SHPO),* as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

p. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Scoping: October 2003.

Issue Acceptance or Deficiency Letter: November 2003.

Notice that application is ready for environmental analysis: April 2004.

Notice of the availability of the EA: November 2004.

Ready for Commission decision on the application: January 2005.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00279 Filed 11–14–03; 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 and Protests

November 7, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2619–012.

c. *Date filed:* July 22, 2003.

d. *Applicant:* Duke Power.

e. *Name of Project:* Mission Hydroelectric Project.

f. *Location:* The Mission Project is located on the Hiwassee River in Clay County, North Carolina. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jeffrey G. Lineberger; Manager, Hydro Licensing. Duke Power, 526 South Church Street, PO Box 1006, Charlotte, NC 28201–1006.

i. *FERC Contacts:* Lee Emery at (202) 502–8379 or *lee.emery@ferc.gov*; and Carolyn Holsopple at (202) 502–6407 or *carolyn.holsopple@ferc.gov*.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The existing Mission Hydroelectric Project operates in a run-of-river mode, within a 6-inch tolerance band. Project operation is dependent on available flow in the Hiwassee River, which is regulated by TVA's Chatuge dam located approximately 15 miles upstream. The Mission Project consists of the following features: (1) A 397-foot-long, 50-foot-high concrete gravity dam, consisting of, from left to right facing downstream, (a) three bulkhead sections, (b) seven ogee spillway sections, surmounted by 14-foot-high by 16-foot-wide gates, (c) four bulkhead sections, (d) a powerhouse intake structure, and (e) four bulkhead sections; (2) a 47-acre impoundment at elevation 1658.17 msl; (3) three intake bays, each consisting of an 8-foot-diameter steel-cased penstock and a grated trashrack having a clear bar spacing of between 2.25 to 2.5 inches; (4) a powerhouse consisting of a reinforced concrete substructure and a brick superstructure, containing three turbine/generating units, having a total installed capacity of 1,800 kW; (5) a switchyard, with a single three-phase transformer; and (6) appurtenant facilities.

Duke Power estimates that the average annual generation is 8,134,370 kWh. Duke Power uses the Mission Project facilities to generate electricity for use by retail customers living in the Duke Power-Nantahala Area.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00282 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–022—WA]

Public Utility District No.1 of Chelan County; Notice of Meeting To Discuss Settlement Agreement for the Licensing of the Lake Chelan Project

October 20, 2003.

On November 6, 2003, staff from the Public Utility District No. 1 of Chelan County will meet with Commission staff to discuss the settlement agreement for the licensing of the Lake Chelan Hydroelectric Project, located on the Chelan River near the City of Chelan, Washington. The meeting will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC, on November 6, 2003, from 9 a.m. to 12 p.m. in Hearing Room 3. All interested individuals, organizations, and agencies are invited to attend, and should contact David Turner at 202–502–6091 by November 3, 2003 if they plan to attend. This meeting is posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

If you have further questions, please contact David Turner, at 202–502–6091.

Linda Mitry,

Acting Secretary.

[FR Doc. E3–00280 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–6–000]

Natural Gas Markets Conference; Agenda for the Conference

October 9, 2003.

1. As announced in the Notice of Conference issued September 23, 2003, and clarified in the Supplemental Notice issued October 3, 2003, the Federal Energy Regulatory Commission (FERC) will convene a public conference on October 14, 2003 at 9:00 a.m. in the Commission Meeting Room.

2. The purpose of this conference is to discuss the findings and recommendations contained in the National Petroleum Council's (NPC) report, Balancing Natural Gas Policy—Fueling the Demands of a Growing Economy,[1] and to explore any other issues the Commission should consider in shaping its future regulatory policies concerning the natural gas industry. Issues contained in contested cases pending before the Commission will not be discussed. Attached is the Agenda for the conference.

3. All interested persons are invited to attend. No registration is required for attendance. All visitors must check-in at the 888 First Street NE., entrance and have picture identification readily available to ensure quick admittance to the building.

Magalie R. Salas,

Secretary.

Attachment: The Agenda

Opening Remarks—9–9:10 a.m.

Pat Wood, III, Chairman, FERC

Introduction of NPC Report—9:10–9:30 a.m.

Richard D. Kinder, Vice Chair,

[1]The NPC Report's summary of findings and recommendations was released by the NPC on September 25, 2003, and is available on the NPC Web site at *http://www.npc.org*. The entire integrated report is scheduled to be released by the NPC on or about the day of the conference on its web site. Printed copies of the integrated report will not be distributed at the conference.

Midstream, NPC
Jerry Langdon, Chair, Coordinating Subcommittee, NPC
Panel 1—Outlook for Gas Supply—9:30–11 a.m.
Mark A. Sikkel, Chair, Supply Task Group, NPC
William N. Strawbridge, Assistant to Supply Chair
Gerry A. Worthington, Leader, Resource Subgroup
John Hritcko, Jr. Leader, LNG Subgroup
Panel 2—Outlook for Gas Demand—11 a.m.–12:30 p.m.
David J. Manning, Chair, Demand Task Group, NPC
Harlan Chappelle, Assistant to Demand Chair
Keith Barnett, Leader, Power Generation Subgroup
Dena E. Wiggins, Leader, Industrial Utilization Subgroup
Discussion of NPC Presentations—12:30–1 p.m.
Lunch—1–1:45 p.m.
Panel 3—Outlook for Infrastructure 1:45–3:15 p.m.
Scott E. Parker, Chair, Transmission & Distribution Task Group, NPC
Ronald L. Brown, Assistant to T & D Chair
Mark T. Maassel, Leader, Distribution Subgroup
Richard C. Daniel, Storage Subgroup
Patrick A. Johnson, Leader, Transmission Subgroup
Discussion of NPC Presentation—3:15–3:45 p.m.
Open Forum on Non-NPC Issues—4 p.m.–End

[FR Doc. E3–00262 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the Record Communications; Public Notice

November 7, 2003.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are 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 (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.

Exempt:

Docket No.	Date filed	Presenter or requester
1. Project Nos. 2000–000, 2216–000	10–08–03	Hon. Bradley H. Jones, Jr.
2. Project Nos. 2000–000, 2216–000	10–20–03	Hon. Patrick Leahy, Hon. James Jeffords, Hon. Bernard Sanders.
3. Docket Nos. CP02–90–000, CP01–409–000	10–26–03	James Martin/Charles Brown (Meeting Record).
4. Docket No. CP02–396–000	11–4–03	Hon. Robert C. Byrd (Ltr. from Retha Warren).
5. Docket No. CP01–49–000	11–4–03	Howard Knight (Meeting Record).
6. Docket Nos. EL02–28–000, et al.; EL02–60–000, et al.; EL02–80–000, et al.	11–5–03	Hon. Maria Cantwell, Hon Gordon Smith, Hon. Harry Reid, Hon. Ron Wyden, Hon. Barbara Boxer, Hon. Dianne Feinstein.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00283 Filed 11–14–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7587–1]

Regional Haze Regulations; Availability of Guidance Documents

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of guidance availability.

SUMMARY: We are announcing today the availability of guidance to assist States and Tribes in implementing regulations governing regional haze which were published in the **Federal Register** on July 1, 1999. These documents address the establishment of natural visibility conditions and the tracking of progress under the regional haze program.

ADDRESSES: Interested parties can download the *Guidance for Estimating Natural Visibility Conditions Under the Regional Haze Program* and *Guidance for Tracking Progress Under the Regional Haze Program* from EPA's Web site on the Internet under the following

address: *http://www.epa.gov/ttn/amtic/visinfo.html.*

FOR FURTHER INFORMATION CONTACT: Neil Frank, U.S. Environmental Protection Agency (C304–01), Research Triangle Park, NC 27711; e-mail *frank.neil@epa.gov.*

SUPPLEMENTARY INFORMATION: In section 169A of the 1977 Amendments to the Clean Air Act, Congress established a national visibility goal as the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Federal Class I areas which impairment results from manmade air pollution'' (42 U.S.C. 7491). These provisions were further supplemented by section 169B of the Clean Air Act Amendments of 1990 (42 U.S.C. 7492). States are required to develop implementation plans that make ''reasonable progress'' toward this goal.

The EPA issued initial visibility regulations in 1980 [1] that addressed visibility impairment in a specific mandatory Federal Class I area that is determined to be ''reasonably attributable'' to a single source or small group of sources. Regulations to address regional haze were deferred until improved techniques could be developed in monitoring, modeling, and in understanding the effects of specific pollutants on visibility impairment. The EPA issued regional haze regulations in 1999.[2]

The overall framework of the regional haze rule requires States to develop a State Implementation Plan that includes: (1) Reasonable progress goals for improving visibility in each mandatory Federal Class I area and (2) set of emission reduction measures to meet these goals. Specifically, States will set progress goals for each mandatory Federal Class I area to:

- Provide for an improvement in visibility for the 20 percent most impaired (*i.e.*, worst visibility) days over the period of the implementation plan, and
- Ensure no degradation in visibility for the 20 percent least impaired (*i.e.*, best visibility) days over the same period.

Baseline visibility conditions for the 20 percent worst and 20 percent best days are to be determined using monitoring data collected during calendar years 2000–2004. Baseline conditions for 2000–2004, progress goals, and tracking changes over time are to be expressed in terms of the deciview index.[3]

Most States (and Tribes as appropriate [4]) participating in regional planning organizations will submit regional haze implementation plans, including estimates of natural conditions and proposed progress goals in the 2007–2008 time frame. In developing any progress goal, the State will need to analyze and consider in its set of options the rate of improvement between 2004 (when 2000–2004 baseline conditions are set) and 2018 that, if maintained in subsequent implementation periods, would result in achieving estimated natural conditions in 2064.

The purpose of the documents announced in today's notice is to provide guidance to the States and Tribes in implementing the regional haze program and to explain how EPA intends to exercise its discretion in implementing Clean Air Act provisions and EPA regulations concerning the estimation of natural visibility and tracking progress under the Regional Haze program. The guidance documents are designed to implement national policy on these issues. The guidance documents are designed to assist States and Tribes in implementing national policy on these issues. Sections 169A and 169B of the Clean Air Act and implementing regulations at 40 CFR 51.308 and 51.309 contain legally binding requirements. These guidance documents will not substitute for those provisions or regulations, nor will they constitute regulations themselves. Thus, they will not impose binding, enforceable requirements on any party, and may not apply to a particular situation based upon the circumstances. We and State decision makers retain the discretion to adopt approaches on a case-by-case basis that differ from this guidance where appropriate. Any decisions by us regarding a particular SIP demonstration will only be made based on the statute and regulations. Therefore, you are free to raise questions and objections about the appropriateness of the application of this guidance to a particular situation; we will, and States should, consider whether or not the recommendations in this guidance are appropriate in that situation. These guidance documents will be living documents and may be revised periodically without public notice. We welcome public comments on these documents at any time and will consider those comments in any future revision of these guidance documents.

Because these documents are not regulations and do not impose binding requirements, we are not required to solicit public comments on them. However, we chose to do so as a matter of discretion in order to improve the quality and responsiveness of the documents to the needs of the State and Tribal air quality management agencies. A summary of the comments we received and our responses to them will be available at the Web site identified above.

Dated: October 31, 2003.

Henry C. Thomas, Jr.,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–28649 Filed 11–14–03; 8:45 am]

BILLING CODE 6560–50–P

[1] *See* 45 FR 80084 (December 2, 1980).

[2] *See* 64 FR 35713 (July 1, 1999). *See also* 40 CFR 51.300–51.309.

[3] The deciview is a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in visual perception across the entire range of conditions, from pristine to highly impaired. Deciview = 10 $\ln(b_{ext}/10)$.

[4] Under the Tribal Air Rule (63 FR 7254; February 12, 1998; 40 CFR part 49), Tribal governments may elect to implement air programs in much the same way as States, including development of Tribal implementation plans.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7585–9]

Proposed Reissuance of the NPDES General Permit for the Territorial Seas of Texas (TXG260000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed NPDES general permit reissuance.

SUMMARY: The Regional Administrator of EPA Region 6 today proposes to issue the National Pollutant Discharge Elimination System (NPDES) general permit for the Territorial Seas of Texas (No. TXG260000) for discharges from existing and new dischargers and New Sources in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category as authorized by section 402 of the Clean Water Act. The permit will supercede the previous general permit (TX0085651) issued on September 15, 1983 and published in the **Federal Register** at 48 FR 41494. That permit authorized discharges from exploration, development, and production facilities located in and discharging to the territorial seas off Texas. Through this reissuance, EPA proposes to include current technology and water quality based effluent limitations consistent with National Effluent Limitations Guidelines, Federal Ocean Discharge Criteria, and State Water Quality Standards.

DATES: Comments must be received by January 16, 2004.

ADDRESSES: Comments should be sent to: Director, Water Quality Protection Division, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Comments may also be submitted via e-mail to the following address: *smith.diane@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, Region 6, U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202–2733. Telephone: (214) 665–7191.

A complete draft permit and/or a fact sheet more fully explaining the proposal may be obtained from Ms. Smith. In addition, the Agency's current administrative record on the proposal is available for examination at the Region's Dallas offices during normal working hours after providing Ms. Smith 24 hours advance notice. Additionally, a copy of the proposed permit, fact sheet, and this **Federal Register** notice may be obtained on the Internet at *http://www.epa.gov/earth1r6/6wq/6wq.htm*.

SUPPLEMENTARY INFORMATION:

Regulated entities. EPA intends to use the proposed reissued permit to regulate oil and gas extraction facilities located in the territorial seas off Texas. These generally include oil and gas platforms, but other types of facilities such as drill ships may also be subject to the permit. To determine whether your (facility, company, business, organization, *etc.*) may be affected by today's action, you should carefully examine the applicability criteria in Part I, Section A.1 of the draft permit. Questions on the permit's application to specific facilities may also be directed to Ms. Smith at the telephone number or address listed above.

Permit Summary. The permit contains limitations conforming to EPA's Oil and Gas extraction, Offshore Subcategory Effluent Limitations Guidelines at 40 CFR part 435 and additional requirements assuring that regulated discharges will cause no unreasonable degradation of the marine environment, as required by section 403(c) of the Clean Water Act. Limitations and conditions are also included to ensure compliance with State Water Quality Standards. Specific information on the derivation of those limitations and conditions is contained in the fact sheet.

Specifically, the draft permit proposes to prohibit the discharge of drilling fluids, drill cuttings and produced sand. Produced water discharges are limited for oil and grease, 48-hour acute toxicity, and 24-hour acute end-of-pipe toxicity. In addition to limits on oil and grease, the proposed permit includes a prohibition of the discharge of priority pollutants except in trace amounts in well treatment, completion, and workover fluids. A limit of ''No Free Oil'' is proposed for miscellaneous discharges, such as non-contact cooling water and ballast water, and on deck drainage discharges. Discharges of seawater and freshwater which have been used to pressure test existing pipelines and piping, to which treatment chemicals have been added, are also proposed to be authorized. Those seawater and freshwater discharges are proposed to be subject to limitations on free oil, concentration of treatment chemicals, and acute toxicity.

Other Legal Requirements

Oil Spill Requirements. Section 311 of the CWA, ''the Act'', prohibits the discharge of oil and hazardous materials in harmful quantities. Discharges that are in compliance with NPDES permits are excluded from the provisions of section 311. However, the permit does not preclude the institution of legal action or relieve permittees from any responsibilities, liabilities, or penalties for other, unauthorized discharges of oil and hazardous materials which are covered by section 311 of the Act.

Endangered Species Act. The Environmental Protection Agency has evaluated the potential effects of issuance of this permit modification upon listed threatened or endangered species. Based on that evaluation, EPA has determined that authorization of the new discharges is not likely to adversely affect any listed threatened or endangered species. The proposal contains extensive controls to minimize the quantity and toxicity of discharged pollutants. While including limits which will minimize the discharge of toxic pollutants such as polynuclear aromatic hydrocarbons and prohibiting the discharge of drilling fluid and drill cuttings, the proposal additionally limits the toxicity of discharged produced water and chemically treated seawater and freshwater. The proposed authorization of the new discharge of chemically treated sea water or fresh water which has been used to hydrostatically test existing piping and existing pipelines includes controls on the amount of treatment chemical used and toxicity of the discharge and prohibits the discharge of free oil. Requirements proposed for both these new discharges are consistent with Ocean Discharge Criteria (40 CFR part 125, subpart M) and ensure that sensitive marine species are protected.

Based on the available information and analysis of the discharges described in the Fact Sheet for this proposed modification EPA Region 6 has determined that authorization of the proposed discharges is not likely to adversely affect listed threatened or endangered species. EPA is seeking written concurrence from the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service on this determination.

Ocean Discharge Criteria Evaluation. For discharges into waters of the territorial sea, contiguous zone, or oceans CWA section 403 requires EPA to consider guidelines for determining potential degradation of the marine environment in issuance of NPDES permits. These Ocean Discharge Criteria (40 CFR part 125, subpart M) are intended to ''prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal'' (45 FR 65942, October 3, 1980). Since this proposed permit will contain significantly more stringent limits than the previous permit, which are intended to protect water quality and reduce the discharge of toxic pollutants to the marine environment, the Region finds that discharges proposed to be authorized by the general permit reissuance will not cause unreasonable degradation of the marine environment.

Coastal Zone Management Act. EPA has determined that the activities which are proposed to be authorized by this permit are consistent with the local and state Coastal Zone Management Plans. The proposed permit and consistency determination will be submitted to the State of Texas for interagency review at the time of public notice.

Marine Protection, Research, and Sanctuaries Act. The Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972 regulates the dumping of all types of materials into ocean waters and establishes a permit program for ocean dumping. In addition the MPRSA establishes the Marine Sanctuaries Program, implemented by the National Oceanographic and Atmospheric Administration (NOAA), which requires NOAA to designate ocean waters as marine sanctuaries for the purpose of preserving or restoring their conservation, recreational, ecological or aesthetic values. Pursuant to the Marine Protection and Sanctuaries Act, the NOAA has not designated any marine sanctuaries within the area covered under the permit.

State Certification. Under section 401(a)(1) of the Act, EPA may not issue an NPDES permit until the State in which the discharge will originate grants or waives certification to ensure

compliance with appropriate requirements of the Act and State law. Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions that ensure compliance with applicable state water quality standards or limitations. The proposed permit contains limitations intended to ensure compliance with state water quality standards and has been determined by EPA Region 6 to be consistent with Texas Water Quality Standards and the corresponding implementation guidance. The Region has solicited certification from the Texas Railroad Commission.

Executive Order 12866. The Office of Management and Budget (OMB) has exempted this action from the review requirements of Executive Order 12291 pursuant to section 8(b) of that order. Guidance on Executive Order 12866 contain the same exemptions on OMB review as existed under Executive Order 12291. In fact, however, EPA prepared a regulatory impact analysis in connection with its promulgation of guidelines on which a number of the permit's provisions are based and submitted it to OMB for review. See 58 FR 12494.

Paperwork Reduction Act. The information collection required by this permit has been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, in submission made for the NPDES permit program and assigned OMB control numbers 2040–0086 (NPDES permit application) and 2040–0004 (discharge monitoring reports).

This reissued permit will not significantly change the reporting and application requirements from those under the previous general permit, which authorized discharges to the territorial seas off Texas. Since this permit is very similar in reporting and application requirements and in discharges which are required to be monitored as the Western Gulf of Mexico Outer Continental Shelf (OCS) general permit (GMG290000), the paperwork burdens are expected to be nearly identical. When it issued the OCS general permit, EPA estimated it would take an affected facility three hours to prepare the request for coverage and 38 hours per year to prepare discharge monitoring reports. It is estimated that the time required to prepare the request for coverage and discharge monitoring reports for this permit will be the same.

However, the alternative to obtaining authorization to discharge under this general permit is under an individual permit. The application and reporting burden of obtaining authorization to discharge under the general permit is expected to be significantly less than under an individual permit.

Regulatory Flexibility Act. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq,* requires that EPA prepare a regulatory flexibility analysis for regulations that have a significant impact on a substantial number of small entities. As indicated below, the permit modification proposed today is not a ''rule'' subject to the Regulatory Flexibility Act . EPA prepared a regulatory flexibility analysis, however, on the promulgation of the Offshore Subcategory guidelines on which many of the permit's effluent limitations are based. That analysis shows that issuance of this permit modification will not have a significant impact on a substantial number of small entities.

Unfunded Mandates Reform Act. Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' on State, local, and tribal governments and the private sector. UMRA uses the term ''regulatory actions'' to refer to regulations. (*See, e.g.,* UMRA section 201, ''Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)'' (emphasis added)). UMRA section 102 defines ''regulation'' by reference to section 658 of title 2 of the U.S. Code, which in turn defines ''regulation'' and ''rule'' by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines ''rule'' as ''any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. * * *''

NPDES general permits are not ''rules'' under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide ''an opportunity for a hearing.'' Thus, NPDES general permits are not ''rules'' for RFA or UMRA purposes.

EPA has determined that the proposed permit modification would not contain a Federal requirement that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the permit would not significantly nor uniquely affect small governments. For UMRA purposes, ''small governments'' is defined by reference to the definition of ''small governmental jurisdiction'' under the RFA. (*See* UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) ''Small governmental jurisdiction'' means governments of cities, counties, towns, *etc.,* with a population of less than 50,000, unless the agency establishes an alternative definition.

The permit, as proposed, also would not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the permit. Additionally, EPA does not expect small governments to operate facilities authorized to discharge by this permit.

National Environmental Policy Act. Issuance of an NPDES general permit for oil and gas extraction in the territorial seas of Texas is a major federal action significantly affecting the quality of the human environment. Thus, EPA has prepared a Draft EIS to evaluate the potential environmental consequences of its Federal (general permit) action, pursuant to its responsibilities under the National Environmental Policy Act of 1969 (NEPA).

EPA issued a Notice of Intent (NOI) on February 12, 1993, to prepare an Environmental Impact Statement (EIS) on new source NPDES General Permits for the Offshore Subcategory of the Oil & Gas Extraction Category proposed for the territorial seas of both Texas and Louisiana. Scoping issues were considered through the NOI and other informal procedures, including interagency meetings conducted in July, 1993. The Draft EIS was issued in January 1994, for review and comment from interested agencies, officials, groups and individuals. EPA's public hearing to receive comments on the Draft EIS was held on March 16, 1994. The Final EIS issued in June 1996, however, covered only EPA's proposed general permit action for Louisiana, recognizing that a separate Final EIS would be prepared prior to its decision on the NPDES general permit for the territorial seas of Texas.

EPA intends to rely on its original Draft EIS (which is available for review at the EPA Region 6 Office) in this continued NEPA review process for the current proposal to issue the oil and gas NPDES general permit for the territorial seas of Texas. In addition EPA will

undertake consultations with the Advisory Council on Historic Preservation, National Marine Fisheries Service, the U.S. Fish and Wildlife Service, the Texas General Land Office, and the Texas Railroad Commission. EPA invites comment on the Draft EIS, particularly on whether there are significant new circumstances or information relevant to environmental concerns that bear on the proposed action or its impacts. EPA will review all comments made on the Draft EIS and draft NPDES general permit, and, unless EPA learns of significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, EPA will issue the Final EIS for the territorial seas of Texas, followed by a Record of Decision and final NPDES general permit.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 03–28421 Filed 11–14–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

November 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before December 17, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0994.

Title: Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 161.

Estimated Time Per Response: .5 hours—50 hours.

Frequency of Response: On occasion, annual and one-time reporting requirements, recordkeeping requirement, and third party disclosure requirement.

Total Annual Burden: 1,326 hours.

Total Annual Cost: $158,000.

Needs and Uses: On July 3, 2003, the Commission adopted and released an Order on Reconsideration in IB Docket 01–185, FCC 03–162. In this Order, the Commission reconsidered in part its January 29, 2003 decision in this proceeding. The purposes of the Order are to clarify certain issues relating to the time for filing applications to provide ancillary terrestrial components (ATCs), the time in which the Commission may grant such applications, the time in which Mobile Satellite Service (MSS) ATC licenses may construct, test, and commence commercial ATC operations, and the Commission's process for placing applications on public notice for comment. Without this collection of information the Commission would not have the necessary information to grant entities the authority to operate or provide their services to consumers.

OMB Control No.: 3060–1007.

Title: Streamlining and Other Revisions of Part 25 of the Commission's Rules.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 180 respondents; 1,001 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion, annually, and other reporting requirements, and third party disclosure requirements.

Total Annual Burden: 9,746 hours.

Total Annual Cost: $95,206,000.

Needs and Uses: On June 20, 2003, the Commission adopted and released a Second Report and Order in IB Docket No. 00–248, a Second Report and Order in IB Docket No. 02–34, and a Declaratory Order in IB Docket No. 96.111. Among other decisions, the Commission adopted a procedure that gives operators the flexibility to operate satellites in their fleets at any one of their orbit locations assigned to their fleet without individual prior Commission approval. The collections of information are used by Commission staff in carrying out its duties concerning satellite communications as required by various sections of the Communications Act. This information is also used by the Commission staff in carrying out its duties under the World Trade Organization (WTO) Basic Telecom Agreement.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–28614 Filed 11–14–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 03–3310]

Wireless Telecommunications Bureau Confirms Certain 220 MHz Phase I Licenses Cancelled as a Result of Spectrum Audit

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: As a result of certain licensees' failure to respond to the Wireless Telecommunications Bureau (Bureau) audit inquiries, the Bureau announces that certain licenses have been presumed non-operational for one year or more and therefore have cancelled automatically. Action has

been taken in the Universal Licensing System to terminate the licenses that are set forth in Attachment A of the Public Notice.

FOR FURTHER INFORMATION CONTACT: Denise D. Walter, Commercial Wireless Division, at 202–418–0620.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Public Notice*, DA 03–3310, released on October 22, 2003. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On May 14, 2003, 452 letters were mailed to all licensees operating in the QT, QD, and QO radio services inquiring into the operational status of each license held. Each licensee was required to respond and certify, by June 13, 2003, that its authorized station(s) had not permanently discontinued service (*i.e.*, discontinued operations for one year or more). The audit letter, mailed to each licensee at its address of record, included the call signs of the licensee's authorizations involved in this audit. In addition, the Bureau released an initial *Public Notice*, 68 FR 19822, April 22, 2003 announcing the audit, as well as several follow-up *Public Notices*, 68 FR 31704, May 28, 2003 and 68 FR 41133, July 10, 2003 explaining that the audit was underway and setting forth the audit process.

2. In the audit letters that were mailed to the individual licensees, as well as in the Bureau's Public Notices, the Bureau expressly indicated that a response to the audit letter was mandatory. The Bureau also indicated that failure to provide a timely response might result in the Commission's presumption that station at issue was non-operational for one year or more and therefore automatically cancelled. The Bureau's second audit letter explicitly stated that failure to timely respond to the audit letter would result in the loss of the licensee's authority to operate on the station(s) at issue in the audit letter. The Bureau has received no response to either of the audit letters for the station licenses that are set forth in Attachment A of the *Public Notice*. The Bureau therefore presumes that the stations identified in Attachment A have been non-operational for a period of one year or more, and confirms that these station licenses have cancelled automatically pursuant to 47 CFR 90.157 of the Commission's rules. Action has been taken in the Universal Licensing System to terminate these licenses.

Federal Communications Commission.

Roger Noel,

Deputy Division Chief.

[FR Doc. 03–28582 Filed 11–14–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Deletion of Agenda Items From November 13th Open Meeting

November 12, 2003.

The following items have been deleted from the list of Agenda items scheduled for consideration at the November 13, 2003, Open Meeting and previously listed in the Commission's Notice of November 6, 2003.

3 International

Title: Procedures to Govern the Use of Satellite Earth Stations on Board Vessels in the 5925–6425 MHz/3700–4200 MHz Bands and 14.0–14.5 GHz/11.7–12.2 GHz Bands (IB Docket No. 02–10).

Summary: The Commission will consider a Notice of Proposed Rulemaking concerning Earth stations on board vessels that are used to provide broadband telecommunications services on passenger, government, cargo, and recreational vessels.

4 Office of Engineering and Technology

Title: Revision of Parts 2 and 15 of the Commission's Rules to Permit Unlicensed National Information Infrastructure (UNII) devices in the 5 GHz band (ET Docket No. 03–122; RM–10371).

Summary: The Commission will consider a Report and Order to provide an additional 255 MHz of spectrum for unlicensed wireless devices operating in the 5 GHz region of the spectrum.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–28784 Filed 11–13–03; 1:03 pm]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–69–03]

Proposed Data Collections Submitted for Public Comment and Recommendations Withdrawal

A notice announcing a 30–Day comment period for the proposed project: Health and Safety Outcomes Related to Work Schedules in Nurses—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC) was inadvertently republished in the **Federal Register** November 5, 2003, [68 FR 62607 through 62608]. This notice is hereby withdrawn.

The official publication of this notice was September 18, 2003, [68 FR 54732] and stands as published.

Dated: November 10, 2003.

James D. Seligman,

Chief Information Officer, Office of the Chief Operations Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–28602 Filed 11–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Comprehensive Cancer Control (CCC) Implementation Case Study—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

While much has been learned about the development of CCC plans, little is known about CCC grantee activities, organizational capacity, or essential elements of implementing CCC plans. CDC, through a contractor will evaluate the necessary components of the CCC Program. The evaluation consists of: (1) The design of a plan to evaluate the CCC Program; (2) an evaluation of grantee activities; (3) a nationwide assessment of capacity to plan, implement and evaluate CCC programs, and (4) a study of selected grantees' experiences implementing CCC plans. This project will focus on the fourth component of the evaluation.

Implementation case studies provide the opportunity to follow the relationships among needs identified in the planning process, goals and objectives established in the plan (priorities for action), and implemented activities. The goals of the proposed data collection are to document the process and activities CCC programs undertake to implement a CCC plan, and to document measures CCC programs use to assess how well a CCC plan is implemented.

The data will be collected via in-person interviews with key personnel in the implementation of CCC plans. Key personnel will include: Program directors, program staff in health departments and partner organizations, partner organization decisionmakers, program evaluators, and representatives from non-partner organizations. Interviews will take place during one 3 to 4-day site visit to 10 sites. A total of 240 interviews will be conducted. Interviews will last approximately one to two hours each. The program directors will also complete a packet of background information in preparation for the site visits. The materials will take approximately two hours to complete. The only cost to respondents is their time.

Form and type of respondents	No. of respondents	No. of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)
1: Program Directors	20	1	2	40
2: Staff Members	80	1	1	80
3: Partners or Coalition Member	80	1	1	80
4: Program Evaluators	20	1	1	20
5: Non-partners	40	1	1	40
6: Program Directors	20	1	2	40
Total				300

Dated: November 7, 2003.

Gaylon D. Morris,

Acting Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–28603 Filed 11–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: A Survey of Veterinary Clinics to Assess Infection Control Practices and Use of Personal Protective Equipment to Reduce Transmission of Zoonotic Diseases—New—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Recent outbreaks of emerging zoonotic diseases in the United States have highlighted the need to better protect the veterinary community from infectious diseases by educating them about personal protective measures. In particular, during the recent 2003 outbreak of monkeypox in the United States associated with prairie dogs and imported rodents, veterinarians or veterinary staff represented over 25% of confirmed and probable human cases. During the height of this outbreak, health officials were tasked with providing information to the medical and veterinary communities to ensure safety when examining monkeypox-infected patients; a lack of universally accepted infection control and personal protection guidelines within the veterinary community hampered the delivery of effective prevention messages to this vulnerable population.

The proposed survey asks veterinarians about infection control procedures employed in their clinics and the use of personal protective equipment to prevent zoonotic disease transmission.

The proposed study consists of a self-administered, written questionnaire

mailed to veterinary clinics in the United States. The American Veterinary Medical Association has volunteered to collaborate on the survey and will provide a list of clinics through their membership mailing list. The study objectives are to describe current knowledge, attitudes, and practices of veterinarians regarding zoonotic disease risks and protection of veterinary clinic staff, and to determine what types of national guidelines on infection control practices in veterinary settings are needed. There is no cost to respondents.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hours)
Written surveys	5000	1	20/60	1667
Total				1667

Dated: November 7, 2003.

Gaylon D. Morris,

M.P.Aff, Acting Executive Secretariat, Centers for Disease Control and Prevention.

[FR Doc. 03–28604 Filed 11–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–06]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (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. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Potential Reproductive and Neurological Effects of Exposure to Acrylamide—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

The mission of the National Institute for Occupational Safety and Health (NIOSH) is to promote safety and health at work for all people through research and prevention. Consistent with this mission, NIOSH is undertaking a study of the reproductive and neurobehavioral effects of the occupational exposure to acrylamide. Acrylamide workers and control workers (N = 100 per group) will be recruited from manufacturing, end-user and non-exposed settings. Exposure will be characterized by acrylamide hemoglobin, adduct and urinary metabolite levels, ambient area, personal air, and dermal sampling. Reproductive effects will be evaluated by examining semen quality, sperm DNA integrity, reproductive hormone levels, and prostate specific antigen (PSA) levels.

Neurobehavioral effects will be assessed using sensation-tactile, postual stability, grooved pegboard, and simple reaction time tests. Two questionnaires will be administered on one occasion. Questionnaire information will be collected concurrently to augment test interpretation, adjust for potential confounders and covariates during regression analysis, correlate specific jobs and job activities with exposure measurements, and for validation purposes. Findings from this study will clarify if the adverse reproductive effects observed in animal studies are also present in acrylamide-exposed workers, and if preclinical neurobehavioral deficits are present at acrylamide doses currently considered to be within safe limits.

This study is scheduled for implementation in late 2003 and 2004. There are no costs to respondents.

Survey questionnaire	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden (in hrs.)
Medical & Reproductive History Questionnaire	200	1	13/60	43
Occupational History Questionnaire	200	1	34/60	113
Non-participant Questionnaire	50	1	2/60	2
Total				158

Dated: November 10, 2003.

James D. Seligman,

Chief Information Officer, Office of the Chief Operations Officer, Centers for Disease Control and Prevention.

[FR Doc. 03–28605 Filed 11–14–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Board on Radiation and Worker Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–4 p.m., December 9, 2003, 8 a.m.–5 p.m., December 10, 2003.

Place: The Westin Casuarina, 160 East Flamingo Road, Las Vegas, Nevada 89109, telephone 702/836–9775, fax 702/836–9776.

Status: Open 8 a.m.–4 p.m., December 9, 2003. Open 8 a.m.–12:30 p.m., December 10, 2003. Closed 2 p.m.–5 p.m., December 10, 2003.

Background: The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by the National Institute for Occupational Safety and Health (NIOSH) for qualified cancer claimants, and advice on the addition of classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to the CDC. NIOSH implements this responsibility for CDC. The charter was renewed on August 3, 2003 and the President has completed the appointment of members to the Board to ensure a balanced representation on the Board.

Purpose: This board is charged with (a) providing advice to the Secretary, HHS on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

Matters to be Discussed: The meeting will convene in open session from 8 a.m.–4 p.m. on December 9, 2003 and 8 a.m.–12:30 p.m. on December 10, 2003, to address matters related to NIOSH and Department of Labor updates, an Integrated Module Bioassay Analysis (IMBA) Update, site profile status and roll-out, a Sanford Cohen and Associates brief, reports from the Workgroup on Options for Evaluating Interviews and the Research Issues Workgroup, as well as Board discussion. The remainder of the meeting will proceed in closed session.

The purpose of the closed sessions is to include development, review, and discussion of a proposed Independent Government Cost Estimate (IGCE) for a technical support contract intended to assist the Board in fulfilling its statutory duty to advise the Secretary, HHS regarding dose reconstruction efforts under the EEOICPA. The IGCE will include contract cost estimates, the disclosure of which would adversely impact the Government's negotiating position and strategy in regards to this contract by giving potential bidders an undue advantage in determining the price associated with their bids. The information being discussed will include information of a confidential nature.

This portion of the meeting will be closed to the public in accordance with provisions set forth regarding subject matter considered confidential under the terms of 5 U.S.C. 552b(c)(9)(B), 48 CFR 5.401(b)(1) and (4), and 48 CFR 7.304(d), and the Determination of the Director of the Management Analysis and Services Office, Centers for Disease Control and Prevention, pursuant to Pub. L. 92–463.

A summary of this meeting will be prepared and submitted with 14 days of the close of the meeting.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: November 10, 2003.

Betsey Dunaway,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–28600 Filed 11–14–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0502]

Agency Information Collection Activities; Proposed Collection; Comment Request; Study to Measure the Compliance of Prescribers With the Contraindication of the Use of Triptans in Migraine Headache Patients With Vascular Disease

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on FDA's burden estimates to distribute an Internet-based questionnaire to measure the compliance of prescribers with the contraindication of the use of triptans in migraine headache patients with vascular disease.

DATES: Submit written or electronic comments on the collection of information by January 16, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Study to Measure the Compliance of Prescribers With the Contraindication of the Use of Triptans in Migraine Headache Patients With Vascular Disease

Migraine headaches affect about 20 million Americans. Over the last decade, a category of drugs referred to as triptans, has been shown to be efficacious in treating migraine and has been prescribed to millions. However, triptans are routinely contraindicated in patients with vascular diseases due to associated rare occurrence of myocardial infarction, stroke, and other ischemic events. In view of the wide use of this class of drugs and the potential impact on public health, it would be of great use to better understand the prescribing practices as a result of this contraindication.

FDA plans to use the Internet to recruit triptan-user migraine headache patients to determine whether prescribers follow the labeling recommendation to avoid prescribing this class of drugs to patients with pre-existing cardiovascular, cerebrovascular, or peripheral vascular syndromes or with cardiac risk factors. The study is intended to measure the proportion of patients that were prescribed triptans although they have pre-existing cardiovascular, cerebrovascular, or peripheral vascular syndromes.

Soliciting patients over the Internet will identify a cohort of triptan users. These patients will then be asked to fill out a questionnaire about their medical history with a focus on vascular diseases. Following that, a sample of patients' medical records will be solicited and reviewed to verify the medical history. Prevalence of cardiovascular, cerebrovascular, or peripheral vascular ischemic diseases among migraine patients using triptans will be estimated. Information about patients' demographics, route of administration (oral, injection, intranasal), and duration of exposure to triptans will also be collected.

There are no available estimates about the rates of various vascular diseases and cardiac risk factors among migraine headache patients using triptans. The current study is considered a pilot study aimed at providing estimates of such rates to be used as a basis for future studies. Although FDA recognizes that the study population obtained through Internet-based recruitment may not reflect the population of triptan users at large, a signal of substantial prescribing to patients with vascular contraindications in this selected population may warrant further action on the sponsor's part to improve risk management. Improvement of risk management may include further study of the problem, a labeling change, educational programs performed by the sponsor, or increased restrictions on prescribing.

FDA estimates that approximately 500 persons will voluntarily complete the questionnaire. The estimated time for completing each questionnaire is approximately 2 hours, resulting in a total burden of 1,000 hours per year. The burden of this collection of information is estimated as follows:

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

No. of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours
500	1	500	2	1,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

Dated: November 7, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–28581 Filed 11–14–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage

for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

High Efficiency Single Stranded Homologous Recombination in Host Cells Deficient for Mismatch Repair

Donald L. Court *et al.* (NCI); PCT Application No. PCT/US03/14657 filed 09 May 2003 (DHHS Reference No. E–038–2003/0-PCT–01); Licensing Contact: Norbert Pontzer; 301/435–5502; *pontzern@mail.nih.gov.*

Homologous recombination is the process of exchanging DNA between two molecules through regions of identical sequence. Homologous recombination provides an alternative to using restriction endonucleases and ligases for producing recombinant DNA. However, the background level of homologous recombination in *E. coli* is very low even with long homology arms. Previous improvements have provided methods of using bacterophage lambda Red recombination functions to greatly increase the recombination frequency of endogenous single- and double-stranded DNA with relatively short homology arms. This type of genetic engineering has been named ''recombineering,'' a convenient term to describe homology-dependent, recombination-mediated, genetic engineering. Recombination with endogenous linear single-stranded DNA (ssDNA) is likely to occur by annealing with transiently single-stranded regions of the chromosome such as the replication fork. We show that only the Beta component of the Red function is required for this activity. (Published PCT Application WO00/21449; Nat. Rev. Genet. 2001, 2:769–779.)

When the ssDNA used for recombineering introduces change(s) near the DNA replication fork, the change(s) may trigger mismatch repair (MMR), which in turn can reduce the level of recombination. In the present invention, altering MMR function achieves a 10-to 100-fold increase in Red recombination. This increase raises the number of recombinants to 25 to 30 percent of treated cells surviving electroporation of the oligo. Methods of transiently inhibiting MMR and bacterial strains deficient for the production of MMR genes are also provided. (Annu. Rev. Genet. 2002, 36:361–88.)

Dated: November 7, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–28657 Filed 11–14–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301-496–7057; fax: 301-402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

Automated Identification of Ileocecal Valve

Ronald Summers (NIHCC), Jianhua Yao (NIHCC), Daniel C. Johnson (Mayo Clinic); U.S. Provisional Application filed 10 Oct 2003 (DHHS Reference No. E–174–2003/0–US–01); Licensing Contact: Michael Shmilovich; 301–435–5019; *shmilovm@mail.nih.gov.*

Available for licensing is a system and software that analyzes digital representations of the colon and eliminates the occurrence of false positive colonic polyps. For example, in a scenario in which a list of polyp candidates is analyzed, the ileocecal valve can be removed from the list. Because the ileocecal valve is a normal structure and not a polyp (*i.e.*, a false positive), removing the ileocecal valve from the list of polyp candidates increases the usefulness and specificity of computer aided polyp detection techniques. Characteristics of a digital representation of at least a portion of a colon can be compared with paradigmatic characteristics of digital representations of ileocecal valves. Based on determining that the digital representation has the characteristics of an ileocecal valve, action can be taken. The digital representation can be removed from a list of polyp candidates or depicted distinctively in a visual depiction. Characteristics can include density, volume, intensity, attenuation, location within the colon, and the like.

Novel Non-Nucleoside Agents for the Inhibition of HIV Reverse Transcriptase for the Treatment of HIV–1

Christopher A. Michejda, Marshall Morningstar, Thomas Roth (NCI); U.S. Patent 6,369,235 issued 09 Apr 2002 (DHHS Reference No. E–076–1997/1–US–01); U.S. Patent Application No. 10/119,634 filed 09 Apr 2002 (DHHS Reference No. E–076–1997/1–US–02); Licensing Contact: Sally Hu; 301–435–5606; *hus@mail.nih.gov*.

Despite recent developments in drug and compound design to combat the human immunodeficiency virus (HIV), there remains a need for a potent, non-toxic compound that is effective against wild type reverse transcriptase (RT) as well as RTs that have undergone mutations and thereby become refractory to commonly used anti-HIV compounds. There are two major classes of RT inhibitors. The first comprises nucleoside analogues, which are not specific for HIV–RT and are incorporated into cellular DNA by host DNA polymerases. Nucleoside analogues can cause serious side effects and have resulted in the emergence of drug resistance viral strains that contain mutations in their RT. The second major class of RT inhibitors comprises non-nucleoside RT inhibitors (NNRTIs) that do not act as DNA chain terminators and are highly specific for HIV–RT. This technology is a novel class of NNRTIs (substituted benzimidazoles) effective in the inhibition of HIV–RT wild type as well as against variant HIV strains resistant to many non-nucleoside inhibitors. These NNRTIs are highly specific for HIV–1 RT and do not inhibit normal cellular polymerases, resulting in lower cytotoxicity and fewer side effects that the nucleoside analogues, such AZT. This novel class of compounds could significantly improve

the treatment of HIV by increasing compliance with therapy.

