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Contents

Federal Register

Vol. 68, No. 235

Monday, December 8, 2003

Agriculture Department
See Foreign Agricultural Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service

Army Department
NOTICES
Senior Executive Service:
Performance Review Board; membership, 68359–68360

Census Bureau
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68329–68331

Children and Families Administration
See Community Services Office

Civil Rights Commission
NOTICES
Meetings; Sunshine Act, 68328

Coast Guard
RULES
Navigation aids:
Alternatives to incandescent lights and standards for new lights in private aids, 68235–68239
Regattas and marine parades:
Boca Raton Holiday Boat Parade, 68239–68241

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68328–68329

Community Services Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Community Services Block Grant Training and Technical Assistance Program, 68393–68400

Corporation for National and Community Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68358–68359

Defense Department
See Army Department
See Navy Department

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68360–68361

Employment and Training Administration
NOTICES
Federal-State unemployment compensation program:
Federal Unemployment Tax Act; certifications; correction, 68449

Employment Standards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68424–68425

Energy Department
See Federal Energy Regulatory Commission
PROPOSED RULES
Worker Safety and Health; chronic beryllium disease prevention programs, 68276–68299

Environmental Protection Agency
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68372–68374
Air pollution control:
Citizens suits; proposed settlements—
Environmental Defense Fund, 68374–68376
Grants and cooperative agreements; availability, etc.:
Environmental Information Exchange Network, 68376–68384
Privacy Act:
Systems of records, 68384–68388
Superfund program:
Prospective purchaser agreements—
Riverfront Superfund Site, MO, 68388–68389

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Farm Credit Administration
NOTICES
Meetings; Sunshine Act, 68389

Federal Aviation Administration
RULES
Class E airspace
Correction, 68449
PROPOSED RULES
Airworthiness directives:
Boeing, 68301–68304, 68306–68312
Dassault, 68299–68301
McDonnell Douglas, 68304–68306

Federal Communications Commission
RULES
Radio services, special, etc.:
Mobile-satellite service; 2 GHz spectrum allocation, 68241–68254
Radio stations; table of assignments:
Texas, 68254
PROPOSED RULES
Common carrier services:
Update default compensation rate for dial-around calls from payphones, 68312–68319

NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68389–68393

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Bayou CovePeaking Power LLC, et al., 68366–68368
Southwestern Power Administration, et al., 68368–68369
Hydroelectric applications, 68369–68371
Meetings:
Midwest Independent Transmission System Operator, Inc. Advisory Committee and Board of Director; FERC staff participation, 68371
National Fuel Gas Supply Corporation;, 68371
Practice and procedure:
Off-the-record communications, 68371–68372
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 68361
Alliance Pipeline L.P., 68361–68362
CenterPoint Energy Gas Transmission Co., 68362
Colorado Interstate Gas Co., 68362–68363
El Paso Natural Gas Co., 68363–68364
Gas Transmission Northwest Corp., 68364
Gulfstream Natural Gas System, L.L.C., 68364–68365
Overthrust Pipeline Co., 68365
Southern Natural Gas Co., 68365
Southern Star Central Gas Pipeline, Inc., 68365–68366
Tennessee Gas Pipeline Co., 68366

Federal Motor Carrier Safety Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68446

Fish and Wildlife Service
RULES
Endangered and threatened species:
Interagency cooperation; joint counterpart consultation regulations, 68254–68265

Food and Drug Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68400–68402
Reports and guidance documents; availability, etc.:
Race and ethnicity data collection relating to postmarking adverse event data for MedWatch Forms; amendments, 68402–68403

Foreign Agricultural Service
NOTICES
Trade adjustment assistance; applications, petitions, etc.:
California fresh garlic producers, 68325

Forest Service
NOTICES
Environmental statements; notice of intent:
Lincoln National Forest, NM, 68325
Meetings:
Resource Advisory Committees—
Glenn/Colusa County, 68325
Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, 68326

Grain Inspection, Packers and Stockyards Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68326–68327

Health and Human Services Department
See Community Services Office
See Food and Drug Administration
See Health Resources and Services Administration
See National Institutes of Health

Health Resources and Services Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68403–68404

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68405–68406
Grant and cooperative agreement awards:
Housing Counseling Program, 68406
Research and technology unsolicited proposals, 68406–68407
Privacy Act:
Commuter matching programs, 68407–68408

Indian Affairs Bureau
NOTICES
Reports and guidance documents; availability, etc.:
Tribal agents; list, 68408–68422

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipe from—
Korea, 68331–68336
Hot-rolled carbon steel flat products from—
Netherlands, 68341–68348
Thailand, 68336–68341
Prestressed concrete steel wire strand from—
Brazil, 68354–68355
India, 68352–68353
Korea, 68353–68354
Mexico, 68350–68351
Thailand, 68348–68350
Stainless steel sheet and strip in coils from—
Taiwan, 68355
Countervailing duties:
Prestressed concrete steel wire strand from—
India, 68356–68357
North American Free Trade Agreement (NAFTA); binational panel reviews:
Hard red spring wheat from—
Canada, 68357

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration

Land Management Bureau
PROPOSED RULES
Range management:
Grazing administration—
Livestock grazing on public lands exclusive of Alaska, 68451–68474
NOTICES
Meetings:
Santa Rosa and San Jacinto Mountains National Monument Advisory Committee, 68326

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 68426–68428

National Commission on Terrorist Attacks Upon the United States
NOTICES
Hearings, 68428

National Highway Traffic Safety Administration
PROPOSED RULES
Motor vehicle safety standards:
Low speed vehicles; definition, 68319–68324
NOTICES
Reports and guidance documents; availability, etc.:
Impaired Driving Integrate Project Team Plan, 68447–68448