Dated: November 6, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–28658 Filed 11–14–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patents and patent applications listed below may be obtained by contacting Michael Ambrose, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/594–6565; fax: 301/402–0220; e-mail: *ambrosem@mail.nih.gov.* A signed Confidential Disclosure Agreement will be required to receive copies of any patent applications.

Mouse Lacking the Chemokine Receptor CX3CR1

Philip Murphy, Christopher Combadiere, Ji-liang Gao (NIAID).

DHHS Reference No. E–216–2003/0—Research Tool.

This mouse has been generated by targeted gene disruption. The mouse provides a model to investigate the function of the chemokine receptor CX3CR1, which is a proinflammatory receptor for the leukocyte chemoattractant CX3CL1 (aka fractalkine). As an example, the mouse is in use in the study of atherosclerosis. Further, the mouse may serve as a model study the role of the immune system during infection with pathogens as well as other immunologically mediated diseases and responses to tumors.

This mouse has been described in the publication ''Decreased atheroscelerotic lesion formation in CX3R1/ApoE double knockout mice''. Combadiere C., Potteaux S., Gao J–L., Esposito B., Casanova S., Lee EJ., Debre P., Tedgui A., Murphy PM., Mallat Z. Circulation. 2003; 1009–1016.

Factors That Bind Intestinal Toxins

Joel Moss (NHLBI), Masatoshi Noda (EM).

U.S. Provisional Application No. 60/409,742 filed 10 Sep 2002 (DHHS Reference No. E–223–2002/0–US–01); PCT Application No. PCT/US03/28282 filed 09 Sep 2003 (DHHS Reference No. E–223–2002/0–PCT–02).

This invention discloses and covers polyphenolic compounds that will bind bacterial toxins, methods for the treatment of such infections, specifically Stx-1 toxins from STEC strains of *E. coli.*

Bacterial infections not only cause disease by their presence but also upon the release of toxins. The common enteric bacteria, *E. coli* O157:H7 releases such toxins (Stx-1) upon treatment with antibiotics. These toxins, when released into the lumen of the intestinal tract, will cause cellular damage thus increasing the severity of the infection. Thus not only does the patient become sick by the infection, but treatment can exacerbate the condition and clinical picture. Further, the indiscriminate use of antibiotics has lead to an increase in the number of resistant strains thus limiting the effectiveness of therapy as well.

The disclosed invention uses an extract from the bracts of *Humulus lupulus* that binds the toxins thus eliminating them as a source of cellular damage. The enclosed methods and devices to isolate such polyphenolic components, the methods to use such components in the detection of such bacteria in biological samples and potential therapies based on the isolated components.

Molecular Diagnosis of Disseminated *Candida albicans* Infection Using Hemoglobin-Response Gene

David D. Roberts, Sizhuang Yan (NCI).

U.S. Patent Application No. 09/258,634 filed 26 Feb 1999 (DHHS Reference No. E–086–1999/0–US–01).

Three hemoglobin-response genes from *Candida albicans* have been isolated. These genes are induced when the organism initiates systemic infections, coming into contact with hemoglobin. Further, the methods and composition of the included nucleic acid sequences and encoded proteins can be used in the development of reagents and kits used to discriminate between commensal colonization and the more life threatening disseminated infection.

Mucosal Cytotoxic T Lymphocyte Responses

Jay A. Berzofsky (NCI), Igor M. Belyakov (NCI), Michael A. Derby (NCI), Brian L. Kelsall (NIAID), Warren Strober (NIAID).

U.S. Patent Application No. 09/508,552 filed 12 Jun 2000 (DHHS Reference No. E–268–1997/2–US–02).

This invention claims methods and compositions for inducing a protective mucosal cytotoxic T lymphocyte (CTL) response in a mammal involving administering a soluble antigen or a soluble antigen with one or more active agents such as a cytokine or co-stimulatory molecule to a mucosal surface or tissue. As a preferred embodiment, the invention contemplates intrarectal administration of the peptide vaccine because the inventors have shown that there is a greater CTL response through intrarectal administration rather than intranasal administration. The synthetic peptide vaccines utilized in the invention to elicit protective immune responses after mucosal infection comprise a multideterminant helper peptide containing a cluster of overlapping helper epitopes (a PCLUS or cluster peptide) colinearly synthesized with a peptide epitope target for neutralizing antibodies and CTL. The inventors have generated data showing that an intrarectally administered synthetic multiepitope HIV/SIV peptide vaccine administered to macaques in conjunction with mutant *E. coli* heat labile enterotoxin as an adjuvant induces mucosal CTL responses that provide better protection against intrarectal SHIV infection when compared to a subcutaneously administered vaccine comprising the same peptides inducing as high or higher systemic CTL responses. The invention is further described in Belyakov *et al., Proc. Natl. Acad. Sci. USA* 1998 Feb 17;95(4):1709–14 and Belyakov *et al., J. Clin. Invest.* 102: 2072–2081, 1998.

Conformationally Locked Nucleoside Analogues

Victor E. Marquez, Juan B. Rodriguez, Marc C. Nicklaus, Joseph J. Barchi, Jr., Maqbool A. Siddiqui (NCI).

U.S. Patent 5,629,454 issued 13 May 1997 (DHHS Reference No. E–231–1993/1–US–01); U.S. Patent 5,869,666 issued 09 Feb 1999 (DHHS Reference No. E–231–1993/1–US–02); and

Conformationally Locked Nucleoside Analogs as Antiherpetic Agents

Victor E. Marquez, Juan B. Rodriguez, Marc C. Nicklaus, Joseph J. Barchi, Jr., Maqbool A. Siddiqui (NCI).

U.S. Patent 5,840,728 issued 23 Nov 1998 (DHHS Reference No. E–100–1996/0–US–03).

The compounds of the present invention represent the first examples of carbocyclic dideoxynucleosides that in solution exist locked in a defined N-geometry (C3′-endo) conformation typical of conventional nucleosides. These analogues exhibit increased stability due to the substitution of carbon for oxygen in the ribose ring. The invention includes 4′–6′-cyclopropane fused carbocyclic dideoxynucleosides, 2′-deoxynucleosides and ribonucleosides as well as oligonucleotides derived from these analogues; the preferred embodiment of the invention is carbocyclic-4′–6′-cyclopropane-fused analogues of dideoxypurines, dideoxypyrimidines, deoxypurines, deoxypyrimidines, purine ribonucleosides and pyrimidine ribonucleosides. In addition, oligonucleotides derived from one or more of the nucleosides in combination with the naturally occurring nucleosides are within the scope of the present invention.

The second invention discloses a method for the treatment of herpes virus infections by the administration of cyclopropanated carbocyclic 2′-deoxynucleosides to an affected individual. This invention is a method of administration of the compounds described above. The compounds of this invention are particularly efficacious against herpes simplex viruses 1 and 2 (HSV–1 and HSV–2), Epstein-Barr Virus (EBV) and human cytomegalovirus (CMV), although the nucleoside analogues of the invention may be used to treat any condition caused by a herpes virus. Specifically, the N-methanocarba-T (Thymidine) analogue has been shown to exhibit strong activity against HSV–1 and HSV–2, and moderate to strong activity against EBV. Significantly, the anti-HSV activity of the Thymidine analogue is stronger than that of Acyclovir (shown in a plaque reduction assay), a widely used anti-HSV therapeutic. Furthermore, the Thymidine analogue is also non-toxic against stationary cells and is potent against rapidly dividing cells. Dosage amounts for the compounds are similar to those of Acyclovir.

Descriptions of these inventions may be found in Rodriguez *et al., J. Medicinal Chemistry* 37:3389–3399 (1994) and Marquez *et al., J. Medicinal Chemistry* 39:3739–3747 (1996).

Dated: November 6, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–28659 Filed 11–14–03; 8:45 am]

BILLING CODE 4146–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; 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 Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: November 24, 2003.

Time: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., One Democracy Plaza, Room 1078, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, National Center for Research Resources, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1080, Bethesda, MD 20817–4874, (301) 435–0806, *rigasm@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 Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: November 25, 2003.

Time: 2:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: 6701 Democracy Blvd., Room 1080, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, National Center for Research Resources, Office of Review, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1080, Bethesda, MD 20817–4874, 301–435–0806, *rigasm@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. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: November 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28644 Filed 11–14–03; 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, Developing Disaster Mental Health Research Capacity through Education RFA.

Date: December 1, 2003.

Time: 8:30 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: Richard E. Weise, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6140, MSC 9606, Bethesda, MD 20892–9606, (301)–443–1225, *rweise@mail.nih.gov.*

This notice is being published less than 145 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, From Intervention Development to Services: Exploratory Research Grants.

Date: December 1, 2003.

Time: 12 p.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: 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: November 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28645 Filed 11–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: December 9, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: December 9, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Applications (R13s).

Date: December 9, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health, Building 4401, East Campus, 79 T.W. Alexander Drive, 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: November 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28647 Filed 11–14–03; 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 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microglia and Astrocyte Applications.

Date: November 21, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Toby Behar, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rolm 4136, MSC 7850, Bethesda, MD 20892, (301) 435–1256, *behart@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, Translational Control by Herpesvirus.

Date: November 25, 2003.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, 301–435–1050, *freundr@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, Brain Neurotransmitter.

Date: December 1, 2003.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, Md 20892, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the mining limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Biobehaviorial Regulation, Learning and Ethology.

Date: December 1, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cheri Wiggs, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892, (301) 435–1261.

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, AIDS Opportunistic Infections and Cancer.

Date: December 1, 2003.

Time: 11:30 a.m. to 1:30 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: Abraham P. Bautista, MS, PhD., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@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 Commitee: Center for Scientific Review Special Emphasis Panel, Health Services Organization and Delivery.

Date: December 1, 2003.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gertrude K. McFarland, FAAN, DNSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3156, MSC 7770, Bethesda, MD 20892, (301) 435–1784, *mcfarlag@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, Oculomotor.

Date: December 1, 2003.

Time: 2:30 p.m. to 5:30 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: Bernard F. Driscoll, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov*

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 Empahasis Panel, Molecular Techniques, Neurochemistry and Neurogenetics.

Date: December 2, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Carole L. Jelsema, PhD., Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Calcium Homeostasis and Vascular Tone.

Date: December 2, 2003.

Time: 1 p.m. to 2 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: Rajiv Kumar, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212.

Name of Committee: Center for Scientific Review Special Empahasis Panel, ZRG1 PTHA 51 S: Cardiac Cell Therapy.

Date: December 2, 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: Larry Pinkus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Empahasis Panel, Corticosensory.

Date: December 2, 2003.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Empahasis Panel, Synaptic Plasticity.

Date: December 2, 2003.

Time: 4 p.m. to 6 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: Syed Husain, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict Review on Child Abuse and Neglect.

Date: December 3, 2003.

Time: 9:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maribeth Champous, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–402–4454, *champoum@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AIDS Opportunistic Infections and Cancer Studies.

Date: December 3, 2003.

Time: 11:30 a.m. to 1:30 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: Abraham P. Bautista, MS, PhD., Scientist Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Special Emphasis Panel on Weight Maintenance.

Date: December 3, 2003.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maribeth Champous, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, 301–402–4454, *champoum@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Movement.

Date: December 3, 2003.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Role of ALK3 in Atrioventricular Canal Development.
Date: December 3, 2003.
Time: 3 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anshumali Chaudhari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSS–5 (15) Orthopaedic Small Business.
Date: December 4–5, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Wyndham Washington, DC, 1400 M Street, NW, Washington, DC 20005.
Contact Person: Richard J. Bartlett, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, 301–435–6809.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Speech Disorder and Neural Change.
Date: December 4, 2003.
Time: 1 p.m. to 2 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: Weijia Ni, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, MSC 7848, (for overnight mail use room # and 20817 zip), Bethesda, MD 20892, (301) 435–1507, *niw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR/STTR.
Date: December 4, 2003.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Bernard F. Driscoll, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuro SBIR.
Date: December 5, 2003.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Jurys Washington Hotel, 1500 New Hampshire Ave NW., Washington, DC 20036.
Contact Person: Michael A. Lang, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265, *langm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome Special Emphasis Panel.
Date: December 5, 2003.
Time: 10 a.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J Terrell Hoffeld, DDS, PhD, Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Reviews in Adult Psychopathology.
Date: December 5, 2003.
Time: 11 a.m. to 1:30 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: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, 301–435–0902. *krausem@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSS–W 11B: Small Business: Cardiovascular Devices.
Date: December 5, 2003.
Time: 1 p.m. to 2 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: Behrouz Shabestari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, 301–435–2409. *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chronic Fatigue Syndrome/Fibromyalgia Syndrome–SBIR/STTR Special Emphasis Panel.
Date: December 5, 2003.
Time: 2:30 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: River Inn, 924 25th Street, NW., Washington, DC 20037.
Contact Person: J Terrell Hoffeld, DDS, PhD., Dental Officer, USPHS, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, 301/435–1781, *th88q@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 10, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–28646 Filed 11–14–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG 2003–15778]

Information Collections Under Review by the Office of Management and Budget (OMB): OMB Control Numbers: 1625–0023 (Formerly 2115–0092), 1625–0017 (Formerly 2115–0056), 1625–0044 (Formerly 2115–0542), and 1625–0008 (Formerly 2115–0017)

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this request for comments announces that the Coast Guard has forwarded the four Information Collection Requests (ICRs) abstracted below to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. Our ICRs describe the information we seek to collect from the public. Review and comment by OIRA ensures that we impose only paperwork burdens commensurate with our performance of duties.

DATES: Please submit comments on or before December 17, 2003.

ADDRESSES: To make sure that your comments and related material do not enter the docket [USCG 2003–15778] more than once, please submit them by only one of the following means:

(1)(a) By mail to the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. (b) By mail to OIRA, 725 17th Street, NW., Washington, DC 20503, to the attention of the Desk Officer for the Coast Guard.

(2)(a) By delivery to room PL–401 at the address given in paragraph (1)(a)

above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329. (b) By delivery to OIRA, at the address given in paragraph (1)(b) above, to the attention of the Desk Officer for the Coast Guard.

(3) By fax to (a) the Facility at (202) 493–2251 and (b) OIRA at (202) 395–5806, or e-mail to OIRA at *oira_docket@omb.eop.gov*, attention: Desk Officer for the Coast Guard.

(4)(a) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.* (b) OIRA does not have a Web site on which you can post your comments.

(5) Electronically through Federal eRule Portal: *http://www.regulations.gov.*

The Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 (Plaza level), 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.*

Copies of the complete ICRs are available for inspection and copying in public dockets. They are available in docket USCG 2003–15778 of the Docket Management Facility between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays; for inspection and printing on the Internet at *http://dms.dot.gov;* and for inspection from the Commandant (G–CIM–2), U.S. Coast Guard, room 6106, 2100 Second Street, SW., Washington, DC, between 10 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, (202) 267–2326, for questions on this document; Andrea M. Jenkins, Program Manager, U.S. Department of Transportation, (202) 366–0271, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this request for comment by submitting comments and related materials. We will post all comments received, without change, to *http://dms.dot.gov,* and they will include any personal information you have provided. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act'' below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this request for comment [USCG–2003–15778], 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 them 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 the documents supporting this collection of information or even the underlying requirements 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 in 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 Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov.*

Regulatory History

This request constitutes the 30-day notice required by OIRA. The Coast Guard has already published [68 FR 45833 (August 4, 2003)] the 60-day notice required by OIRA. That notice elicited no comments.

Request for Comments

The Coast Guard invites comments on the proposed collections of information to determine whether the collections are necessary for the proper performance of the functions of the Department. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the collections; (2) the accuracy of the Department's estimated burden of the collections; (3) ways to enhance the quality, utility, and clarity of the information that is the subject of the collections; and (4) ways to minimize the burden of collection on respondents, including the use of automated collection techniques or other forms of information technology.

Comments, to DMS or OIRA, must contain the OMB Control Number of the ICR addressed. Comments to DMS must contain the docket number of this request, USCG 2003–15778. Comments to OIRA are best assured of having their full effect if OIRA receives them 30 or fewer days after the publication of this request.

Information Collection Request

1. *Title:* Barge Fleeting Facility Records.

OMB Control Number: 1625–0023.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of barge fleeting facilities.

Form: This collection of information does not require the public to fill out forms, but does require barge facilities to keep records of daily inspections.

Abstract: This collection of information requires the person-in-charge of a barge fleeting facility to keep records of twice daily inspections of barge moorings and movements of barges and hazardous cargo in and out of the facility.

Annual Estimated Burden Hours: The estimated burden is 32,092 hours a year.

2. *Title:* Various International Agreement Safety Certificates and Documents.

OMB Control Number: 1625–0017.

Type of Request: Extension of a currently approved collection.

Affected Public: Owners and operators of vessels.

Form: CG–967, CG–968, CG–968A, CG–969, CG–3347, CG–3347B, CG–4359, CG–5643, CG–5679, CG–5679A, CG–5680.

Abstract: This collection of information accounts for 11 certificates and documents associated with the International Convention for Safety of Life at Sea, 1974 (SOLAS). Each of certain U.S.-flag vessels on international voyages needs one or more of these certificates or documents to demonstrate compliance with SOLAS. Without proper certificates and documents, such a vessel could find itself detained in a foreign port. The certificates and documents associated with this collection issue primarily to deep-draft vessels, and thus the annual hour-burden estimated below is relatively small for these requirements of

recordkeeping—which in practice is just posting. The factors that result in the relatively small burden are (a) the limited number of vessels in the affected population; (b) the brief amount of time, no more than five minutes for any certificate or document, necessary for this posting; and (c) the limited frequency with which these certificates and documents issue—many only once in five years.

Annual Estimated Burden Hours: The estimated burden is 16 hours a year.

3. *Title:* Outer Continental Shelf (OCS) Activities—Title 33 CFR Subchapter N.

OMB Control Number: 1625–0044.

Type of Request: Extension of a currently approved collection.

Affected Public: Operators of facilities and vessels engaged in activities on the OCS.

Form: CG–5432.

Abstract: The information is needed to ensure compliance with the safety regulations related to OCS activities. The regulations include reporting and recordkeeping requirements for annual inspections of fixed OCS facilities, employee citizenship records, station bills, and emergency evacuation plans.

Annual Estimated Burden Hours: The estimated burden is 5,767 hours a year.

4. *Title:* Regattas and Marine Parades.

OMB Control Number: 1625–0008.

Type of Request: Extension of a currently approved collection.

Affected Public: Sponsors of marine events.

Form: This collection of information does not require the public to fill out forms, but does require the submittal of information to the Coast Guard in written or electronic format.

Abstract: The Coast Guard needs to determine whether a marine event may present a substantial threat to the safety of human life on navigable waters and which measures are needed to ensure the safety of life during the events. The requirement for sponsors of these events to provide specific information on their events is an efficient means for the Coast Guard to learn of the events and to address environmental impacts of events requiring permits.

Annual Estimated Burden Hours: The estimated burden is 3,000 hours a year.

Dated: November 7, 2003.

Clifford I. Pearson,

Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. 03–28616 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–89]

Notice of Submission of Proposed Information Collection to OMB: Request Voucher for Grant Payment—LOCCS Voice Response Access Authorization

AGENCY: Office of the Chief Information Officer, 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 submission is a request for extension of the current approval to collect information on baseline performance standards. This information replaced various reporting requirements and places greater emphasis on performance and results in grant programs.

The Department is soliciting public comments on our request to extend approval for the subject information collection.

DATES: *Comments Due Date:* January 16, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0102) and should be sent to: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, or Lillian Deitzer, Information Technology Specialist, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or *Lillian_L_Deitzer@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer, or on HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice Also Lists the Following Information

Title of Proposal: Request Voucher for Grant Payment.

OMB Approval Number: 2535–0102.

Form Numbers: Form HUD–27053, HUD–27054.

Description of the Need for the Information and its Proposed Use: Request vouchers are used by recipients to request distribution of grant funds through access to the Department's voice activated payments system. Information collected will be used as a mechanism to safeguard Federal funds and to facilitate the payment of funds to recipients.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion.

Reporting Burden: An estimation of the total number responses annually is 241,176 from 2,000 respondents. The average time per response is 0.17 hours.

Total Estimated Burden Hours: 41,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 7, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–28585 Filed 11–14–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–20]

Notice of Proposed Information Collection for Public Comment for Contract Administration—Public and Indian Housing

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:* January 16, 2004.

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 & 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). For hearing- and speech-impaired persons, this telephone number may be accessed via TTY (Text telephone) by calling the Federal Information Relay Services at 1–800–877–8339 (toll-free).

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).

Housing Agencies (HAs) must maintain certain records and submit certain documents to HUD with the award of oversight or construction contracts for development or new low-income housing developments or modernization of existing developments. This information is necessary for compliance with procurement requirements part 85.36(b).

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 submissions of responses.

This Notice also Lists the Following Information:

Title of Proposal: Contract Administration—Public and Indian Housing.

OMB Control Number: 2577–0039.

Description of the Need for the Information and Proposed Use: HAs will keep records or submit the following information to HUD:

Bidding Control Record. HAs or its architect maintains a record of bid documents received or issued to each individual or firm requesting a bid package. A control record is required for each contract, but is not submitted to HUD, except for the bid tabulation when prior HUD approval of contract award is required.

Register of Change Order and Time Extensions. HAs maintain a register of change orders and time extensions to assure factual data upon which to adjudicate disputes or claims concerning delays from the HA, architect, contractor or HUD actions or inactions relative to approval, disapproval or execution of requested work changes or time extensions.

Form HUD–5372, Construction Progress Schedule. Immediately after execution of the Construction Contract, the contractor submits Form HUD–5372 to the HA to enable accurate checking of Actual completion of the contract within prescribed time periods.

Form HUD–51000, Schedule of Amounts for Contract Payments. Immediately after execution of the construction contract, the contractor submits the schedule of amounts for contract payment to the HA to enable accurate checking of periodical estimates for partial payments.

Agency form numbers: HUD–5372; HUD–5100.

Members of the Affected Public: State, local or tribal governments; business or other for-profit.

Estimation Including the Total Number of Hours Needed To Prepare the Information Collection for the Number of Respondents, Frequency of Response, and Hours of Response: 11,608 responses, one response per construction contract, 1.3 hours per response, 14,506 total burden hours.

Status of the Proposed Information Collection: Extension.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: October 31, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–28586 Filed 11–14–03; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4860–C–02]

Notice of Funding Availability for HOME Investment Partnerships Program (HOME) Competitive Reallocation of Funds To Provide Permanent Housing for the Chronically Homeless; Correction

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of funding availability; correction.

SUMMARY: On October 15, 2003, HUD published the Notice of Funding Availability (NOFA) for the Competitive Reallocation of HOME Funds to Provide Permanent Housing for the Chronically Homeless. This notice corrects that funding announcement by notifying applicants of the new government-wide requirement that all applicants for federal grants and cooperative agreements must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their applications. In addition, this document makes a correction to the scoring assigned to certain HOME participating jurisdictions (PJs) found in Appendix 1 to the NOFA and changes the deadline for submission of applications to December 18, 2003.

FOR MORE INFORMATION CONTACT: Cliff Taffet, Office of Affordable Housing Programs, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC, 20410–5000; telephone (202) 708–3226 ext. 4589 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On October 15, 2003 (68 FR 59450), HUD published its Notice of Funding

Availability (NOFA) for the Competitive Reallocation of HOME Funds to Provide Permanent Housing for the Chronically Homeless. This notice published in today's **Federal Register** corrects the NOFA by requiring applicants to provide in their application package, a Dun and Bradstreet Data Universal Numbering System (DUNS) number. This correction is required by an Office of Management and Budget (OMB) policy directive issued in the **Federal Register** on June 27, 2003 (68 FR 38402). The policy directive requires all grant applicants to provide a DUNS number when applying for federal grants or cooperative agreements on or after October 1, 2003. This information was inadvertently left out of the October 15, 2003, NOFA.

In addition, it has come to our attention that in the NOFA published on October 15, 2003, the scoring for Selection Criterion 2C did not give recognition in all cases to Community Housing Development Organization (CHDO) set-aside funding in completed ''mixed-funded'' projects where ''regular'' (*i.e.*, non-CHDO set-aside) HOME funds were also used. Therefore, nine PJs listed in Appendix 1 to the NOFA were improperly assigned 0 points when, in fact, their CHDO(s) had indeed completed rental projects of 5 or more units, as reported in IDIS (Integrated Disbursement and Information System) during the two year period ending June 30, 2003. Appendix A to this technical correction notice lists the nine PJs whose scores for Selection Criterion 2C are being raised to 15 based upon the re-running of the IDIS data to give proper credit to these ''mixed-funded'' projects. The total scores assigned to these PJs on the ''pre-scored'' portion of the competition are being adjusted accordingly.

As a consequence of the scoring change, which could affect the decision of these PJs to apply under the HOME competition, the deadline for submission of applications is being moved back to December 18, 2003.

All other guidance and requirements contained in the original NOFA, including the scores assigned to PJs not appearing on Appendix A, are unchanged.

Accordingly, the Notice of Funding Availability for the Competitive Reallocation of HOME Funds to Provide Permanent Housing for the Chronically Homeless, published in the **Federal Register** on October 15, 2003, (68 FR 59450) is corrected to read as follows:

1. On page 59450, in the first column under Program Overview and again under section I, Application Due Date, Standard Forms, Further Information, and Technical Assistance, the deadline for submission of applications is changed to December 18, 2003.

2. On page 59454, in the middle column, under section VI. entitled, ''Application Requirements and Checklist for Application Submission,'' a new paragraph at the end of this section to read as follows:

''New government-wide DUNS requirement. Beginning October 1, 2003, all applicants must provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the federal government. Applicants are required to provide a DUNS number with the application. OMB is currently updating the SF–424 to accommodate the submission of the DUNS, however, at this time, applicants should simply indicate the DUNS number on a separate sheet of paper and include with the application package. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or applying on-line at *www.dunandbradstreet.com.* For faster service, HUD recommends using the telephone request line to obtain the DUNS number.''

3. On Appendix 1, beginning on page 59455, the scores assigned to nine participating jurisdictions for Selection Criterion 2C and, consequently, their total scores are changed. The specific PJs affected by this change are St. Petersburg, FL (page 59458); Dupage County Consortium, IL (page 59458); New Orleans, LA (page 59459); Quincy Consortium, MA (page 59460); Middlesex County Consortium, NJ (page 59462); Ocean County Consortium, NJ (page 59462); Altoona, PA (page 59463); Utah, UT (page 59465); and Bellingham, WA (page 59466). A list of the affected PJs and their revised scores is found on Appendix A to this notice.

Dated: November 10, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

BILLING CODE 4210–29–P

Appendix A
HOME Competition Summary Scoring Report
- Revised -

		Selection Criteria					
Grantee	St	# 1	# 2A	# 2B*	# 2C	# 2D	# 3	Score
ST. PETERSBURG	FL	25	13	10	15	6	0	69
DUPAGE CO CON	IL	22	10	10	15	3	0	60
NEW ORLEANS	LA	1	0	10	15	6	0	32
QUINCY CON	MA	12	5	10	15	9	0	51
MIDDLESEX CO CON	NJ	16	15	10	15	6	0	62
OCEAN CO CON	NJ	14	7	10	15	8	0	54
ALTOONA	PA	21	15	10	15	4	0	65
UTAH	UT	9	11	10	15	4	0	49
BELLINGHAM	WA	23	15	10	15	6	0	69

*_Score for this factor may be reduced based on updates obtained from field offices.

[FR Doc. 03–28666 Filed 11–14–03; 8:45am]
BILLING CODE 4210–29–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4892–N–01]

OIG Fraud Alert: Bulletin on Detecting and Preventing Counterfeiting of Housing Authority Checks

AGENCY: Office of the Inspector General, HUD.

ACTION: Notice.

SUMMARY: This **Federal Register** notice provides important information recently issued by HUD's Office of the Inspector General on detecting and preventing counterfeiting of local housing authority checks.

FOR FURTHER INFORMATION CONTACT: Bryan P. Saddler, Counsel to the Inspector General, Office of Legal Counsel Office of Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–4500, telephone (202) 708–1613 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

The HUD Office of Inspector General is established by law to provide independent and objective reporting to the Secretary, the Congress, and the American people through its audit and investigative activities. HUD's OIG works to promote the integrity, efficiency and effectiveness of HUD

programs and operations to assist the Department in meeting its mission. HUD's OIG is charged specifically with combating waste, fraud, and abuse in the administration of HUD programs and operations.

Consistent with this charge, Section II of this notice presents OIG's recently issued bulletin on detecting and preventing counterfeiting of local housing authority (HA) checks.

II. Fraud Information Bulletin: Detecting and Preventing Counterfeiting of HA Checks Purpose

This Bulletin highlights a recurring problem in the production of counterfeit Housing Authority checks across the country.

Background

OIG's mission is to provide policy direction for HUD and to conduct, supervise, and coordinate audits, investigations, and other activities for the purpose of promoting economy and efficiency in the administration of the programs and operations of HUD and preventing and detecting fraud and abuse in such programs. HUD administers Federal aid to local housing agencies (HAs) that own and operate housing for low-income residents at rents they can afford. During the course of audits and investigations of, and relating to, HAs, OIG has detected numerous bank fraud schemes victimizing HAs across the country. Examples of these schemes follow.

Examples

In Cleveland, OH, fourteen individuals were indicted for conspiracy to defraud local banks, merchants, businesses, and the Cuyahoga Metropolitan Housing Authority (CMHA). These individuals allegedly comprised a loosely connected ring formed to counterfeit payroll and business checks. The ring was led by a felon with a prior uttering conviction. He used ''recruiters'' who, in turn, would seek out individuals who were willing to provide their identification, and in some cases, their own bank accounts, to deposit counterfeit checks which he made on a personal computer. The felon, the recruiters, and check utterers would then split the proceeds. Counterfeit check amounts ranged from as little as $300 to more than $16,000. Six of the defendants were indicted for passing counterfeit checks that displayed either the payroll or Section 8 account numbers of the CMHA. CMHA's loss estimates exceed $49,500.

In St. Louis, MO, an individual was indicted on two counts of bank fraud for allegedly manufacturing counterfeit checks drawn on accounts of the City of St. Louis and St. Louis County Housing Authority (SLCHA). The individual engaged in his scheme beginning in October 2002 and continuing until April 2003, and over $80,000 in fraudulent SLCHA checks were created and uttered in the St. Louis metropolitan area. SLCHA lost over $28,000 from its Section 8 account.

What Happens

As part of a counterfeiting scheme, bank routing and account numbers of HAs are used to create counterfeit checks. Among other means, counterfeiters obtain the routing and account numbers from: (1) HA employees and vendors who receive payroll checks or other checks from an HA; and (2) HA residents who receive utility or other checks from an HA. Counterfeiters then employ personal computers, commercially available software, and check stock to manufacture bogus checks using the legitimate routing and account numbers. In some cases investigated by OIG, the counterfeit checks were used to buy computer equipment, which in turn was used to manufacture more fictitious checks.

The Problem

Federal funds are at risk, and from an HA's standpoint avoiding victimization can be difficult. First, even tiny HAs have numerous employees and vendors who regularly receive HA checks, and it only takes one such employee or vendor to open an HA to fraud. Second, many HAs issue utility checks directly to residents via the U.S. mail. These residents may participate in a scheme against the HA, or their utility checks could be intercepted from the mail by a third party. Third, check stock and business check software is readily available at local office supplies stores. Fourth, counterfeit checks are usually cashed at local mom/pop stores that don't have check authentication equipment or protocols. Fifth, numerous false identities accompany the counterfeit checks, and local merchants don't necessarily have the will or ability to detect false identifications.

Red Flags

An accounting discrepancy detected by monthly bank reconciliation performed by the HA. A discrepancy in the check stock (*e.g.*, color, design) ordinarily used by the HA. Suspicious endorsements on cancelled checks. Unusual disbursements.

HA Responsibility. What Can Be Done?

Internal Controls

The first step in preventing this type of scheme is for HAs to enhance procedures for preventing and detecting fraud and mismanagement (*i.e.*, to improve internal controls). The most effective internal control concept is separation of duties. An ideal system of internal controls will separate three functions: (1) Authorizing transactions; (2) keeping books; and (3) handling funds. When staff size is too small to permit separation of duties, closer supervision is needed to occasionally check for problems. Other steps that can be taken to improve internal controls include HAs paying for all disbursements by sequentially pre-numbered checks, reconciling accounts receivables to the general ledger on a monthly or more frequent basis, reviewing cancelled checks for suspicious endorsements and unusual disbursements, and requiring timely audits.

External Controls

Positive Pay Agreements. The most effective external control concept is Positive Pay Agreements (a/k/a Check Registries). This form of external control protects the HA from absorbing the loss involved with counterfeit checks if a bank fails to identify a counterfeit check and makes payment. Many banks will enter into a security contract (Positive Pay Agreements) with HAs, whereby the HAs are responsible for submitting electronic registries to the bank indicating checks that have been legitimately drawn of the HA's operating account. Upon receipt of the registry, the bank compares all checks received for payment against the registry. Any check that is not listed on the registry is rejected for payment. The bank makes a copy of the unverified check and forwards it to the HA for appropriate investigation. The bank returns the unpaid check to the original depositor and the HA will not incur a loss on the unverified check. In the event the bank pays a counterfeit check, the HA is not responsible for the amount paid out by the bank. While the registry does not prevent the production of counterfeit HA checks, it does reduce the financial loss to the HA and the Federal Government. Positive Pay Agreements have been an effective tool in the detection and prevention of check fraud. At least one bank fraud scheme that is currently under OIG investigation is the result of a Positive Pay Agreement detection.

Electronic Payment Systems. HAs may also consider converting to an

electronic payment system. By eliminating utility and/or payroll checks HAs will reduce access to routing and account numbers and, thus, the opportunity for counterfeiting. In that regard, conversion to electronic fund transfers for resident utilities and direct deposit of payroll would close off two avenues that OIG investigations have demonstrated allow fraud to occur.

Dated: November 12, 2003.

Kenneth M. Donohue,

Inspector General.

[FR Doc. 03–28667 Filed 11–14–03; 8:45 am]

BILLING CODE 4210–78–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–010–1020–PK; HAG 04–0026]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Bureau of Land Management (BLM), Lakeview District.

SUMMARY: The Southeast Oregon Resource Advisory Council (SEORAC) will hold a meeting for all members from 8 a.m. to 5 p.m. Pacific Time (PT), Monday, December 8, 2003 and 8 a.m. to 2 p.m. (PT) on Tuesday, December 9, 2003 at the BLM, Burns District Office. The meeting is open to the public. Members of the public in the Burns area may attend the meeting in person at the Burns District Office, Conference Room, HC 74–12533, Hwy 20 West, Hines, Oregon 97738.

The meeting topics that may be discussed by the Council include a discussion of issues within Southeast Oregon related to: Welcome new members, Set 2004 meeting dates, Update on National Fire Plan implementation, Healthy Forest Initiative as it relates to Eastern Oregon, Noxious Weeds—update and explanation on national process, Report/Update on Sage Grouse Conservation Plan, Report/Update on Sustainable Working Landscapes, Tour of Burns Wild Horse facility. Update on Steens Mountain Advisory Council activities, Update on Steens/Andrews RMP/EIS, SEORAC Subcommittee meetings and reports, Summary of Rangeland Health Assessment process, Federal Officials' update and other issues that may come before the Council.

Information to be distributed to the Council members is requested in written format 10 days prior to the Council meeting. Public comment is scheduled for 11:15 a.m. to 11:45 a.m. (PT) on Monday, December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the SEORAC conference call may be obtained from Pam Talbott, Contact Representative, Lakeview Interagency Office, 1301 South G Street, Lakeview, OR 97630 (541) 947–6107, or *ptalbott@or.blm.gov* and/or from the following Web site <*http://www.or.blm.gov/SEOR-RAC*>.

Dated: November 10, 2003.

Steven A. Ellis,

District Manager.

[FR Doc. 03–28601 Filed 11–14–03; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1310–01; WYW154931]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease WYW154931

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of proposed reinstatement of terminated oil and gas lease.

SUMMARY: Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW154931 for lands in Converse, County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Pamela J. Lewis, Chief, Fluid Minerals Adjudication, at (307) 775–6176.

SUPPLEMENTARY INFORMATION: The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $166 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW154931 effective March 1, 2003, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: September 26, 2003.

Pamela J. Lewis,

Chief, Fluid Minerals Adjudication.

[FR Doc. 03–28640 Filed 11–14–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–04–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David J. Clark, Acting Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, (775) 861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on July 11, 2003:

The plat, in three sheets, representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and a portion of the subdivision-of-section lines of section 20, the further subdivision of section 20, the subdivision of sections 29 and 30, and metes-and-bounds surveys in sections 19, 20, 29, and 30, Township 23 South, Range 62 East, Mount Diablo Meridian, Nevada, under Group No. 809, was accepted July 10, 2003.

This plat was prepared to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands were officially filed at the Nevada State Office, Reno, Nevada, on September 5, 2003:

The plat, representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of section 6, and a metes-and-bounds survey in section 6, Township 18 North, Range 29 East, Mount Diablo Meridian, Nevada, under Group No. 813, was accepted September 4, 2003.

This survey was executed to meet certain administrative needs of the Bureau of Reclamation.

3. The Supplemental Plat of the following described lands was officially

filed at the Nevada State Office, Reno, Nevada, on September 9, 2003:

The supplemental plat, showing a subdivision of lot 4, section 30, Township 14 North, Range 71 East, Mount Diablo Meridian, Nevada, was accepted September 9, 2003.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

4. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: November 7, 2003.

David J. Clark,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 03–28590 Filed 11–14–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Office of the Special Trustee for American Indians

Tribal Consultation on Participation by the Office of the Special Trustee for American Indians in the Department of the Interior Consolidation of Agency Appraisal Functions: Reopening of Comment Period

AGENCY: Office of the Special Trustee for American Indians, Interior.

ACTION: Notice of reopening of comment period.

SUMMARY: Notice is hereby given that the period during which the Office of the Special Trustee for American Indians (OST) will accept written comments concerning potential issues related to participation by OST in the Department of the Interior plan to consolidate agency appraisal functions, has been reopened to be effective from the date of this publication in the **Federal Register** until December 1, 2003. Pursuant to the September 17, 2003 notice published in the **Federal Register**, the period for written comments on this matter closed on November 7, 2003. In response to tribal requests, however, OST is reopening the comment period and extending it to December 1, 2003, to allow tribes and other interested parties an extended opportunity to provide written comments on this matter.

On June 19, 2003, Secretary of the Interior Gale Norton announced that real estate appraisal functions currently performed by various agencies within the Department would be consolidated into a single office. This action is taken in response to concerns about the objectivity and management of appraisal functions carried out by several agencies within the Department, and documented in reports issued by the Department's Inspector General, the General Accounting Office and other groups.

The goals of a consolidated appraisal organization include: To restore public and consumer confidence in land valuations; to ensure greater appraiser independence for unbiased valuation services that meet the highest professional standards; and a sharing of skills and resources throughout the Department. In addition, the consolidation is expected to provide better coordination and consistency of appraisal guidance, enhanced professional development of appraisers, and greater efficiencies in contract monitoring and development.

Since July 2003, OST has participated in the Departmental action team composed of appraisal and realty specialists from affected offices within the Department. The action team has been meeting to determine the best way to accomplish the consolidation, with as minimal disruption to appraisal services as possible. Participation on this action team, and additional discussions with the Department, indicate that it would be in the best interest of the OST appraisal program to join this consolidation. Specific issues unique to the appraisal of Indian trust assets as conducted by the OST Office of Appraisal Services, and by self-governance and self-determination tribes, however, require special consideration. OST held four tribal consultation sessions to discuss these issues. Two meetings were held on September 24, 2003 in Tulsa, Oklahoma, and two meetings were held on October 28, 2003 in Las Vegas, Nevada. In response to requests for additional time to submit written comments on the proposal to OST, the comment period has been reopened from the date of publication to December 1, 2003.

DATES: All comments are due by December 1, 2003.

ADDRESSES: Send or hand-deliver written comments to: Carrie Moore, Office of the Special Trustee for American Indians, 1849 C Street, NW., Suite 5140, Washington, DC 20240. Submissions by facsimile should be sent to (202) 208–7545.

FOR FURTHER INFORMATION CONTACT: Carrie Moore at (202) 208–4866 or Pat Gerard at (505) 816–1313.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian tribes and other interested parties with the opportunity to comment on issues relevant to OST participation in the Department of the Interior consolidation of agency appraisal programs.

Individual respondents may request confidentiality. If you wish us to withhold your name, street address, and other contact information (such as fax or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Special Trustee for American Indians by 209 DM 11.

Ross Swimmer,

Special Trustee for American Indians, Office of the Special Trustee for American Indians.

[FR Doc. 03–28478 Filed 11–14–03; 8:45 am]

BILLING CODE 4310–02–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–146)]

NASA Advisory Council, Biological and Physical Research Advisory Committee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Biological and Physical Research Advisory Committee.

DATES: Monday, December 8, 2003, from 10 a.m. until 5 p.m.

ADDRESSES: Holiday Inn Washington Capitol, 550 C Street SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Dr. Bradley Carpenter, Code UG, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0826.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capability of the meeting room.

The agenda for the meeting is as follows:

—Status of the International Space Station Research Institute

—Overview of the Space Telescope Science Institute

—Role of the International Space Station Research Institute in NASA's Mission

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–28661 Filed 11–14–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES

Public Hearing

ACTION: Notice of public hearing.

SUMMARY: The National Commission on Terrorist Attacks Upon the United States will hold its fifth public hearing on November 19, 2003, at Drew University in Madison, NJ. Witnesses will speak about issues related to ''Private/Public Sector Partnerships for Emergency Preparedness.'' Representatives of the media should register in advance of the hearing by visiting the Commission's Web site at *www.9–11 commission.gov.* Seating for the general public will be on a first-come, first-served basis. Press availability will occur at the conclusion of the hearing.

DATES: November 19, 2003, 10 a.m. to 5 p.m. Press availability to follow.

LOCATION: Baldwin Gymnasium, Drew University, 36 Madison Ave, Madison, NJ, 07940.

FOR FURTHER INFORMATION CONTACT: Al Felzenberg, (202) 401–1725 (office) or (202) 236–4878 (cellular).

SUPPLEMENTARY INFORMATION: Please refer to Public Law 107–306 (November 27, 2002), title VI (Legislation creating the Commission), and the Commission's Web site: *www.9–11 commission.gov.*

Dated: November 12, 2003.

Philip Zelikow,

Executive Director.

[FR Doc. 03–28648 Filed 11–14–03; 8:45 am]

BILLING CODE 8800–01–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Generic Clearance for Guidelines, Applications, Reporting Forms and Customer Surveys

AGENCY: Institute of Museum and Library Services.

ACTION: Notice of Requests for Information Collection, Submission for OMB Review.

SUMMARY: The Institute of Museum and Library Services announces the following information collection has been submitted to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of the proposed forms may be obtained by calling the Institute of Museum and Library Services, Director of Research and Technology, Rebecca Danvers at (202) 606–2478. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–8636.

DATES: Comments must be received by December 17, 2003. OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

ADDRESSES: For a copy of the form contact: Rebecca Danvers, Director of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 223, Washington, DC 20506.

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 public. Museums and libraries of all sizes and types may receive support from IMLS programs.

Pub. L. 104–208 enacted on September 30, 1996 contains the Library Services and Technology Act and the Museum Services Act.

Pub. L. 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to States, and to Indian tribes and to organizations that primarily serve and represent Native Hawaiians to—

(1) Consolidate Federal library service programs;

(2) stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages;

(3) promote library services that provide all users access to information through State, regional, national and international electronic networks;

(4) provide linkages among and between libraries;

(5) promote targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literacy or information skills.

Pub. L. 104–208 also provides authority for the Director to make grants, and to enter into contracts and cooperative agreements for activities that may include:

(1) Education and training of persons in library and information science, particularly in ares of new technology and other critical needs, including graduate fellowships, traineeships, institutes and other programs.

(2) research and demonstration projects related to the improvement of libraries, education in library and information science, enhancement of library services through effective and efficient use of new technologies, and dissemination of information derived from such projects;

(3) preserving or digitization of library materials and resources, giving priority to projects emphasizing coordination, avoidance of duplication, and access by researchers beyond the institution of library entity undertaking the project; and

(4) model programs demonstrating cooperative efforts between libraries and museums.

Pub. L. 104–208 also provides authority for the Director to make grants to museums for activities such as—

(1) Programs that enable museums to construct or install displays,

interpretations, and exhibitions in order to improve museum services provided to the public:

(2) assisting museums in developing and maintain professionally trained or otherwise experienced staff to meet the needs of the museums;

(3) assisting museums in meeting the administrative costs of preserving and maintaining the collections of the museums, exhibiting the collections to the public, and providing educational programs to the public through the use of the collections;

(4) assisting museums in cooperating with each other in developing traveling exhibitions, meeting transportation costs, and identifying and locating collections available for loan;

(5) assisting museums in the conservation of their collections;

(6) developing and carrying out specialized programs for specific segments of the public, such as programs for urban neighborhoods, rural areas, Indian reservations, and penal and other State institutions; and

(7) model programs demonstrating cooperative efforts between libraries and museums.

The Director is also authorized to enter into contracts and cooperative agreements with appropriate entities to strengthen museum services.

II. Current Actions

To administer these programs of grants, cooperative agreements and contracts, IMLS must develop application guidelines, reports and customer service surveys.

Agency: Institute of Museum and Library Services.

Title: Application Guidelines, Interim and Final Performance Reports, and Customer Service Surveys.

OMB Number: 3137–0029.

Agency Number: 3137.

Frequency: Annually.

Affected Public: State Library Administrative Agencies, museums, libraries.

Number of Respondents: 2500.

Estimated Time Per Respondent: 1–40.

Total Burden Hours: 35,000.

Total Annualized capital/startup costs: 0.

Total Annual Costs: 0.

FOR FURTHER INFORMATION CONTACT: Comments should be sent to the Office of Information and Regulatory Affairs, Attn.: OMB Desk Officer for Education, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316.

Dated: November 7, 2003.

Rebecca Danvers,

Director of Research and Technology.

[FR Doc. 03–28591 Filed 11–14–03; 8:45 am]

BILLING CODE 7036–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Cannon Express, Inc., Common Stock, $.01 Par Value) File No. 1–13917

November 7, 2003.

Cannon Express, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Issuer states that it wishes to withdraw its Security from listing and registration on the Amex because the Company is no longer eligible for continued listing on the Amex. The Issuer's management states that the Issuer would not be in a position to file its Form 10–K and Form 10–Q before the deadline required by the Amex and that it is in the Issuer's best interest to commence a voluntary delisting from the Amex.

The Issuer stated in its application that it has met the requirements of Amex Rule l8 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Securities from listing on the Amex and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before December 2, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–28596 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26250; 812–12956]

Alpine Equity Trust, et al.; Notice of Application

November 7, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under sections 6(c), 12(d)(1)(J), and 17(b) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and (B) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application: The requested order would permit certain registered management investment companies and certain entities that are excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act to invest uninvested cash in affiliated money market funds in excess of the limits in sections 12(d)(1)(A) and (B) of the Act.

Applicants: Alpine Equity Trust, Alpine Series Trust, Alpine Income Trust (collectively, the ''Investment Companies''); Alpine Woods Growth Values, L.P., Alpine Woods Growth Values Financial Equities, L.P. (collectively, the ''Private Funds''); Alpine Management & Research, LLC (''Alpine Management''); and Saxon Woods Advisors, LLC (''Saxon Woods'').

Filing Dates: The application was filed on April 9, 2003, and amended on November 7, 2003.

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 December 2, 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, 2500 Westchester Avenue, Suite 109, Purchase, NY 10577.

FOR FURTHER INFORMATION CONTACT: John Yoder, Attorney-Adviser, at (202) 942–0544 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 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 Investment Company is organized as a Delaware business trust and is registered under the Act as an open-end management investment company. The Investment Companies have one or more series, each with separate investment objectives and policies. Alpine Woods Growth Values, L.P. and Alpine Woods Growth Values Financial Equities, L.P. are Delaware limited partnerships excluded from the definition of investment company under the Act pursuant to section 3(c)(1) or 3(c)(7) of the Act. Alpine Management is a Delaware limited liability company registered under the Investment Advisers Act of 1940 (''Advisers Act'') and serves as investment adviser to each series of the Investment Companies. Saxon Woods is a Delaware limited liability company registered under the Advisers Act and serves as sub-adviser to a series of Alpine Series Trust and as investment manager for Alpine Woods Growth Values, L.P. and Alpine Woods Growth Values Financial Equities, L.P. (Alpine Management and Saxon Woods or any entity controlling, controlled by, or under common control with Alpine Management or Saxon Woods, collectively, the ''Advisers'').[1]

2. Applicants state that certain Funds and Private Funds (the ''Investing Funds'') have, or may be expected to have, uninvested cash (''Uninvested Cash'') in an account held by a custodian. Uninvested Cash may result from a variety of sources, including dividends or interest received on portfolio securities, unsettled securities transactions, reserves held for investment strategy purposes, scheduled maturity of investments, liquidation of investment securities to meet anticipated redemptions, dividend payments, or new monies received from investors.

3. Applicants request an order to permit each of the Investing Funds to invest its Uninvested Cash in shares of one or more Funds that are money market funds and comply with rule 2a–7 under the Act (''Money Market Funds''), and to permit the Money Market Funds to sell shares to, and redeem such shares from, the Investing Funds, and the Advisers to effect such purchases and sales. All existing and future Funds that invest their Uninvested Cash in the Money Market Funds are referred to as ''Registered Investing Funds,'' and the Private Funds that invest in the Money Market Funds are referred to as the ''Non-Registered Investing Funds.'' Investment of Uninvested Cash in shares of the Money Market Funds will be made only to the extent that such investments are consistent with each Registered Investing Fund's investment objectives, restrictions, and policies as set forth in its prospectus and statement of additional information. Applicants believe that the proposed transactions may reduce transaction costs, create more liquidity, increase returns, and diversify holdings.

Applicants' Legal Analysis

1. Section 12(d)(1)(A) of the Act provides that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies. Any entity that is excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act is deemed to be an investment company for the purposes of the 3% limitation specified in sections 12(d)(1)(A) and (B) with respect to purchases by and sales to such company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that such exemption is consistent with the public interest and the protection of investors. Applicants request relief under section 12(d)(1)(J) to permit the Investing Funds to use their Uninvested Cash to acquire shares of the Money Market Funds in excess of the percentage limitations in section 12(d)(1)(A), provided, however, that in all cases a Registered Investing Fund's aggregate investment of Uninvested Cash in shares of the Money Market Funds will not exceed 25% of the Registered Investing Fund's total assets at any time. Applicants also request relief to permit the Money Market Funds to sell their securities to the Investing Funds in excess of the percentage limitations in section 12(d)(1)(B).

3. Applicants state that the proposed arrangement will not result in the abuses that sections 12(d)(1)(A) and (B) were intended to prevent. Applicants state that there is no threat of redemption to gain undue influence over the Money Market Funds due to the highly liquid nature of each Money Market Fund's portfolio. Applicants state that the proposed arrangement will not result in inappropriate layering of fees. Shares of the Money Market Funds sold to the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b-1 under the Act or service fee (as defined in NASD

[1] Applicants request that any relief granted also apply to (a) any other registered management investment company and series thereof for which an Adviser currently or in the future serves as investment adviser (''Funds,'' and together with all existing or future series of the Investment Companies, the ''Funds'') and (b) any private investment company excluded from the definition of investment company under section 3(c)(1) or 3(c)(7) of the Act for which an Adviser currently or in the future may serve as investment adviser or general partner exercising investment discretion (included in the term ''Private Funds.''). All Funds and Private Funds that currently intend to rely on the requested order are named as applicants. Any other entity that may rely on the order in the future will do so only in accordance with the terms and conditions of the application.

Conduct Rule 2830(b)(9)). If a Money Market Fund offers more than one class of shares, each Investing Fund will invest its Uninvested Cash only in the class with the lowest expense ratio at the time of investment. In connection with approving any advisory contract for a Registered Investing Fund, the board of trustees of each Registered Investing Fund (''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act (''Disinterested Trustees''), will consider to what extent, if any, the advisory fees charged to the Registered Investing Fund by the Adviser should be reduced to account for reduced services provided to the Registered Investing Fund by the Adviser as a result of the investment of Uninvested Cash in a Money Market Fund. In this regard, the Adviser will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Registered Investing Fund that can be expected to be invested in the Money Market Funds. Applicants represent that so long as its shares are held by an Investing Fund, no Money Market Fund will acquire securities of any other investment company in excess of the limitations contained in section 12(d)(1)(A) of the Act.

4. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, acting as principal, to sell or purchase any security to or from the investment company. Section 2(a)(3) of the Act defines an affiliated person of an investment company to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding securities are directly or indirectly owned, controlled, or held with power to vote by the other person, any person directly or indirectly controlling, controlled by, or under common control with the other person, and any investment adviser to the investment company. Because each Fund shares a common investment adviser, they may be deemed to be under common control and thus affiliated persons of each other. In addition, if a Registered Investing Fund purchases more than 5% of the voting securities of a Money Market Fund, the Money Market Fund and the Registered Investing Fund may be affiliated persons of each other. As a result, section 17(a) would prohibit the sale of the shares of Money Market Funds to the Investing Funds, and the redemption of the shares by the Investing Funds.

5. Section 17(b) of the Act authorizes the Commission to exempt a transaction from section 17(a) of the Act if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

6. Applicants submit that their request for relief to permit the purchase and redemption of shares of the Money Market Funds by the Investing Funds satisfies the standards in sections 6(c) and 17(b) of the Act. Applicants note that shares of the Money Market Funds will be purchased and redeemed at their net asset value, the same consideration paid and received for these shares by any other shareholder. Applicants state that the Registered Investing Funds will retain their ability to invest Uninvested Cash directly in money market instruments as authorized by their respective investment objectives and policies. Applicants state that a Money Market Fund has the right to discontinue selling shares to any of the Investing Funds if the Money Market Fund's Board determines that such sale would adversely affect the Money Market Fund's portfolio management and operations.

7. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates, unless the Commission has approved the joint arrangement. Applicants state that the Investing Funds and the Money Market Funds, by participating in the proposed transactions, and the Advisers, by managing the proposed transactions, could be deemed to be participating in a joint arrangement within the meaning of section 17(d) and rule 17d–1.

8. In considering whether to approve a joint transaction under rule 17d–1, the Commission considers whether the investment company's participation in the joint transaction is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants. Applicants state that the investment by the Investing Funds in shares of the Money Market Funds would be on the same basis and no different from or less advantageous than that of other participants. Applicants submit that the proposed transactions meet the standards for an order under rule 17d–1.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Shares of the Money Market Funds sold to and redeemed from the Investing Funds will not be subject to a sales load, redemption fee, distribution fee under a plan adopted in accordance with rule 12b–1, or service fee (as defined in rule 2830(b)(9) of the Rules of Conduct of the NASD) or, if such shares are subject to any such sales load, redemption fee, distribution fee or service fee, an Adviser will waive its advisory fee for each Investing Fund in an amount that offsets the amount of such fees incurred by the Investing Fund.

2. Before the next meeting of the Board of a Registered Investing Fund is held for purposes of voting on an advisory contract under section 15 of the Act, the Adviser to the Registered Investing Fund will provide the Board with specific information regarding the approximate cost to the Adviser of, or portion of the advisory fee under the existing advisory contract attributable to, managing the Uninvested Cash of the Registered Investing Fund that can be expected to be invested in the Money Market Funds. Before approving any advisory contract for a Registered Investing Fund, the Board of the Registered Investing Fund, including a majority of the Disinterested Trustees, shall consider to what extent, if any, the advisory fees charged to the Registered Investing Fund by the Adviser should be reduced to account for reduced services provided to the Registered Investing Fund by the Adviser as a result of Uninvested Cash being invested in the Money Market Funds. The minute books of the Registered Investing Fund will record fully the Board's considerations in approving the advisory contract, including the considerations relating to fees referred to above.

3. Each of the Registered Investing Funds will invest Uninvested Cash in,

and hold shares of, the Money Market Funds only to the extent that the Registered Investing Fund's aggregate investment of Uninvested Cash in the Money Market Funds does not exceed 25 percent of the Registered Investing Fund's total assets. For purposes of this limitation, each Registered Investing Fund and series thereof will be treated as a separate investment company.

4. Investment by a Registered Investing Fund in shares of the Money Market Funds will be in accordance with each Registered Investing Fund's respective investment restrictions and will be consistent with each Registered Investing Fund's policies as set forth in its prospectus and statement of additional information.

5. Each Registered Investing Fund and each Money Market Fund relying on the order will be advised by an Adviser. A Registered Investing Fund that is subadvised, but not advised, by an Adviser may rely on the order provided that the Adviser manages the Uninvested Cash and the Registered Investing Fund is in the same group of investment companies (as defined in 12(d)(1)(G) of the Act) as the Money Market Fund in which the Registered Investing Fund invests its Uninvested Cash. Each Non-Registered Investing Fund will be advised by an Adviser or have an Adviser as its general partner exercising investment discretion.

6. So long as its shares are held by an Investing Fund no Money Market Fund shall acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–28595 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48765; File No. PCAOB–2003–06]

Public Company Accounting Oversight Board; Notice of Filing and Order Granting Accelerated Approval of Proposed Temporary Hearing Rules Relating to Disapproved Registration Applications

November 10, 2003.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (the ''Act''), notice is hereby given that on October 1, 2003, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''SEC'' or ''Commission'') the proposed rules described in Items I and II below, which items have been prepared by the Board.

I. Board's Statement of the Terms of Substance of the Proposed Rules

On September 29, 2003, the Board adopted rules on investigations and adjudications (the ''Enforcement Rules''). The current proposal is limited to a subset of the Enforcement Rules. The subset consists of certain rules that would govern hearings that the Board may hold concerning possible disapproval of applications for registration. As to the subset (the ''Temporary Hearing Rules''), the Board requests that the Commission grant accelerated effectiveness, pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board seeks accelerated effectiveness of the Temporary Hearing Rules to facilitate any registration disapproval hearings that may be necessary before the Enforcement Rules are approved. The Board requests that effectiveness only on a temporary basis. The Temporary Hearing Rules would be superseded by any Enforcement Rules approved by the Commission, upon final Commission approval of those rules. The Temporary Hearing Rules include 41 rules and nine definitions, all of which are designated as temporary by appending a ''T'' to the rule number. The text of the Temporary Hearing Rules is set forth below.

Rules of the Board

Section 1. General Provisions

Rule 1001. Definitions of Terms Employed in Rules

When used in the Rules, unless the context otherwise requires—

(a)(ix)T Accounting Board Demand. The term ''accounting board demand'' means a command to produce documents and/or to appear at a certain time and place to give testimony.

(a)(x)T Accounting Board Request. The term ''accounting board request'' means a request to produce documents and/or to appear at a certain time and place to give testimony.

(c)(ii)T Counsel. The term ''counsel'' means an attorney at law admitted to practice, and in good standing, before the Supreme Court of the United States or the highest court of any state.

(h)(i)T Hearing Officer. The term ''hearing officer'' means a person, other than a Board member or staff of the interested division, duly authorized by the Board to preside at a hearing.

(i)(iv)T Interested Division. The term ''interested division'' means a division or office of the Board assigned primary responsibility by the Board to participate in a particular proceeding.

(o)(ii)T Order Instituting Proceedings. The term ''order instituting proceedings'' means an order issued by the Board commencing a disciplinary proceeding.

(p)(iii)T Party. The term ''party'' means the interested division, any person named as a respondent in an order instituting proceedings or notice of a hearing, any applicant named in the caption of any order, or any person seeking Board review of a decision.

(p)(iv)T Person. The term ''person'' means any natural person or any business, legal or governmental entity or association.

(s)(iii)T Secretary. The term ''Secretary'' means the Secretary of the Board.

Rule 1002T. Time Computation

In computing any period of time prescribed in or allowed by these Rules or by order of the Board, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, Sunday, or federal legal holiday, in which event the period runs until the end of the next day that is not a Saturday, Sunday, or federal legal holiday. Intermediate Saturdays, Sundays, and federal legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed by rule or order for service by mail. If on the day a filing is to be made, weather or other conditions have caused the Secretary's office or other designated filing location to close, the filing deadline shall be extended to the end of the next day that is neither a Saturday, a Sunday, nor a federal legal holiday.

Note: The Secretary will maintain a list of federal legal holidays.

Section 5. Investigations and Adjudications

Rule 5000. [Reserved]

Part 1—[Reserved]

Part 2—Disciplinary Proceedings

Rule 5200T. Commencement of Disciplinary Proceedings

(a) [Reserved]

(b) Appointment of a Hearing Officer

As soon as practicable after the Board has issued an order instituting proceedings, or after a registration applicant has requested a hearing pursuant to Rule 5500(b), the Secretary shall assign a hearing officer to preside over the proceeding and shall serve the parties with notice of the hearing officer's assignment. Subject to Rules 5402 and 5403, the hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. The powers of the hearing officer include, but are not limited to, the following—

(1) Obtaining a court reporter to administer oaths and affirmations;

(2) Issuing accounting board demands pursuant to Rule 5424;

(3) Receiving relevant evidence and ruling upon the admission of evidence and offers of proof;

(4) Regulating the course of a proceeding and the conduct of the parties and their counsel;

(5) Holding prehearing and other conferences and requiring the attendance at any such conference of at least one representative of each party who has authority to negotiate concerning the resolution of issues in controversy;

(6) Recusing himself or herself upon motion made by a party or upon his or her own motion;

(7) Ordering, in his or her discretion, in a proceeding involving more than one respondent, that the interested division indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(8) Subject to any limitations set forth elsewhere in these Rules, considering and ruling upon all procedural and other motions;

(9) Preparing an initial decision as provided in Rule 5204;

(10) Upon notice to all parties, reopening any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Board;

(11) Informing the parties as to the availability of one or more alternative means of dispute resolution, and encouraging the use of such methods; and

(12) Scheduling hearing dates, except that a hearing officer may not, absent the approval of the Board, change a hearing date set by Board order.

(c) Separation of Functions

The staff of the Division of Enforcement and Investigations may not participate or advise in the decision, or in Board review of the decision, in any proceeding in which the Division of Enforcement and Investigations is the interested division, except as a witness or counsel in the proceeding. Any other employee or agent of the Board engaged in the performance of investigative or prosecutorial functions for the Board in a proceeding may not, in that proceeding or one that is factually related, participate or advise in the decision, or in Board review of the decision, except as a witness or counsel in the proceeding. A hearing officer may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Board.

(d) Consolidation of Proceedings

By order of the Board or a hearing officer, proceedings involving a common question of law or fact may be consolidated for hearing of any or all the matters at issue in such proceedings. The Board or the hearing officer may make such orders concerning the conduct of such proceedings as it deems appropriate to avoid unnecessary cost or delay. Consolidation shall not prejudice any rights under these Rules and shall not affect the right of any party to raise issues that could have been raised if consolidation had not occurred. For purposes of this Rule, no distinction is made between joinder and consolidation of proceedings.

Rule 5201T. Notification of Commencement of Disciplinary Proceedings

(a) [Reserved]

(b) [Reserved]

(c) Notice of a Hearing on a Registration Application

In the case of a proceeding pursuant to Rule 5500, the notice of a hearing shall state proposed grounds for disapproving the registration application.

(d) [Reserved]

Rule 5202T. Record of Disciplinary Proceedings

(a) Contents of the Record

(1) Record of a Disciplinary Proceeding

A hearing record shall consist of—

(i) The order instituting proceedings, each notice of hearing and any amendments;

(ii) Each application, supplemental application, motion, submission or other paper, and any amendments, motions, objections, and exceptions to or regarding them;

(iii) Each stipulation, transcript of testimony and document or other information admitted into evidence;

(iv) Each written communication accepted by the hearing officer pursuant to Rule 5420;

(v) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal pursuant to Rule 5402, each affidavit or transcript of testimony taken and the decision made in connection with the request;

(vi) All motions, briefs and other papers filed on interlocutory appeal;

(vii) Any proposed findings and conclusions;

(viii) Each written order or notice issued by the hearing officer or the Board; and

(ix) Any other document or item accepted into the record by the Board or the hearing officer.

(2) Record on Disapproval of Application for Registration

The record on a disapproval of an application with respect to which the applicant has elected to waive its opportunity for a hearing pursuant to Rule 5500 shall consist of—

(i) The application for registration, and any supplemented application;

(ii) Any additional information provided by the applicant;

(iii) Any other information obtained by the Board in connection with the application;

(iv) The notice of a hearing and any written order issued by the Board; and

(v) Any other document or item accepted into the record by the Board.

(b) Documents Not Admitted

Any document offered in evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered a part of the record. The Secretary shall retain any documents offered in evidence but excluded until all opportunities for Commission and judicial review have been exhausted or waived.

(c) Substitution of Copies

A true copy of a document may be substituted for any document in the record or any document retained pursuant to paragraph (b) of this Rule.

(d) Preparation of Record and Certification of Record Index

Promptly after the close of a hearing, the hearing officer shall transmit to the Secretary an index of any motions, exhibits or any other documents submitted to, or accepted into evidence by, the hearing officer that have not been previously transmitted to the Secretary, and the Secretary shall prepare a record index. Prior to issuance of an initial decision, the Secretary shall transmit the record index to the hearing officer and serve a copy of the record index on each party. Any party may file proposed corrections to the record index with the hearing officer within 15 days of service of the record index. The hearing officer shall, by order, direct whether any corrections to the record index shall be made. The Secretary shall make such corrections, if any, and issue a revised record index. The initial decision shall include a certification that the record consists of the items set forth in the record index or revised record index issued by the Secretary.

(e) Final Transmittal of Record Items to the Secretary

After the close of a hearing, the hearing officer shall transmit to the Secretary originals of exhibits or any other documents submitted to, or accepted into evidence by, the hearing officer, and any other portions of the record that have not already been transmitted to the Secretary. Prior to service of the initial decision by the Secretary, the Secretary shall inform the hearing officer if any portions of the record are not in the Secretary's custody.

Rule 5203T. Public and Private Hearings

No hearing shall be public unless ordered by the Board. In any proceeding commenced pursuant to Rule 5200(a), the Board shall not order that a hearing be public except for good cause shown and with consent of the parties.

Rule 5204T. Determinations in Disciplinary Proceedings

(a) [Reserved]

(b) Initial Decision of a Hearing Officer

Unless the Board directs otherwise, a hearing officer shall prepare an initial decision in any proceeding in which the Board directs a hearing officer to preside at a hearing. An initial decision shall include findings and conclusions, including sanctions, if appropriate, and the reasons or basis therefor, as to all the material issues of fact, law or discretion presented on the record and such other information as the Board may require.

Note: Unless the Board has directed otherwise, the Board expects hearing officers in proceedings pursuant to Rule 5500 to prepare initial decisions within 45 days after the deadline for filing post-hearing briefs or other submissions.

(c) Filing, Service and Publication

The hearing officer shall file the initial decision with the Secretary. The Secretary shall promptly serve the initial decision upon the parties. In a public proceeding, the Secretary shall as soon as practicable thereafter publish the initial decision, unless the Board otherwise directs.

(d) When Final

(1) An initial decision as to a party shall become the final decision of the Board as to that party upon issuance of a notice of finality by the Secretary.

(2) Subject to subparagraph (3) of this paragraph, the Secretary shall issue a notice of finality no later than 20 days after the lapsing of the time period for filing a petition for review of the initial decision.

(3) The Secretary shall not issue a notice of finality as to any party

(i) Who has filed a timely petition for review; or

(ii) with respect to whom the Board has ordered review of the initial decision pursuant to Rule 5460(b).

Rule 5205T. Settlement of Disciplinary Proceedings Without a Determination After Hearing

(a) Availability

Any firm or person who is notified that a proceeding may or will be instituted against him or her, or any firm or person that is a party to a proceeding already instituted, may, at any time, propose in writing an offer of settlement.

(b) Procedure

An offer of settlement shall state that it is made pursuant to this Rule; shall recite or incorporate as a part of the offer the provisions of paragraphs (c)(2) and (3) of this Rule; shall be signed by the person making the offer, not by counsel; and shall be submitted to the Director of Enforcement and Investigations.

(c) Consideration of Offers of Settlement

(1) The Director of Enforcement and Investigations shall present an offer of settlement to the Board with his or her recommendation, except that, if the recommendation is unfavorable, the offer shall not be presented to the Board unless the person making the offer so requests.

(2) By submitting an offer of settlement, the person making the offer waives, subject to acceptance of the offer—

(i) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) the filing of post-hearing briefs or other submissions, proposed findings of fact and conclusions of law;

(iii) proceedings before, and an initial decision by, a hearing officer;

(iv) all post-hearing procedures; and

(v) judicial review by any court.

(3) By submitting an offer of settlement the person further waives—

(i) such provisions of the Rules of Board Procedure or other requirements of law as may be construed to prevent any member of the Board's staff from participating in the preparation of, or advising the Board as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(ii) any right to claim bias or prejudgment by the Board based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

(4) If the Board rejects the offer of settlement, the person making the offer shall be notified of the Board's action and the offer of settlement shall be deemed withdrawn. The rejected offer shall not constitute a part of the record in any proceeding against the person making the offer. Rejection of an offer of settlement does not affect the continued validity of waivers pursuant to paragraph (c)(3) of this Rule with respect to any discussions concerning the rejected offer of settlement.

(5) Final acceptance of any offer of settlement will occur only upon the issuance of findings and an order by the Board.

Note: In a hearing on disapproval of registration, an offer of settlement will be considered and handled by the Director of Registration and Inspections in accordance with Rule 5206 as if the Director of Registration and Inspections were the Director of Enforcement and Investigations.

Rule 5206. [Reserved]

Part 3—[Reserved]

Part 4—Rules of Board Procedure

General

Rule 5400T. Hearings

Hearings for the purpose of taking evidence shall be held only upon order

of the Board. All hearings shall be conducted in a fair, impartial, expeditious and orderly manner.

Rule 5401T. Appearance and Practice Before the Board

A person shall not be represented before the Board or a hearing officer except as stated in paragraphs (a) or (b) of this Rule or as otherwise permitted by the Board or a hearing officer.

(a) Representing Oneself

In any proceeding, an individual may appear on his or her own behalf.

(b) Representing Others

In any proceeding, a person may be represented by counsel; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association.

(c) Designation of Address for Service; Notice of Appearance; Power of Attorney; Withdrawal

(1) Representing Oneself

When an individual first makes any filing or otherwise appears on his or her own behalf before the Board or a hearing officer, he or she shall file with the Secretary both an electronic and a mailing address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours, and the individual shall promptly advise the Secretary of changes to that information during the course of the proceeding.

(2) Representing Others

When a person first makes any filing or otherwise appears in a representative capacity before the Board or a hearing officer, that person shall file with the Secretary, and keep current, a written notice stating the name of the proceeding; the representative's name, mailing address, electronic address and telephone number; and the name and electronic and mailing addresses of the person or persons represented; and, if the person is an attorney, a declaration that the attorney is admitted to practice before the Supreme Court of the United States or the highest court of any state, as defined in Section 3(a)(16) of the Exchange Act.

(3) Power of Attorney

Any individual appearing or practicing before the Board in a representative capacity may be required to file a power of attorney with the Board showing his or her authority to act in such capacity.

(4) Withdrawal

Withdrawal by any individual appearing in a representative capacity shall be permitted only by order of the Board or the hearing officer. A motion seeking leave to withdraw shall state with specificity the reasons for such withdrawal. Leave to withdraw shall not be withheld absent good cause.

Rule 5402T. Hearing Officer Disqualification and Withdrawal

(a) Motion for Withdrawal

A party who has a reasonable, good faith basis to believe that a hearing officer has a conflict of interest or personal bias, or circumstances otherwise exist such that the hearing officer's fairness may reasonably be questioned, may make a motion to the hearing officer that the hearing officer withdraw, which shall be filed with the Secretary. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and shall continue to preside over the proceeding. A motion for withdrawal shall be filed within 15 days after the later of—

(1) When the party learned of the facts believed to constitute the basis for the disqualification; or

(2) when the party was notified of the assignment of the hearing officer.

(b) Appointment of a Replacement Hearing Officer

Upon withdrawal of a hearing officer, or in the event that a hearing officer is incapacitated or is otherwise unable to continue to serve after being appointed, the Secretary will appoint a replacement hearing officer. To ensure fairness to the parties and expedite completion of the proceeding when a replacement hearing officer is appointed after a hearing has commenced, the replacement hearing officer may recall any witness or may certify familiarity with any part or all of the record.

Rule 5403T. Ex Parte Communications

Except to the extent permitted for the disposition of ex parte matters as authorized by law or the Board's Rules—

(a) The person presiding over an evidentiary hearing may not consult a person or party on a fact in issue, unless on notice and with opportunity for all parties to participate; and

(b) neither a party, nor any Board staff that substantially assists the interested division on the particular matter, whether before or during the hearing, may—

(1) Communicate with the person presiding over an evidentiary hearing on a fact in issue, unless on notice and opportunity for all parties to participate; or

(2) communicate with the Board or any member of the Board on a fact in issue, unless on notice and opportunity for all parties to participate or under circumstances in which a party excluded from the communication has waived the rights described in Rule 5205(c)(3) with respect to the matters that are the subject of the communication.

Rule 5404T. Service of Papers by Parties

In every proceeding, each paper, including each notice of appearance, written motion, brief, or other written communication, shall be served upon each party in a manner calculated to bring the paper to the attention of the party to be served.

Rule 5405T. Filing of Papers With the Board: Procedure

(a) When To File

All papers required to be served by a party upon any person shall be filed with the Board at the time of service or promptly thereafter. Papers required to be filed with the Board must be received within the time limit, if any, for such filing.

(b) Where To File

Unless otherwise permitted by the Secretary, filing of papers with the Board shall be made by electronically filing them with the Secretary.

Note: When a document has been filed electronically, the official record is the electronic recording of the document as stored by the Secretary, and the filing party is bound by the document as filed. A document filed electronically is deemed filed at the date received electronically by the Secretary. Upon request, the Secretary may permit regulators granted permission to participate on a limited basis (to request a stay), amici curiae, nonparties and others to file in paper form. Where practicable, the Secretary will scan such a filing into the docket file.

Rule 5406T. Filing of Papers: Form

(a) Specifications

Papers filed in connection with any proceeding shall—

(1) Be formatted in a Portable Document Format on pages measuring 8½ x 11 inches, except that, upon consent of the Secretary for good cause, a document may be filed in paper form;

Note: To the extent that the reduction of larger documents would render them illegible, the Secretary may consent to the filing of such documents on larger paper, in electronic or paper form.

(2) include at the head of the paper, or on a title page, the name of the Board, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding;

(3) be paginated with margins at least 1 inch wide; and

(4) be double-spaced in a 12-point font, with single-spaced footnotes and single-spaced indented quotations.

(b) Form of Briefs

All briefs containing more than 10 pages shall include a table of contents, an alphabetized table of cases, a table of statutes, and a table of other authorities cited, with references to the pages of the brief wherein they are cited.

Rule 5407T. Filing of Papers: Signature Requirement and Effect

Following the issuance of an order instituting proceedings, every filing of a party who represents himself or herself shall sign his or her individual name and state the date and his or her address and telephone number on every filing. A party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's business address and telephone number.

Note: If practicable, a party's or an attorney's signature should be scanned into an electronic document. In any event, however, the use of an attorney's electronic mail address, or password for the Board's electronic filing system, shall constitute the signature of that attorney.

Rule 5408T. Motions

(a) Generally

Unless made during a hearing or conference, a motion shall be in writing, shall state with particularity the grounds therefor, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon. Unless otherwise ordered by the Board or the hearing officer, if a motion is properly made to the Board concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Board. No oral argument shall be heard on any motion unless the Board or the hearing officer otherwise directs.

(b) Opposing and Reply Briefs

Except as provided in Rule 5427, and unless otherwise ordered by the Board or a hearing officer, a brief in opposition to a motion shall be filed within five days after service of the motion. Reply briefs are only permitted with leave of the hearing officer.

(c) Length Limitation

Except as provided in Rule 5427, a brief in support of or opposition to a motion shall not exceed 10 pages, exclusive of pages containing any table of contents, table of authorities, and/or addendum. The hearing officer may grant requests for leave to file briefs in excess of 10 pages, upon a showing of good cause.

Rule 5409T. Default and Motions To Set Aside Default

(a) Default

A party to a proceeding may be deemed to be in default and the Board or the hearing officer may determine the proceeding against that party upon consideration of the record, including the order instituting proceedings or notice of a hearing, the allegations of which may be deemed to be true, if that party fails—

(1) To appear, in person or through a representative, at a hearing or conference of which that party has been notified;

(2) to answer when required to do so by a Board order, to respond to a dispositive motion within the time provided, or otherwise to defend the proceeding; or

(3) to cure a deficient filing within the time specified by the Board or the hearing officer.

(b) Motion To Set Aside Default

A motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to appear or defend, and specify the nature of the proposed defense in the proceeding. In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of the initial decision, or the Board at any time, may for good cause shown set aside a default.

Rule 5410T. Additional Time for Service by Mail

If service is made by mail, three days shall be added to the prescribed period for response.

Rule 5411T. Modifications of Time, Postponements and Adjournments

Except as otherwise provided by law, the Board, at any time, or the hearing officer, at any time prior to the filing of his or her initial decision, may, for good cause shown, extend or shorten any time limits prescribed by these Rules for the filing of any papers and may, consistent with paragraph (b) of this Rule, postpone or adjourn any hearing.

Rules 5412.–5419. [Reserved]

Prehearing Rules

Rule 5420T. Stay Requests

(a) Leave To Participate To Request a Stay

The Board or the hearing officer may grant leave to participate on a limited basis only to an authorized representative of the Commission, an authorized representative of the United States Department of Justice, an authorized representative of a United States Attorney, an appropriate state regulatory authority, or an authorized representative of any criminal prosecutorial authority of any State or any other political subdivision of a State for the purpose of requesting a stay during the pendency of a Commission investigation or proceeding, a criminal investigation or prosecution, or a state regulatory proceeding, arising out of the same or similar facts that are at issue in the pending Board or disciplinary proceeding. Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. A stay granted pursuant to this Rule may be granted for such a period and upon such conditions as the Board or the hearing officer deems appropriate.

(b) Stay To Protect Ongoing Commission Investigation

Upon a showing that a stay requested pursuant to this Rule is necessary to protect an ongoing Commission investigation, the motion for the stay shall be granted.

(c) Other Stays

Upon a showing that such a stay is in the public interest or for the protection of investors, the motion for the stay shall be favored.

Rule 5421T. Answer to Allegations

(a) When Required

In its order instituting proceedings, the Board may require any party to file an answer to each of the allegations contained therein. Even if not so ordered, any party in any proceeding may elect to file an answer.

(b) When To File

Unless additional time is granted by the hearing officer or the Board, a party filing an answer as provided in

paragraph (a) of this Rule shall do so within 20 days after service upon the party of an order instituting proceedings pursuant to Rule 5500. If the order instituting proceedings is amended, the Board or the hearing officer may require that an amended answer be filed and, if such an answer is required, shall specify a date for the filing thereof.

(c) Contents of Answer and Effect of Failure To Deny

Unless otherwise directed by the hearing officer or the Board, an answer shall specifically admit, deny, or state that the party does not have, and is unable to obtain, sufficient information to admit or deny each allegation in the order instituting proceedings. When a party intends in good faith to deny only a part of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial. A defense of res judicata, statute of limitations or any other matter constituting an affirmative defense shall be asserted in the answer. Any allegation not denied shall be deemed admitted.

Rule 5422T. Availability of Documents for Inspection and Copying

(a) Documents To Be Available for Inspection and Copying

(1) [Reserved]

(2) [Reserved]

(3) Proceedings Commenced Pursuant to Rule 5500

Unless otherwise provided by this Rule, or by order of the Board or the hearing officer, in proceedings pursuant to Rule 5500, the Division of Registration and Inspections shall make available for inspection and copying by the applicant documents obtained by that division in connection with the registration application prior to the notice of hearing, except that the Division need not produce any documents described in subparagraph (b) that it does not intend to introduce as evidence.

(b) Documents That May Be Withheld

(1) The interested division may decline to make available for inspection and copying—

(i) Any document prepared by a member of the Board or of the Board's staff that has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration;

(ii) any other document that is privileged, including any other document protected by the attorney work product doctrine;

(iii) any document that would disclose the identity of a confidential source; and

(iv) any other document that the staff identifies for the hearing officer's consideration as to whether the document may be withheld as not relevant to the subject matter of the proceeding or otherwise for good cause shown.

(2) Nothing in this paragraph (b), or in paragraph (a)(2) above, authorizes the interested division in connection with a disciplinary proceeding or hearing on disapproval of registration to withhold documents that contain material exculpatory evidence.

(c) Procedures Concerning Withheld Documents

(1) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the respondent with a log of documents withheld pursuant to paragraph (b)(1)(ii) of this Rule. The log shall provide the same information that a person would be required to supply to the Board under Rule 5106 in connection with a privilege assertion. On a motion by any respondent, a hearing officer may, in his or her discretion, require the interested division to submit any document listed on the log for inspection by the hearing officer in camera. A hearing officer may order that any such document be made available to a respondent for inspection and copying only if the hearing officer determines that the document is not a document described in paragraph (b)(1)(ii).

(2) The interested division shall, at the time it makes documents available to a respondent under this rule, provide the hearing officer and each respondent with a list of documents withheld pursuant to paragraph (b)(1)(iii) or (b)(1)(iv) of this Rule and a brief description of the reason for withholding each document. The list provided to the respondent may be redacted as necessary to protect interests related to the interested division's reason for withholding the document. The hearing officer may require the interested division to submit any such document for inspection by the hearing officer in camera. The hearing officer may order that any such document be made available to the respondent for inspection and copying only if the hearing officer determines that—

(i) With respect to any document withheld pursuant to paragraph (b)(1)(iii)—

(A) producing the document would not have the effect of identifying a confidential source; or

(B) the document contains material, exculpatory evidence, provided, however, that to the extent such evidence can be disclosed without disclosing the identity of a confidential source, such identity shall not be disclosed.

(ii) with respect to any document withheld pursuant to paragraph (b)(1)(iv)—

(A) the document is relevant to the subject matter of the proceeding and no good cause exists for withholding it; or

(B) the document contains material, exculpatory evidence.

(d) Timing of Inspection and Copying

Unless otherwise ordered by the Board or the hearing officer, the interested division shall make documents available for inspection and copying to any respondent who is not in default under Rule 5409 no later than 14 days after the institution of proceedings pursuant to Rule 5500.

(e) Place of Inspection and Copying

Documents subject to inspection and copying pursuant to this Rule shall be made available to a party for inspection and copying at the Board office where they are ordinarily maintained, or at such other place as the parties, in writing, may agree. A party shall not be given custody of the documents or leave to remove the documents from the Board's offices pursuant to the requirements of this Rule other than by written agreement of the interested division. Such agreement shall specify the documents subject to the agreement, the date they shall be returned and such other terms or conditions as are appropriate to provide for the safekeeping of the documents.

(f) Copying Costs and Procedures

A party may obtain a photocopy of any documents made available for inspection. The party shall be responsible for the cost of photocopying. The respondent shall be given access to the documents at the Board's offices or such other place as the parties may agree during normal business hours for copying of documents at the respondent's expense.

(g) Failure To Make Documents Available—Harmless Error

In the event that a document required to be made available to a party pursuant to this Rule is not made available by the

interested division, no rehearing or redecision of a proceeding already heard or decided shall be required, unless the party shall establish that the failure to make the document available was not harmless error.

Note: The interested division's obligation under this Rule relates to documents obtained by that division. Documents located only in the files of other divisions or offices are beyond the scope of the Rule, except that documents located in the files of other divisions and that the interested division intends to introduce as evidence shall, for purposes of this Rule, be treated as if they have been obtained by the interested division and must therefore be made available under this Rule.

Rule 5423T. Production of Witness Statements

(a) Availability

Upon motion by any respondent in a disciplinary proceeding, the hearing officer may order that the interested division produce for inspection and copying any statement of any person called or to be called as a witness by the division that pertains, or is expected to pertain, to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500, if the Board were a governmental entity. Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) Failure To Produce—Harmless Error

In the event that a statement required to be made available for inspection and copying by a respondent is not turned over by the interested division, no rehearing or redecision of a proceeding already heard or decided shall be required unless the respondent establishes that the failure to turn over the statement was not harmless error.

(c) Definition of Statement

For purposes of this Rule, the term ''statement'' shall have the meaning set forth in 18 U.S.C. 3500(e).

Rule 5424T. Accounting Board Demands and Commission Subpoenas

(a) Accounting Board Demands and Requests

In connection with any hearing ordered by the Board, a party may request the issuance of an accounting board demand of a registered public accounting firm or an associated person of such a firm, or an accounting board request of any other person. Such a demand or request may call for the attendance and testimony of a witness at the designated time and place of the hearing or for the production of documentary or other tangible evidence returnable at any designated time or place. Unless made on the record at a hearing, an application for issuance of such a demand or request shall be made in writing and served on each party. A party whose application for such a demand or request has been denied or modified may not submit any other application seeking substantially the same testimony or other evidence specified in the denied application or excluded from an otherwise granted application.

(1) Unavailability of Hearing Officer

In the event that the hearing officer assigned to a proceeding is unavailable, any member of the Board, or other person designated by the Board for this purpose, may grant an application for the issuance of an accounting board demand or request. A party seeking such issuance may submit the application to the Secretary, who shall direct it to a person authorized to grant the request, deny the request, or grant the request with modifications.

(2) Signing May Be Delegated

A hearing officer may authorize issuance of an accounting board demand, or an accounting board request, and may delegate the manual signing of the demand or request to any other person.

(3) Standards for Issuance

Where it appears that an application for an accounting board demand or request is reasonable in scope and is reasonably calculated to encompass, or lead to the discovery of, admissible evidence, the application shall be granted. If it appears that the accounting board demand or request sought may be unreasonable, oppressive, excessive in scope, unduly burdensome, designed to seek irrelevant information, or sought for the purpose of harassment or delay, the application shall be denied. The hearing officer or other person ruling on the application may, in his or her discretion, as a condition precedent to the issuance of the demand or request, require the party seeking the demand or request to show the general relevance and reasonable scope of the testimony or other evidence sought. After consideration of all the circumstances, the hearing officer or other person ruling on the application may grant the application upon such conditions or with such modifications as fairness requires. In making the determination, the hearing officer or other person ruling on the application may inquire of the parties whether they will stipulate to the facts sought to be proved.

Note: Whenever possible, the parties should explore the extent to which stipulations of fact may obviate the need for issuance of accounting board demands and requests to non-parties, and the hearing officer or other person ruling on an application for issuance of an accounting board demand or request should encourage the parties to reach such stipulations when possible.

(4) Witness Fees

A witness, other than a party, who is summoned to a Board proceeding pursuant to an accounting board demand, or an accounting board request, or who is deposed pursuant to Rule 5425, shall be paid his or her reasonable expenses by the party at whose instance the witness appears.

Rule 5425T. Depositions To Preserve Testimony for Hearing

(a) Procedure

Any party desiring to take the testimony of a witness by deposition shall make a written motion setting forth the reasons why such deposition should be taken including the specific reasons why the party believes the witness will be unable to attend or testify at the hearing; the name and address of the prospective witness; the matters concerning which the prospective witness is expected to be questioned; and the proposed time and place for the taking of the deposition.

Note: Depositions under the Rules of Board Procedure are used only to preserve testimony of a witness who would be unlikely to be able to attend the hearing. They are not permitted for purposes of discovery.

(b) Required Finding When Ordering a Deposition

In the discretion of the Board or the hearing officer, an order for deposition may be issued upon a finding that the prospective witness will likely give testimony material to the proceeding, that it is likely the prospective witness will be unable to attend or testify at the hearing because of age, sickness, infirmity, imprisonment or other disability, or otherwise unavailable, and that the taking of a deposition will serve the interests of justice.

(c) Procedure at Depositions

A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination of deponents may proceed

as permitted at a hearing. The witness being deposed may have counsel present during the deposition.

(d) Objections to Questions or Evidence

Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted in the transcript, but no person other than the hearing officer shall have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence during the deposition shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

(e) Filing of Depositions

The questions propounded and all answers or objections shall be recorded or transcribed verbatim, and a transcript prepared by the deposition officer, or under his or her direction. The transcript shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be filed with the Secretary. A copy of the deposition shall be available to the deponent and each party for purchase at prescribed rates.

Rule 5426T. Prior Sworn Statements of Witnesses in Lieu of Live Testimony

At a hearing, any person wishing to introduce a prior, sworn statement of a nonparty witness otherwise admissible in the proceeding, in lieu of live testimony may make a motion setting forth the reasons therefor. If only part of a statement is offered in evidence, the hearing officer may require that all relevant portions of the statement be introduced. If all of a statement is offered in evidence, the hearing officer may require that portions not relevant to the proceeding be excluded. A motion to introduce a prior sworn statement in lieu of live testimony may be granted if—

(a) The witness is dead;

(b) the witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the prior sworn statement;

(c) the witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(d) the party offering the prior sworn statement has been unable to procure the attendance of the witness by accounting board demand; or,

(e) in the discretion of the Board or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In making this determination, due regard shall be given to the presumption that witnesses will testify orally in an open hearing. If the parties have stipulated to accept a prior sworn statement in lieu of live testimony, consideration shall also be given to the convenience of the parties in avoiding unnecessary expense.

Rules 5427.–5439. [Reserved]

Conduct of Hearings

Rule 5440T. Record of Hearings

(a) Recordation

All hearings shall be recorded and a written transcript thereof shall be prepared.

(b) Availability of a Transcript

Transcripts of public hearings shall be available for purchase at prescribed rates. Transcripts of nonpublic proceedings shall be available for purchase only by parties, provided, however, that any person compelled to testify at a hearing may purchase a copy of that person's own testimony.

(c) Transcript Correction

Prior to the filing of post-hearing briefs or other submissions, or within such earlier time as directed by the Board or the hearing officer, a party or witness may make a motion to correct the transcript. Proposed corrections of the transcript may be submitted to the hearing officer by stipulation or by motion. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections to the transcript.

Rule 5441T. Evidence: Admissibility

The Board or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

Rule 5442T. Evidence: Objections and Offers of Proof

(a) Objections

Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling. Such exceptions will be deemed waived on appeal to the Board, however, unless raised—

(1) pursuant to interlocutory review in accordance with Rule 5461;

(2) in a proposed finding or conclusion filed pursuant to Rule 5445; or

(3) in a petition for Board review of an initial decision filed in accordance with Rule 5460.

(b) Offers of Proof

Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the record. Excluded material shall be retained pursuant to Rule 5202(b).

Rule 5443T. Evidence: Presentation Under Oath or Affirmation

A witness at a hearing for the purpose of taking evidence shall testify under oath or affirmation.

Rule 5444T. Evidence: Presentation, Rebuttal and Cross-examination

In any proceeding, a party may present its case or defense by oral or documentary evidence, submit rebuttal evidence, and conduct such cross-examination as, in the discretion of the Board or the hearing officer, may be required for a full and true disclosure of the facts. The scope and form of evidence, rebuttal evidence, if any, and cross-examination, if any, shall be determined by the Board or the hearing officer in each proceeding.

Rule 5445T. Post-Hearing Briefs and Other Submissions

(a) At the end of the hearing in any proceeding instituted pursuant to Rule 5200(a)(1), Rule 5200(a)(2), or Rule 5500 in which an initial decision is to be issued, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which post-hearing briefs or other submissions are to be filed. Unless the hearing officer, for good cause shown, permits a different period and sets forth in the order the reasons why the different period is necessary—

(i) the party or parties directed to file first shall make its or their initial filing within 30 days of the end of the hearing; and

(ii) the total period within which all such filings and any opposition and reply submissions are to be filed shall be no longer than 90 days after the end of the hearing.

Rules 5446.–5459. [Reserved]

Appeals to the Board

Rule 5460T. Board Review of Determinations of Hearing Officers

(a) Petition for Review of Initial Decision by Hearing Officers

Any party to a hearing may obtain Board review of an initial decision by filing a petition for review that—

(1) sets forth specific findings and conclusions of the initial decision as to which exception is taken, together with the supporting reasons for each exception; and

(2) is filed, in a proceeding instituted pursuant to Rule 5500, within 30 days after service of the initial decision on the petitioner or within 10 days after the filing of a petition for review by another party, whichever is later.

(b) Review on Board's Initiative

The Board may, on its own initiative, order review of any initial decision, or a portion of any initial decision, at any time before the initial decision becomes final pursuant to Rule 5204(d).

(c) De Novo Review

Based on a petition for review, or on its own initiative, the Board may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, an initial decision by a hearing officer and may make any findings or conclusions that in its judgment are proper based on the record.

(d) Limitations on Matters Reviewed

Review by the Board of an initial decision shall be limited to the issues specified in the petition for review or the issues, if any, specified in the briefing schedule order issued pursuant to Rule 5462(a). On notice to all parties, however, the Board may, at any time prior to issuance of its decision, raise and determine any other matters that it deems material, with opportunity for oral or written argument thereon by the parties.

(e) Summary Affirmance

The Board may summarily affirm an initial decision based upon the petition for review and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Board.

Rule 5461T. Interlocutory Review

(a) Availability

The Board will not review a hearing officer's ruling prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. The Board may decline to consider a ruling certified by a hearing officer pursuant to paragraph (c) of this Rule if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Board may, at any time, on its own motion, direct that any matter be submitted to it for review.

(b) Certification Process

A ruling submitted to the Board for interlocutory review shall be certified in writing by the hearing officer as appropriate for interlocutory review and shall specify the basis for certification. The hearing officer shall certify a ruling only if—

(1) The ruling would compel testimony of Board members, officers or employees or the production of documentary evidence in their custody; or

(2) upon application by a party, within five days of the hearing officer's ruling, the hearing officer is of the opinion that—

(i) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion; and

(ii) an immediate review of the order may materially advance the completion of the proceeding.

(c) Proceedings Not Stayed

The filing of an application for interlocutory review or the grant of interlocutory review shall not stay proceedings before the hearing officer unless he or she, or the Board, shall so order. The Board will not consider the motion for a stay unless the motion has first been made to the hearing officer.

Rule 5462T. Briefs Filed With the Board

(a) Briefing Schedule Order

Upon a timely and valid petition for review, or upon its own timely motion to review an initial decision, other than review ordered pursuant to Rule 5469, the Board shall issue a briefing schedule order directing the parties to file opening briefs and specifying particular issues, if any, as to which briefing should be limited or directed. Unless otherwise provided, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs may be filed within 14 days after the date opposition briefs are due. No briefs in addition to those specified in the briefing schedule order may be filed except with leave of the Board. The briefing schedule order shall be issued—

(1) At the time the Board orders review on its own initiative pursuant to Rule 5460(b), or orders interlocutory review on its own motion pursuant to Rule 5460; or

(2) within 21 days, or such longer time as provided by the Board, after—

(i) the last day permitted for filing a petition for review pursuant to Rule 5204(d);

(ii) certification of a ruling for interlocutory review pursuant to Rule 5461(c).

(b) Contents of Briefs

Briefs shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief, in an appendix thereto, or by citation to the record. Reply briefs shall be confined to matters in opposition briefs of other parties.

(c) Length Limitation

Opening and opposition briefs shall not exceed 30 pages and reply briefs shall not exceed 15 pages, exclusive of pages containing the table of contents, table of authorities, and any addendum, except with leave of the Board.

Rule 5463T. Oral Argument Before the Board

(a) Availability

The Board, on its own motion or the motion of a party, may order oral argument with respect to any matter. Motions for oral argument with respect to whether to affirm all or part of an initial decision by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Board will consider appeals, motions and other matters properly before it on the basis of the papers filed by the parties without oral argument unless the Board determines that the presentation of facts and legal arguments in the briefs and record and the decisional process would be significantly aided by oral argument.

(b) Procedure

Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. The Board shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. The grant or denial of a motion for oral argument shall be made promptly after the filing of the last brief called for by the briefing schedule. If oral argument is granted, the time fixed for oral argument shall be changed only by written order of the Board, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

(c) Time Allowed

Unless the Board orders otherwise, not more than one half-hour per side will be allowed for oral argument. The

Board may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, *provided, however,* that by mutual agreement they may reallocate their time among themselves. A request for additional time must be made by motion filed reasonably in advance of the date fixed for argument.

Note: The term ''side'' is used in this Rule to indicate that the time allowed is afforded to opposing interests rather than to individual parties. If multiple parties have a common interest, they may constitute only a single side.

(d) Participation of Board Members

A member of the Board who was not present at the oral argument may participate in the decision of the proceeding, provided that the member has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

Rule 5464T. Additional Evidence

Upon its own motion or the motion of a party, the Board may allow the submission of additional evidence. A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Board. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. Any other party may file a response to the motion within 5 days after the motion is filed, or such longer time as the Board may allow. The Board may accept or hear additional evidence, or it may remand or refer the proceeding to a hearing officer for the taking of additional evidence, as appropriate.

Rule 5465T. Record Before the Board

The Board shall determine each matter on the basis of the record.

(a) Contents of the Record

In proceedings for final decision before the Board, the record shall consist of—

(1) All items part of the hearing record below in accordance with Rule 5202(a);

(2) any petitions for review, cross-petitions or oppositions; and

(3) all briefs, motions, submissions and other papers filed on appeal or review.

(b) Transmittal of Record to Board

Within 14 days after the last date set for filing briefs or such later date as the Board directs, the Secretary shall transmit the record to the Board.

(c) Review of Documents Not Admitted

Any document offered in evidence but excluded by the hearing officer or the Board and any document marked for identification but not offered as an exhibit shall not be considered a part of the record before the Board on appeal but shall be transmitted to the Board by the Secretary if so requested by the Board. In the event that the Board does not request the document, the Secretary shall retain the document not admitted into the record until the later of—

(1) The date upon which the Board's order becomes final, or

(2) the conclusion of any Commission and judicial review of that order.

Rule 5466T. Reconsideration

(a) Scope of Rule

A party may file a motion for reconsideration of a final order issued by the Board.

(b) Procedure

A motion for reconsideration shall be filed within 10 days after service of the order complained of on each party, or within such time as the Board may prescribe upon motion of the person seeking reconsideration, if made within the foregoing 10-day period. The motion for reconsideration shall briefly and specifically state the matters of record alleged to have been erroneously decided, the grounds relied upon, and the relief sought. Except with permission of the Board, a motion for reconsideration shall not exceed 15 pages. No responses to a motion for reconsideration shall be filed unless requested by the Board.

Rule 5467.–5499. [Reserved]

Part 5—Hearings on Disapproval of Registration Applications

Rule 5500T. Commencement of Hearing on Disapproval of a Registration Application

The Board may commence a proceeding to determine whether to approve or disapprove a public accounting firm's application for registration when, based on review of an application for registration as a registered public accounting firm—

(a) The Board determines, pursuant to Rule 2106(b)(2)(ii), to provide the applicant with written notice of a hearing to determine whether to approve or disapprove the application; and

(b) within such period, as the Board permits, after the date of service of a notice of a hearing whether to approve or disapprove an application for registration pursuant to Rule 2106(b)(2)(ii), the public accounting firm served with such notice files with the Secretary a written request for a hearing date and a notice of appearance pursuant to Rule 5401(c), and includes with the request—

(1) A statement that the public accounting firm has elected not to treat the notice as a written notice of disapproval for purposes of Section 102(c) of the Act; and

(2) a statement describing with specificity why the public accounting firm believes that the Board should not issue a written notice of disapproval.

Rule 5501T. Procedures for a Hearing on Disapproval of a Registration Application

Proceedings instituted pursuant to Rule 5500 shall be subject to procedures as described in Parts 2 and 4 of Section 5 of the Board's Rules.

II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined in the Commission's Public Reference Room and at the principal office of the PCAOB. The Board has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements as they relate to the proposed Temporary Hearing Rules.

A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

(a) Purpose

Section 102 of the Act prohibits accounting firms that are not registered with the Board from preparing or issuing, or playing a substantial role in the preparation or furnishing of, an audit report with respect to any issuer. Under Board rules previously approved by the Commission, the Board will not disapprove an application for registration without first giving the applicant an opportunity for a hearing. The purpose of the proposed temporary rules is to supply fair procedures and rules to govern the conduct of any such hearing. The proposed temporary rules consist of 41 rules and nine definitions. Each of the rules and definitions is discussed below.

Rule 1001—Definitions

Rule 1001(a)(ix)T defines ''accounting board demand'' as a command to produce documents and/or to appear at a certain time and place to give testimony. The rules use this term only to identify demands made upon registered public accounting firms and associated persons of such firms. Under the Act, the Board has authority to require those firms and persons to provide any testimony or documents sought by the Board in furtherance of its responsibilities under the Act, and including in particular any testimony or documents that the Board considers relevant to an investigation.

Rule 1001(a)(x)T defines ''accounting board request'' as a request to produce documents and/or to appear at a certain time and place to give testimony. The rules use this term to distinguish the Board's efforts to obtain documents and testimony from persons other than registered public accounting firms and their associated persons.

Rule 1001(c)(ii)T defines ''counsel'' as an attorney at law admitted to practice, and in good standing, before the Supreme Court of the United States or the highest court of any state.

Rule 1001(h)(i)T defines ''hearing officer'' to mean any person, other than a Board member or staff of the interested division, duly authorized by the Board to preside at a hearing.

Rule 1001(i)(iv)T defines ''interested division'' as a division or office of the Board assigned primary responsibility by the Board to participate in a particular proceeding. As a general matter, the interested division in a disciplinary proceeding will be the Division of Enforcement and Investigations, and the interested division in a hearing on disapproval of a registration application will be the Division of Registration and Inspections. The definition is adapted from Rule 101(a)(6) of the Commission's Rules of Practice.

Rule 1001(o)(ii)T defines ''order instituting proceedings'' as an order issued by the Board commencing a disciplinary proceeding.

Rule 1001(p)(iii)T defines ''party'' as the interested division, any person named as a respondent in an order instituting proceedings or notice of a hearing, any applicant named in the caption of any order, or any person seeking Board review of a decision.

Rule 1001(p)(iv)T defines ''person'' as any natural person or any business, legal or governmental entity or association.

Rule 1001(s)(iii)T defines ''Secretary'' as the Secretary of the Board.

Rule 1002T—Time Computation

Rule 1002T describes the method by which the Board shall compute time for purposes of complying with deadlines in the Board's rules.

Rule 5200T—Commencement of Disciplinary Proceedings

Rule 5200T(b) provides for an appointment of a hearing officer by the Board as soon as practicable after issuance of the order instituting proceedings or after a registration applicant has requested a hearing pursuant to Rule 5500T(b). The rule is adapted from NASD Rule 9213(a).

Under Rule 5200T(b), the Board shall notify the parties of the hearing officer's assignment. The hearing officer shall have authority to do all things necessary and appropriate to discharge his or her duties, including, but not limited to, the matters specified in Rule 5200T(b). The rule expressly subjects the hearing officer's authority to the limitations described in Rule 5402T (concerning hearing officer disqualification) and Rule 5403T (concerning ex parte communications).

Rule 5200T(c) provides that the Board will observe certain separation of functions principles. The rule provides that neither the staff of the Division of Enforcement and Investigations, nor any other staff who engaged in investigative or prosecutorial functions on a matter, may participate or advise in the decision, or the review of the decision, except as a witness or counsel. In addition, the rule provides that a hearing officer may not be responsible to or subject to the supervision or direction of an employee or agent engaged in the performance of investigative or prosecuting functions for the Board.

With respect to proceedings that involve a common question of law or fact, Rule 5200T(d) provides that the Board or a hearing officer may, by order, consolidate the proceedings for hearing of any or all matters at issue in the proceedings. The rule is adapted from Rule 201 of the Commission's Rules of Practice. The rule provides that consolidation shall not prejudice any rights that any party may have under the Board's Rules and shall not affect the right of any party to raise issues that could have been raised in the absence of consolidation.

Rule 5201T—Notification of Commencement of Disciplinary Proceedings

Rule 5201T(c) provides that, in the case of a hearing on a registration application commenced under Rule 5500T, the notice of hearing shall state proposed grounds for disapproving the registration application.

Rule 5202T—Record of Disciplinary Proceedings

Rule 5202T(a) describes the material that shall make up the contents of the record in a disciplinary proceeding (Rule 5202T(a)(1)) and the contents of the record on disapproval of an application for registration (Rule 5202T(a)(2)). Under Rule 5202T(b), any document offered as evidence but excluded, and any document marked for identification but not offered as an exhibit, shall not be considered part of the record but shall be maintained by the Secretary until all opportunities for Commission and judicial review have been exhausted or waived. Paragraphs (c)–(e) of Rule 5202T address the substitution of true copies for documents in the record, the preparation of the record and the certification of the record index, and the final transmittal of record items to the Secretary. The rule is adapted from Rules 350 and 351 of the Commission's Rules of Practice.

Rule 5203T—Public and Private Hearings

Under Rule 5203T, a hearing on disapproval of a registration application shall be nonpublic unless the Board orders otherwise. The rule essentially creates a presumption that a hearing on disapproval of a registration application will be non-public. A disapproval hearing will, by its nature, involve a firm that is not yet a registered firm and may well involve a record that includes confidential information submitted as part of the registration application. The rule reserves to the Board the flexibility to make the hearing public if warranted by unusual circumstances. In any event, if the Board decides, after a hearing, to disapprove the application, that decision, along with the reasons for the decision, will be made public according to the provisions of Section 105(d) of the Act.

Rule 5204T—Determinations in Disciplinary Proceedings

Rule 5204T(b) provides that, unless the Board orders otherwise, the hearing officer shall prepare an initial decision following a hearing. The rule provides that the initial decision shall include findings and conclusions, including sanctions, if appropriate, and the reasons or basis therefore, as to all the material issues of fact, law, or discretion presented on the record and such other information as the Board may require.

The rule is adapted from Rule 360 of the Commission's Rules of Practice.

The note to Rule 5204T(b) sets out the Board's general expectations about the time frame within which a hearing officer should complete an initial decision in various types of cases. These time frames are nothing more than the Board's general expectations and do not create any right in any person to have an initial decision prepared within any particular period of time.

Rule 5204T(c) governs the hearing officer's filing of the initial decision with the Secretary and the Secretary's service of the initial decision on the parties.

Rule 5204T(d) provides the circumstances in which an initial decision of a hearing officer becomes the final decision of the Board as to a party. The rule is adapted from Rule 360(d) of the Commission's Rules of Practice. Rule 5204T(d)(1) provides that the initial decision becomes the Board's final decision as to a party upon issuance by the Secretary of a notice of finality. Rule 5204T(d)(2) provides that the Secretary shall issue the notice of finality no later than twenty days after the lapsing of the time period for filing a petition for Board review (as described in Rule 5460T), unless one of the two conditions described in Rule 5204T(d)(3) has occurred. Rule 5204T(d)(3) provides that the Secretary shall not issue a notice of finality as to any party who has filed a timely petition for Board review or with respect to whom the Board, on its own motion, has ordered review of the initial decision pursuant to Rule 5460T(b).

Rule 5205T—Settlement of Disciplinary Proceedings Without a Determination After Hearing

Rule 5205T governs certain matters related to possible settlement of disciplinary proceedings. The rule is adapted from Rule 240 of the Commission's Rules of Practice.

Rule 5205T provides that any person who is or is to be a party to a disciplinary proceeding may at any time propose in writing an offer of settlement. The rule imposes requirements for the content of the offer, and requires that it be signed by the person making the offer, not by counsel.

Rule 5205T(c)(1) requires that the Division Director the offer to the Board along with a recommendation concerning the offer, except that, if the recommendation is unfavorable, the Director shall not present the offer to the Board unless the person making the offer so requests.

Rules 5205T(c)(2)–(3) set out various matters that the person making the offer must waive before the Board will consider the offer, including waiver of rights to hearings, rights to proposed findings of fact and conclusions of law, rights to proceedings before and an initial decision by a hearing officer, rights to post-hearing procedures, rights to judicial review, rights to have Board and Board staff observe separation of functions principles, and rights to claim bias or prejudgment by the Board based on consideration of or discussions concerning the settlement offer.

Rule 5205T(c)(4) provides that if the Board rejects the offer, the offer will be deemed withdrawn and will not constitute a part of the record. Rule 5205T(c)(4) further provides that rejection of the offer will not affect the continued validity of waivers of rights to claim bias or prejudgment on the basis of discussions concerning the settlement offer.

Rule 5205T(c)(5) provides that Board acceptance of an offer will occur only upon the issuance of findings and an order by the Board.

A note to Rule 5205T points out that in hearings on disapproval of registration, settlement offers will be handled by the Director of Registration and Inspections.

Rule 5400T—Hearings

Rule 5400T provides for hearings to be held only upon order of the Board and to be conducted in a fair, impartial, expeditious and orderly manner. The rule is adapted from Rule 200 of the Commission's Rules of Practice.

Rule 5401T—Appearance and Practice Before the Board

Rule 5401T provides that a person may appear on his own behalf before the Board or may be represented by counsel. Rule 5401T further provides that a member of a partnership may represent the partnership and a bona fide officer of a corporation, trust, or association may represent the corporation, trust, or association. Rule 5401T(c) imposes certain procedural requirements related to representation and withdrawal.

Rule 5402T—Hearing Officer Disqualification and Withdrawal

Rule 5402T allows a party to make a motion for withdrawal of a hearing officer and governs the circumstances under which such a motion may be made and the time within which it must be made. Rule 5402T also provides for appointment of a replacement hearing officer in the event of withdrawal or disqualification. The rule is based on Rule 112 of the Commission's Rules of Practice and NASD Rule 9233.

Rule 5403T—*Ex Parte* Communications

Rule 5403T prohibits a hearing officer from having *ex parte* communications with a person or party, except to the extent permitted by law or by the Board's rules for the disposition of *ex parte* matters. The rule also prohibits a party from having *ex parte* communication with the Board or any Board member on a fact in issue, except as permitted by law or by the Board's rules. Rule 5403T(b) extends that restriction on *ex parte* communications not only to a party (including the interested division) but also to any Board staff that substantially assists the interested division on the particular matter, whether before or during the hearing,

Rule 5404T—Service of Papers by Parties

Rule 5404T requires service of papers on each party in a manner calculated to bring the paper to the attention of the party served.

Rule 5405T—Filing of Papers With the Board: Procedure

Rule 5405T governs procedures for filing papers with the Board.

Rule 5406T—Filing of Papers: Form

Rule 5406T governs the form of papers to be filed with the Board.

Rule 5407T—Filing of Papers: Signature Requirement and Effect

Rule 5407T requires every paper filed to be signed either by the party, if the party represents himself or herself, or by counsel if the party is represented by counsel. Because the Board expects most papers to be filed electronically, a note to the rule states that the signature should be scanned into an electronic document where practicable, but that otherwise certain indicia of electronic signature will suffice.

Rule 5408T—Motions

Rule 5408T describes procedures and length limitations related to motions and supporting briefs.

Rule 5409T—Default and Motions To Set Aside Default

Rule 5409T describes the circumstances that shall constitute a default and the procedure for seeking to set aside a default. The rule is adapted from Rule 155 of the Commission's Rules of Practice.

Rule 5410T—Extra Time for Service by Mail

Rule 5410T allows an additional three days, with respect to any computation of time, for service made by mail.

Rule 5411T—Modifications of Time, Postponements and Adjournments

Rule 5411T provides that the Board maintains discretion, except as otherwise provided by law, to adjust the time limits prescribed by the rules or to postpone or adjourn any hearing.

Rule 5420T—Leave to Participate To Request a Stay

Rule 5420T provides a procedure by which certain entities may seek a stay of a hearing. The entities that may seek such a stay would have been the Commission, the United States Department of Justice or any United States Attorney's Office, any criminal prosecutorial authority of a state or political subdivision of a state, and an appropriate state regulatory authority may seek a stay.

Under Rule 5420T, an authorized representative of any such entity may seek leave to participate on a limited basis to request a stay. Rule 5420T provides that a stay shall be granted upon a showing that a stay is necessary to protect an ongoing Commission investigation, and that a stay shall otherwise be favored upon a showing that it is in the public interest or for the protection of investors.

Rule 5421T—Answer to Allegations

Rule 5421T governs the filing of answers to orders instituting proceedings. A party may file an answer in any matter, but is not required to file an answer unless ordered to do so in the order instituting proceedings.

Rule 5422T—Availability of Documents for Inspection and Copying

Rule 5422T governs the obligations of Board staff to make documents available to a party for inspection and copying. Paragraphs (a) through (c) of Rule 5422T are the core provisions for determining what documents the staff must make available. Paragraph (a) describes generally the documents that the staff must make available to a respondent. Paragraph (b) limits paragraph (a) by describing categories of documents that the staff may withhold, subject to an overriding obligation not to withhold material exculpatory evidence. Paragraph (c) prescribes procedures the staff must follow when withholding certain categories of documents, and procedures for a hearing officer to determine whether withholding is appropriate.

Rule 5422T(a)(3) applies to registration disapproval proceedings commenced pursuant to Rule 5500T. Rule 5422T(a)(3) requires the Division of Registration and Inspections to make available all documents obtained by the Division in connection with the registration application prior to the notice of hearing.

Rule 5422T(a) includes specific exceptions for, and must be read in conjunction with, Rule 5422T(b), which describes four categories of documents that the Division may withhold from a respondent even if Rule 5422T(a) would otherwise require the Division to make the document available. Moreover, withholding documents may trigger the procedural requirements of Rule 5422T(c). We therefore individually address each of the four categories of documents that may be withheld under Rule 5422T(b), and any Rule 5422T(c) procedures related to withholding those documents.

Under Rule 5422T(b)(1)(i), the Division need not make available any document prepared by a member of the Board or the Board's staff that has not been disclosed to any person other than Board members, Board staff, or persons retained by the Board or Board staff to provide services in connection with the investigation, disciplinary proceeding, or hearing on disapproval of registration. Withholding such documents does not trigger any procedural requirements under Rule 5422T(c).

Under Rule 5422T(b)(1)(ii), the Division need not make available any other document that, while not encompassed within the first category, is nevertheless protected by a privilege or by the attorney work product doctrine. This category would include, for example, documents that were privileged in the hands of the person who supplied them to the Board, but who supplied them pursuant to an understanding that doing so would not otherwise waive the privilege. As to this category of withheld documents, Rule 5422T(c)(1) requires the Division to supply to the hearing officer and each respondent a log providing all of the same information that Rule 5106 requires a person to submit when asserting a privilege against production to the Board.[1]

Under Rule 5422T(b)(1)(iii), the Division need not make available any document that would disclose the identity of a confidential source. The rule provides, however, that the staff may not withhold a document on this basis if doing so results in withholding material exculpatory evidence. Rule 5422T(c)(2) requires the Division to provide the hearing officer with a list of any documents withheld to protect the identity of a confidential informant. The rule requires the Division to provide the same list to each respondent, although the staff may redact as much information as necessary from that list (including, in appropriate circumstances, all information) to protect the interests related to the Division's reason for withholding the document. The hearing officer, in his or her discretion, may review any such document *in camera* to assess the grounds for withholding it and to assess whether it includes material exculpatory evidence.

Under Rule 5422T(b)(1)(iv), the Division need not make available any other document that the staff identifies for the hearing officer's consideration as to whether the document may be withheld as not relevant to the subject matter of the proceeding or otherwise for good cause shown. For example, the staff might have documents supplied by a foreign regulator under a confidentiality agreement. If the staff does not intend to use them, the ''good cause'' exception allows the staff to withhold them to honor the confidentiality agreement. Again, however, the good cause exception does not allow the staff to withhold a document that contains material exculpatory evidence. Rule 5422T(c)'s

[1] Rule 5106, adopted by the Board on September 29, 2003, is currently pending before the Commission for approval and will not take effect unless the Commission approves it. If Rule 5422T(c)(1) takes effect on a temporary basis before Rule 5106 takes effect, the portions of Rule 5106 that are incorporated by reference in Rule 5422T(c)(1) shall be given effect as part of Rule 5422T(c)(1) as fully as if they were expressly restated therein. The Commission notes that Board staff has confirmed that the specific language of Rule 5106 that is intended to be given effect as part of Rule 5422T(c)(1) is the language in Rule 5106(a) that requires that,

(1) the person asserting the privilege, or his or her attorney, shall identify the nature of the privilege (including attorney work product) that is being claimed and indicate the relevant jurisdiction's privilege rule being invoked; and

(2) the following information shall be provided in the objection, unless divulgence of such information would cause disclosure of the allegedly privileged information—

(i) for documents: (A) the type of document, (*e.g.,* letter or memorandum); (B) the general subject matter of the document; (C) the date of the document; and (D) such other information as is sufficient to identify the document for a Commission subpoena duces tecum, including, where appropriate, the author of the document, the addressees of the document, and any other recipients shown in the document, and, where not apparent, the relationship of the author, addressees, and recipients to each other; and

(ii) for oral communications: (A) the name of the person making the communication and the names of persons present while the communication was made and, where not apparent, the relationship of the persons present to the person making the communication; (B) the date and place of communication; and (C) the general subject matter of the communication. (Telephone conversation between Gordon Seymour, Acting General Counsel, PCAOB, and staff of the Commission's Office of the Chief Accountant, on November 4, 2003.)

procedures, described above with respect to confidential informant documents, apply in the same fashion to documents withheld as irrelevant or otherwise for good cause.

In addition to the procedural protections described above, Rule 5422T(b)(2) provides an over-arching restriction on what the Division may withhold. It provides that nothing in paragraph (b) authorizes the interested division to withhold non-privileged documents that contain material exculpatory evidence.

Rule 5422T(d) governs the time period in which the staff must make the documents available. Under the rule, the staff must make the documents available within 14 days of the institution of proceedings under Rule 5500.

Rule 5422T(e) provides that the staff shall make the documents available at the Board's office where the documents are normally maintained, or at such other place as the parties agree upon in writing. Rule 5422T(d) further provides that, except as subject to any specific contrary agreement with the staff, a party shall not have custody of the documents and shall not remove the documents from the Board's offices, though the party may make and retain copies of the documents. Rule 5422T(f) provides that a party wishing to make copies of the documents must bear the cost of copying.

Rule 5422T(g) addresses any failure by the interested division to make available any document that these rules required it to make available. The rule provides that, in that event, no person shall be entitled to a rehearing or redetermination in a matter already heard or decided unless that person first establishes that the failure to make the document available did not constitute harmless error.

A note following Rule 5422T points out that the obligations of the interested division under this rule extend only to documents obtained by that division, and that this Rule does not require the interested division to make available documents located only in the files of other divisions or offices. The proviso, however, is not intended to relieve the interested division of the obligation to make available any such document that the division knows of and intends to introduce as evidence. Any such document should be treated, for purposes of Rule 5422T, just as if it were physically located in the division's files.

Rule 5423T—Production of Witness Statements

Rule 5423T(a) provides that a respondent may move that the interested division produce any statement of a person, called or to be called as a witness by the division, that pertains or is expected to pertain to his or her direct testimony and that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500, if the Board were a governmental entity. The hearing officer shall have authority to grant such a motion and require production of any such statement. Rule 5423T(b) provides, however, that the interested division's failure to produce any such statement shall not be grounds for rehearing or redecision of a matter already heard or decided unless the respondent first establishes that the failure to produce the statement was not harmless error. The rule is based on Rule 231 of the Commission's Rules of Practice.

Rule 5424T—Accounting Board Demands

Rule 5424T provides for mechanisms by which any party may seek to secure testimony or evidence relevant to a proceeding. Rule 5424T(a) describes procedures by which any party may seek to have an accounting board demand served on any registered public accounting firm or associated person of such a firm, or seek to have an accounting board request served on any other person. Under the rule, the party must make a request to the hearing officer for issuance of the accounting board demand or accounting board request. In the event of the hearing officer's unavailability, the party may present its request, through the Secretary, to any member of the Board, or any other person designated by the Board to issue such demands and requests.

The application for an accounting board demand or accounting board request may be denied, or may be granted with modifications, if it is unreasonable, oppressive, excessive in scope, or unduly burdensome. The rule provides that a person whose application for an accounting board demand or accounting board request has been denied or modified may not make the same application to another person and may not apply to the Board for a Commission subpoena covering the same testimony, documents, or information as the denied application covered or as was excluded by modification in granting an application. Rule 5424T(a) also provides that a party who applies for an accounting board demand or accounting board request to summon a witness shall pay the witness's reasonable expenses.

Rule 5425T—Depositions To Preserve Testimony for Hearing

Rule 5425T provides procedures by which a party may seek a deposition for the purpose of preserving for a hearing the testimony of a person who may be unavailable to appear at the hearing. Rule 5425T does not provide for depositions taken for the purpose of discovery. The rule is adapted from Rule 233 of the Commission's Rules of Practice.

Under Rule 5425T(a), a party seeking to take a deposition to preserve testimony must make a written motion setting out the reasons why the deposition is necessary and specifically including the reasons that the party believes the witness will be unable to testify at the hearing. The motion must also identify the witness, the matters on which the party intends to question the witness, and the proposed time and place of the deposition. Under Rule 5425T(b), the hearing officer may grant the motion if the hearing officer finds that the witness will likely give testimony material to the proceeding, that it is likely the witness will be unable to appear at the hearing because of age, sickness, infirmity, imprisonment or other disability, or will otherwise be unavailable, and that the taking of the deposition will serve the interests of justice. Rules 5425T(c)–(e) describe certain procedures governing any such deposition allowed by the hearing officer.

Rule 5426T—Prior Sworn Statements of Witnesses in Lieu of Live Testimony

Rule 5426T provides procedures by which a party may introduce into evidence a witness's prior sworn statement in lieu of live testimony by the witness. Rule 5426T is not a limitation on any party's ability to introduce a prior sworn statement with respect to a witness who appears in person and testifies (for purposes of impeachment, for example). But Rule 5426T does limit the circumstances in which a party may introduce a prior sworn statement in lieu of live testimony by the witness.

Rule 5426T identifies five circumstances in which the hearing officer may grant a motion to introduce a prior sworn statement in lieu of live testimony: (1) If the witness is dead, (2) if the witness is outside of the United States, unless it appears that the witness's absence from the country was procured by the party offering the prior sworn statement, (3) if the witness is

unable to attend because of age, sickness, infirmity, imprisonment or other disability, (4) if the party offering the prior sworn statement has been unable to procure the attendance of the witness by accounting board demand, or (5) if, in the discretion of the Board or the hearing officer, it would be desirable, in the interests of justice, to allow the prior sworn statement to be used. In granting a motion to introduce a prior sworn statement, a hearing officer has the discretion, under Rule 5426T, to require that all relevant portions of the statement be included or to exclude portions of the statement not relevant to the proceeding.

Rule 5440T—Record of Hearings

Rule 5440T describes procedures related to the creation, correction, and availability of hearing transcripts.

Rule 5441T—Evidence: Admissibility

Rule 5441T provides that a hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious. The standard in Rule 5441T is based on the Administrative Procedures Act.[2] In addition, the same standard is used in the SEC's Rules of Practice.[3] By using this phrase in Rule 5441T, the Board intends for evidentiary issues in PCAOB hearings to be addressed in a generally similar manner to SEC administrative hearings, and the administrative hearings of most other administrative agencies. Rule 5441T is not intended to limit a hearing officer's authority to exclude or allow evidence based on reasonable principles of admissibility, but is intended to allow a hearing officer reasonable flexibility.[4] In particular, the three bases in the rule—irrelevance, immateriality, and undue repetition—are not the only permissible bases on which a hearing officer may exclude evidence under administrative practice. Nor does the standard in Rule 5441T preclude a hearing officer from referring to principles from the Federal Rules of Evidence or other authoritative sources in exercising his or her discretion to resolve evidentiary issues.[5]

Rule 5442T—Evidence: Objections and Offers of Proof

Rule 5442T(a) provides that any objections must be made on the record and must be in short form, stating the grounds relied upon. Under Rule 5442T(a) any exception to a hearing officer's ruling on an objection need not be noted at the time of the ruling but will be deemed waived on appeal to the Board unless the exception was raised (1) on interlocutory review under Rule 5461T, (2) in a proposed finding or conclusion filed under Rule 5445T, or (3) in a petition for Board review of an initial decision filed under Rule 5460T. Rule 5442T(b) provides that when evidence is excluded from the record, the party offering the evidence may make an offer of proof which shall be included in the record. The excluded material itself would be retained under Rule 5202T(b).

Rule 5443T—Evidence: Presentation Under Oath or Affirmation

Rule 5443T provides that witnesses at a hearing shall testify under oath or affirmation.

Rule 5444T—Evidence: Rebuttal and Cross-Examination

Rule 5444T provides that a party may present its case or defense by oral or documentary evidence, submit rebuttal evidence, and conduct such cross-examination as, in the discretion of the Board or the hearing officer, may be required for a full and true disclosure of the facts. The rule provides that the Board or hearing officer shall determine the scope and form of evidence, rebuttal evidence, and cross-examination in any proceeding. The rule is adapted from Rule 326 of the Commission's Rules of Practice.

Rule 5445T—Post-Hearing Briefs and Other Submissions

Rule 5445T provides procedures relating to the submission of post-hearing briefs and other submissions.

Rule 5460T—Board Review of Determinations of Hearing Officers

Rule 5460T concerns Board review of initial decisions. Under Rule 5460T, a party may obtain Board review of an initial decision by filing a timely petition setting forth specific findings and conclusions of the initial decision to which the party takes exception and setting forth the supporting reasons for each exception. To be timely, a petition must be filed within 30 days of an initial decision in proceedings on disapproval of a registration application. The rule is based in part on Rule 410 of the Commission's Rules of Practice.

Also under Rule 5460T(a), if one party submits a timely petition for review, any other party then has an additional ten days to submit its own petition for review, even if its petition raises different issues than those raised by the first party to submit a petition. The purpose of this rule is to avoid the unnecessary expenditure of Board resources in cases where no party would appeal if it knew that the other party would not appeal, but in which one or more parties nevertheless appeal because of a concern that failing to appeal will deprive it of the opportunity to raise its issues in any appeal lodged by another party. Under Rule 5460T(a), no party need guess about the other party's intentions, and no party sacrifices anything by waiting to see whether another party files a timely petition for review.

Rule 5460T(b) provides that the Board may, on its own initiative, order review of all or any portion of an initial decision even if no party seeks review. The Board may order such review, however, only if it does so before the initial decision would otherwise become the final decision of the Board pursuant to the operation of Rule 5204T(c). In effect, this allows the Board to order review on its own initiative for a period of 20 days beyond the deadline for a party to petition for review. The rule is based in part on Rule 411 of the Commission's Rules of Practice. Rules 5460T(c)–(e) set out procedural matters related to Board review.

Rule 5461T—Interlocutory Review

Rule 5461T concerns Board interlocutory review of hearing officer rulings. Under Rule 5461T(a), the Board will not grant interlocutory review absent extraordinary circumstances, but also may direct at any time that any matter or ruling be submitted to the Board for review. Rule 5461T(b) provides that a hearing officer shall certify a ruling for interlocutory review only if (1) the ruling would compel testimony of Board members, officers or employees or the production of documentary evidence in their custody, or (2) the ruling involves a controlling question of law as to which there is substantial ground for difference of opinion and immediate review of the order may materially advance completion of the proceeding. Rule 5461T(c) provides that neither an application for, nor the granting of, interlocutory review shall stay the proceeding unless otherwise ordered by the hearing officer or the Board. The rule is adapted from Rule 400 of the Commission's Rules of Practice and 28 U.S.C. 1292(b).

[2] 5 U.S.C. 556(c)(3) and (d).

[3] *See* SEC Rule of Practice 320, 17 C.F.R. § 201.320 (''The Commission or the hearing officer may receive relevant evidence and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.'').

[4] *See, e.g.*, Commission Opinion: Wheat, First Securities, Inc.; Rel. No. 34–48378, (August 20, 2003) (holding that hearsay is admissible in an SEC administrative hearing, but noting that the ''record shows the probative and reliable nature of this evidence'').

[5] *See id.* (explaining that same result would have been reached had the administrative law judge applied the Federal Rules of Evidence).

Rule 5462T—Briefs Filed With the Board

Rule 5462T describes procedural requirements related to briefs and the filing of briefs. The rule is adapted from Rule 450 of the Commission's Rules of Practice.

Rule 5463T—Oral Argument Before the Board

Rule 5463T concerns oral argument before the Board. Under Rule 5463T(a), the Board may order oral argument, with or without the motion of a party, on any matter. The rule provides that, in general, motions for oral argument will be granted unless exceptional circumstances make oral argument impractical or inadvisable. Rules 5463T(b)–(c) provide for procedures relating to oral argument. Rule 5463T(d) provides that a member of the Board who is not present for oral argument may nevertheless participate in the Board's decision as long as the Board member reviews a transcript of the argument before participating in the decision.

Rule 5464T—Additional Evidence

Rule 5464T provides that the Board may, upon its own motion or the motion of a party, allow the submission of additional evidence in connection with the Board's review of an initial decision. The rule is adapted from Rule 452 of the Commission's Rules of Practice.

Rule 5465T—Record Before the Board

Rule 5465T provides that the Board shall determine each matter on the basis of the record and provides certain requirements concerning the record. The rule is adapted from Rule 460 of the Commission's Rules of Practice.

Rule 5466T—Reconsideration

Rule 5466T provides procedures by which a party may seek reconsideration of a Board decision. The rule is adapted from Rule 470 of the Commission's Rules of Practice.

Rule 5469T—Board Consideration of Actions Made Pursuant to Delegated Authority

Rule 5469T provides procedures relating to Board consideration of petitions for review of actions made pursuant to authority delegated by the Board. Rule 5469T(a) provides that the Board may act summarily on the basis of the petition, or on the basis of the petition and any staff response, or may require additional statements in support of or opposition to the petition. Rule 5469T(b) provides that the effect of any staff action would not be stayed pending any petition for review of that action.

Rule 5500T—Commencement of Hearing on Disapproval of a Registration Application

Rule 5500T describes the procedure relating to the commencement of a Board adjudication proceeding to consider an application for registration. Under the Board's registration rules, if the Board is unable to make the determination necessary to approve a registration application, the Board will provide the applicant with notice of a hearing. Rule 5500T provides the procedures through which such a proceeding would be commenced.

Specifically, Rule 5500T provides that a proceeding would commence after the Board provides a notice of hearing under Rule 2106(b)(2)(ii) and the applicant timely files a request for a hearing date and notice of appearance, rather than opting to treat the Board's notice of hearing as a denial of the application. Under Rule 5500T(b), a request for hearing must include a statement that the applicant has elected not to treat the notice of hearing as a disapproval of its application and a statement describing with specificity why the applicant believes that the Board should not disapprove the application.

Rule 5501T—Procedures for a Hearing on Disapproval of a Registration Application

Rule 5501T provides that proceedings commenced pursuant to Rule 5500T are subject to the procedures set out in Parts 2 and 4 of Section 5 of the Board's rules.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

B. Board's Statement on Burden on Competition

The Board does not believe that the proposed rules will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed temporary rules supply procedures for the conduct of fair hearings. Moreover, the proposed temporary rules would apply only in the context of a hearing that an applicant for registration elects, at its option, to have.

C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others

The Board published the Enforcement Rules, including the rules that constitute the Temporary Hearing Rules, for public comment in PCAOB Release No. 2003–012 (July 28, 2003). A copy of PCAOB Release No. 2003–012 and the comment letters received in response to the PCAOB's request for comment are available on the PCAOB's Web site at *http://www.pcaobus.org.* The Board received 17 written comments. The Board has clarified and modified certain aspects of the rules that constitute the Temporary Hearing Rules in response to comments it received, as discussed below.

The Board proposed to define the term ''hearing officer'' to include a panel of Board members constituting less than a quorum of the Board, an individual Board member, or any other person duly authorized by the Board to preside at a hearing. Several commenters expressed the view that neither Board members nor staff of the interested division should ever serve as hearing officers. We never intended to permit staff of the interested division to serve as hearing officers, and we have revised the rule to exclude that possibility. Nor did we intend to provide for a Board member to serve as a hearing officer except in an extraordinary situation, and we are now persuaded that the rule should exclude that possibility as well. In general, we intend to rely on a corps of qualified persons whose service to the Board is strictly limited to the role of hearing officer. We may rely on consultants for this purpose, or we may employ a staff of hearing officers, or we may rely on a combination of the two.

Rule 5200T(c) provides that the Board will observe certain separation of functions principles. The proposed rule provided that any Board employee or agent engaged in investigative or prosecutorial functions for the Board in a proceeding could not, in that same proceeding or a factually related proceeding, participate or advise in the decision, or in Board review of the decision, except as a witness or counsel in the proceeding. One commenter suggested that this rule should clearly exclude all enforcement personnel from participating in the adjudication of a disciplinary proceeding, whether or not they had an investigative or prosecutorial role in the matter. We are persuaded that this represents a good policy choice and we have revised the rule accordingly. The final rule provides that neither the staff of the Division of Enforcement and Investigations, nor any other staff who engaged in investigative or prosecutorial functions on a matter, may participate or advise in the decision, or the review of the decision, except as a witness or counsel.

Rule 5401T provides that a person may appear on his own behalf before the Board or may be represented by counsel and imposes certain procedural requirements related to representation

and withdrawal. The proposed rule provided that an individual's withdrawal from representation of a party would be permitted only with the approval of the Board or the hearing officer. One commenter suggested that it would be helpful if the rules would enumerate grounds that would be adequate for withdrawal. Other commenters suggested that the rules should provide that permission to withdraw would not be unreasonably withheld. One commenter suggested that a party's request to replace counsel (as distinct from counsel's request to withdraw) should not require approval.

We are sensitive to the importance of counsel being free to withdraw in appropriate circumstances, and the importance of a party being free to change counsel in appropriate circumstances. We are also mindful of the ways in which an ostensible desire to withdraw or to change counsel can be used to delay or disrupt proceedings. To provide some assurance of the limited scope within which we intend for the Board or hearing officer to withhold permission to withdraw, we have adopted the suggestion of those commenters who urged that the rule provide that permission to withdraw would not be unreasonably withheld.

Rule 5402T allows a party to make a motion for withdrawal of a hearing officer and governs the circumstances under which such a motion may be made and the time within which it must be made. Rule 5402T also provides for appointment of a replacement hearing officer in the event of withdrawal or disqualification. The rule is based on Rule 112 of the Commission's Rules of Practice and NASD Rule 9233. Commenters suggested that the rule should provide for a right of immediate interlocutory appeal to the Board from a hearing officer's denial of a recusal motion. One commenter stated that this was of particular importance given the possibility that Board staff, including enforcement staff, might be assigned to serve as hearing officers.

As discussed earlier, we have revised the definition of ''hearing officer'' to provide that neither a Board member nor any staff of the interested division will serve as a hearing officer. We decline to create a special right of interlocutory Board review in every case of a denied recusal motion. The interlocutory appeal process, governed by Rule 5461T, allows a party to request that the hearing officer certify his or her recusal ruling for interlocutory review. The rule requires that the hearing officer should certify the ruling if immediate review of the order may materially advance the completion of the proceeding. Given that a reversible denial of a recusal motion could substantially delay completion of the proceeding by eventually requiring a complete re-hearing before a different hearing officer, we expect hearing officers to give careful attention to whether that standard for certification has been met with respect to any ruling denying a recusal motion.

One commenter suggested that the rule should provide that, if a hearing officer is replaced, the parties should have a right to move that certain testimony be reheard so that the new hearing officer may judge credibility. We believe that the rules as proposed and adopted are flexible enough to accommodate such a motion and to leave the decision within the discretion of the new hearing officer.

Rule 5403T prohibits a hearing officer from having *ex parte* communications with a person or party, except to the extent permitted by law or by the Board's rules for the disposition of *ex parte* matters. The proposed rule also prohibited a party from having *ex parte* communication with the Board or any Board member on a fact in issue, except as permitted by law or by the Board's rules. Commenters suggested that the restriction should extend beyond the interested division to any Board staff that has had substantial involvement in a matter. We have revised Rule 5403T(b) to impose the restriction not only on a party (including the interested division) but also on any Board staff that substantially assists the interested division on the particular matter, whether before or during the hearing,

Rule 5422T(a)(3) applies to registration disapproval proceedings commenced pursuant to Rule 5500T. Rule 5422T(a)(3) requires the Division of Registration and Inspections to make available all documents obtained by the Division in connection with the registration application prior to the notice of hearing, and specifies the categories of documents that the Division may withhold from production. In response to comments, we have revised the proposed rule to provide more clearly that nonprivileged documents that include material, exculpatory evidence may not be withheld even if they otherwise fall into one of the categories of documents that may be withheld. In response to other comments, we have revised the rule to require the Division to supply a log of certain privileged documents and lists of other withheld documents.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rules

The Board has asked the Commission to approve the proposed temporary rules prior to the thirtieth day after the date of publication of notice of the filing to ensure the efficient implementation of the registration process under section 102 of the Act.

Under section 102 of the Act, Congress required accounting firms to register with the Board by October 22, 2003, the 180th day from the Commission's section 101(d) determination that the Board is organized and has the capacity to carry out the requirements of, and enforce compliance with, the Act. The Board began accepting registration forms on August 7, 2003. Under section 102(c)(i) of the Act, the Board is required to issue a notice of disapproval or seek additional information within 45 days of receiving a registration form. Furthermore, section 105(c) of the Act requires that the Board, among other things, establish fair disciplinary procedures. Under rules previously adopted by the Board and approved by the Commission, the Board may not disapprove an application without first giving the applicant an opportunity for a hearing. On July 28, 2003, the Board proposed procedural rules for disapproving a registration application, as part of its Rules on Investigations and Adjudications. The Board sought and received comments on the proposals. After considering the comments, the Board adopted temporary rules relating to registration disapproval procedures on September 29, 2003.

Pursuant to section 107(b) of the Act, the Commission shall approve proposed rules upon a finding that such rules are consistent with the Act and with the securities laws or are necessary or appropriate in the public interest or for the protection of investors. Although the Commission will later consider permanent rules, the proposed temporary rules will facilitate the process of making determinations on new and pending registration applications. On the basis of the foregoing, the Commission finds that the temporary rules are consistent with the requirements of sections 102, 105(c) and 107(b) of the Act and the securities laws [6] and are necessary and appropriate in the public interest and for the protection of investors.

Because accounting firms already have begun submitting registration

[6] The Commission has considered whether the action will promote efficiency, competition and capital formation.

forms to the Board, both the Board and accounting firms would benefit from the operation of procedures to resolve issues relating to registration before the approval of permanent rules. In connection with these temporary rules, accounting firms and other members of the public have been given an opportunity to participate in the Board's rulemaking process. A further opportunity for public comment will be provided when the Commission publishes the permanent rules on investigations and adjudications for comment. In the meantime, the temporary rules will allow the Board to administer the registration disapproval process in the event that a hearing is necessary before permanent rules are approved by the Commission.

The Commission believes that the proposed temporary rules will enable the Board to properly exercise its authority and perform its responsibilities within the time frame specified by the Act. Because of the importance of registering accounting firms to the operation of the Board and the benefit provided by the Board's inspection, investigation and enforcement functions, expedited implementation of the temporary rules is consistent with the public interest and protection of investors.

The Commission therefore finds good cause, consistent with sections 102, 105 and 107 of the Act and section 19(b)(2) of the Exchange Act, to approve the proposed temporary rules on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning the proposed temporary hearing rules, including whether the rules are consistent with the Act and the securities laws or are necessary or appropriate in the public interest or for the protection of investors. Commenters may prefer to comment on the PCAOB's proposed permanent rules for investigations and adjudications when the Commission publishes those rules for comment. Persons making written submissions with regard to the proposed temporary hearing rules 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 temporary hearing rules that are filed with the Commission, and all written communications relating to the proposed temporary hearing rules 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. All submissions should refer to File No. PCAOB–2003–06 and should be submitted by December 17, 2003.

IV. Conclusion

It is therefore ordered, pursuant to sections 102, 105 and 107 of the Sarbanes-Oxley Act and Section 19(b)(2) of the Exchange Act that the proposed temporary rules (File No. PCAOB–2003–06) be and hereby are approved on an accelerated basis.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28597 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27749]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

November 7, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 3, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After December 3, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Dominion Resources, Inc., et al. (70–10155)

Dominion Resources, Inc. (''DRI''), a registered public-utility holding company, and Dominion Energy, Inc. (''DEI''), its direct, wholly owned nonutility subsidiary (together, ''Applicants''), both located at 120 Tredegar Street, Richmond, Virginia 23219, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12 (b) and (d) and 13 of the Act and rules 53 and 54.

DRI and DEI propose to organize and acquire Dominion Wholesale, Inc. (''DWI''), as a subsidiary of DEI to assist their nonutility electric generation and gas-related subsidiaries in the procurement, storage and maintenance of materials, machinery, equipment, services and supplies (the ''Equipment'') more cost effectively and, incidentally, to sell Equipment to unaffiliated third parties.

DRI and DEI have multiple subsidiaries, utility and nonutility, engaged in the generation of electricity.[1] DRI and DEI state that DWI will provide (a) procurement, storage, maintenance and sales of Equipment to affiliated nonutility companies and (b) incidental

[1] DRI's principal utility subsidiaries are: (1) Virginia Electric and Power Company (''Virginia Power''), a regulated public utility engaged in the generation, transmission and distribution of electric energy in Virginia and northeastern North Carolina; (2) The Peoples Natural Gas Company (''Peoples''), a regulated public utility engaged in the distribution of natural gas in Pennsylvania; (3) The East Ohio Gas Company (''East Ohio''), a regulated public utility engaged in the distribution of natural gas in Ohio, and (4) Hope Gas, Inc. (''Hope''), a regulated public utility engaged in the distribution of natural gas in West Virginia. Virginia Power is a direct subsidiary of DRI. Consolidated Natural Gas Company (''CNG'') is a direct subsidiary of DRI and also a registered holding company, directly owning Peoples, East Ohio and Hope. DRI's nonutility activities are conducted through: (1) DEI, active, through its direct and indirect subsidiaries (together with DEI, the ''DEI Companies''), in competitive electric power generation and in development, exploration and operation of natural gas and oil reserves; (2) direct and indirect subsidiaries of Virginia Power, engaged in acquiring raw materials for nuclear power stations owned and operated by Virginia Power, fuel procurement for Virginia Power, energy marketing and nuclear consulting services; (3) direct and indirect subsidiaries of CNG, engaged natural gas business (other than retail distribution), including transmission, storage and exploration and production; and (4) DRI's interest in Dominion Fiber Ventures LLC which owns Dominion Telecom, Inc., owner of a fiber optic network providing telecommunications and advanced data services. DRI recently announced its intention to sell its telecommunications assets. DRI has another nonutility subsidiary, Dominion Capital, Inc., a diversified financial services company with operating subsidiaries in commercial and residential lending and merchant banking businesses, which is being sold pursuant to Commission order. *See* Dominion Resources, Inc., Holding Co. Act Release Nos. 27113 and 27644 (December 15, 1999 and January 28, 2003, respectively).

sales of Equipment to unaffiliated third parties (''Inventory Services''). DEI will be the sole stockholder of DWI, acquiring all of its outstanding capital stock or other ownership interests directly. DEI would make an initial capital contribution to DWI of $1,000 and working capital needs of DWI would be funded through a combination of equity investments, capital advances or loans from DRI and/or DEI.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–28594 Filed 11–14–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48754; File No. SR–CBOE–2003–34]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating To Modifying the Designated Primary Market-Maker Membership Ownership Requirement

November 6, 2003.

On August 11, 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 modify the Designated Primary Market-Maker (''DPM'') membership ownership requirement. Specifically, the proposed rule change would add new Commentary .04 to CBOE Rule 8.85 to allow a senior principal's ownership of a membership to satisfy the requirement on behalf of the DPM organization if the senior principal is a natural person owner of the DPM organization who: (i) Owns at least 45% equity interest in the DPM organization; (ii) maintains at least a 45% profit participation in the DPM organization; (iii) is actively involved in the management of the DPM operation; and (iv) maintains a constant presence on the Exchange floor as a DPM designee of the DPM organization.

The proposed rule change was published for notice and comment in the **Federal Register** on September 30, 2003.[3] The Commission received no comments. This order approves the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[6] because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. The Commission notes that the proposed rule change will permit individuals who have significant involvement in the day-to-day operation of a DPM and significant financial stake, as well as an Exchange membership, to satisfy the DPM membership requirements of CBOE Rule 8.85(e). The Commission believes that the proposed amendment to the DPM seat ownership requirement should provide incentives to DPMs that are allocated existing CBOE options, or seeking allocations in established option classes, to maintain sufficient capital to operate as a DPM. The proposal could further CBOE's interest in securing long-term commitments to the Exchange.[7]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2003–34) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland.

Deputy Secretary.

[FR Doc. 03–28598 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48524 (September 23, 2003), 68 FR 56356 (September 30, 2003).

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Securities Exchange Act Release No. 47333 (February, 10, 2003), 68 FR 7634 (February 14, 2003) (SR–CBOE–2002–18).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48761; File No. SR–NASD–2003–147]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the NASD Delegation Plan To Remove the Nasdaq Stock Market, Inc.'s Representation of NASD in the UTP Plan

November 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 3, 2003, the National Association of Securities Dealers, Inc. (''NASD''), filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I, II, and III below, which items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend NASD's Plan of Allocation and Delegation of Functions by NASD to Subsidiaries (''Delegation Plan'') to remove The Nasdaq Stock Market, Inc.'s (''Nasdaq'') representation of NASD in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''UTP Plan'').

The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

A. Delegation of Functions and Authority.

1. Subject to section I.B.11., [the] NASD hereby delegates to Nasdaq and Nasdaq assumes the following responsibilities and functions as a registered securities association:

a. through g. No Change.

h. To administer [the Association's] *NASD's* involvement in National Market System Plans related to [Nasdaq/Unlisted Trading Privileges or] trading in the third market for securities listed on a registered exchange. *The scope of this administrative authority extends*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

solely to the exercise of NASD's voting authority.

i. through o. No Change.

2. No Change.

B. through 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, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1996, NASD delegated authority to Nasdaq to administer NASD's involvement in the National Market System Plans relating to Nasdaq/Unlisted Trading Privileges or trading in the third market for securities listed on a registered exchange.[3] This delegation was appropriate at the time because Nasdaq was the only facility for quoting and trade reporting in Nasdaq securities operated by NASD. Today, NASD also operates the Alternative Display Facility (''ADF''). The SEC, as a condition to the approval of Nasdaq's SuperMontage rule filing, required NASD to operate the ADF to ensure the existence of an alternative venue for NASD members to quote and trade report in Nasdaq securities. While the ADF is operating as a separate NASD facility for Nasdaq securities, NASD has delegated its participation rights, including the right to vote in the UTP Plan, to Nasdaq. Accordingly, the ADF is not separately represented in the UTP Plan and has no voting authority.

On April 22, 2003, the Director of the SEC's Division Market Regulation ''Director'' wrote to NASD's Chairman and Chief Executive Officer and requested that NASD exercise its own participation rights in the UTP Plan.[4] The SEC staff also requested that the UTP Plan be amended to recognize Nasdaq as a separate UTP Plan participant, thereby ensuring separate independent participation by both NASD and Nasdaq in the UTP Plan.[5]

This proposed rule change effectuates the Director's request by proposing to amend the Delegation Plan to retract the delegation of its UTP participation rights to Nasdaq. In addition, the proposed rule change replaces several references to ''the Association'' and ''the NASD'' in the text of the proposed rule change with ''NASD.'' NASD no longer refers to itself using its full corporate name, ''the Association'' or ''the NASD.'' Instead, NASD uses ''NASD'' unless otherwise appropriate for corporate or regulatory reasons.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD's rules be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. NASD is taking action to ensure it exercises its own participation rights in the Nasdaq UTP Plan.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

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.

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 NASD 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 NASD. All submissions should refer to file number SR–NASD–2003–147 and should be submitted by December 8, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28599 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

[3] Securities Exchange Act Release No. 37107 (April 11, 1996), 61 FR 16948 (April 18, 1996) (SR–NASD–96–16).

[4] Letter to Robert R. Glauber, Chairman and CEO, NASD, from Annette L. Nazareth, Director, Divison of Market Regulation, SEC, dated April 22, 2003.

[5] Two amendments to the UTP Plan were proposed, that would allow Nasdaq to be recognized as a separate UTP Plan participant. The UTP Operating Committee voted on both proposed amendments on September 16, 2003. Neither amendment received the affirmative and unanimous vote necessary to constitute action by the Operating Committee to seek an amendment to the UTP Plan. Nasdaq also is required to pursue an exemption from SEC Rule 11Aa3–2 (17 CFR 240.11Aa3–2). The Director indicated in her letter to NASD that SEC staff is ''prepared to approve the necessary UTP Plan amendments (or to initiate them on our own if the Nasdaq UTP Committee does not approve them) and to issue the necessary exemption.''

[6] 15 U.S.C. 78o–3(b)(6).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48762; File No. SR–NYSE–2003–26]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc., To Amend an Interpretation of NYSE Rule 345 To Provide for the Elimination of ''Registered Representative-in-Charge'' as a Category Precluded From Being an Independent Contractor

November 7, 2003.

On September 3, 2003, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend an Interpretation of NYSE Rule 345 in order to permit independent contractors to serve as ''Registered Representatives-In-Charge.'' Notice of the proposed rule change was published for comment in the **Federal Register** on October 7, 2003.[3] No comments were received on the proposed rule change.

NYSE Rule 342.15 provides that a small office (one with three or fewer registered representatives) may be in the charge of a non-resident qualified principal or manager. However, pursuant to Interpretation /02 to the same Rule, in such a case, a resident registered representative must be designated as ''in charge.'' Currently, Interpretation /02 to Rule 345(a) prohibits a natural person registered representative who is an independent contractor from serving as a ''registered representative-in-charge.''

The Exchange has represented that small offices with independent contractors typically have a limited securities sales business, and that ''members and member organizations generally assign administrative as opposed to supervisory functions to persons they designate as registered representatives-in-charge.''[4] According to the Exchange, NYSE member organizations believe that prohibiting registered representatives in charge of small offices from being independent contractors creates an unnecessary burden. To address this position, the Exchange proposes to allow registered representatives-in-charge to associate with members and member organizations as independent contractors, provided that the member or member organization does not assign or delegate supervisory responsibilities to such persons, and submits a written statement to that effect.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,[6] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change should reduce the regulatory burdens of NYSE members and member organizations and allow them an appropriate degree of flexibility in their management of personnel in small offices.

At the same time, the Commission notes that the proposed rule change does not alter in any way the obligation of NYSE members or member organizations to oversee the operation of their businesses and supervise the performance of their associated persons in a manner that assures compliance with the Act and rules and regulations thereunder, as well as applicable rules of the NYSE. The Commission therefore believes that the proposal is consistent with its longstanding position that regardless of their designation, independent contractor registered representatives are considered ''associated persons'' of a broker-dealer under the Act if their activities are subject to control by the broker-dealer, such as when there is a principal and agent relationship.[7]

To this end, the Commission notes that other NYSE rules governing the supervision of personnel that relate to independent contractors and small offices will remain unchanged. Thus, NYSE Interpretation /02 to Rule 345(a) will continue to provide that status as an ''independent contractor'' does not preclude characterization and treatment as an employee for purposes of the NYSE Constitution and Rules. Moreover, NYSE rules will continue to require that qualified supervisors perform all supervisory functions, such as approval of accounts and review of account activity.[8] Indeed, NYSE will require that where a registered representative-in-charge is an independent contractor, the employing member or member organization submit a written statement confirming that it has not assigned or delegated supervisory responsibilities to the registered representative-in-charge. This written statement will be in addition to documents already required to be submitted by the member or member organization in seeking approval of independent contractor status, such as written assurances that the member or member organization will supervise and control all activities of the independent contractor the same as it regulates the activities of all other registered representatives.[9]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (File No. SR–NYSE–2003–26) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28613 Filed 11–14–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–48579 (October 1, 2003), 68 FR 57947 (''Notice'').

[4] Notice, 68 FR at 57948.

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78(c)(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *See* Letter to Gordon S. Macklin, President, National Association of Securities Dealers, Inc. from Douglas Scarff, Director, Division of Market Regulation, Commission (June 18, 1982) (on file with the Commission). *See also Privacy of Consumer Financial Information (Regulation S–P),* Rel. No. 34–42974 (June 22, 2000), 65 FR 40334 (June 29, 2000); *Matter of Crute,* 53 S.E.C. 1112 (December 21, 1998).

[8] *See* NYSE Rules 342, 345.

[9] *See* NYSE Rule 345(a), Interpretation /02.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Instructions for Continued Airworthiness; Maintenance Tasks for High Intensity Radio Frequency (HIRF)/ Electromagnetic Interference (EMI)/ Lightning Protection Features

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of proposed advisory circular (AC) number 33.4–3,

Instructions for Continued Airworthiness; Maintenance Tasks for High Intensity Radio Frequency (HIRF)/ Electromagnetic Interference (EMI)/ Lightning Protection Features.

DATES: Comments must be received on or before February 16, 2004.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Gary Horan, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803–5299.

FOR FURTHER INFORMATION CONTACT: Gary Horan, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone: (781) 238–7164; fax: (781) 238–7199; e-mail: *gary.horan@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named under **FOR FURTHER INFORMATION CONTACT** or by downloading the proposed AC from the following Internet Web site: *http://www.airweb.faa.gov/rgl.* The FAA invites interested parties to comment on the proposed AC. Comments should identify the subject of the AC and be submitted to the individual identified under **FOR FURTHER INFORMATION CONTACT**. The FAA will consider all communications received by the closing date before issuing the final AC.

Background

This AC provides guidance and methods, but not the only methods, that may be used to demonstrate compliance with § 33.4 of title 14 of the Code of Federal Regulations (14 CFR 33.4), Instructions for Continued Airworthiness. This AC provides maintenance tasks to ensure the integrity of HIRF/Lightning protection features.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

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

Robert Guyotte,

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

[FR Doc. 03–28618 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (04–09–C–00–JAC) To Impose and To Use a Passenger Facility Charge (PFC) at the Jackson Hole Airport, Submitted by the Jackson Hole Airport Board, Jackson, WY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent To Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use a PFC at the Jackson Hole Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before December 17, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. George Larson, Airport Director, at the following address: Jackson Hole Airport Board, P.O. Box 159, Jackson, Wyoming 83001.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Jackson Hole Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (04–09–C–00–JAC) to impose and use a PFC at the Jackson Hole Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 5, 2003, the FAA determined that the application to impose and use a PFC submitted by the Jackson Hole Airport Board, Jackson Hole Airport, Jackson, Wyoming, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 7, 2004.

The following is a brief overview of the application:

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2004.

Proposed charge expiration date: February 1, 2007.

Total requested for use approval: $1,814,693.00.

Brief description of proposed project: Terminal building expansion, landside improvements, noise monitoring system and part 150 update, runway threshold lighting, and a fence and gate.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Range, Airports Division, ANM–600, 1601 Lind Avenue, SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jackson Hole Airport.

Issued in Renton, Washington on November 6, 2003.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–28619 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Bartow County, GA

AGENCY: Federal Highway Administration (FHWA), Georgia Department of Transportation (GDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplemental draft Environmental Impact Statement (EIS) will be prepared for the proposed new location extension of US 411 in Bartow County, Georgia.

FOR FURTHER INFORMATION CONTACT: Robert M. Callan, P.E., Division Administrator, Federal Highway Administration, 61 Forsyth Street, SW., Suite 17T100, Atlanta, GA 30303–3104, Telephone (404) 562–3630 and/or Mr.

Harvey Keepler, State Environmental/Location Engineer, Georgia Department of Transportation, Office of Environmental/Location, 3993 Aviation Circle, Atlanta, Georgia 30336, Telephone (404) 699–4400.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the GDOT, will prepare a supplemental draft EIS to construct a new location roadway between US 41 and I–75 in Bartow County, Georgia for a distance of approximately 7.5 miles. This new location extension of US 411 is needed to provide additional capacity and congestion relief for the existing roadway network, which currently includes common sections of US 411, SR 61 and SR 20 to access I–75. This project would provide direct, multi-lane access from Rome to I–75 and is one of the final connecting links in the Memphis to Atlanta Connector.

A Final EIS for this project was approved January 9, 1989, and the Record of Decision was signed May 25, 1989. In 1991, a suit was filed against the USDOT, FHWA and the GDOT on this project. In 1993, the United States District Court for the Northern District of Georgia acknowledged the need for the project and confirmed its independent utility from a larger east-west connector known as teh Northern Arc. However, the document was ruled inadequate because it failed to adequately study a full range of alternatives. The proposed Supplemental draft EIS will address and study a full range of alternatives for this corridor and will provide updated studies and analyses on the alternatives originally studied.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. A public hearing will be held and a public notice will be given of the time and place of the hearing.

To ensure that the full range of issues related to this proposed project is addressed and all significant issues identified in the EIS, formal scoping will be reinitiated. Additionally, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. Georgia's approved clearinghouse review procedures apply to this program.)

Issued on: November 5, 2003.

Jennifer L. Giersch,

Environmental Coordinator, Atlanta, Georgia.

[FR Doc. 03–28631 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–4334, FMCSA–99–5578, FMCSA–99–5748, FMCSA–99–6480, FMCSA–2000–7363, FMCSA–2000–8398]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 22 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective November 30, 2003. Comments from interested persons should be submitted by December 17, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Numbers FMCSA–98–4334, FMCSA–99–5578, FMCSA–99–5748, FMCSA–99–6480, FMCSA–2000–7363, and FMCSA–2000–8398 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket numbers for this notice. 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 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 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, 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:

Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Exemption Decision

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, 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 procedures for requesting an exemption (including renewals) are set out in 49 CFR Part 381. This notice addresses 22 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 22 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

They are: Terry J. Aldridge, Jerry D. Bridges, Michael L. Brown, Roosevelt Bryant, James C. Bryce, Thomas P. Cummings, Ralph E. Eckles, Marion R. Fox, Jr., Gary R. Gutschow, Richard J. Hanna, Peter L. Haubruck, James J. Hewitt, John K. Love, Albert E. Malley, Eldon Miles, Rodney M. Mimbs, Walter F. Moniowczak, Marvin L. Swillie, Jr., Robert Tatum, Thomas E. Walsh, Kevin P. Weinhold, and Thomas A. Wise.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails 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(e).

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 22 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (63 FR 66226, 64 FR 16517, 66 FR 41656, 64 FR 27027, 64 FR 51568, 66 FR 63289, 64 FR 40404, 64 FR 66962, 64 FR 68195, 65 FR 20251, 65 FR 45817, 65 FR 77066, 65 FR 78256, 66 FR 16311). Each of these 22 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

Comments

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by December 17, 2003.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: November 10, 2003.

Pamela M. Pelcovits,

Office Director, Policy, Plans, and Regulations.

[FR Doc. 03–28620 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16481]

Notice of Receipt of Petition for Decision That Nonconforming 1991–1994 Mercedes Benz S Class (140 Car Line) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1991–1994 Mercedes Benz S Class (140 car line) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1991–1994 Mercedes Benz S Class (140 car line) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 17, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety

standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import L.C. of Cape Coral, Florida (''SCI'') (Registered Importer 01–289) has petitioned NHTSA to decide whether 1991–1994 Mercedes Benz S Class (140 car line) passenger cars are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 1991–1994 Mercedes Benz S Class (140 car line) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1991–1994 Mercedes Benz S Class (140 car line) passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SCI submitted information with its petition intended to demonstrate that non-U.S. certified 1991–1994 Mercedes Benz S Class (140 car line) passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1991–1994 Mercedes Benz S Class (140 car line) passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol; (b) replacement or conversion of the speedometer to read in miles per hours.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model headlamps and front side marker lights; (b) installation of U.S.-model tail lamp assemblies that incorporate rear side marker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 114 *Theft Protection:* installation of a key warning buzzer.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport will not operate with the ignition switched off.

Standard No. 208 *Occupant Crash Protection:*

(a) Reprogramming of the instrument cluster software to activate the seat belt warning buzzer; (b) inspection of all vehicles and replacement of the driver's and passenger's air bags, control units, sensors, and seat belts with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles should be equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self-tensioning and that release by means of a single red pushbutton and with a lap belt at the rear center seating position. The petitioner further states that the vehicles are equipped with a seat belt warning lamp that is identical to the lamp installed on U.S.-certified models.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door beams identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

Standard No. 301 *Fuel System Integrity:* inspection of all vehicles to ensure that they are equipped with a roll over valve with the same part number as the U.S.-model component, and installation of that component on vehicles that are not already so equipped.

The petitioner states that all vehicles must be inspected for compliance with the Bumper Standard found in 49 CFR part 581 and that U.S.-model components necessary to achieve compliance with the standard must be installed on vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565. The petitioner further states that a certification label must be affixed to the driver's door latch post to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 12, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28621 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16480]

Notice of Receipt of Petition for Decision That Nonconforming 1999 Chevrolet Corvette Coupe Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 Chevrolet Corvette Coupe passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 Chevrolet Corvette Coupe passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 17, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Sunshine Car Import L.C. of Cape Coral, Florida (''SCI'') (Registered Importer 01–289) has petitioned NHTSA to decide whether 1999 Chevrolet Corvette Coupe passenger cars originally manufactured for sale in foreign markets are eligible for importation into the United States. The vehicles which SCI believes are substantially similar are 1999 Chevrolet Corvette Coupe passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 Chevrolet Corvette Coupe passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

SCI submitted information with its petition intended to demonstrate that non-U.S. certified 1999 Chevrolet Corvette Coupe passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 Chevrolet Corvette Coupe passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays,* 102 *Transmission Shift Lever Sequence,* 103 *Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 109 *New Pneumatic Tires,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 116 *Brake Fluid,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact, 202 Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

The petitioner states that the vehicles also comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* inspection of all vehicles and installation of U.S.-model headlamps, tail lamps, side markers, and high mounted stop lamps on vehicles that are not already so equipped.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 118 *Power Window Systems:* inspection of all vehicles and installation, in vehicles that are not already so equipped, of a relay in the power window system so that the window transport will not operate with the ignition switched off.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door beams identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

The petitioner states that all vehicles must be inspected for compliance with the Theft Prevention Standard found in 49 CFR 541, and that an anti-theft system capable of immobilizing the vehicle must be installed in any vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565. The petitioner further states that a

certification label must be affixed to the driver's doorjamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590 (docket hours are from 9 a.m. to 5 p.m.). It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 12, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–28622 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Guidance on When the Baseline Integrity Assessment Begins

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: This document provides guidance to operators of gas transmission pipelines on the requirement in 49 U.S.C. 60109 that operators begin the baseline integrity assessment of pipeline segments located in high consequence areas no later than June 17, 2004. Trade associations representing natural gas pipeline companies affected by this requirement, have asked for guidance on what actions an operator must take to begin a baseline assessment. This document provides guidance to gas transmission operators on what initial steps RSPA/OPS expects each operator to take to begin the baseline integrity assessment to meet the intent of the statute.

General Information

You may contact the Dockets Facility by phone at (202) 366–9329, for copies of this document or other material in the docket. All materials in this docket may be accessed electronically at *http://dms.dot.gov/search*. Once you access this address, type in the last four digits of the docket number shown at the beginning of this notice (in this case 7666), and click on search. You will then be connected to all relevant information.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mike Israni by phone at (202) 366–4571, by fax at (202) 366–4566, or by e-mail at *mike.israni@rspa.dot.gov*, regarding the subject matter of this guidance. General information about the RSPA/OPS programs may be obtained by accessing RSPA's Home page at *http://RSPA.dot.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Federal Pipeline Safety Statute (49 U.S.C. 60109(c)) requires that RSPA/OPS issue regulations, by December 17, 2003, establishing requirements for integrity management programs for gas transmission pipelines in high consequence areas. The statute also imposes requirements directly on gas pipeline operators. The statute requires each gas pipeline operator to adopt an integrity management program for pipeline segments located in high consequence areas by December 17, 2004, and to begin the baseline integrity assessment of those segments no later than June 17, 2004. The statute requires that an operator complete the baseline assessment on all the operator's gas transmission pipeline segments in high consequence areas by December 17, 2012, with at least 50 percent of those segments being assessed no later than December 17, 2006. An operator must also reassess each of the segments every 7 years.

Trade associations that represent gas pipeline operators have requested guidance on what actions are necessary for an operator to have begun the required baseline assessment process by the statutory deadline. This advisory bulletin gives guidance on the actions RSPA/OPS expects an operator to take by June 17, 2004 for the operator to be considered as having begun the baseline assessment.

On August 6, 2002, RSPA/OPS published a final rule defining high consequence areas, *i.e.* those areas for which additional protections are required (67 FR 50824). RSPA/OPS initiated the rulemaking on integrity management program requirements with a notice of proposed rulemaking (NPRM), published January 28, 2003 (68 FR 4278), that proposed substantive requirements to establish integrity management programs and modifications to the high consequence area definition to better identify population potentially impacted by a pipeline failure. A final rule has not yet been issued. RSPA/OPS published an advisory bulletin on July 17, 2003 (68 FR 42456) providing guidance on steps RSPA/OPS expects gas transmission operators to take to determine ''identified sites'' along the pipeline, one of the components of the high consequence area definition.

RSPA/OPS expects that by June 17, 2004, an operator will have identified many high consequence areas along its transmission pipelines though operation and maintenance activities on the pipeline right-of-way, including patrolling, that the operator conducts on a routine basis, and through the guidance RSPA/OPS provided on how to determine the identified sites component with the help of emergency response officials. An operator will also have integrated all available data and information the operator has available on those high consequence areas to prioritize segments that are high risk, and to have begun selecting the assessment method best suited for each segment and scheduling the assessment of the high risk segments.

Advisory Bulletin (ADB–03–07)

To: Operators of gas transmission pipelines.

Subject: The requirement in 49 U.S.C. 60109 (c) that each operator begin the baseline integrity assessment of segments in high consequence areas no later than June 17, 2004.

Purpose: To provide guidance to operators on what steps RSPA/OPS considers acceptable to begin the baseline integrity assessment process to meet the intent of the statute.

Advisory: RSPA/OPS will accept the following steps as having begun the baseline assessment process required by 49 U.S.C. 60109 (c).

Prior to June 17, 2004, each operator must have begun to—

• Identify segments that are located in high consequence areas;
• Integrate available data on those identified segments;
• Prioritize the highest risk segments from available data on those identified segments; and
• Select the assessment method best suited to assess (pressure-test, internal inspection devices, direct assessment, or alternative method) each high risk segment.

By June 17, 2004, each operator must have begun its preparation to conduct a baseline assessment on at least one high risk segment that the operator has already identified. Preparing to conduct a baseline assessment means that—
• An operator has scheduled for assessment the segments identified prior to June 17, 2004; and
• An operator has started to contract or has entered into a contract with a tool vendor to assess the identified segments; or
• An operator has started to assess the first scheduled segment.

RSPA/OPS also considers that any of the following actions as meeting the intent of the statute that an operator have begun the baseline integrity assessment process by June 17, 2004. The following actions are not the only actions that RSPA/OPS will accept.
• An operator has installed launchers or receivers for internal inspection devices;
• An operator has set up a segment for a pressure test; or
• An operator has completed the pre-assessment step for Direct Assessment.

Issued in Washington, DC, on November 10, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–28623 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 11 a.m. on Thursday, November 20, 2003, at the Office of the Administrator, 400 Seventh Street, SW., Washington, DC, room 5424, by conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than November 19, 2003, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202–366–0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on November 12, 2003.

Marc C. Owen,

Chief Counsel.

[FR Doc. 03–28611 Filed 11–14–03; 8:45 am]

BILLING CODE 4910–61–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 34424]

STB Finance Docket No. 34424, Railroad Control Application, Canadian National Railway Company and Grand Trunk Corporation—Control—Duluth, Missabe and Iron Range Railway Company, Bessemer and Lake Erie Railroad Company, and The Pittsburgh & Conneaut Dock Company

AGENCY: Surface Transportation Board.

ACTION: Notice of Availability of Environmental Appendix and Request for Comments.

SUMMARY: CN has filed an application with the Surface Transportation Board (Board) seeking approval under 49 U.S.C. 11321–11325 to acquire control of three rail carriers—Duluth, Missabe and Iron Range Railway Company; Bessemer and Lake Erie Railroad Company; and The Pittsburgh & Conneaut Dock Company—from Great Lakes Transportation, LLC (GLT).

CN has met with the Board's Section of Environmental Analysis (SEA) and has explained to SEA that CN believes that its proposed transaction would not have significant environmental impacts or require further environmental review. Therefore, according to CN, the Board should exercise its authority under 49 CFR 1105.6(d) and find that this transaction is one for which preparation of an Environmental Assessment or an Environmental Impact Statement is not required. To afford the public an opportunity to review and comment on CN's conclusion, CN has prepared an ''Environmental Appendix,'' which provides further information in support of CN's conclusion. CN has mailed copies of the Environmental Appendix to appropriate government agencies and other interested parties. CN has also placed notices in major newspapers delivered to communities located in the project area announcing the availability of the Environmental Appendix and the opportunity for public review and comment on the Environmental Appendix.

Comments are due to SEA by December 10, 2003. SEA invites written comments on all aspects of the Environmental Appendix and whether there is any reason that the proposed transaction could result in potentially significant environmental impacts warranting preparation of further environmental documentation. SEA will consider all timely written comments on the Environmental Appendix when making its recommendation to the Board about whether there is a need for further environmental review in this case. Comments should be submitted to the address below.

DATES: Comments on the Environmental Appendix are due by December 10, 2003.

ADDRESSES: Comments (an original and 10 copies) regarding the Environmental Appendix should be submitted in writing to: Case Control Unit, STB Finance Docket No. 34424, Surface Transportation Board, 1925 K Street NW., Washington, DC 20423, to the attention of Phillis Johnson-Ball.

FOR FURTHER INFORMATION CONTACT: Phillis Johnson-Ball, (202) 565–1530 (TDD for the hearing impaired, 1–800–877–8339). To obtain a copy of the Environmental Appendix, you may contact Ms. Johnson-Ball at the number above or Mr. Paul Cunningham, CN's legal representative, at (202) 973–7600. Copies of the Environmental Appendix are available on the Board's Web site *http://www.stb.dot.gov.* Copies are also available for a fee from ASAP Document Solutions, Suite 405, 1925 K Street, NW., Washington, DC 20006, phone (202) 293–7878.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 03–28628 Filed 11–14–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 7, 2003.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before December 17, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1849.
Form Number: IRS Form 13460.
Type of Review: Extension.
Title: Employer/Payer Information.
Description: Form 13460 is used to assist filers who have underreported or correction issues. Also, this form expedites research of filer's problems.
Respondents: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State or Tribal Government.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 15 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 50 hours.

OMB Number: 1545–1854.
Form Number: IRS Form 13469.
Type of Review: Extension.
Title: Electronic Options for Tax Professionals.
Description: This brochure (Publication 4028, which includes Form 13469) will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The brochure provides these professionals the dates and times of electronic seminars being held in the state of Tennessee. These seminars are being conducted to encourage tax professionals to electronically file so the IRS can work toward meeting the goal of 80% electronically filed returns by 2007.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,400.
Estimated Burden Hours Per Respondent: 3 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 70 hours.
Clearance Officer: R. Joseph Durbala, (202) 622–3634, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.

[FR Doc. 03–28627 Filed 11–14–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, December 11, 2003, from 3 to 4 p.m., Eastern Standard Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, December 11, 2003, from 3 to 4 p.m., Eastern standard time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: November 4, 2003.

Sandy McQuin,
Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–28660 Filed 11–14–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
November 17, 2003

Part II

Securities and Exchange Commission

17 CFR Parts 228, et al.

Purchases of Certain Equity Securities by the Issuer and Others; Direct Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 240, 249, 270, and 274

[Release Nos. 33–8335; 34–48766; IC–26252; File No. S7–50–02]

RIN 3235–AH37

Purchases of Certain Equity Securities by the Issuer and Others

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: We are adopting amendments to Rule 10b–18 under the Securities Exchange Act of 1934 (Exchange Act), which provides issuers with a ''safe harbor'' from liability for manipulation when they repurchase their common stock in the market in accordance with the Rule's manner, timing, price, and volume conditions. The amendments are intended to simplify and update the safe harbor provisions in light of market developments since the Rule's adoption. To enhance the transparency of issuer repurchases, we also are adopting amendments to a number of regulations and forms to require disclosure of all issuer repurchases (open market and private transactions), regardless of whether the repurchases are effected in accordance with the safe harbor rule.

DATES: *Effective Date:* December 17, 2003, except §§ 270.23c-1(a)(11) and 274.201 are effective July 15, 2004.

Compliance Dates: The following compliance dates apply to the amendments that require periodic disclosure of all issuer repurchases. The repurchase disclosure required by new Item 2(e) of Forms 10–Q and 10–QSB and new Item 5(c) of Forms 10–K and 10–KSB must appear in reports filed on these forms for periods ending on or after March 15, 2004. The disclosure required by new Item 16E of Form 20–F must appear in Form 20–F reports filed for fiscal years ending on or after December 15, 2004.

The repurchase disclosure required by new Item 8 and Item 10(a)(3) of Form N–CSR must appear in reports filed on this form by registered closed-end management investment companies for periods ending on or after June 15, 2004. A registered closed-end management investment company need not file reports on Form N–23C–1 with respect to any repurchases during any calendar month following June 2004.

FOR FURTHER INFORMATION CONTACT: James Brigagliano, Assistant Director, Joan Collopy, Special Counsel, or Elizabeth Sandoe, Special Counsel, Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772, or, with respect to the disclosure amendments, Sean Harrison, Special Counsel, Office of Rulemaking, Division of Corporation Finance, at (202) 942–2900, or, John Faust, Attorney Adviser, Office of Disclosure Regulation, Division of Investment Management, at (202) 942–0721, at the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are adopting amendments to Rule 10b–18 under the Exchange Act [17 CFR 240.10b–18], Regulations S–K and S–B [17 CFR 229.703 and 228.703], Exchange Act Forms 10–Q [17 CFR 249.308a], 10–QSB [17 CFR 249.308b], 10–K [17 CFR 249.310], 10–KSB [17 CFR 310b], and 20–F [17 CFR 249.220f], Form N–CSR under the Exchange Act and the Investment Company Act of 1940 (Investment Company Act) [17 CFR 249.331 and 274.128], and Rule 23c–1 [17 CFR 270.23c-1], and Form N–23C–1 [17 CFR 274.201] under the Investment Company Act.

I. Introduction

On December 10, 2002, we proposed amendments to Rule 10b–18, Regulations S–K and S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR,[1] which would:

- Modify the definition of a ''Rule 10b–18 purchase'' to incorporate the current ''Rule 10b–18 bid'' definition;
- Clarify the scope of the exclusion for purchases effected ''pursuant to a merger, acquisition, or similar transaction involving a recapitalization'';
- Modify the timing condition by applying an average daily trading volume (ADTV) value and public float value test to determine when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor;
- Apply a uniform price condition that limits issuers to purchasing their securities at a price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher;
- Modify the volume condition's treatment of block purchases by including block purchases in calculating a security's ADTV and the 25% volume limitation;
- Apply an alternative volume condition (applicable only during the trading session immediately following a market-wide trading suspension), which would increase the 25% volume limitation to 100%; and
- Amend Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, and 20–F under the Exchange Act, and Form N–CSR under the Exchange Act and the Investment Company Act, to require disclosure of all issuer repurchases (open market and private transactions) of equity securities, regardless of whether the repurchases are effected in accordance with Rule 10b–18.

We received letters from 43 commenters in response to the Proposing Release.[2] The commenters expressed strong support for the proposed amendments to update and simplify the language of Rule 10b–18, to expand the safe harbor to allow issuers[3] whose securities are less susceptible to manipulation to stay in the market longer, and to repurchase a greater amount of shares during periods of severe market decline. Most of the commenters also supported the proposal to require periodic disclosure of issuer repurchases. However, commenters generally opposed the proposal to eliminate the ''block exception'' from the Rule's volume condition, as well as the proposal to exclude from the safe harbor repurchases made following the announcement of a merger, acquisition, or similar transaction involving a recapitalization, until completion of the transaction (the ''merger exclusion'').

After considering the comments received, and upon thorough examination of current market practices and the purposes underlying the safe harbor, we are adopting the amendments substantially as proposed, but with some modifications to clarify provisions or to address commenters' concerns (particularly with respect to the ''block exception'' and the ''merger exclusion''), as discussed below. In response to comments received, we also are adopting an amendment that will extend the safe harbor for certain issuer repurchases effected during after-hours trading sessions.

[1] Securities Exchange Act Release No. 46980 (December 10, 2002), 67 FR 77594 (December 18, 2002) (Proposing Release).

[2] Comment letters were received from, among others, 21 issuers, eight professional associations, five law firms, three broker-dealers, and two asset/investment management companies. The comment letters and a summary of comments prepared by the Division of Market Regulation have been placed in Public File No. S7–50–02, which are available for public inspection in the Commission's Public Reference Room and at *http://www.sec.gov.*

[3] The safe harbor is also available for ''affiliated purchasers'' of the issuer. In this Release, the term ''issuer'' includes affiliated purchasers.

II. Overview of Current Rule 10b–18

A. Rule 10b–18 as a ''Safe Harbor''

In 1982, the Commission adopted Rule 10b–18,[4] which provides that an issuer will not be deemed to have violated Sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b–5 under the Exchange Act, *solely by* reason of the manner, timing, price, or volume of its repurchases, if the issuer repurchases its common stock in the market in accordance with the safe harbor conditions.[5] Rule 10b–18's safe harbor conditions are designed to minimize the market impact of the issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer.

Although the safe harbor conditions are intended to offer issuers guidance when repurchasing their securities in the open market, Rule 10b–18 is not the exclusive means of making non-manipulative issuer repurchases. As the Rule states, there is no presumption that bids or purchases outside of the safe harbor violate Sections 9(a)(2) or 10(b) of the Exchange Act, or Rule 10b–5 under the Exchange Act.[6] Given the widely varying characteristics in the market for the stock of different issuers, it is possible for issuer repurchases to be made outside of the safe harbor conditions and not be manipulative.

B. Scope of the Current Rule

Rule 10b–18 applies to bids for and purchases of an issuer's common stock by or for an issuer.[7] Purchases of any other type of security are not covered—even if related to the common stock (*e.g.*, preferred stock, warrants, rights, convertible debt securities, options, or security futures products).[8] Because Rule 10–18 is not intended to apply in contexts where the issuer has a heightened incentive to manipulate the market price of its securities, the safe harbor excludes issuer bids and purchases made during certain corporate events, for example, during mergers, tender offers, and distributions that involve the issuer.[9] The safe harbor also does not confer absolute protection from all liability for purchases (*e.g.*, purchases that are part of a plan or scheme to evade the federal securities laws)—even if made in technical compliance with the Rule.[10] Rather, the safe harbor provides only that certain, specific provisions of the securities laws will not be considered to have been violated solely by reason of the manner, timing, price, or volume of such repurchases, provided that the repurchases are made within the limitations of the Rule.

C. Conditions of the Current Rule

Rule 10b–18 provides a safe harbor for purchases on a given day. To come within the safe harbor for that day, an issuer must satisfy the Rule's manner, timing, price, and volume conditions when purchasing its own common stock in the market.[11] Failure to meet any one of the four conditions will disqualify the issuer's purchases from the safe harbor for that day.

1. Manner of Purchase Condition

The manner of purchase condition requires an issuer to use a single broker or dealer per day to bid for or purchase its common stock. This requirement is intended to avoid the appearance of widespread trading in a security that could result if the issuer uses many brokers or dealers to repurchase its stock.[12] The ''single broker or dealer'' condition, however, applies only to Rule 10b–18 purchases that are ''solicited'' by or on behalf of the issuer. Accordingly, the issuer may purchase shares from more than one broker or dealer if the issuer does not solicit the transactions. An issuer must evaluate whether a transaction is ''solicited'' by or on behalf of the issuer, depending on the facts and circumstances of each case.[13]

Moreover, where an issuer engages a single coordinating broker or dealer to make its Rule 10b–18 purchases, the broker or dealer can make (consistent with the single broker or dealer condition) appropriate and customary arrangements with other brokers or dealers, including exchange specialists, or ''two-dollar'' brokers on exchange floors to execute repurchases.[14]

2. Timing Condition

The timing condition restricts the periods during which the issuer may bid for or purchase its common stock. Currently, this condition excludes from the safe harbor purchases at the opening and during the last half hour of trading because market activity at such times is considered to be a significant indicator of the direction of trading, the strength of demand, and the current market value of the security.[15] Therefore, where

[4] Securities Exchange Act Release No. 19244 (November 17, 1982), 47 FR 53333, 53334 (November 26, 1982) (1982 Adopting Release). Since 1967, the Commission has considered on several occasions the issue of whether to regulate an issuer's market purchases of its own securities. The Commission first proposed Rule 10b–10 to govern issuer repurchases in connection with proposed legislation that became the Williams Act Amendments of 1968. Pub. L. No. 90–439, 82 Stat. 454 (July 29, 1968), reprinted in Hearings on S. 510 before Senate Committee on Banking and Currency, 90th Cong., 1st Sess. 214–216 (1967). The Commission then published for public comment proposed Rule 13e–2 in 1970, 1973, and 1980. Rule 13e–2, which was later withdrawn with the adoption of Rule 10b–18, would have been a prescriptive rule with mandatory disclosure requirements, substantive purchasing limitations, and general anti-fraud liability. Securities Exchange Act Release Nos. 8930 (July 13, 1970), 35 FR 11410 (July 16, 1970); 10539 (December 6, 1973), 38 FR 34341 (December 13, 1973); and 17222 (October 17, 1980), 45 FR 70890 (October 27, 1980) (1980 Proposing Release).

[5] However, some repurchase activity that meets the safe harbor conditions may still violate the anti-fraud and anti-manipulation provisions of the Exchange Act. For example, as the Commission noted in 1982 when adopting Rule 10b–18, ''Rule 10b–18 confers no immunity from possible Rule 10b–5 liability where the issuer engages in repurchases while in possession of favorable, material nonpublic information concerning its securities.'' 1982 Adopting Release, *supra* note 4, at 47 FR 53333. Thus, regardless of whether an issuer's repurchases technically satisfy the conditions of the Rule, the safe harbor is not available if the repurchases are fraudulent or manipulative, when viewed in the totality of the facts and circumstances surrounding the repurchases (*i.e.*, facts and circumstances in addition to the volume, price, time, and manner of the repurchases).

[6] *See* 17 CFR 240.10b–18(d). Moreover, the safe harbor is not intended to define the appropriate limits to be observed by those persons not covered by the safe harbor nor the appropriate limits to be observed when repurchasing securities other than common stock.

[7] 17 CFR 240.10b–18(a)(3) and (4).

[8] The safe harbor also is not available for issuers repurchasing their stock using forward contracts or accelerated share repurchase programs. Nor is the safe harbor available for an issuer's put writing, call purchasing, or purchases of stock upon exercise of such puts and calls.

[9] 17 CFR 240.10b–18(a)(3)(i)–(vii).

[10] *See supra* note 5.

[11] 17 CFR 240.10b–18(b)(1)–(4).

[12] 1980 Proposing Release, *supra* note 4, 45 FR at 70891.

[13] Although Rule 10b–18 does not define ''solicitation,'' we would not consider the issuer's disclosure and announcement of a repurchase program alone as necessarily causing a subsequent purchase to be deemed ''solicited'' by or on behalf of an issuer. *See* 1982 Adopting Release, *supra* note 4, 47 FR at 53337.

[14] *See* 1980 Proposing Release, *supra* note 4, 45 FR at 70898. *See also* Letter regarding Optimark System (February 10, 2000) (stating that, consistent with the Rule's single broker or dealer condition, an issuer could utilize one or more clearing brokers solely for purposes of clearing and settling executed Rule 10b–18 purchases).

[15] 17 CFR 240.10b–18(b)(2) currently provides that an issuer's purchase may not be the opening transaction reported to the consolidated system, nor may the issuer purchase during the last half hour before the scheduled close of trading in the principal market (including during the last half hour before the scheduled close of trading on the exchange on which the purchase is to be made) or the last half-hour before termination of the period in which last sale prices are reported to the consolidated system (whichever is applicable). These limitations apply regardless of a security's trading characteristics (*e.g.*, liquidity or daily trading volume). 17 CFR 240.10b–18(b)(2)(i)–(iii). The prohibition of Rule 10b–18 bids and purchases near the close of trading is to prevent the issuer from creating or sustaining a high bid or transaction price at or near the close of trading. ''Other''

Continued

there is no independent opening transaction on a given trading day, the issuer is precluded from making purchases under the safe harbor for that day.

3. Price Condition

The price condition specifies the highest price an issuer may bid or pay for its common stock.[16] Rule 10b–18's current price limitations vary depending on whether the security is a ''reported,'' ''exchange-traded,'' ''Nasdaq,'' or ''other security,'' (as defined under the current Rule) and whether the bid or purchase is effected on an exchange.[17] The price condition is intended to prevent the issuer from leading the market for the security through its repurchases by limiting the issuer to bidding for or buying its security at a price that is no higher than the highest independent published bid or last independent transaction price. As such, the price condition uses an independent reference price that has not been set or influenced by the issuer but, instead, is based on independent market forces.

4. Volume Condition

The volume condition limits the amount of securities an issuer may repurchase in the market in a single day. The volume condition is designed to prevent an issuer from dominating the market for its securities through substantial purchasing activity.[18] An issuer dominating the market for its securities in this way can mislead investors about the integrity of the securities market as an independent pricing mechanism.[19]

Under the current volume condition, an issuer may effect daily purchases in an amount up to 25% of the ADTV in its shares (the ''25% volume limitation'').[20] However, the current 25% volume limitation does not include an issuer's block purchases. Moreover, an issuer's block purchases are not included in determining a security's four-week ADTV under the Rule.[21] The current Rule defines a ''block'' as a quantity of stock that either: (i) Has a purchase price of $200,000 or more; or (ii) is at least 5,000 shares and has a purchase price of at least $50,000; or (iii) is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate.[22]

The definition also provides that a block does not include any amount a broker or dealer, acting for its own account, has accumulated for the purpose of selling to the issuer, if the issuer knows or has reason to know that such amount was accumulated for such purpose. The definition also excludes any amount that a broker or dealer has sold short to the issuer, if the issuer knows or has reason to know that the sale was a short sale.[23]

III. Amendments to Rule 10b–18

A. Amendments Concerning the Scope of the Safe Harbor

1. Preliminary Notes to Rule 10b–18

We are adopting the two preliminary notes to Rule 10b–18 as proposed. The first note explains that, as a safe harbor, compliance with Rule 10b–18 is voluntary. However, to come within the safe harbor, an issuer's repurchases must satisfy (on a daily basis) each of the Rule's four conditions. Failure to meet any one of the four conditions removes all of the issuer's repurchases from the safe harbor for that day. Because we are adopting this sentence as part of the preliminary notes to the Rule, we have decided that it is unnecessary to also include this sentence in paragraph (d), as we had originally proposed. The note also states that the safe harbor is not available for repurchases that, although made in technical compliance with the Rule, are part of a plan or scheme to evade the federal securities laws.[24]

The second note states that, regardless of whether the repurchases are effected in accordance with Rule 10b–18, reporting issuers must comply with the new disclosure provisions, *i.e.*, Item 703 of Regulations S–K and S–B and Item 15(e) of Form 20–F (regarding foreign private issuers), and closed-end management investment companies that are registered under the Investment Company Act (''closed-end funds'') must comply with Item 8 of Form N–CSR.

2. Eligible Securities

While not making any substantive changes to the scope of the Rule, we are adopting the proposed amendment to merge the current definition of ''Rule 10b–18 bid''[25] into the definition of ''Rule 10b–18 purchase'' and to clarify that the safe harbor is available for repurchases of all common equity securities (*i.e.*, an issuer's common stock or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share). Thus, as adopted, ''Rule 10b–18 purchase'' means a purchase (or any bid or limit order that would effect such purchase) of an issuer's common stock (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) by or for the issuer or any affiliated purchaser.[26]

3. Availability of Rule 10b–18 Once a Merger, Acquisition, or Similar Transactions Involving a Recapitalization Is Announced

We proposed to amend the definition of ''Rule 10b–18 purchase'' to clarify that the current exception for purchases effected ''pursuant to a merger, acquisition, or similar transaction

securities (*i.e.*, securities that do not meet the definition of ''reported securities'' under the current Rule, such as OTC Bulletin Board (''OTCBB'') and Pink Sheet securities) do not have timing restrictions under the safe harbor. 17 CFR 240.10b–18 (b)(2).

[16] 17 CFR 240.10b–18(b)(3).

[17] 17 CFR 240.10b–18(b)(3).

[18] 1980 Proposing Release, *supra* note 4, 45 FR 70890.

[19] A market can be manipulated even in the absence of price leadership. Following the market closely with purchases or bids essentially places a floor underneath the market at each independent purchase or bid. This may exhaust the available supply of securities that may be offered at that price, which ultimately forces others to raise their bids. *See* 1980 Proposing Release, *supra* note 4, 45 FR 70890; L. Loss and J. Seligman, *Securities Regulation, 3d Edition,* at 10–E–10 (1999); Kidder, Peabody & Co., 18 SEC 559, 570 (1945); *Halsey, Stuart & Co., Inc.,* 30 SEC 106, 129 (1949) (describing over-the-counter manipulation).

[20] This applies to ''reported securities,'' ''exchange-traded securities,'' and ''Nasdaq securities'' under the current Rule. 17 CFR 240.10b–18(b)(4). For ''other securities'' under the current Rule (*e.g.*, OTCBB and Pink Sheet securities), volume of purchases on a single day may not exceed one round lot or, on that day plus the preceding five business days, 1/20th of one percent (0.0005) of outstanding shares of the security. 17 CFR 240.10b–18(b)(4). Trading volume is currently defined as the average daily trading volume reported to the consolidated transaction reporting system or to the NASD for the security in the four calendar weeks preceding the week that the Rule 10b–18 purchase or bid is to be effected. 17 CFR 240.10b–18(a)(11).

[21] 17 CFR 240.10b–18(b)(4).

[22] 17 CFR 240.10b–18(a)(14).

[23] 17 CFR 240.10b–18(a)(14).

[24] *See* Adopted Preliminary Notes to Rule 10b–18. *See also* 1982 Adopting Release, *supra* note 4 and text accompanying *supra* note 5. While an issuer will not be deemed to have violated Sections 9(a)(2) or 10(b) of the Exchange Act, or Exchange Act Rule 10b–5 *solely by* reason of the manner, timing, price, or volume of such repurchases if they are made in compliance with the safe harbor conditions, the safe harbor is not available if the repurchases are fraudulent or manipulative, when viewed in the totality of the facts and circumstances surrounding the repurchases (*i.e.*, facts and circumstances in addition to the volume, price, time, and manner of the repurchases).

[25] ''Rule 10b–18 bid'' is currently defined as a bid for securities that, if accepted, or a limit order that, if executed, would result in a Rule 10b–18 purchase. *See* 17 CFR 240.10b–18(a)(4).

[26] Amended Rule 10b–18(a)(13).

involving a recapitalization'' includes purchases effected during the period from the time of public announcement[27] of the merger, acquisition, or similar transaction involving a recapitalization, until the completion of such transaction.[28] Once a merger or acquisition is announced, an issuer has considerable incentive to support or raise the market price of its stock in order to facilitate the merger or acquisition. For example, in a recent contested takeover, several news articles suggested that the banks repurchased their respective securities in order to boost their stock price to enhance the value of their competing merger proposals.[29]

Some of the commenters, however, argued that the proposed amendment would drastically expand the scope of the current exclusion and that Regulation M's restricted periods[30] and other federal and state laws adequately address any manipulative concerns.[31] These commenters also argued that, because regulatory approvals for mergers may take several months, the proposed merger exclusion would keep issuers out of the market far longer than necessary.[32] Other commenters argued that the proposed amendment should not apply to all cash mergers; after the shareholder vote in a merger; after the exchange ratio is fixed; or after the valuation period expires.[33]

After considering the comments, and in view of the fact that we are limiting the amount that can be repurchased within the safe harbor (as discussed below and in Section III.B.6 of this Release), we have determined that it is not necessary to exclude from the safe harbor all issuer repurchase activity following the announcement of a merger, acquisition, or similar transaction involving a recapitalization. Instead, as adopted in 10b–18(a)(13)(iv), the merger exclusion applies to purchases that are effected during the period from the time of public announcement of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of such transaction or the completion of the vote by target shareholders (including during any period where the market price of a security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or similar transaction),[34] with the following exceptions.

The exclusion does not extend to transactions in which the consideration is solely cash and there is no valuation period (*i.e.*, where the issuer has little or no incentive to manipulate the market price of its securities).[35] We also recognize that some issuers may desire to carry out ordinary repurchases (*i.e.*, purchases not made in connection with or relating to the merger or other covered transaction) during what could be an extended period of time until completion of the transaction. Thus, we are modifying the proposed merger exclusion to allow ordinary Rule 10b–18 purchases to be effected after the announcement of a merger or covered transaction (subject to Regulation M's restricted period[36] and any other applicable restrictions) so long as the total amount of the issuer's Rule 10b–18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b–18 purchases during the three full calendar months preceding the date of the announcement of the merger or other covered transaction.[37] Moreover, the issuer may effect block purchases pursuant to paragraph (b)(4) of the Rule (subject to Regulation M's restricted period and any other applicable restrictions) provided that the issuer does not exceed the average size and frequency of block purchases effected pursuant to paragraph (b)(4) of the Rule during the three full calendar months preceding the date of the announcement of such transaction.[38]

We believe that limiting the amount an issuer may repurchase following the announcement of a merger or other covered transaction will safeguard against the heightened potential for manipulative abuse during this sensitive

[27] ''Public announcement'' is any oral or written communication by any participant that is reasonably designed to, or has the effect of, informing the public or security holders in general about the business combination transaction. *See* 17 CFR 230.165(f).

[28] This includes any period where the market price of a security will be a factor in determining the consideration to be paid pursuant to a merger, acquisition, or similar transaction. *See* Proposing Release, *supra* note 1.

[29] *See, e.g.*, Jeffrey N. Gordon, ''Reviewing the New Merger Accounting Regime,'' *New York Law Journal,* at 1 (July 19, 2001) (stating that in the contest between First Union and SunTrust for Wachovia, all three banks have engaged in share buybacks in ways that affected the comparative deal prices). *See also* Liz Moyer, ''SEC Rule May Hinder SunTrust: Buyback to Boost Stock Price Could be a Violation,'' *American Banker*, at 1 (June 28, 2001).

[30] *See* note 36, *infra.*

[31] *See, e.g.*, comment letters from Committee on Federal Regulation of Securities, Section of Business Law of the American Bar Association (Fed. Reg. Committee) and Merrill Lynch, Pierce, Fenner & Smith, Incorporated (Merrill).

[32] *See* comment letters from Citigroup; Committee on Corporation Law of the Association of the Bar of the City of New York (Corp. Law Committee); Fed. Reg. Committee; Intel Corporation (Intel); Merrill; Sullivan & Cromwell, LLP (Sullivan); Valero Energy Corporation (Valero); Wachtell, Lipton, Rosen & Katz (Wachtell); Wal-Mart Stores, Incorporated (Wal-Mart); and Wells Fargo (Wells).

[33] *See, e.g.*, comment letters from Cardinal Health; Dell Computer Corporation (Dell); Intel; Morgan Stanley; Sullivan; Valero; Wachtell; Wal-Mart; and Wells.

[34] This includes during the period following the vote by target security holders but before an election period. However, the safe harbor would be available after a shareholder vote is completed in instances where the only pending issue is regulatory approval or other action that could not influence the market price of the issuer's security.

[35] Amended Rule 10b–18 (a)(13)(iv)(A).

[36] In the case of a distribution involving a merger, acquisition, or exchange offer, Regulation M's restricted period begins on the day the proxy solicitation or offering materials are first disseminated to security holders, and ends upon the completion of the distribution (*i.e.*, the time of the shareholder vote or the expiration of the exchange offer), and includes any post-vote valuation or election period. 17 CFR 242.100. In addition, Rule 14e–5 under the Exchange Act prohibits purchases or arrangements to purchase securities that are the subject of an exchange offer, or a security immediately convertible into or exchangeable for those securities, from the time of public announcement until the expiration of the exchange offer. 17 CFR 240.14e–5.

While not making any substantive changes, we are shortening the language in subsection (a)(13)(i) (regarding purchases made during a Rule 102 of Regulation M restricted period) to read simply: ''effected during the applicable restricted period of a distribution that is subject to Section 242.102 of this chapter.''

[37] Amended Rule 10b–18 (a)(13)(iv)(B)(*1*). This latter calculation is different from ADTV, as defined in Amended Rule 10b–18 (a)(1).

[38] Amended Rule 10b–18 (a)(13)(iv)(B)(*2*). For example, if the daily average amount of the issuer's Rule 10b–18 purchases over the course of the three full calendar months prior to the merger announcement was 10,000 shares per day, and 25% of the security's four-week ADTV is 20,000 shares per day, then the issuer could purchase up to 10,000 shares per day during the post-announcement period. Accordingly, if the issuer did not make any Rule 10b–18 purchases during this three-month period, it would not be permitted to make any Rule 10b–18 purchases during the post-announcement period.

In addition, if the issuer made block purchases within the safe harbor (pursuant to paragraph (b)(4) of the amended Rule) over the course of the three full calendar months prior to the announcement of a merger or other covered transaction, then the issuer may make block purchases within the safe harbor with the same average size and frequency during the post-announcement period. For example, if a thinly traded issuer purchased three blocks over the course of the three full calendar months prior to a merger announcement (an average of one block per month) and the average block size was 7,800 shares, then the issuer could purchase a block no larger than 7,800 shares each month during the post-announcement period (subject to other applicable restrictions). If the issuer did not make any block purchases under the amended block exception during the three-month period, the issuer could not utilize the amended block exception during the post-announcement period.

Issuers are reminded that the safe harbor is not available for repurchases that, although made in technical compliance with the Rule, are fraudulent or manipulative, when viewed in the totality of the facts and circumstances surrounding the repurchases. See Adopted Preliminary Notes to Rule 10b–18. *See also* 1982 Adopting Release, *supra* note 4, and text accompanying *supra* notes 5 and 24.

period—without us having to exclude all issuer repurchase activity from the safe harbor. The revised language strikes a balance between safeguarding against the heightened potential for manipulative abuse and the need for issuers to have the safe harbor available for routine repurchase activity. We believe this approach will foster market integrity while providing issuers with the ability to make purchases in the ordinary course and the flexibility to purchase outside the safe harbor if they choose to do so.[39]

We received other comments suggesting further changes that we have not incorporated into the amended Rule because we continue to believe that issuers may have an incentive to manipulate in the situations raised by commenters. For example, some commenters suggested the safe harbor should be available for transactions that the issuer deems immaterial. They also expressed concern that, in addition to lengthy regulatory delays, multiple, overlapping transactions would similarly preclude an issuer from relying on the safe harbor for extensive time periods.

Materiality is judged from the perspective of a reasonable investor, not a subjective issuer.[40] Under this standard, the transaction may be material regardless of whether the issuer deems it material. We also recognize that, under the merger exclusion language, an issuer conducting multiple acquisitions may experience a long time period in which the safe harbor is unavailable. While this time period may be long, the issuer may have a heightened incentive to manipulate the price of its stock.[41] Accordingly, with the exception of the repurchases made pursuant to the merger exclusion (as described above) or during an all-cash transaction, we do not believe that it is appropriate to make the safe harbor available after announcement of a merger or other covered transaction, even in situations where the period of unavailability is longer than average.

In summary, Rule 10b–18 is intended to protect issuer repurchases from manipulation charges when the issuer has no special incentive to interfere with the ordinary forces of supply and demand affecting its stock price. Therefore, it is not appropriate for the safe harbor to be available when the issuer has a heightened incentive to manipulate its share price. As discussed above, in these circumstances, issuers have the flexibility to purchase outside the safe harbor (unless constrained by other provisions of law) without any presumption that they are engaged in manipulation. While issuers argue that they are reluctant to repurchase outside the safe harbor, we do not find that argument sufficiently persuasive to make the safe harbor available where there is the heightened potential for issuer manipulation.

4. Repurchases Effected Outside the United States

In the Proposing Release, we sought comment as to whether the Rule 10b-18 safe harbor should apply to issuer repurchases effected in markets outside of the United States. While the safe harbor currently applies only to issuer repurchases effected in the United States, a few commenters suggested that we amend Rule 10b–18 to apply to non-U.S. markets.[42] One commenter urged us to extend the safe harbor to bids and purchases in non-U.S. markets, with the price, volume, timing, and manner conditions modified so as to apply on a market-by-market basis in order to address certain practical problems associated with shares traded in multiple markets around the world.[43] Another commenter, however, stated that issuers are presently comfortable accessing liquidity outside the United States without having to extend the safe harbor.[44]

After considering the comments, we have determined not to extend the safe harbor to issuer repurchases effected outside of the United States. The safe harbor was crafted based on the manner in which the securities markets operate in United States. We do not believe currently that a workable rule could be created for universal application both inside *and* outside the United States, without unnecessarily complicating or undermining the utility of the safe harbor. Nor is there currently a practical way for us to adequately monitor the impact of an issuer's repurchase activity outside the United States. Moreover, many of the non-U.S. markets have their own rules and disclosure requirements regarding issuer repurchase activity, some of which also provide a safe harbor, which should provide issuers with sufficient guidance and protection when repurchasing their securities outside the United States. Finally, there is no presumption that purchases made without benefit of the safe harbor are manipulative.

5. Purchases by or for Affiliated Purchasers

The safe harbor applies to Rule 10b–18 purchases made by or for an ''affiliated purchaser'' of the issuer. An ''affiliated purchaser'' of the issuer is currently defined as a person acting in concert[45] with the issuer for the purpose of acquiring the issuer's securities, or any affiliate[46] that, directly or indirectly, controls the issuer's Rule 10b–18 purchases, whose purchases are controlled by, or are under common control with, those of the issuer.[47] The term ''affiliated purchaser,'' however, does not include a broker, dealer, or other person solely by his effecting Rule 10b–18 purchases on behalf of the issuer (or for the issuer's account), or an officer or director of the issuer solely by his participation in the decision to authorize the issuer to effect Rule 10b–18 purchases.

We believe the current definition of ''affiliated purchaser'' has proved to be a workable one, and that an expanded, more complex definition, would unnecessarily complicate the Rule. Therefore, we are not revising the definition of ''affiliated purchaser'' at this time, except to add the words ''directly or indirectly'' to the ''acting in concert'' language in subparagraph (a)(3)(i) of the Rule in order to make it consistent with the ''acting in concert'' language in Regulation M.[48]

B. Amendments to the Purchasing Conditions

1. Manner of Rule 10b–18 Purchases

While we did not propose making any substantive changes to the ''single broker or dealer'' condition, several commenters asked us to clarify the application of the single broker or dealer

[39] For example, an issuer is free to repurchase its securities, although not in reliance on the safe harbor, between the time of the announcement of a merger or other covered transaction and beginning of the Regulation M restricted period tied to the proxy mailing. As with any non-safe harbor repurchase, there is no presumption of manipulation. Moreover, repurchases by independent agents for plans also can continue throughout this period (as these repurchases would not be attributable to the issuer).

[40] *See, e.g., TSC Industries, Inc.* v. *Northway, Inc.,* 426 U.S. 438, 449 (1976).

[41] During that time, for example, the issuer may try to maintain or increase its stock price in order to defend against a hostile bidder.

[42] *See* comment letters from Cleary, Gottlieb, Steen & Hamilton (Cleary); Fed. Reg. Committee; and Sullivan.

[43] *See* comment letter from Fed. Reg. Committee.

[44] *See* comment letter from Merrill.

[45] 17 CFR 240.10b–18(a)(2)(i). The ''acting in concert'' standard currently includes persons acting with the issuer in purchasing the issuer's securities, regardless of whether the purchases are made for the account of the issuer itself. 1980 Proposing Release, *supra* note 4, 45 FR at 70895.

[46] ''Affiliate'' is currently defined to mean any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer. 17 CFR 240.10b–18(a)(1).

[47] 17 CFR 240.10b–18(a)(2)(i) and (ii).

[48] *See* 17 CFR 242.100.

condition to issuer repurchases effected through electronic communication networks (ECNs) or other alternative trading systems (ATSs) (which are registered as broker-dealers).[49] We believe that, consistent with the Rule's single broker or dealer condition, issuers can effect repurchases through an ECN (or other ATS) directly. Issuers, however, cannot use both an ECN (or other ATS) directly and a non-ECN (or other non-ATS) broker-dealer on any single day, as this could create the perception of widespread demand. If the issuer chooses to use a non-ECN (or other non-ATS) broker-dealer to conduct all its repurchase activity on a particular day, however, that broker-dealer can access ECN (or other ATS) liquidity on behalf of the issuer on that day.[50] In this regard, the ECN (or other ATS) would simply be acting in its capacity as an execution venue or market center.

2. Time of Purchases

We are adopting the proposed amendments that add an ADTV value and public float value test to determine the time when an issuer must be out of the market before the scheduled close of trading in order to qualify for the safe harbor.[51] Commenters expressed overwhelming support for expanding the safe harbor's timing condition to allow issuers whose securities are more liquid and, thus, less susceptible to manipulation to stay in the market longer. As adopted, limitations on purchases at the close would vary (*i.e.*, either 10 or 30 minutes before the scheduled close of trading) depending on the security's ADTV value and public float value. The timing modifications are designed to reflect the relative liquidity of the security and, therefore, the likelihood of an issuer that is active in the market affecting the closing price.[52] As such, the modifications recognize that the current Rule's last half-hour restriction (*i.e.*, that limits an issuer from repurchasing its securities during the 30 minutes before the scheduled close of trading) may be unnecessarily long to prevent issuers of highly liquid securities from influencing market prices and volume near the close of trading. At the same time, the modifications continue to provide a clear standard whereby issuers and their affiliates would know when they must be out of the market in order to qualify for the safe harbor.

As adopted, the timing condition would work as follows: to qualify for the safe harbor, issuers of more liquid securities (*i.e.*, those having an ADTV value of $1 million or more and a public float value of $150 million or more),[53] may not bid for or purchase their securities during the last ten minutes before the scheduled close of the primary trading session (*i.e.*, 9:30 a.m.–4 p.m. price discovery session) in the principal market for the security, and during the last ten minutes before the scheduled close of the primary trading session in the market where the purchase is made.[54] These modifications allow issuers of more actively traded securities, which are considered to be less susceptible to manipulation, to stay in the market longer.

Issuers of all other eligible securities (*i.e.*, those having an ADTV value of less than $1 million or a public float value of less than $150 million) may not bid for or purchase their securities during the last 30 minutes before the scheduled close of the primary trading session in the principal market for the security, and during the last 30 minutes before the scheduled close of the primary trading session in the market where the purchase is made.[55]

We had proposed to explicitly exclude Rule 10b–18 purchases ''after the termination of the period in which last sale prices are reported in the consolidated system'' in order to emphasize that the safe harbor applies only to reported, open market purchases.[56] However, since the period ''after termination'' necessarily would be outside the safe harbor, we believe the proposed amendment is unnecessary and, therefore, we are not adding this language to the timing condition.

In the Proposing Release, we also sought comment as to whether the Rule's timing condition should be modified to allow issuers of more liquid securities (*i.e.*, those having an ADTV value of $1 million or more and public float value of $150 million or more) to effect a Rule 10b–18 purchase as the opening transaction. Only one commenter favored this proposal. However, because the opening transaction continues to set the tone for that day's trading session, the safe harbor will continue to preclude an issuer from being the opening (regular way) purchase reported in the consolidated system.[57]

3. Price of Purchases

We are adopting the proposed amendment to apply a uniform price condition that limits all issuers to purchasing their securities at a price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system.[58] For those securities that are

[49] *See* Regulation ATS, 17 CFR 242.300.

[50] *See* amended Rule 10b–18(b)(1)(iii).

[51] *See* amended Rule 10b–18(b)(2). *See also* Proposing Release, *supra* note 1.

[52] One concern we are addressing is that the issuer may attempt to ''mark the close'' (*i.e.*, determine the final transaction price reported in the market). *See* 1980 Proposing Release, *supra* note 4, 45 FR at 70899. The Commission has brought several marking the close cases. *See, e.g., S.E.C.* v. *Schiffer,* 1998 U.S. Dist. LEXIS 8579, Fed. Sec. L. Rep. (CCH) p. 90247 (S.D.N.Y. 1998) (issuer orchestrated over several months purchases effected at or shortly before the close of trading in order to increase the issuer's stock price); *Thomas C. Kocherhans,* Securities Exchange Act Release No. 36556 (December 6, 1995), 60 SEC Docket 2589; *Myron S. Levin,* Securities Exchange Act Release No. 31124 (September 1, 1992); *S.E.C.* v. *John G. Broumas,* Civil Action No. 91–2449 (D.D.C.), Litigation Release No. 12999 (September 27, 1991).

[53] Amended Rule 10b–18(b)(2)(ii). The timing amendment incorporates Regulation M's standards and methods of calculating ADTV and public float value. Under Regulation M, issuers with a security that has an ADTV value of $1 million or more and a public float value of $150 million or more are excluded from Rule 101 of Regulation M under its ''actively-traded securities'' exception. *See* 17 CFR 242.101(c)(1). We selected $150 million for the public float value test because the securities of issuers with a public float value at or above this threshold, and that also have an ADTV value of at least $1 million, are considered to have a sufficient market presence to make them less likely to be manipulated. *See* Securities Exchange Act Release No. 38067 (December 20, 1996), 62 FR 520 (January 3, 1997). Moreover, the public float value test is intended in part to exclude issuers from the ''actively-traded securities'' category where a high trading volume level is an aberration. *Id.*

In calculating the dollar value of ADTV, any reasonable and verifiable method may be used. For example, it may be derived from multiplying the number of shares by the price in each trade, or from multiplying each day's total volume of shares by the closing price on that day. Public float value (*i.e.*, the aggregate market value of common equity securities held by non-affiliates of the issuer) is to be determined in the manner set forth on the front page of Form 10–K, even if the issuer of such securities is not required to file Form 10–K. For reporting issuers, the public float value should be taken from the issuer's most recent Form 10–K or based upon more recent information made available by the issuer.

[54] Amended Rule 10b–18(b)(2)(ii). This means that an issuer may not purchase in *any* market during the specified periods.

[55] Amended Rule 10b–18(b)(2)(iii).

[56] *See* Proposing Release, *supra* note 1.

[57] Amended Rule 10b–18(b)(2)(i). For purposes of Rule 10b–18's timing and price conditions, Amended Rule 10b–18(a)(6) defines ''consolidated system'' to mean ''a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan (as defined in 17 CFR 240.11Aa3–1) or a national market system plan (as defined in 17 CFR 240.11Aa3–2).''

[58] Amended Rule 10b–18(b)(3). The previous price limitations under Rule 10b–18 varied depending on the market for the security. To further simplify the Rule, the uniform price condition incorporates the proposed definitions of ''highest independent bid'' and ''last independent transaction price'' into the uniform price condition (*i.e.*, rather than separately defining these terms).

not quoted or reported in the consolidated system, the issuer will need to look to the highest independent bid or the last independent transaction price, whichever is higher, that is displayed and disseminated on any national securities exchange or on any inter-dealer quotation system, as defined in Exchange Act Rule 15c2–11(e)(2),[59] that displays at least two independent priced quotations for the security.[60] For all other securities, the issuer will need to look to the highest independent bid obtained from three independent dealers.[61] The amendments simplify and update the Rule by replacing the outdated definitions and price provisions (that depended on whether the security is a ''reported security,'' ''exchange traded security,'' ''Nasdaq security,'' or ''other security,'' and whether the bid or purchase is effected on an exchange) with a uniform price condition (*i.e.*, a two-prong—''highest independent bid'' or ''last independent transaction price''—price test), which applies to *all* securities, regardless of where they are traded. All of the commenters supported the proposal to apply a uniform price condition that retains both the ''highest independent bid'' and the ''last independent transaction price'' alternatives.

4. Passive Pricing Systems

In the Proposing Release, we also sought comment as to whether Rule 10b–18's price condition should apply where the issuer has no control, directly or indirectly, over the price at which a Rule 10b–18 purchase will be effected, for example, ''passive'' (independently-derived) pricing, such as the VWAP. Several commenters favored excepting VWAP transactions from the Rule's pricing condition. One commenter specifically urged the Commission to except VWAP transactions from the pricing condition because VWAP matches do not influence price or provide price discovery.[62]

After considering the comments, we believe that excepting VWAP transactions from the Rule's pricing condition is premature at this time. However, we will continue to consider the commenters' recommendations, as well as current market practices involving VWAP transactions, in considering whether any future changes to the Rule are appropriate.

5. Riskless Principal Transactions

In the Proposing Release, we sought specific comment regarding the application of Rule 10b–18 to riskless principal transactions. Riskless principal transactions raise the issue of how to apply the safe harbor to the two ''legs'' of the transaction: the broker-dealer's purchase in the market for its own account; and the issuer's purchase of the shares from the broker-dealer. The issuer and the broker-dealer (buying on behalf of the issuer) may seek to claim the protection of the safe harbor for both legs of the transaction.

We believe that the safe harbor should apply to riskless principal trades that are analogous to agency trades effected on behalf of the issuer. Thus, the safe harbor should apply only to those riskless principal transactions where both legs are effected at the same price and only one leg is reported to the market (*e.g.*, transactions that would qualify for trade reporting under the NASD riskless principal trade-reporting rules, which require that only the first leg of the transaction be reported, and not the offsetting sale to the issuer), provided that this first leg of the transaction meets all the conditions of Rule 10b–18.[63] Accordingly, we have amended the ''Rule 10b–18 purchase'' definition to clarify that purchases *for the issuer* include riskless principal transactions.[64] Paragraph (a)(12) of the Rule defines ''riskless principal transaction'' as a transaction in which a broker or dealer, after having received an order from the issuer to buy its security, buys the security as principal and then sells the security (to the issuer) to satisfy the issuer's buy order.[65] Under this definition, the issuer's purchase must be effected at the same price per-share at which the broker or dealer bought the shares to satisfy the issuer's buy order, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee. Moreover, only the first leg of the transaction (*i.e.*, when the broker or dealer purchases the shares in the open market), rather than the second leg (*i.e.*, when the broker or dealer sells the shares to the issuer) is reported under the rules of a self-regulatory organization or under the Act.[66] In addition, for purposes of this definition, a broker or dealer must have written policies and procedures in place to assure that, at a minimum, the issuer's order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal account or the issuer's account within 60 seconds of the execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders effected on a riskless principal basis.[67]

6. Volume of Purchases

a. Treatment of ''Block Purchases'' Under the Current Rule

Under the current volume condition, an issuer's block purchases are not subject to the Rule's 25% volume limitation, nor are the shares purchased by the issuer in block transactions included when calculating a security's four week ADTV.[68] This means that, under the current Rule, an issuer can purchase an unlimited amount of its securities if purchased in block size.

b. Proposal To Eliminate the ''Block Exception''

Under the proposed amendments, to qualify for the safe harbor, an issuer would have to include its block purchases in its 25% volume limitation. However, the issuer also could include its block purchases in calculating its

[59] 17 CFR 240.15c2–11(e)(2).

[60] Amended Rule 10b–18(b)(3)(ii).

[61] Amended Rule 10b–18(b)(3)(iii).

[62] *See, e.g.*, comment letters from Vie Financial Group (dated March 3, 2003 and June 26, 2003).

[63] *See* NASD Rules 4632(d)(3)(B), 4642(d)(3)(B), and 6620(d)(3)(B). Under the NASD's trade-reporting rules, for certain riskless principal trades, the broker-dealer reports only one leg of the transaction (*i.e.*, the first leg of the transaction when the broker-dealer purchases the shares in the open market, rather than the offsetting transaction to the issuer). In order to qualify for riskless principal trade reporting, the trades must be executed at the ''same price'' (exclusive of an explicitly disclosed markup or markdown, commission equivalent, or other fee). *See also* Securities Exchange Act Release No. 41208 (March 24, 1999), 64 FR 15386 (March 31, 1999), NASD Notice to Members 99–65 (March 1999) and NASD Notice to Members 00–79 (November 2000). *See also* Securities Exchange Act Release No. 44291 (May 18, 2001), 66 FR 27760; Securities Exchange Act Release No. 33743 (March 9, 1994), 59 FR 12767–01 (March 17, 1994); and Securities Exchange Act Release No. 45194 (December 17, 2001), 67 FR 6 (January 2, 2002).

[64] Amended Rule 10b–18(a)(13).

[65] Amended Rule 10b–18(a)(12).

[66] *Id.*

[67] We believe that these conditions will allow for surveillance of these transactions by linking the definition to specific incoming orders and executions, and by requiring brokers and dealers to establish procedures for handling such transactions. Moreover, requiring that the orders be received prior to the offsetting transaction and the allocation of the offsetting transaction to the issuer's account within 60 seconds will help prevent issuers (and brokers or dealers) from taking advantage of the safe harbor by retroactively claiming that a non-riskless principal transaction was done on a riskless principal basis. The requirement that an offsetting transaction be allocated to either a riskless principal or customer account within 60 seconds is a condition that is consistent with previously stated Nasdaq policy regarding the handling of mixed capacity trades and compliance with the Manning Interpretation. *See* NASD Notice to Members 01–85, at Question 7 and Notice to Members 95–67, at Question 5.

[68] 17 CFR 240.10b–18(a)(14) and (b)(4). *See also* Section II.C.4, *supra*.

security's four-week ADTV.[69] To accommodate issuers of thinly traded securities, we also proposed to modify the volume condition to allow issuers to purchase up to a daily aggregate amount of 500 shares, as an alternative to the 25% volume limitation.

c. Comment Letters

Twenty-six of the 43 comment letters we received discussed the treatment of block purchases, all of which opposed our proposal to eliminate the block exception. Most of the support for retaining the block exception came from companies with moderate or low average daily trading volumes. These issuers say that they rely heavily on the block transactions to implement their repurchase programs and argue that eliminating the block exception would cause their repurchase programs to take much longer to complete.[70] Other commenters opposed eliminating the block exception due to their claims of an absence of evidence that block transactions are manipulative, adversely affect share prices, or are otherwise abusive.[71] Some commenters argued that the block exception should be retained because it stabilizes markets in periods of severe market decline.[72]

As alternatives to eliminating the block exception, several commenters suggested raising the amount of shares in a block to the NYSE definition (*i.e.*, 10,000 shares or more).[73] Other commenters suggested limiting the number of ''block'' purchases that can occur on a single day. For example, one commenter suggested allowing issuers to make one single block purchase per day (*i.e.*, on condition that the issuer does not make any other purchases for that day).[74] Another commenter suggested limiting either all issuers or only mid-capitalization issuers to 20 block purchases in a day.[75] Other commenters suggested raising the volume limits, especially for small capitalization companies with limited liquidity, from 25% to 35% (or even 100%) of a security's ADTV.[76]

We believe eliminating the current block exception is essential if we are to maintain a limit on the amount of repurchase activity that is protected under the safe harbor.[77] Block transactions today represent one-half of all market activity; accordingly, these transactions are not the exception, and they have a substantial impact on market prices.[78] Issuers also may attempt to take advantage of the block exception to facilitate corporate transactions. For example, in contested takeovers, bidders might purchase significant blocks of their securities to boost their share price in order to enhance the value of their competing merger proposals. Moreover, during the late 1990s, it was reported that many companies were spending more than half their net income on massive buyback programs that were intended to boost share prices—often supporting their share price at levels far above where they would otherwise trade.[79]

These situations illustrate that the potential for manipulative abuse can be exacerbated by the block exception. Moreover, extending a safe harbor for issuer repurchases without any effective limit on the amount of repurchase activity undermines the original objectives of the Rule. For example, the current block exception may allow companies to engage in undisclosed stabilization and market domination, or the exception may be used by companies to engage in aggressive buybacks in order to enhance exchange ratios for their common stock. These activities can mislead investors about the integrity of the securities trading market as an independent pricing mechanism.

The predicate assumption of the commenters—that significant abuse must exist before any revisions to the safe harbor are warranted—may be appropriate for a prohibitive rule, but it is not necessary when the Commission is determining whether a safe harbor is warranted. We believe that safe harbors should facilitate only those activities that clearly present no cause for regulatory concern. In the case of the block exception, there is cause for regulatory concern.

d. Adopted Amendments to the Volume Condition

After carefully considering the comments received, and upon thorough examination of current market practices and the underlying purposes of the safe harbor, we are adopting the proposed amendments relating to the volume condition's treatment of block purchases, with some modifications in response to comments received. Under the amended volume condition, to qualify for the safe harbor, an issuer's total volume of Rule 10b–18 purchases effected on any single day must not exceed 25% of the ADTV in its security, which includes any block-size purchases by or on behalf of the issuer for that day. Issuers, however, can include their block-size purchases when calculating its security's four-week ADTV.

In view of commenters' concerns that eliminating the block exception would negatively affect issuers with moderate or low average daily trading volumes

[69] *See* Proposing Release, *supra* note 1, which defined ADTV as the average daily trading volume (*including* block-size purchases made by or on behalf of the issuer), reported for the security during the four calendar weeks preceding the week in which the Rule 10b–18 purchase is effected. We are adopting this definition of ADTV, except that shares purchased as part of the amended block exception in paragraph (b)(4) under the Rule are not to be included in a security's four-week ADTV. Rule 10b–18 also will continue to include only U.S. market trading volume data in calculating a security's ADTV.

See also Letter from Charles J. Plohn, Jr., Managing Director, Merrill Lynch, Pierce, Fenner, & Smith, Inc. to Larry E. Bergmann, Associate Director, Division of Market Regulation, Securities and Exchange Commission (June 3, 1991), which notes that the utility of effecting purchases in blocks is largely diminished by the inability to include such block purchases in calculating a security's four-week ADTV and the practical difficulty and burden of recording all block purchases and subtracting them from the security's overall trading volume, to calculate trading volume under the Rule.

[70] *See, e.g.*, comment letters from America's Community Bankers; First Virginia Banks, Inc.; and Securities Industry Association (SIA).

[71] *See, e.g.*, comment letters from Fed. Reg. Committee; Merrill; and Sullivan.

[72] The concern about eliminating the block exception during times of severe market distress is addressed by the amended Rule's alternative volume condition, which allows issuers to repurchase as much as 100% of their ADTV (up from 25%) during the trading session immediately following a market-wide trading suspension. The Commission also may use its emergency exemptive authority under Exchange Act Sections 12(k) and 36, 15 U.S.C. 78l (k) and 78mm(a). This would allow issuers to supply liquidity during the rare times of severe market volatility, such as the post-September 11, 2001 market. *See* note 93, *infra*.

[73] *See, e.g.*, comment letters from Fed. Reg. Committee; Merrill; Morgan; and Sullivan. However, raising the amount of shares in a block to 10,000 shares or more would do little to address the concerns of smaller issuers whose securities are thinly traded. Moreover, block-sized trades are likely to be relatively rare for small issuers, because they generally do not have institutional holders. For larger issuers, blocks of 10,000 shares have become commonplace in today's market. In fact, blocks of 10,000 or more shares are nearly half of overall trading on the NYSE and Nasdaq. *See NYSE Fact Book—2002 Data.*

[74] *See* comment letter from Bank Mutual Corporation.

[75] *See, e.g.*, comment letter from LNR Property Corporation (LNR).

[76] *See, e.g.*, comment letter from Morgan Stanley.

[77] *See, e.g.*, The October 1987 Market Break: A Report by the Division of Market Regulation, U.S. Securities and Exchange Commission (February 1988) at p. 6:11 (noting that, while issuer repurchases provided an important source of liquidity after the 1987 market break, the treatment of blocks under the Rule may effectively negate the volume restriction for many securities).

[78] *See, e.g.*, Steve Thel, ''$850,000 in Six Minutes—The Mechanics of Securities Manipulation,'' 79 *Cornell Law Review* 219, at 226–227, n. 39 (January 1994) (finding that large blocks move price more often and to a greater degree than the analysis of trading data indicates). *See also* Robert W. Holthausen, *et al.*, ''The Effect of Large Block Transactions on Security Prices,'' 19 *Journal of Financial Economics* 237 (1987).

[79] *See, e.g.*, The Buyback Boomerang, *Business Week* (September 23, 2002).

that rely heavily on block purchases to implement their repurchase programs,[80] we have decided to allow issuers to make (within the safe harbor) one block purchase per week, provided that the issuer does not make any other Rule 10b–18 purchases on that day. Thus, alternatively, once each week the issuer may purchase one block of its common stock *in lieu of* purchasing under the 25% volume limitation for that day.[81] However, shares purchased by the issuer relying on this amended block exception may not be included when calculating a security's four-week ADTV under the Rule. This amended block exception is intended to provide issuers with moderate or low ADTV greater flexibility in carrying out their repurchase programs.[82] However, this amended block exception does not include any amount of securities that a broker or dealer, acting as principal, has accumulated for the purpose of selling to the issuer, if the issuer knows or has reason to know that such amount was accumulated for such purpose.[83]

We also wish to reiterate that Rule 10b–18 is not the exclusive means by which issuers and their affiliated purchasers may effect purchases of the issuer's stock without manipulating the market. In fact, the Commission has long recognized that there may be circumstances under which an issuer could effect repurchases outside the volume limitation without raising manipulative concerns, and indeed that failure to satisfy the conditions of the safe harbor does not give rise to any presumption that the activity is manipulative.[84]

IV. Applicability of the Safe Harbor During After-Hours Trading Sessions

Since the adoption of Rule 10b–18, the opportunity for investors to trade securities after the markets' regular trading sessions (''after-hours trading'') has increased.[85] The Division of Market Regulation (Division) has interpreted Rule 10b–18 to be available to purchases effected during limited off-hours trading (OHT) sessions at the primary market's closing price.[86] Specifically, the Division interpreted Rule 10b–18's ''one-half hour before the scheduled close of trading'' language to refer to an exchange's primary (or regular) trading session (*i.e.*, 9:30 a.m.–4 p.m. price discovery session), rather than OHT sessions.

In the Proposing Release, we asked whether the safe harbor should be available to other issuer repurchases effected during after-hours trading and, if so, how should the safe harbor conditions apply to each separate trading session in one day. One commenter suggested that the safe harbor be available as long as the consolidated reporting system is open, so that the safe harbor would be available up to 30 minutes prior to the close of the consolidated tape with a price limit that is no higher than the closing price of the regular trading session (subject to bids or sales subsequently reported to the tape by other markets).[87] Two other commenters favored extending the safe harbor to after-hours trading sessions and made specific suggestions as to how the conditions should apply to this second trading session.[88] Other commenters simply requested clarification with respect to whether the safe harbor is available in the after-hours OTC session and, if so, whether the timing condition would apply in the after-hours OTC session.

After considering the comments, we have decided to extend the safe harbor to issuer repurchases effected after-hours (while the consolidated system is still open) and that are effected at prices that do not exceed the lower of the closing price of the primary trading session in the principal market for the security and any lower bids or sale prices subsequently reported in the consolidated system by other markets.[89] This amendment will allow issuers to provide a source of liquidity, while still providing investor protection. Such purchases, of course, would still need to comply with the other three conditions of the safe harbor, with the following modifications. We are modifying the Rule to permit the issuer to use a broker or dealer for its after-hours Rule 10b–18 purchases different from the broker or dealer that it used during normal trading hours, because it may be impractical for an issuer to use the same broker-dealer in both a primary trading session and an after-hours trading session in one day.[90] The amended Rule, however, precludes the issuer from effecting a Rule 10b–18 purchase as the opening transaction of the after-hours trading session (because the

[80] These commenters claim that they are unable to effect repurchases within the safe harbor's parameters or maintain effective and efficient repurchase programs without the block exception. *See, e.g.*, comment letters from Morgan; National Association of Real Estate Investment Trusts (NAREIT); SIA; Skadden, Arps, Meagher & Flom, LLP (Skadden); and Sullivan.

[81] For purposes of the amended block exception, we are retaining the current ''block'' definition. *See* Amended Rule 10b–18(a)(5).

We carefully considered whether to allow issuers to effect one block purchase per day (rather than per week). However, commenters noted that even one block purchase for a thinly traded issuer could be greater than 25% of its ADTV on a particular day. Rule 10b–18's conditions are intended to minimize the market impact of an issuer's repurchases, thereby allowing the market to establish a security's price based on independent market forces without undue influence by the issuer. Allowing small, thinly traded issuers to use the block exception each trading day so that they might enjoy safe harbor protection for purchasing more than 25% of their ADTV for each of these days is inconsistent with the purpose of the Rule, investor protection and market integrity. If there is no true volume limitation, that condition is meaningless and safe harbor protection is inappropriate. We stress, however, that there is no presumption of manipulation if the issuer decides to purchase a block outside the safe harbor.

[82] Of course, the issuer may repurchase under its 25% volume limitation on the other days of that week. Allowing one block purchase per week should also help certain thinly traded regulated issuers that are limited under relevant law in the number of shares they can issue (and are, therefore, dependent upon repurchasing to fund benefit programs), to purchase within the safe harbor. *See, e.g.*, comment letter from Bank Mutual.

[83] This block exception also excludes any amount that a broker or dealer has sold short to the issuer, if the issuer knows or has reason to know that the sale was a short sale. Amended Rule 10b–18(a)(5). Because commenters generally believed that the proposed 500-share alternative volume limit was too low, and because we are already providing issuers with greater flexibility by allowing them to effect one block purchase per week (as discussed above), we have decided not to adopt this proposal.

[84] *See* 1982 Adopting Release, *supra* note 4.

[85] For example, both the New York Stock Exchange, Inc. (NYSE) and the American Stock Exchange provide crossing sessions in which matching buy and sell orders can be executed at 5:00 p.m. at the exchanges' 4 p.m. closing prices.

[86] *See* Letter Regarding Operation of OHT Session by the NYSE (June 13, 1991); Letter Regarding Operation of OHT Session by the AMEX (August 5, 1991); and Letter Regarding AMEX After-Hours Trading Facility (May 6, 1997) (the OHT Session letters).

[87] *See* comment letters from Merrill and T. Rowe Price Associates, Incorporated (T. Rowe).

[88] *See* comment letters from Fed. Reg. Committee and Sullivan.

[89] For example, in the case of a security that is traded in the NYSE OHT session (*e.g.*, Crossing Session I) and other markets (*e.g.*, the Pacific Stock Exchange (or in the third market)), if the highest current independent bid or the last independent sale price reported in the consolidated system is lower than the NYSE closing price, the safe harbor would not be available for closing-price single-sided orders entered during Crossing Session I. *See* Amended Rule 10b–18 (b)(2)(iv).

For many market centers, including the NYSE and the Nasdaq Stock Market, primary (or regular) trading sessions currently run from 9:30 a.m. to 4 p.m. Eastern Time. For securities that do not have a principal market, the issuer would need to look to the closing price of the primary trading session in the listing market for the security.

[90] These amendments address the proposals raised in the Guzman & Company's Petition for Rulemaking (filed on May 21, 1999), which is publicly available in File No. 4–424 in the Commission's Public Reference Room. The Guzman petition requested that the Commission amend Rule 10b–18's timing and pricing conditions to permit an issuer to effect repurchases during after-hours trading sessions so long as the purchases are effected at prices lower than the last reported price on the primary exchange or market on which the security of the issuer is traded. The petition also requested that the Rule be amended to permit an issuer to utilize a different broker or dealer for after-hours Rule 10b–18 purchases than is used during normal trading hours.

opening transaction may be considered to be a significant indicator of the direction of trading and the strength of demand in the after-hours trading session), but permits the issuer to repurchase until the termination of the period in which last sale prices are reported in the consolidated system. The Rule's volume calculation would carry over from the regular trading session.

V. Rule 10b–18 Alternative Conditions

A. Proposed Amendment to Rule 10b–18 Alternative Conditions

In view of the extreme market volatility that would trigger a circuit breaker and the desirability of facilitating liquidity in that context, we are adopting our proposed amendment to modify the safe harbor alternative conditions (which are applicable only during the trading session immediately following a market-wide trading suspension), by increasing the 25% volume limitation to 100% of a security's ADTV.[91] The amendment would permit issuers to purchase more securities within the safe harbor during these rare, but critical periods of severe market decline.[92] All the commenters expressed strong support for the increased alternative volume limit, citing reasons such as enhanced liquidity and issuer flexibility. In addition, we will continue to view market situations other than market-wide trading suspensions, on a case-by-case basis, relying on our emergency and exemptive authority in Sections 12(k)(2) and 36 of the Exchange Act, as we did following the reopening of the markets after September 11, 2001.[93]

B. NYSE Petition for Rulemaking

In the Proposing Release, we sought comment as to whether Rule 10b–18's ''alternative conditions'' should apply where there is a significant decline in the market price of an *individual* stock (*i.e.*, in the absence of a market-wide trading suspension), as suggested by the NYSE in its petition.[94] Only one commenter asked that we adopt the rules suggested by the NYSE in its petition concerning ''special purchases'' by independent trustees during periods of volatility. In contrast to the rare occurrence of a market-wide trading suspension (as discussed above), we are concerned about the likely frequency and market impact of such ''special purchases,'' as well as the feasibility of monitoring a program that involves market declines in *individual* stock prices. In addition, because the petition calls for the purchases to be made by an ''independent trustee,'' we believe such purchases may not even be attributable to the issuer in order for the safe harbor to apply. Thus, we have determined not to implement the proposals set forth in the NYSE's petition for rulemaking.

VI. Disclosure

To enhance the transparency of issuer repurchases, we proposed that Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F (for foreign private issuers), and N–CSR (for closed-end funds) be amended to require periodic disclosure of all issuer repurchases of equity securities. These disclosure requirements would be independent of the Rule 10b–18 safe harbor.

Under the proposed amendments, issuers would be required to disclose, among other things, the total number of shares repurchased during the past quarter, the average price paid per share, the number of shares that were purchased as part of a publicly announced repurchase plan, and the maximum number (or approximate dollar value) of shares that may yet be purchased under the plans or programs.

Most of the commenters expressed support for enhanced transparency through the proposed disclosure and agreed that issuer disclosure in periodic filings of repurchases of their equity securities would provide investors with useful information about the level, frequency and purpose of such activity by an issuer and its affiliates.[95] One commenter especially applauded the fact that the proposed amendments call for increased transparency of issuer repurchases by requiring disclosure of all such repurchases, regardless of whether such repurchases fall within the Rule 10b–18 safe harbor.[96] Another commenter stated that repurchase disclosures by issuers will ensure that all market participants are aware of the size and scope of the repurchase program.[97] In addition, requiring issuers to provide disclosure with respect to proposed and actual repurchases would make information that can be relevant in making investment decisions available to the market.[98]

However, commenters generally believed that disclosure of the broker-dealer's identity is an unnecessary disclosure of confidential business information that could provide an informational advantage to other market participants.[99] Two commenters

[91] Amended Rule 10b–18(c)(2). *See also* text accompanying note 93, *infra,* regarding the Commission's emergency orders where the volume limitation was temporarily increased from 25% to 100% of a security's ADTV following the events of September 11, 2001. The Rule defines a ''market-wide trading suspension'' as a market-wide trading halt of 30 minutes or more that is imposed pursuant to the rules of a national securities exchange or a national securities association in response to a market-wide decline during a single trading session; or declared by the Commission pursuant to its authority under Section 12(k) of the Act (15 U.S.C. 78*l* (k). *See* Amended Rule 10b–18(a)(7). For example, the alternative volume condition would apply in the trading session following a trading halt pursuant to NYSE Exchange Rule 80B or Market Closing Policy of the NASD. The Commission approved the NASD's market closing policy statements, codified in IM–4120–3. Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Circuit Breaker Approval Order). *See also* 17 CFR 240.10b–18(c); Securities Exchange Act Release No. 41905 (September 23, 1999), 64 FR 52428 (September 29, 1999) (modifying the timing condition to include in the safe harbor issuer purchases made at the reopening and during the last half-hour prior to the scheduled close of trading or at the next day's opening if a market-wide trading suspension was in effect at the scheduled close of trading).

[92] At such times, an issuer would still also have to comply with the manner, price, and alternative timing conditions in Rule 10b–18 to satisfy the requirements of the safe harbor. *See generally* The October 1987 Market Break, *supra* note 77 at pp. 6:1–6:15 (noting the increase in trading volume and the positive impact of issuer repurchases following the October 1987 market break).

[93] On September 14, 2001, the Commission issued an ''Emergency Order Pursuant to Section 12(k)(2) of the Exchange Act Taking Temporary Action to Respond to Market Developments.'' Securities Exchange Act Release No. 44791 (September 14, 2001), 66 FR 48494 (September 20, 2001). This Emergency Order temporarily modified certain Commission rules and regulations governing issuer stock repurchases for an initial five-day period beginning September 17, 2001 and ending September 21, 2001. The Commission extended the period for an additional five days, ending on September 28. Securities Exchange Act Release No. 44827 (September 21, 2001), 66 FR 49438 (September 27, 2001). On September 28, 2001, the Commission used its exemptive authority under Section 36 of the Exchange Act to temporarily modify certain conditions of Rule 10b–18 for issuers that repurchased their own common stock during the period October 1–12, 2001. Securities Exchange Act Release No. 44874 (September 28, 2001), 66 FR 51076 (October 5, 2001).

In the event that there is another ''market emergency'' that does not fit within the meaning of a ''market-wide trading suspension'' (as defined under the rule), as was the case with the events following September 11, the Commission would have the same emergency and exemptive authority as above (*i.e.*, under Sections 12(k)(2) and 36(a)(1) of the Exchange Act) to modify the safe harbor conditions, as it deems necessary.

[94] The NYSE's Petition for Rulemaking seeks an amendment to Rule 10b–18 to make the safe harbor available to an issuer for a category of ''special purchases'' effected by an independent trustee during a period of unusual volatility in the issuer's stock. The petition is publicly available in File No. 4–446 in the Commission's Public Reference Room.

[95] *See, e.g.*, comment letter from Cleary.

[96] *See* comment letter from NAREIT.

[97] *See* comment letter from WVS Financial Corporation (WVS).

[98] *See* comment letter from Investment Company Institute (ICI).

[99] *See* comment letters from Cleary; Dell; Emerson; Fed. Reg. Committee; Professor David Ikenberry, University of Illinois (Ikenberry); Merrill; Morgan; SIA; Sullivan; T. Rowe; Valero; and WVS.

suggested that the identity of the broker-dealer could be disclosed solely to the Commission, rather than to the public.[100]

After consideration of the above comments, and the concerns expressed about disclosure of the broker-dealer's identity, and in view of the fact that most of the commenters agreed that publicly available information about issuer repurchasing activity would be useful for investors, we are adopting the proposed tabular disclosure requirements, with one modification. Specifically, the final rules will not require issuers to disclose the identity of the broker-dealer(s) used to effect the purchases.[101]

As adopted, Regulations S–K and S–B, and Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR are amended to require periodic disclosure of all issuer repurchases of shares or other units of any class of the issuer's ''equity securities''[102] that are registered by the issuer pursuant to Section 12 of the Exchange Act.[103] In particular, an issuer is required to disclose information concerning its repurchases in a new table in Forms 10–Q/10–QSB (new Item 2(e)), 10–K/10–KSB (new Item 5(c)), 20–F, and, for registered closed-end funds, Form N–CSR (new Item 8).[104] The table in Forms 10–K/10–KSB, 10–Q/10–QSB, and N–CSR includes disclosure of all issuer repurchases of its Section 12 registered equity securities (both open market and private transactions) for its last fiscal quarter (the fourth quarter, in the case of Forms 10–K/10K–SB), or in the case of closed-end funds, semi-annual period, including the total number of shares (or units) purchased (reported on a monthly basis), the average price paid per share, the total number of shares (or units) purchased as part of a publicly announced repurchase plan or program, and the maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs.[105] As stated above, the disclosure requirement is independent of the Rule 10b–18 safe harbor.

New Item 16E to Form 20–F requires the same tabular presentation of information (again, pursuant to the adopted amendments, the identity of the broker-dealer effecting the transactions will not be required in the table included in Form 20–F). However, a foreign private issuer that has securities registered under Section 12 of the Exchange Act is required to disclose on a yearly basis in its annual report on Form 20–F its repurchases of its securities. The disclosure provided relates to the issuer's securities in ordinary share form, whether the issuer has repurchased the shares itself or depositary receipts that represent the shares. The price data and other data should be stated in the same currency used in the issuer's primary financial statements.

One commenter noted that many foreign private issuers are subject to regulatory regimes in their home countries with respect to the repurchase of shares and suggested that these issuers be permitted to include disclosure in their Form 20–F annual reports that was based on home country disclosure requirements instead of our proposed disclosure requirements.[106] We have not adopted this view because, under Item 16E as adopted, investors will be afforded disclosure of the same type of information with respect to share repurchases whether the issuer in question is a foreign private issuer or a domestic issuer. In addition, it would not appear unduly burdensome for foreign private issuers to gather and disclose the type of summary information required under Item 16E, nor are we aware that the disclosure of this information would conflict with any country's law. Lastly, to the extent a foreign private issuer files public reports pursuant to its home country requirements with respect to share repurchases, the issuer can file those reports under Form 6–K if the issuer deems those reports material to investors.

The final rules also require footnote disclosure of the principal terms of publicly announced repurchase plans or programs, including: (1) The date of announcement, (2) the share or dollar amount approved, (3) the expiration date (if any) of the plans or programs, (4) each plan or program that has expired during the period covered by the table, and (5) each plan or program that the issuer has determined to terminate prior to expiration or under which the issuer does not intend to make further purchases.

We initially proposed to require additional footnote disclosure of each plan or program that the issuer has not purchased under during the period covered by the table, and whether the issuer still intends to purchase under that plan or program. Several commenters opposed the proposed disclosure of an issuer's intent to make future purchases under an announced plan or program. One commenter noted that a board's authorization of a purchase plan or program typically is general enough as to provide management with considerable flexibility to respond to market conditions in executing the plan.[107] This commenter thought that requiring issuers to provide disclosure about their intent to make future purchases could be more misleading than helpful to investors.

Based on commenters' remarks, we have modified the footnote disclosure to instead require an issuer to disclose each plan or program under which the issuer does not intend to make further purchases. Because an issuer therefore will only have to provide this disclosure after it has made a determination to stop making purchases under a particular plan or program, there will be no need for the issuer to speculate about its future intent. The revision also will obviate the need for issuers to include boilerplate representations in their periodic reports indicating that they may continue to make purchases under announced plans or programs.

The table also must include footnotes that briefly disclose the nature of the transaction for purchases made other than pursuant to a publicly announced repurchase plan or program. These include, for example, open market and privately negotiated purchases, issuer tender offers, purchases made by the issuer upon another person's exercise of outstanding put rights, and in other transactions through which the company purchases its Section 12 registered equity securities.

We believe information about how much common stock the issuer has repurchased is important to investors.[108] Studies have shown that

[100] *See* comment letters from SIA and WVS.

[101] Of course, the Commission can request this information under a variety of circumstances. However, the submission to the Commission of the identity of the broker-dealer(s) would not be made public.

[102] For purposes of Item 703 of Regulations S–K and S–B, and Item 8 of Form N–CSR, the term ''equity securities'' is defined in Section 3(a)(11) of the Exchange Act. For purposes of Form 20–F, the term ''equity securities'' is defined in General Instruction F to Form 20–F.

[103] These new disclosure requirements supplement such disclosure obligations as issuers have always had under existing antifraud and other provisions of the federal securities laws. Thus, compliance with new Item 703 of Regulations S–K and S–B, new Item 16E of Form 20–F or new Item 8 of Form N–CSR will not excuse an issuer from disclosure obligations arising under other provisions of the federal securities laws. *See, e.g.*, 17 CFR 240.10b–5 and 17 CFR 240.12b–20.

[104] *See* adopted Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703), Item 2(e) of Forms 10–Q and 10–QSB, Item 5(c) of Forms 10–K and 10–KSB, Item 16(E) of Form 20–F, and Item 8 of Form N–CSR.

[105] *Id.*

[106] *See* comment letter from Sullivan.

[107] *Id.*

[108] In the past, we had proposed requiring issuers that intended to repurchase more than 2% of their stock in a twelve-month period to disclose specified

the public announcement by an issuer of a repurchase program is often followed by a rise in the issuer's stock price.[109] Studies have also shown that some issuers publicly announce repurchase programs, but do not purchase any shares or purchase only a small portion of the publicly disclosed amount.[110] Thus, disclosure of an issuer's actual repurchases will inform investors whether, and to what extent, the issuer had followed through on its original plan.[111] Investors also will have information regarding an issuer's repurchase activity in order to assess its possible impact on the issuer's stock price, similar to periodic disclosure of issuer earnings and dividend payouts.[112] Finally, investors also will be apprised of when an issuer repurchase plan has expired, has been terminated, or when the issuer has determined not to make further purchases under a repurchase plan.

The importance of requiring disclosure of issuer repurchases was made more apparent when the Commission temporarily afforded emergency relief regarding Rule 10b-18 following the September 11, 2001 attacks.[113] The Commission's emergency action, which temporarily modified Rule 10b-18's timing and volume limitations, was designed to provide for potential additional liquidity in order to facilitate the reopening of the U.S. equities markets on September 17, 2001, and the continued orderly operation of the markets during the weeks following. However, because Rule 10b-18 does not require disclosure, it was difficult to assess precisely how much of the purchasing activity was attributable to issuer repurchases and how much was attributable to non-issuer trading activity. Requiring issuers to disclose their repurchases in their periodic reports will provide investors with important information regarding the company's purchasing activity. It also will provide the Commission with useful information in assessing the level and market impact of issuer repurchases, as well as in responding to future market emergencies.

Closed-end funds will provide the required disclosure regarding their repurchases semi-annually on Form N–CSR. We believe that, as with other issuers, additional disclosure regarding repurchases by closed-end funds will be useful to investors.[114]

We are eliminating the current requirement for closed-end funds to disclose information regarding privately negotiated repurchases of their securities on Form N–23C–1. One commenter noted that the current requirement would be duplicative, in light of the new disclosure required on Form N–CSR, and we agree.[115] Currently, closed-end funds are required to file Form N–23C–1 no later than the tenth day of the calendar month following the month in which the purchase occurs.[116] Elimination of the requirement to file Form N–23C–1 will remove an unnecessary regulatory burden for closed-end funds and will apply a uniform disclosure requirement to closed-end funds and other issuers.[117]

We are also adopting a conforming technical amendment to Rule 23c–1 under the Investment Company Act. Currently, Rule 23c–1(a)(11) requires a closed-end fund to file a copy of any written solicitation to purchase securities under the rule sent or given during the prior month by or on behalf of the fund to 10 or more persons together with Form N–23C–1. Because we are eliminating Form N–23C–1, we are amending Rule 23c–1 and Form N–CSR to require closed-end funds to use Form N–CSR to comply with the requirement to file such a solicitation.[118]

VII. Paperwork Reduction Act

The adopted amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR contain collection of information requirements within the meaning of the Paperwork Reduction Act of 1995.[119] We published a notice requesting comment on the collection of information requirements in the Proposing Release, and submitted these requirements to the Office of Management and Budget (OMB) for review. OMB has approved these requests. There is no collection of information requirement within the meaning of the Paperwork Reduction Act for Rule 10b–18.

Compliance with the adopted amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR will be mandatory. The Commission will not keep the information required by the amendments confidential.

An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a currently valid OMB

information prior to effecting any repurchases. *See* Proposed Rule 13e–2(d)(1). *See* 1980 Proposing Release, *supra* note 4, 45 FR at 70897. Issuers also would have been required to disclose this information to the exchange on which the stock was listed for trading or to the NASD if the stock was authorized for quotation on Nasdaq. *See* Proposed Rule 13e–2(d)(2). The Commission did not act on these proposals.

[109] *See* Comment, R. and Jarrell, G., ''The Relative Signaling Power of Dutch-Auction and Fixed-Price Self-Tender Offers and Open-Market Share Repurchases,'' *Journal of Finance* 46 (1991), pp. 1243–71; Asquith, P. and Mullins, D., ''Signaling with Dividends, Stock Repurchases and Equity Issues,'' *Financial Management* 15 (1986), pp. 27–44; Vermaelen, T., ''Common Stock Repurchases and Market Signaling,'' *Journal of Financial Economics* 9 (1981), pp. 139–83; and Dann, L., ''The Effects of Common Stock Repurchase on Security Holder's Returns,'' *Journal of Financial Economics* 9 (1981), pp. 101–138.

[110] *Id.* If an issuer announced a repurchase program, but had no intention to make purchases, it may violate the anti-fraud and anti-manipulation provisions of the federal securities laws.

[111] *See, e.g.*, Ikenberry, David, *et al.*, ''Stock Repurchases in Canada: Performance and Strategic Trading,'' *Journal of Finance* 55 (October 2000), pp. 2373–97 (noting that the fraction of shares actually repurchased in connection with Canadian stock repurchase programs is surprisingly low, for example, at termination of the program, roughly a quarter of the firms did not repurchase any shares). Under Canadian law, issuers must report each month the number of shares they actually repurchase. *Id.*

[112] *See, e.g.*, Grullon, G. and Ikenberry, D., ''What Do We Know About Stock Repurchases,'' *Journal of Applied Corporate Finance* 13 (2000), pp. 31, 40–41 (discussing how corporations have been substituting repurchases for dividends, as economic equivalent means of returning excess capital to shareholders). Moreover, requiring such disclosure would be analogous to the requirement that corporate insiders disclose their own transactions involving the company's stock. *See, e.g., id*, at 48 (emphasizing the need to regulate consistently economically equivalent practices, the authors note that ''[a]lthough firms repurchasing stock are not required to disclose any of their trades, if management makes the same decision on a personal account, details about the trades must be promptly disclosed to the SEC and then made public in short order''). *See also* Cook, Douglas *et al.*, SEC Guidelines for Executing Open Market Repurchases,'' *The Journal of Business,* 2003, vol. 76, no. 2) (questioning the regulatory effectiveness of safe harbors without mandatory disclosure).

[113] *See* text accompanying *supra* note 93.

[114] *See generally* Thomas J. Herzfeld, *Market Shakeout Leads to Unprecedented Number of Share Buyback Announcements,* Investor's Guide to Closed-End Funds (Oct. 1998) (discussing actual buybacks after announcements and the use of buybacks to reduce closed-end fund discounts and noting that ''many funds maintain the authorization to repurchase their own shares in the open market, but only a handful buy back significant numbers of shares'').

[115] *See* comment letter from ICI.

[116] Rule 23c–1(a)(11) under the Investment Company Act, 17 CFR 270.23c–1(a)(11); Form N–23C–1, 17 CFR 274.201. Of 125 Form N–23C–1 filings made during the year ending September 30, 2002, it appears that at least 37 of these filings were not required under Rule 23c–1 (no repurchases occurred in the prior month or repurchases on the open market).

[117] Closed-end funds will continue to be required to respond to Item 86 of Form N–SAR, 17 CFR 249.330; 17 CFR 274.101, which requires disclosure of the aggregate number of shares and net consideration paid for all repurchases and redemptions of a closed-end fund's common and preferred stock.

[118] Item 10(a)(3) of Form N–CSR; Rule 23c–1(a)(11) under the Investment Company Act.

[119] 44 U.S.C. 3501.

control number. The titles of the affected collections are ''Regulation S–K,'' ''Regulation S–B,'' ''Form 10–Q,'' ''Form 10–QSB,'' ''Form 10–K,'' ''Form 10–KSB,'' ''Form 20–F,'' and ''Form N–CSR'' under OMB control numbers 3235–0071, 3235–0417, 3235–0070, 3235–0416, 3235–0063, 3235–0420, 3235–0288, and 3235–0570 respectively.

We believe that the amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, and N–CSR are necessary to: (1) Facilitate the transparency of issuers' repurchases, (2) bolster investor confidence in the integrity of the securities trading markets, and (3) monitor and assess the level and market impact of issuers' repurchases. We estimate that 75% of the total burden of Forms 10–K, 10–KSB, 10–Q and 10–QSB is carried by the issuer, and therefore is reflected as an hourly burden. The remaining 25% of the total burden is attributed to outside costs.[120] Based on the actual filings that we received in fiscal year 2002, we estimate that Form 10–K is filed by 8,484 respondents, has a total annual burden of 13,970,929 hours and a cost of $1,396,396,000; Form 10–KSB is filed by 3,820 respondents, has a total annual burden of 4,716,969 hours and a cost of $470,993,000; Form 10–Q is filed by 23,743 respondents, has a total annual burden of 3,414,474 hours and a cost of $336,698,630; Form 10–QSB is filed by 11,299 respondents, has a total annual burden of 1,540,119 hours and a cost of $151,752,130; and Form 20–F is filed by 1,194 respondents, has a total annual burden of 769,826 hours and a cost of $690,501,580.

Closed-end funds would be required to provide similar disclosure on new Item 8 of Form N–CSR.[121] With respect to new Item 8 of Form N–CSR, we estimate that 75% of the burden of preparation will be borne by the company internally, and 25% of the burden of preparation will be borne by outside professionals. Based on the actual filings that we received in fiscal year 2002, we estimate that Form N–CSR is filed by 7,400 respondents, has a total annual burden of 142,498 hours and a cost of $881,000.

VIII. Cost-Benefit Analysis

We are sensitive to the costs and benefits of our rules and we have considered the costs and benefits of our adopted amendments. To assist us in evaluating the costs and benefits, in the Proposing Release we encouraged commenters to discuss any costs or benefits that the modifications might impose. In particular, we requested comment on the potential costs for any modifications to information gathering, management, and record keeping systems or procedures as well as any potential benefits resulting from the proposals for issuers, investors, brokers, dealers, and other securities industry professionals, regulators, and others. Commenters were requested to provide analysis and data supporting their views on the costs and benefits associated with the proposed amendments.

A. Costs and Benefits of the Adopted Amendments to Rule 10b–18

We believe the adopted amendments simplify and update Rule 10b–18 in light of market developments since its adoption. First, the adopted amendments merge the definition of a ''Rule 10b–18 bid'' into the definition of a ''Rule 10b–18 purchase.'' Second, the adopted amendments clarify that the safe harbor is available for repurchases of common equity securities. Next, the adopted amendments clarify the scope of the merger exclusion. Fourth, the adopted amendments clarify the application of the single broker or dealer condition to repurchases effected through ECNs or other ATSs. Fifth, the adopted amendments modify the timing condition to allow issuers of highly liquid securities to rely on the safe harbor for a longer time period each day. Sixth, the adopted amendments simplify the pricing condition by applying a uniform price limit for all issuers. Additionally, the adopted amendments clarify the safe harbor's availability for certain riskless principal transactions. Further, the adopted amendments to the volume condition are revised (i) to eliminate the current block exception, (ii) to include block purchases in the 25% ADTV limit, (iii) to provide a volume limit of one block purchase per week in lieu of the 25% ADTV limitation, and (iv) to increase the volume condition following a market-wide trading suspension to 100% of ADTV. Lastly, the adopted amendments extend the safe harbor to certain repurchases made during after-hours trading and allow the use of a different broker or dealer for those repurchases.

1. Benefits

In order to assess the benefits of the proposed amendments to Rule 10b–18, we sought comment regarding potential benefits as well as data and facts supporting commenters' views. We requested data and analysis on any effect the proposed amendments might have on liquidity.

We believe the amendments we are adopting today (i) simplify and update Rule 10b–18 in light of market developments since its adoption; (ii) provide continued clarity as to the scope of the safe harbor for issuers and the brokers, or dealers that assist them with repurchasing; (iii) avoid what might otherwise be a substantial and unpredictable risk of liability under the anti-manipulation provisions of the Exchange Act; and (iv) allow the market to establish a security's price based on independent market forces without undue issuer influence by minimizing the impact of an issuer's safe harbor repurchases.

The Commission expects that the Rule 10b–18 adopted amendments should benefit issuers, brokers, dealers, investors, and the marketplace in a number of ways. First, the adopted amendment to the definition of a ''Rule 10b–18 purchase'' to include a ''Rule 10b–18 bid'' simplifies the definition making Rule 10b–18 easier for issuers and broker-dealers to use. Similarly, the clarification that the safe harbor is available for repurchases of common equity securities alleviates any ambiguity as to the scope of the Rule, thereby benefiting issuers and the brokers, or dealers they employ to effect Rule 10b–18 repurchases. The adopted amendments should further benefit issuers and broker-dealers by providing certainty regarding the use of ECNs and ATSs to effect safe harbor repurchases.

Additionally, we expect the modified timing condition that allows issuers of highly liquid securities to effect safe harbor repurchases for a longer period of time each day should benefit brokers and dealers by allowing them to implement a repurchasing strategy over a longer period of time. We believe this amendment should benefit investors and the marketplace by maintaining a reasonable limit on the repurchases so that market prices are not unduly effected by an issuer's repurchases. Moreover, we anticipate that this

[120] With respect to Form 20-F, however, 25% of the burden is reflected as an internal burden, 75% is reflected as an outside burden.

[121] Currently, closed-end funds are required to disclose information regarding privately negotiated repurchases of their securities on Form N–23C–1 not later than the 10th day of the month following the month in which the repurchase occurs. The information required on Form N–23C–1 is duplicative of the information required in new Item 8 of Form N-CSR. Therefore, we are eliminating Form N–23C–1 and amending Rule 23c–1 under the Investment Company Act to remove the requirement to file Form N–23C–1 regarding privately negotiated repurchases. The PRA burden for Form N–23C–1 of 180 hours will be eliminated as a result of the elimination of this Form. The PRA burden for compliance with Rule 23c–1 will continue to be associated with other disclosure requirements of that rule, including the written confirmation, asset coverage disclosure, and six month notice requirements for paragraphs (a)(5), (a)(7), and (a)(10) of the rule, and will remain unchanged.

amendment may foster enhanced liquidity to the marketplace thereby benefiting investors, as issuers will be a source of buying power during this time. We believe investors should be further benefited by limiting the expanded timing condition to highly liquid issuers thereby minimizing the impact of repurchases by less liquid issuers near the close of trading.

The adopted amendments also reflect our view that a uniform pricing condition should benefit brokers and dealers who effect repurchases for several issuers by making the price condition easier to apply to several issuers on a given day. Next, the adopted amendments make certain riskless principal transactions eligible for the safe harbor, benefiting issuers and broker-dealers who wish to execute Rule 10b–18 repurchases in this manner. We believe that this amendment should similarly allow the markets to establish a security's price based on independent market forces without undue issuer influence, because the open market leg of the transaction must meet the conditions of Rule 10b–18.

We anticipate that the amendment to include block purchases in calculating the 25% ADTV should simplify an issuer's volume calculation because block purchases would no longer need to be subtracted. We also expect that the adopted amendments providing an alternative volume limit of one block per week should benefit small issuers who believed that a complete elimination of the block exception would make the safe harbor entirely unavailable to them. We anticipate that the one block per week limitation should place a reasonable limit on this activity while providing liquidity to investors. Moreover, the inclusion of block purchases in the 25% volume limitation will establish a reasonable limit on the amount of repurchasing activity that is safe harbor protected, which, in turn, prevents issuers from dominating the market for their common stock. Share prices that are established by independent market forces rather than an issuer's substantial repurchasing activity will promote investor confidence and market integrity. Next, we believe that the adopted amendment to the volume condition following a market-wide trading suspension should benefit issuers by increasing their Rule 10b–18 repurchasing flexibility. This adopted amendment should also benefit investors and the marketplace by providing enhanced liquidity. Moreover, the increased liquidity may reduce issuers' transaction costs.

Lastly, we expect that the adopted amendments concerning after-hours repurchases should benefit issuers by providing a longer time period throughout the day in which to effect Rule 10b–18 repurchases. We expect that this may provide additional liquidity for investors effecting after-hours transactions. Further, the adopted modification to the one broker or dealer condition for after-hours sessions should also provide additional Rule 10b–18 flexibility to issuers.

2. Costs

Rule 10b–18 is an optional safe harbor rather than a prescriptive rule. As such, issuers are not required to comply with its conditions. Thus, any costs related to complying with the safe harbor and the adopted amendments are assumed voluntarily. We assume that issuers will rely on Rule 10b–18 only if the anticipated benefits from doing so exceed any anticipated costs. We believe that the adopted Rule 10b–18 amendments should impose negligible costs, if any, on issuers, and should not compromise investor protection. As an aid in evaluating costs and reductions in costs, the Proposing Release sought comments concerning the public's views as well as any supporting information. Specifically, we requested comment as to whether the proposed amendments would impose greater costs on issuers than the current Rule. We received few comments regarding costs and those that we did receive concerned the treatment of blocks and mergers.

The adopted amendments with respect to block purchases allow issuers to choose to purchase one block per week in lieu of the 25% ADTV limit. Rather than a complete elimination of the block exclusion, the amended volume condition allows issuers to elect between purchasing one block per week or purchasing within the 25% ADTV limit. We anticipate that large issuers will continue to rely on the 25% volume limitation as their liquidity levels will enable them to effect repurchases in an amount that equates with their needs without dominating the market for their common stock. We understand that some issuers of less liquid common stock may not have a sufficient ADTV to purchase even one 5,000-share block within the safe harbor using the 25% limit. We anticipate that these issuers will rely on the one block per week exception. We further expect that this exception should mitigate the concerns of small issuers that the inability to purchase any blocks within the safe harbor would increase costs. In light of the comments we solicited in the Proposing Release, we expect that certain issuers will choose this block purchase alternative and we anticipate that this may reduce costs, as blocks may be less costly for issuers to acquire. Next, we anticipate that including block purchases in the ADTV calculation should reduce costs associated with the calculation because it will reduce the burden of, and the potential error associated with, subtracting block purchases.

Additionally, the adopted amendments concerning the merger exclusion will permit for some post merger announcement repurchases to be eligible for the safe harbor. The Commission did not adopt a blanket prohibition with respect to safe harbor repurchasing post-merger announcement. Some commenters believed that such an amendment would reduce liquidity, and affect capital allocation strategies, among other things. Instead, the adopted amendments allow for certain post merger announcement repurchases while excluding those where there is a heightened incentive to manipulate. For example, certain repurchases that reflect an issuer's repurchases during the three-month period prior to a merger announcement are safe harbor eligible, subject to the 25% ADTV limit. We expect that the allowance for certain safe harbor repurchasing post merger announcement should mitigate any adverse effect on issuer costs.

B. Costs and Benefits of the Adopted Disclosure Amendments

1. Benefits

The amendments to Regulations S–K and S–B and Forms 10–K, 10–KSB, 10–Q, 10–OSB, 20–F and N–CSR will provide several important benefits to investors and the securities markets as a whole. The new repurchase disclosure requirement may prevent undetected manipulation by deterring repurchase program announcements by issuers that do not intend to effect repurchases but would benefit from a post announcement increase in the price of their common stock. The disclosure requirement will increase market transparency by providing investors with information that otherwise has not been readily available. Issuers use their discretion in deciding whether and when to effect repurchases. Moreover, issuers may not repurchase all, or even any, of the shares they are authorized to repurchase. Before adoption of these rules, investors and market participants have not had ready access to information that would help them determine the amount of repurchasing effected by a registrant in any given time

period. This disclosure will provide more complete information to investors to assist them in better assessing an issuer, its activities, and its stock price.

The amendments also will provide a uniform disclosure system concerning repurchases. This system should benefit investors and other market participants by providing repurchasing information in a consistent format and in a timely manner. The amendments will also provide investors with useful information concerning the manner in which a company makes repurchases (*e.g.*, through open market purchases, tender offers, in satisfaction of a company's obligations upon exercise of outstanding put options, or other transactions).

Furthermore, the amendments will shed light on currently undisclosed repurchases. Before adoption of these requirements, only certain repurchasing activity had to be disclosed, such as repurchases from company insiders and certain repurchases by closed-end funds. The final rules require comprehensive repurchasing disclosure. For example, the amendments require disclosure of currently undisclosed activity, such as an issuer repurchasing its stock from put option holders who exercised options issued by the company.

Additionally, the disclosure will provide investors and the marketplace with signaling information. An issuer's repurchases may signal information to investors such as an issuer's belief that its stock is undervalued. In the same way, the disclosure could signal information about market trends.

Finally, the disclosure requirement will also provide information about an issuer's use of capital. When registering an offering, an issuer may state various uses of the offering proceeds, including repurchasing. The new periodic disclosure will provide follow-up information to such a registration statement disclosure. It is also a valuable way to confirm whether any of the offering proceeds were used for repurchases. All of these benefits will increase market efficiency.

2. Costs

The final rules require issuers to disclose, with respect to their repurchases, the total number of shares (or units) repurchased, the average price per share, the number of shares (or units) that were repurchased pursuant to a publicly announced plan or program and the maximum number (or approximate dollar value) of shares (or units) that may yet be repurchased under the plans or programs. The final rules will increase costs for all reporting companies that make repurchases. However, these costs may be mitigated somewhat for many issuers that currently collect and publish repurchase information concerning the number of shares repurchased, the total dollar amount paid for the repurchases or the average price paid per share, and/or the number of shares or dollar amount available for repurchase under a particular repurchase program.[122] Although we are not changing our one hour burden estimate reflected in the Proposing Release, we also have slightly reduced the reporting burden by eliminating two proposed disclosure requirements: (1) that issuers disclose the identity of the broker used to effect the disclosed repurchases; and (2) that issuers identify in a footnote to the table each plan or program that the issuer has not purchased under during the period covered by the table and whether the issuer still intends to purchase under that plan or program.[123]

We estimate that it will take an issuer an average of approximately one hour per annual, semi-annual, or quarterly filing to prepare the required disclosure. The estimated cost per registrant of providing this disclosure per filing on Forms 10–Q, 10–QSB, 10–K, 10–KSB and N–CSR is $169.[124] The estimated cost per issuer of providing this disclosure per filing on Form 20–F is $256.[125] The estimated total annual cost of providing this disclosure for all issuers is $879,870.

IX. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act[126] and Section 2(c) of the Investment Company Act[127] require us, when engaging in rulemaking and where we are required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Section 23(a)(2) of the Exchange Act[128] requires the Commission in adopting rules under the Exchange Act, to consider the anticompetitive effects of any rules it adopts under the Exchange Act. Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. In the Proposing Release, we solicited comment on the proposals' effects on efficiency, competition, and capital formation. Additionally we requested, but did not receive, comments regarding the impact of the proposed amendments on the economy generally pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.[129]

We have considered the proposed amendments to Rule 10b–18 in light of the standards of Section 23(a)(2) of the Exchange Act and believe the adopted amendments should not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. With one exception noted below, the amended safe harbor will apply equally to all issuers. Further, Rule 10b–18 is not the exclusive means by which issuers may effect purchases of their common stock. An issuer can purchase its common stock outside the safe harbor without raising a presumption of manipulation. The one area in which issuers may be treated differently is the adopted timing condition amendment. This amendment

[122] See for example, *CGS Systems International, Inc. Reports First Quarter 2002 Results,* PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the average price paid per share, and the remaining number of shares available for repurchase under the repurchase program); *Republic Services, Inc. Reports First Quarter Earnings Per Shares of $0.32,* PR Newswire (April 29, 2002) (publishing the number of shares repurchased, the total dollar amount paid for the repurchases, and the dollar amount remaining under the repurchase program); *Quotesmith.com 1Q Loss 14 Cents a Share,* Dow Jones News Service (April 29, 2002) (publishing the number of shares repurchased and the average price paid per share); *Gartner Reports Profitability Improvement for Fourth Consecutive Quarter,* Business Wire (April 24, 2002) (publishing the number of shares repurchased and the average price paid per share); *Datascope Third Quarter Results,* PR Newswire (April 24, 2002) (publishing the number of shares repurchased and the total dollar amount paid); and *DST Systems, Inc. Announces First Quarter 2002 Financial Results,* PR Newswire (April 24, 2002) (publishing the number of shares repurchased, the average price paid per share, as well as the fact that the repurchasing was done through a private transaction).

[123] In lieu of this disclosure, the final rules require the registrant to disclose each plan or program under which the issuer does not intend to make further purchases.

[124] This calculation is based on an estimate of ¾ burden hour of internal staff time and ¼ burden hour of third-party time and a cost of $125.00 per hour for internal staff and $300 per hour for services provided by third parties. The hourly cost estimate is based on consultations with several issuers and law firms and other persons who regularly assist issuers in preparing and filing periodic reports with the Commission.

[125] This calculation is based on an estimate of ¾ burden hour of third-party time and ¼ burden hour of internal staff time and a cost of $125.00 per hour for internal staff and $300 per hour for services provided by third parties. The hourly cost estimate is based on consultations with several issuers and law firms and other persons who regularly assist issuers in preparing and filing periodic reports with the Commission.

[126] 15 U.S.C. 78c(f).

[127] 15 U.S.C. 80a–2(c).

[128] 15 U.S.C. 78w(a)(2).

[129] Pub. L. No. 104–121, tit. II, 110 Stat. 857 (1996).

allows issuers whose securities are actively traded to stay in the market for—a longer period of time—10 minutes instead of 30 minutes before the scheduled close of trading. The modified timing condition for actively traded issuers will not impose a significant burden on small issuers because small issuers can still make safe harbor purchases during a trading day or elect to make repurchases outside the safe harbor. They would be treated differently under the timing condition for only a 20-minute period. We believe that differing treatment for issuers that meet the actively traded test (ADTV and public float) and those that do not is necessary because issuer repurchases of less liquid securities would likely have a greater impact on the price of those securities. We do not believe that it would be appropriate or in furtherance of investor protection and market integrity to provide safe harbor eligibility for repurchases with a greater potential for undue issuer influence. We believe that allowing issuers of less liquid securities to remain in the market with the protection of the safe harbor between 30 and 10 minutes prior to the market close could compromise market integrity and erode investor confidence. We expect that the adopted timing amendment will benefit (1) the marketplace and investors by providing additional liquidity, and (2) traders by allowing them to implement a trading strategy for a longer period during the day. We believe that the amendment appropriately recognizes the minimal risk that large issuers' repurchases will unduly influence the market, thereby allowing the market to establish security prices based on independent market forces, and the difference in issuer treatment for 20 minutes a day does not create a significant anti-competitive burden on non-actively traded issuers. Further, we do not believe that the adopted safe harbor amendments should have a significant effect on competition because all issuers have the option of complying with the manner, volume, time, and price conditions.

With respect to disclosure, the adopted amendments to Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F and N–CSR apply equally to all filers who announce that they intend to make repurchases. Thus, we do not believe that the amendments to these forms will have an anti-competitive effect.

We believe that the Rule 10b–18 safe harbor, as amended, should improve market efficiency in the trading session following a market-wide trading suspension by providing enhanced liquidity. We further believe the adopted amendments will improve market efficiency by providing greater clarity, uniformity, and simplification of the safe harbor conditions. An efficient market generally promotes capital formation.

Moreover, the adopted disclosure amendments to Forms 10–K, 10–KSB, 10–Q, 10–QSK, 20–F and N–CSR should enhance market efficiency by providing additional, readily accessible information to investors concerning issuer repurchase activity. Enhanced disclosure will allow investors to make better-informed investment decisions. We believe the increased transparency of issuer activity will improve market efficiency and bolster investor confidence in our securities markets. Informed investor decisions generally promote market efficiency and capital formation.

X. Final Regulatory Flexibility Analysis

The Final Regulatory Flexibility Analysis (FRFA) has been prepared in accordance with the Regulatory Flexibility Act.[130] This FRFA relates to adopted amendments regarding Rule 10b–18, Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F, N–CSR, and N–23C–1, and Rule 23c–1 under the Investment Company Act.

A. Need for and Objectives of the Amendments

The adopted Rule 10b–18 amendments fulfill several objectives including (1) simplifying and updating the Rule; (2) providing additional liquidity in times of market stress; (3) fostering investor confidence; and (4) providing a risk management tool to issuers. Moreover, the adopted amendments are consistent with the objective of minimizing the effects of an issuer's repurchases on the market price of an issuer's common stock thereby furthering our objective of fostering markets where investors, and particularly an issuer's shareholders, should be able to rely on a common stock price that is set by independent market forces and not influenced in a manipulative manner by the issuer.

First, the amendments simplify and update the Rule in light of our experience with its operation and to reflect market developments since its adoption. The adopted amendments modify the definition of ''Rule 10b–18 purchase'' to incorporate the current ''Rule 10b–18 bid'' definition, and to apply a uniform price condition among issuers. The safe harbor amendments also clarify the scope of the merger exclusion and modify the timing condition for actively traded issuers. Second, the amended volume condition provides increased liquidity to the markets by easing the volume condition in the trading session following a market-wide trading suspension, and provides an alternative volume condition allowing issuers to purchase one block or 25% of their ADTV on a given day. Third, the adopted amendments foster investor confidence in market integrity by maintaining reasonable limits on issuer repurchasing activity within the safe harbor, and facilitating pricing by independent market forces. Fourth, the adopted amendments provide increased clarity to issuers relying on the Rule to better manage the risk of potential liability associated with repurchases.

The prime objective of the adopted disclosure amendments is to provide investors with useful, timely, and readily accessible information about issuer repurchases. The adopted amendments to Regulations S–K, S–B, Forms 10–Q, 10–QSB, 10–K, 10–KSB, 20–F and N–CSR provide investors and the marketplace with enhanced transparency concerning issuers' repurchases in order to better assess investment decisions and issuers generally. The increased transparency regarding repurchasing will promote enhanced evaluation of issuers, their repurchases and the effects of those repurchases on the issuers' stock prices and the market place. The adopted amendments also provide a means to monitor and assess the level and impact of issuers' repurchases.

B. Significant Issues Raised by Public Comments

The Initial Regulatory Flexibility Analysis (IRFA) appeared in the Proposing Release. We requested comment on the IRFA, including the number of issuers conducting repurchase programs that are small entities, the impact the proposals would have on small entities, and how to quantify the impact. We received no comment letters regarding the IRFA.

C. Small Entities Subject to the Amendments

Exchange Act Rule 0–10(a)[131] defines an entity, other than an investment company, to be a ''small business'' or ''small organization'' if it has total assets of $5 million or less on the last day of its most recent fiscal year.[132] In the

[130] 5 U.S.C. 603.

[131] 17 CFR 240.0–10(a).

[132] An investment company is a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10.

IRFA of the Proposing Release, we estimated that approximately 3 issuers that conducted repurchases in 2000 had assets of less than $5 million. Presently we estimate that approximately 4 issuers, other than investment companies, that conducted repurchases in 2002 had assets of less than $5 million.[133] We estimate that approximately 7 closed-end funds are small entities that conducted repurchases in 2002. We sought comment on the number of issuers engaged in repurchases of their stock that are small entities. We also sought comment regarding the number of issuers that would make the proposed disclosures following open market and privately negotiated purchases each quarter and the number of those issuers that are small entities. No commenters responded with the requested data.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The Rule 10b–18 adopted amendments will not impose any new reporting, record keeping, or other compliance requirements. The amendments to Regulations S–K, S–B, Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F and N–CSR add a new disclosure item for issuer purchases of equity securities. As stated in Section X. C above, approximately 11 issuers who conducted repurchase programs in 2002 were small entities. We believe no additional skills beyond those currently possessed by issuers (and broker-dealers) will be necessary to prepare the forms in accordance with the adopted disclosure amendments or to comply with the adopted Rule 10b–18 amendments.

E. Agency Action To Minimize the Effect on Small Entities

As required by the Regulatory Flexibility Act, we have considered alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the amendments, we considered the following alternatives:

- The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;
- The clarification, consolidation, or simplification of filing or posting requirements;
- The use of performance rather than design standards; and
- An exemption from coverage of the amendments, or any part of them, for small entities.

With respect to the adopted Rule 10b–18 amendments, we believe that the establishment of different requirements for small entities, other than the timing amendment, is neither necessary nor practicable, because the safe harbor amendments provide a voluntary safe harbor. The adopted timing amendment allows issuers of more liquid securities to remain in the market effecting Rule 10b–18 repurchases for 20 minutes more per day than issuers of less actively traded securities. We did not believe it is appropriate to provide safe harbor eligibility near the close of trading for less liquid securities as such activity potentially could affect the closing price of security through undue issuer influence. Such activity could diminish investor confidence that common stock prices are set by independent market forces and erode market integrity.

The Rule 10b–18 amendments should not adversely affect small entities because they do not impose any new reporting, record keeping or compliance requirements. Therefore, it is not feasible to further clarify, consolidate or simplify the safe harbor for small entities. Further, it does not seem necessary to develop separate requirements for small entities with respect to the adopted amendments to Regulations S–K, S–B, Forms 10–K, 10–KSB, 10–Q, 10–QSB, 20–F and N–CSR, because we think all issuers, including issuers that are small entities, already have this information readily available or would not meet objectives.

XI. Statutory Basis and Text of Adopted Amendments

The Rule amendments are being adopted pursuant to Sections 2, 3, 9(a)(6), 10(b), 12, 13(e), 15, 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c), 78o(d) and 78w(a), and Sections 8, 23, 24(a), 30, 31, and 38 of the Investment Company Act, 15 U.S.C. 80a–8, 80a–23, 80a–24(a), 80a–29, 80a–30, and 80a–37.

List of Subjects

17 CFR Part 228

Reporting and record keeping requirements, Securities, Small businesses.

17 CFR Parts 229 and 249

Reporting and record keeping requirements, Securities.

17 CFR Part 240

Brokers, Dealers, Issuers, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and record keeping requirements, Securities.

■ For the reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

■ 1. The general authority citation for part 228 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78u–5, 78w, 78ll, 78mm, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 2. Section 228.703 is added to read as follows:

§ 228.703 (Item 703) Purchases of equity securities by the small business issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the small business issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the small business issuer's equity securities that is registered by the small business issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

[133] The source of this data is Compustat.

SMALL BUSINESS ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a));

Instruction to Paragraph (b)(1) of Item 703

Include in this column all small business issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (or unit) (column (b));

(3) The total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to Paragraphs (b)(3) and (b)(4) of Item 703

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the small business issuer has determined to terminate prior to expiration, or under which the small business issuer does not intend to make further purchases.

Instruction to Item 703

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 3. The general authority citation to Part 229 is revised to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78u–5, 78w, 78*ll*, 78mm, 79e, 79j, 79n, 79t, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 229.703 is added to read as follows:

§ 229.703 (Item 703) Purchases of equity securities by the issuer and affiliated purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3) of this chapter, of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a));

Instruction to paragraph (b)(1) of Item 703

Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.,* whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (or unit) (column (b));

(3) The total number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to Paragraphs (b)(3) and (b)(4) of Item 703

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

Instruction to Item 703

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18 of this chapter.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for Part 240 parties revised as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80–20, 80–23, 80a–29, 80–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 6. Section 240.10b–18 is revised to read as follows:

§ 240.10b–18 Purchases of certain equity securities by the issuer and others.

Preliminary Notes to § 240.10b–18

1. Section 240.10b–18 provides an issuer (and its affiliated purchasers) with a ''safe harbor'' from liability for manipulation under sections 9(a)(2) of the Act and § 240.10b–5 under the Act *solely* by reason of the manner, timing, price, and volume of their repurchases when they repurchase the issuer's common stock in the market in accordance with the section's manner, timing, price, and volume conditions. As a safe harbor, compliance with § 240.10b–18 is voluntary. To come within the safe harbor, however, an issuer's repurchases must satisfy (on a daily basis) each of the section's four conditions. Failure to meet any one of the four conditions will remove all of the issuer's repurchases from the safe harbor for that day. The safe harbor, moreover, is not available for repurchases that, although made in technical compliance with the section, are part of a plan or scheme to evade the federal securities laws.

2. Regardless of whether the repurchases are effected in accordance with § 240.10b–18, reporting issuers must report their repurchasing activity as required by Item 703 of Regulations S–K and S–B (17 CFR 229.703 and 228.703) and Item 15(e) of Form 20–F (17 CFR 249.220f) (regarding foreign private issuers), and closed-end management investment companies that are registered under the Investment Company Act of 1940 must report their repurchasing activity as required by Item 8 of Form N–CSR (17 CFR 249.331; 17 CFR 274.128).

(a) *Definitions.* Unless otherwise provided, all terms used in this section shall have the same meaning as in the Act. In addition, the following definitions shall apply:

(1) *ADTV* means the average daily trading volume reported for the security during the four calendar weeks

preceding the week in which the Rule 10b–18 purchase is to be effected.

(2) *Affiliate* means any person that directly or indirectly controls, is controlled by, or is under common control with, the issuer.

(3) *Affiliated purchaser* means:

(i) A person acting, directly or indirectly, in concert with the issuer for the purpose of acquiring the issuer's securities; or

(ii) An affiliate who, directly or indirectly, controls the issuer's purchases of such securities, whose purchases are controlled by the issuer, or whose purchases are under common control with those of the issuer; *Provided, however,* that ''affiliated purchaser'' shall not include a broker, dealer, or other person solely by reason of such broker, dealer, or other person effecting Rule 10b–18 purchases on behalf of the issuer or for its account, and shall not include an officer or director of the issuer solely by reason of that officer or director's participation in the decision to authorize Rule 10b–18 purchases by or on behalf of the issuer.

(4) *Agent independent of the issuer* has the meaning contained in § 242.100 of this chapter.

(5) *Block* means a quantity of stock that either:

(i) Has a purchase price of $200,000 or more; or

(ii) Is at least 5,000 shares and has a purchase price of at least $50,000; or

(iii) Is at least 20 round lots of the security and totals 150 percent or more of the trading volume for that security or, in the event that trading volume data are unavailable, is at least 20 round lots of the security and totals at least one-tenth of one percent (.001) of the outstanding shares of the security, exclusive of any shares owned by any affiliate; *Provided, however,* That a block under paragraph (a)(5)(i), (ii), and (iii) shall not include any amount a broker or dealer, acting as principal, has accumulated for the purpose of sale or resale to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that such amount was accumulated for such purpose, nor shall it include any amount that a broker or dealer has sold short to the issuer or to any affiliated purchaser of the issuer if the issuer or such affiliated purchaser knows or has reason to know that the sale was a short sale.

(6) *Consolidated system* means a consolidated transaction or quotation reporting system that collects and publicly disseminates on a current and continuous basis transaction or quotation information in common equity securities pursuant to an effective transaction reporting plan (as defined in § 240.11Aa3–1) or a national market system plan (as defined in § 240.11Aa3–2).

(7) *Market-wide trading suspension* means a market-wide trading halt of 30 minutes or more that is:

(i) Imposed pursuant to the rules of a national securities exchange or a national securities association in response to a market-wide decline during a single trading session; or

(ii) Declared by the Commission pursuant to its authority under section 12(k) of the Act (15 U.S.C. 78*l* (k)).

(8) *Plan* has the meaning contained in § 242.100 of this chapter.

(9) *Principal market* for a security means the single securities market with the largest reported trading volume for the security during the six full calendar months preceding the week in which the Rule 10b–18 purchase is to be effected.

(10) *Public float value* has the meaning contained in § 242.100 of this chapter.

(11) *Purchase price* means the price paid per share as reported, exclusive of any commission paid to a broker acting as agent, or commission equivalent, mark-up, or differential paid to a dealer.

(12) *Riskless principal transaction* means a transaction in which a broker or dealer after having received an order from an issuer to buy its security, buys the security as principal in the market at the same price to satisfy the issuer's buy order. The issuer's buy order must be effected at the same price per-share at which the broker or dealer bought the shares to satisfy the issuer's buy order, exclusive of any explicitly disclosed markup or markdown, commission equivalent, or other fee. In addition, only the first leg of the transaction, when the broker or dealer buys the security in the market as principal, is reported under the rules of a self-regulatory organization or under the Act. For purposes of this section, the broker or dealer must have written policies and procedures in place to assure that, at a minimum, the issuer's buy order was received prior to the offsetting transaction; the offsetting transaction is allocated to a riskless principal account or the issuer's account within 60 seconds of the execution; and the broker or dealer has supervisory systems in place to produce records that enable the broker or dealer to accurately and readily reconstruct, in a time-sequenced manner, all orders effected on a riskless principal basis.

(13) *Rule 10b–18 purchase* means a purchase (or any bid or limit order that would effect such purchase) of an issuer's common stock (or an equivalent interest, including a unit of beneficial interest in a trust or limited partnership or a depository share) by or for the issuer or any affiliated purchaser (including riskless principal transactions). However, it does *not* include any purchase of such security:

(i) Effected during the applicable restricted period of a distribution that is subject to § 242.102 of this chapter;

(ii) Effected by or for an issuer plan by an agent independent of the issuer;

(iii) Effected as a fractional share purchase (a fractional interest in a security) evidenced by a script certificate, order form, or similar document;

(iv) Effected during the period from the time of public announcement (as defined in § 230.165(f)) of a merger, acquisition, or similar transaction involving a recapitalization, until the earlier of the completion of such transaction or the completion of the vote by target shareholders. This exclusion does *not* apply to Rule 10b–18 purchases:

(A) Effected during such transaction in which the consideration is solely cash and there is no valuation period; or

(B) Where:

(*1*) The total volume of Rule 10b–18 purchases effected on any single day does not exceed the lesser of 25% of the security's four-week ADTV or the issuer's average daily Rule 10b–18 purchases during the three full calendar months preceding the date of the announcement of such transaction;

(*2*) The issuer's block purchases effected pursuant to paragraph (b)(4) of this section do not exceed the average size and frequency of the issuer's block purchases effected pursuant to paragraph (b)(4) of this section during the three full calendar months preceding the date of the announcement of such transaction; and

(*3*) Such purchases are not otherwise restricted or prohibited;

(v) Effected pursuant to § 240.13e-1;

(vi) Effected pursuant to a tender offer that is subject to § 240.13e-4 or specifically excepted from § 240.13e-4; or

(vii) Effected pursuant to a tender offer that is subject to section 14(d) of the Act (15 U.S.C. 78n(d)) and the rules and regulations thereunder.

(b) *Conditions to be met.* Rule 10b–18 purchases shall not be deemed to have violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5 under the Act, solely by reason of the time, price, or amount of the Rule 10b–18 purchases, or the number of brokers or dealers used in connection with such purchases, if the

issuer or affiliated purchaser of the issuer effects the Rule 10b–18 purchases according to each of the following conditions:

(1) *One broker or dealer.* Rule 10b–18 purchases must be effected from or through only one broker or dealer on any single day; *Provided, however*, that:

(i) The ''one broker or dealer'' condition shall not apply to Rule 10b–18 purchases that are not solicited by or on behalf of the issuer or its affiliated purchaser(s);

(ii) Where Rule 10b–18 purchases are effected by or on behalf of more than one affiliated purchaser of the issuer (or the issuer and one or more of its affiliated purchasers) on a single day, the issuer and all affiliated purchasers must use the same broker or dealer; and

(iii) Where Rule 10b–18 purchases are effected on behalf of the issuer by a broker-dealer that is not an electronic communication network (ECN) or other alternative trading system (ATS), that broker-dealer can access ECN or other ATS liquidity in order to execute repurchases on behalf of the issuer (or any affiliated purchaser of the issuer) on that day.

(2) *Time of purchases.* Rule 10b–18 purchases must not be:

(i) The opening (regular way) purchase reported in the consolidated system;

(ii) Effected during the 10 minutes before the scheduled close of the primary trading session in the principal market for the security, and the 10 minutes before the scheduled close of the primary trading session in the market where the purchase is effected, for a security that has an ADTV value of $1 million or more and a public float value of $150 million or more; and

(iii) Effected during the 30 minutes before the scheduled close of the primary trading session in the principal market for the security, and the 30 minutes before the scheduled close of the primary trading session in the market where the purchase is effected, for all other securities;

(iv) However, for purposes of this section, Rule 10b–18 purchases may be effected following the close of the primary trading session until the termination of the period in which last sale prices are reported in the consolidated system so long as such purchases are effected at prices that do not exceed the lower of the closing price of the primary trading session in the principal market for the security and any lower bids or sale prices subsequently reported in the consolidated system, and all of this section's conditions are met. However, for purposes of this section, the issuer may use one broker or dealer to effect Rule 10b–18 purchases during this period that may be different from the broker or dealer that it used during the primary trading session. However, the issuer's Rule 10b–18 purchase may not be the opening transaction of the session following the close of the primary trading session.

(3) *Price of purchases.* Rule 10b–18 purchases must be effected at a purchase price that:

(i) Does not exceed the highest independent bid or the last independent transaction price, whichever is higher, quoted or reported in the consolidated system at the time the Rule 10b–18 purchase is effected;

(ii) For securities for which bids and transaction prices are not quoted or reported in the consolidated system, Rule 10b–18 purchases must be effected at a purchase price that does not exceed the highest independent bid or the last independent transaction price, whichever is higher, displayed and disseminated on any national securities exchange or on any inter-dealer quotation system (as defined in § 240.15c2–11) that displays at least two priced quotations for the security, at the time the Rule 10b–18 purchase is effected; and

(iii) For all other securities, Rule 10b–18 purchases must be effected at a price no higher than the highest independent bid obtained from three independent dealers.

(4) *Volume of purchases.* The total volume of Rule 10b–18 purchases effected by or for the issuer and any affiliated purchasers effected on any single day must not exceed 25 percent of the ADTV for that security; *However*, once each week, in lieu of purchasing under the 25 percent of ADTV limit for that day, the issuer or an affiliated purchaser of the issuer may effect one block purchase if:

(i) No other Rule 10b–18 purchases are effected that day, and

(ii) The block purchase is *not* included when calculating a security's four week ADTV under this section.

(c) *Alternative conditions.* The conditions of paragraph (b) of this section shall apply in connection with Rule 10b–18 purchases effected during a trading session following the imposition of a market-wide trading suspension, except:

(1) That the time of purchases condition in paragraph (b)(2) of this section shall not apply, either:

(i) From the reopening of trading until the scheduled close of trading on the day that the market-wide trading suspension is imposed; or

(ii) At the opening of trading on the next trading day until the scheduled close of trading that day, if a market-wide trading suspension was in effect at the close of trading on the preceding day; and

(2) The volume of purchases condition in paragraph (b)(4) of this section is modified so that the amount of Rule 10b–18 purchases must not exceed 100 percent of the ADTV for that security.

(d) *Other purchases.* No presumption shall arise that an issuer or an affiliated purchaser has violated the anti-manipulation provisions of sections 9(a)(2) or 10(b) of the Act (15 U.S.C. 78i(a)(2) or 78j(b)), or § 240.10b–5 under the Act, if the Rule 10b–18 purchases of such issuer or affiliated purchaser do not meet the conditions specified in paragraph (b) or (c) of this section.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 7. The general authority citation for Part 249 and the sectional authority for § 249.308 are revised to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, 15 U.S.C. 7201 *et seq.*, and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.308 is also issued under 15 U.S.C. 80a–29 and 80a–37.

* * * * *

■ 8. Amend Form 20–F, Part II (referenced in § 249.220f) by adding new Item 16E to read as follows:

Note: The text of Form 20–F does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Part II

* * * * *

Item 16E Purchases of Equity Securities by the Issuer and Affiliated Purchasers.

(a) In the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the issuer or any ''affiliated purchaser,'' as defined in § 240.10b–18(a)(3), of shares or other units of any class of the issuer's equity securities that is registered by the issuer pursuant to section 12 of the Exchange Act (15 U.S.C. 78*l*).

ISSUER PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or units)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Month #4 (identify beginning and ending dates).				
Month #5 (identify beginning and ending dates).				
Month #6 (identify beginning and ending dates).				
Month #7 (identify beginning and ending dates).				
Month #8 (identify beginning and ending dates).				
Month #9 (identify beginning and ending dates).				
Month #10 (identify beginning and ending dates).				
Month #11 (identify beginning and ending dates).				
Month #12 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a)).

Instruction to Paragraph (b)(1) of Item 16E

Include in this column all issuer repurchases, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (*e.g.*, whether the purchases were made in open-market transactions, tender offers, in satisfaction of the company's obligations upon exercise of outstanding put options issued by the company, or other transactions).

(2) The average price paid per share (or unit) (column (b)).

(3) The number of shares (or units) purchased as part of a publicly announced repurchase plan or program (column (c)).

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to Paragraphs (b)(3) and (b)(4) of Item 16E

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the issuer has determined to terminate prior to expiration, or under which the issuer does not intend to make further purchases.

Instruction to Item 16E

Disclose all purchases covered by this item, including purchases that do not satisfy the conditions of the safe harbor of § 240.10b–18. Price data and other data should be stated in the same currency used in the issuer's primary financial statements provided in Item 8 of this Form.

* * * * *

■ 9. Amend Form 10–Q (referenced in § 249.308a) by revising the caption for Item 2 in Part II and by adding paragraph (e) to read as follows:

Note: The text of Form 10–Q does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–Q

* * * * *

Part II—Other Information

* * * * *

Item 2. Changes in Securities, Use of Proceeds and Issuer Purchases of Equity Securities.

* * * * *

(e) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

* * * * *

■ 10. Amend Form 10–QSB (referenced in § 249.308b) by revising the caption for Item 2 in Part II and adding paragraph (e) to read as follows:

Note: The text of Form 10–QSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–QSB

* * * * *

Part II—Other Information

* * * * *

Item 2. Changes in Securities and Small Business Issuer Purchases of Equity Securities.

* * * * *

(e) Furnish the information required by Item 703 of Regulation S–B (§ 228.703 of this chapter) for any repurchase made in the quarter covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

* * * * *

■ 11. Amend Form 10–K (referenced in § 249.310) by revising the caption for Item 5 in Part II and by adding paragraph (c) to read as follows:

Note: The text of Form 10–K does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–K

* * * * *

PART II

* * * * *

Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities.

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–K (§ 229.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the fourth quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

* * * * *

■ 12. Amend Form 10–KSB (referenced in § 249.310b) by revising the caption for Item 5 in Part II and by adding paragraph (c) to read as follows:

Note: The text of Form 10–KSB does not, and this amendment will not, appear in the Code of Federal Regulations.

Form 10–KSB

* * * * *

PART II

* * * * *

Item 5. Market for Common Equity, Related Stockholder Matters and Small Business Issuer Purchases of Equity Securities.

* * * * *

(c) Furnish the information required by Item 703 of Regulation S–B (§ 228.703 of this chapter) for any repurchase made in a month within the fourth quarter of the fiscal year covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the fourth quarter began on January 16 and ended on April 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, and March 16 through April 15.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 13. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a-1 *et seq.*, 80a-34(d), 80a-37, and 80a-39, unless otherwise noted.

* * * * *

■ 14. Section 270.23c-1 is amended by revising paragraph (a)(11) to read as follows:

§ 270.23c-1 Repurchases of securities by closed-end companies.

(a) * * *

(11) The issuer files with the Commission, as an exhibit to Form N–CSR (§ 249.331 and § 274.128), a copy of any written solicitation to purchase securities under this section sent or given during the period covered by the report by or on behalf of the issuer to 10 or more persons.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 15. The authority citation for Part 274 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a-8, 80a-24, 80a-26, and 80a-29, unless otherwise noted.

* * * * *

■ 16. Remove § 274.201.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 17. Form N–CSR (referenced in §§ 249.331 and 274.128) is amended by:

■ a. Adding text to Item 8; and

■ b. Adding new paragraph (a)(3) to Item 10.

These additions read as follows:

Note: The text of Form N–CSR does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–CSR

* * * * *

Item 8. Purchases of Equity Securities by Closed-End Management Investment Company and Affiliated Purchasers.

(a) If the registrant is a closed-end management investment company, in the following tabular format, provide the information specified in paragraph (b) of this Item with respect to any purchase made by or on behalf of the registrant or any ''affiliated purchaser,'' as defined in Rule 10b–18(a)(3) under the Exchange Act (17 CFR 240.10b–18(a)(3)), of shares or other units of any class of the registrant's equity securities that is registered by the registrant pursuant to Section 12 of the Exchange Act (15 U.S.C. 78*l*).

Instruction to paragraph (a)

Disclose all purchases covered by this Item, including purchases that do not satisfy the conditions of the safe harbor of Rule 10b–18 under the Exchange Act (17 CFR 240.10b–18), made in the period covered by the report. Provide disclosures covering repurchases made on a monthly basis. For example, if the reporting period began on January 16 and ended on July 15, the chart would show repurchases for the months from January 16 through February 15, February 16 through March 15, March 16 through April 15, April 16 through May 15, May 16 through June 15, and June 16 through July 15.

REGISTRANT PURCHASES OF EQUITY SECURITIES

Period	(a) Total number of shares (or units) purchased	(b) Average price paid per share (or unit)	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
Month #1 (identify beginning and ending dates).				
Month #2 (identify beginning and ending dates).				
Month #3 (identify beginning and ending dates).				
Month #4 (identify beginning and ending dates).				
Month #5 (identify beginning and ending dates).				
Month #6 (identify beginning and ending dates).				
Total.				

(b) The table shall include the following information for each class or series of securities for each month included in the period covered by the report:

(1) The total number of shares (or units) purchased (column (a));

Instruction to Paragraph (b)(1)

Include in this column all repurchases by the registrant, including those made pursuant to publicly announced plans or programs and those not made pursuant to publicly announced plans or programs. Briefly disclose, by footnote to the table, the number of shares purchased other than through a publicly announced plan or program and the nature of the transaction (e.g., whether the purchases were made in open-market transactions, tender offers, in satisfaction of the registrant's obligations upon exercise of outstanding put options issued by the registrant, or other transactions).

(2) The average price paid per share (or unit) (column (b));

(3) The number of shares (or units) purchased as part of publicly announced repurchase plans or programs (column (c)); and

(4) The maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs (column (d)).

Instructions to Paragraphs (b)(3) and (b)(4).

1. In the table, disclose this information in the aggregate for all plans or programs publicly announced.

2. By footnote to the table, indicate:

a. The date each plan or program was announced;

b. The dollar amount (or share or unit amount) approved;

c. The expiration date (if any) of each plan or program;

d. Each plan or program that has expired during the period covered by the table; and

e. Each plan or program the registrant has determined to terminate prior to expiration, or under which the registrant does not intend to make further purchases.

* * * * *

Item 10. Exhibits

(a) * * *

(3) Any written solicitation to purchase securities under Rule 23c–1 under the Act (17 CFR 270.23c–1) sent or given during the period covered by the report by or on behalf of the registrant to 10 or more persons.

* * * * *

By the Commission.

Dated: November 10, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–28593 Filed 11–14–03; 8:45 am]

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900–1899	(869–050–00105–5)	35.00	July 1, 2003
1900–1910 (§§ 1900 to 1910.999)	(869–050–00106–3)	61.00	July 1, 2003
1910 (§§ 1910.1000 to end)	(869–050–00107–1)	46.00	July 1, 2003
1911–1925	(869–050–00108–0)	30.00	July 1, 2003
1926	(869–050–00109–8)	50.00	July 1, 2003
1927–End	(869–050–00110–1)	62.00	July 1, 2003
30 Parts:			
1–199	(869–050–00111–0)	57.00	July 1, 2003
200–699	(869–050–00112–8)	50.00	July 1, 2003
700–End	(869–050–00113–6)	57.00	July 1, 2003
31 Parts:			
0–199	(869–050–00114–4)	40.00	July 1, 2003
200–End	(869–050–00115–2)	64.00	July 1, 2003
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–050–00116–1)	60.00	July 1, 2003
191–399	(869–050–00117–9)	63.00	July 1, 2003
400–629	(869–050–00118–7)	50.00	July 1, 2003
630–699	(869–050–00119–5)	37.00	[7] July 1, 2003
700–799	(869–050–00120–9)	46.00	July 1, 2003
800–End	(869–050–00121–7)	47.00	July 1, 2003
33 Parts:			
1–124	(869–050–00122–5)	55.00	July 1, 2003
125–199	(869–050–00123–3)	61.00	July 1, 2003
200–End	(869–050–00124–1)	50.00	July 1, 2003
34 Parts:			
1–299	(869–050–00125–0)	49.00	July 1, 2003
300–399	(869–050–00126–8)	43.00	[7] July 1, 2003
400–End	(869–050–00127–6)	61.00	July 1, 2003
35	(869–050–00128–4)	10.00	[6] July 1, 2003
36 Parts			
1–199	(869–050–00129–2)	37.00	July 1, 2003
200–299	(869–050–00130–6)	37.00	July 1, 2003
300–End	(869–050–00131–4)	61.00	July 1, 2003
37	(869–050–00132–2)	50.00	July 1, 2003
38 Parts:			
0–17	(869–050–00133–1)	58.00	July 1, 2003
18–End	(869–050–00134–9)	62.00	July 1, 2003
39	(869–050–00135–7)	41.00	July 1, 2003
40 Parts:			
1–49	(869–050–00136–5)	60.00	July 1, 2003
50–51	(869–050–00137–3)	44.00	July 1, 2003
52 (52.01–52.1018)	(869–050–00138–1)	58.00	July 1, 2003
52 (52.1019–End)	(869–050–00139–0)	61.00	July 1, 2003
53–59	(869–050–00140–3)	31.00	July 1, 2003
60 (60.1–End)	(869–050–00141–1)	58.00	July 1, 2003
60 (Apps)	(869–050–00142–0)	51.00	[8] July 1, 2003
61–62	(869–050–00143–8)	43.00	July 1, 2003
63 (63.1–63.599)	(869–050–00144–6)	58.00	July 1, 2003
63 (63.600–63.1199)	(869–050–00145–4)	50.00	July 1, 2003
63 (63.1200–63.1439)	(869–050–00146–2)	50.00	July 1, 2003
*63 (63.1440–End)	(869–050–00147–1)	64.00	July 1, 2003
64–71	(869–050–00148–9)	29.00	July 1, 2003
72–80	(869–050–00149–7)	61.00	July 1, 2003
81–85	(869–050–00150–1)	50.00	July 1, 2003
86 (86.1–86.599–99)	(869–050–00151–9)	57.00	July 1, 2003
86 (86.600–1–End)	(869–050–00152–7)	50.00	July 1, 2003
87–99	(869–050–00153–5)	60.00	July 1, 2003
100–135	(869–050–00154–3)	43.00	July 1, 2003
136–149	(869–150–00155–1)	61.00	July 1, 2003
150–189	(869–050–00156–0)	49.00	July 1, 2003
190–259	(869–050–00157–8)	39.00	July 1, 2003
260–265	(869–050–00158–6)	50.00	July 1, 2003
266–299	(869–048–00156–5)	47.00	July 1, 2002
300–399	(869–050–00160–8)	42.00	July 1, 2003
400–424	(869–050–00161–6)	56.00	July 1, 2003
425–699	(869–050–00162–4)	61.00	July 1, 2003
700–789	(869–050–00163–2)	61.00	July 1, 2003
790–End	(869–050–00164–1)	58.00	July 1, 2003
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–048–00162–0)	23.00	July 1, 2002
101	(869–050–00166–7)	24.00	July 1, 2003
102–200	(869–050–00167–5)	50.00	July 1, 2003
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42 Parts:			
1–399	(869–048–00166–2)	56.00	Oct. 1, 2002
400–429	(869–048–00167–1)	59.00	Oct. 1, 2002
430–End	(869–048–00168–9)	61.00	Oct. 1, 2002
43 Parts:			
1–999	(869–048–00169–7)	47.00	Oct. 1, 2002
1000–end	(869–048–00170–1)	59.00	Oct. 1, 2002
44	(869–048–00171–9)	47.00	Oct. 1, 2002
45 Parts:			
1–199	(869–048–00172–7)	57.00	Oct. 1, 2002
200–499	(869–048–00173–5)	31.00	[9] Oct. 1, 2002
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–048–00175–1)	57.00	Oct. 1, 2002
46 Parts:			
1–40	(869–048–00176–0)	44.00	Oct. 1, 2002
41–69	(869–048–00177–8)	37.00	Oct. 1, 2002
70–89	(869–048–00178–6)	14.00	Oct. 1, 2002
90–139	(869–048–00179–4)	42.00	Oct. 1, 2002
140–155	(869–048–00180–8)	24.00	[9] Oct. 1, 2002
156–165	(869–048–00181–6)	31.00	[9] Oct. 1, 2002
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–048–00184–1)	24.00	Oct. 1, 2002
47 Parts:			
0–19	(869–048–00185–9)	57.00	Oct. 1, 2002
20–39	(869–048–00186–7)	45.00	Oct. 1, 2002
40–69	(869–048–00187–5)	36.00	Oct. 1, 2002
70–79	(869–048–00188–3)	58.00	Oct. 1, 2002
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48 Chapters:			
1 (Parts 1–51)	(869–048–00190–5)	59.00	Oct. 1, 2002
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49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
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50 Parts:			
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2002. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2002. The CFR volume issued as of October 1, 2001 should be retained.