National Institutes of Health
NOTICES
Meetings:
Scientific Review Center, 68404–68405

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Interagency cooperation; joint counterpart consultation regulations, 68254–68265
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 68265–68275
NOTICES
Reports and guidance documents; availability, etc.:
Fisheries Research Strategic Plan, 68357–68358

Navy Department
NOTICES
Meetings:
Naval Academy, Board of Visitors, 68360

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Duke Energy Corp., 68428
Entergy Nuclear Operations, Inc., 68428–68430

Occupational Safety and Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Voluntary Protection Programs; safe and healthful working conditions; revision, 68475–68479
Nationally recognized testing laboratories:
Underwriters Laboratories. Inc., 68425–68426

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
PROCLAMATIONS
Steel products; termination of action taken regarding imports (Proc. 7741), 68481–68485
EXECUTIVE ORDERS
President's Task Force on Puerto Rico's Status; amendment to Executive Order 13183 establishing the (EO 13319), 68233

Rural Utilities Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68327–68328

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
The Vanguard Group, Inc., et al., 68430–68432
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 68432–68434
Chicago Stock Exchange, Inc., 68434–68440
New York Stock Exchange, Inc., 68440
Pacific Exchange, Inc., 68440–68442
Philadelphia Stock Exchange, Inc., 68442–68444

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68422–68424

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 68448

Tennessee Valley Authority
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 68444

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Dispute settlement panel establishment requests—
Chile and Singapore; telecommunications trade barriers, 68444–68445

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Separate Parts In This Issue

Part II
Interior Department, Land Management Bureau, 68451–68474

Part III
Labor Department, Occupational Safety and Health Administration, 68475–68479

Part IV
Executive Office of the President, Presidential Documents, 68481–68485

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

7529 (See Proc. 7741) 68483
7576 (See Proc. 7741) 68483
7741 68483

Executive Orders:

13183 (Amended by EO 13319) 68233
13119 68233

Administrative Orders:

Memorandums:
Memorandum of March 5, 2002 (See Proc. 7741) 68483

10 CFR

Proposed Rules:

850 68276
851 68276

14 CFR

71 68449

Proposed Rules:

39 (6 documents) 68299, 68301, 68304, 68306, 68308, 68311

33 CFR

66 68235
100 68239

43 CFR

Proposed Rules:

4100 68452

47 CFR

2 68241
73 68254
74 68241
78 68241
101 68241

Proposed Rules:

64 68312

49 CFR

Proposed Rules:

571 68319

50 CFR

402 68254
679 68265

Federal Register
Vol. 68, No. 235
Monday, December 8, 2003

Presidential Documents

Title 3—

The President

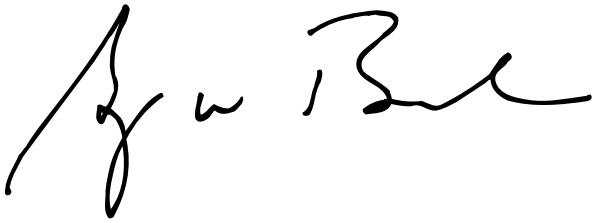
Executive Order 13319 of December 3, 2003

Amendment to Executive Order 13183, Establishment of the President's Task Force on Puerto Rico's Status

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered that Executive Order 13183 of December 23, 2000, as amended, is further amended as follows:

(1) Section 2 is amended by deleting the second and third sentences, and inserting in lieu thereof the following: ''It shall be composed of designees of each member of the President's Cabinet and the Deputy Assistant to the President and Director for Intergovernmental Affairs. The Task Force shall be co-chaired by the Attorney General's designee and the Deputy Assistant to the President and Director for Intergovernmental Affairs.''

(2) By deleting section 4, and inserting in lieu thereof the following: ''**Sec. 4.** *Report.* The Task Force shall report on its actions to the President as needed, but no less frequently than once every 2 years, on progress made in the determination of Puerto Rico's ultimate status.''



THE WHITE HOUSE,
December 3, 2003.

[FR Doc. 03–30513
Filed 12–5–03; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register

Vol. 68, No. 235

Monday, December 8, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 66

[USCG–2000–7466]

RIN 1625–AA55 [Formerly 2115–AF98]

Allowing Alternatives to Incandescent Lights, and Establishing Standards for New Lights, in Private Aids to Navigation

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard removes the requirement to use only tungsten-incandescent-light sources for private aids to navigation (PATONs) and establishes more-specific performance standards for all lights in PATONs. These measures enable private industry and owners of PATONs to take advantage of recent changes in lighting technology—specifically allow owners of PATONs to use lanterns based on the technology of light-emitting diodes (LEDs), which may reduce the consumption of power and simplify the maintenance of PATONs. The more-specific performance standards will make the rules for PATONs equivalent to those for Federal aids to navigation.

DATES: This final rule is effective March 8, 2004.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–7466 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Dan Andrusiak, Office of Aids to Navigation, at Coast Guard Headquarters, telephone 202–267–0327. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Regulatory History

On October 4, 2000, the Coast Guard published a direct final rule (DFR) [65 FR 59124] under the same docket number as the one borne by this final rule: USCG–2000–7466. We published that rule as a DFR because we expected that the public would readily embrace it; however, we received an adverse comment. Because of this, we withdrew the DFR [66 FR 8 (January 2, 2001)] so our engineers could analyze and respond to the comment. Not only did they follow the commenter's advice to make performance standards for LEDs more specific; they also recommended to the Marine Safety Council (now the Marine Safety and Security Council), our policy-setting body, the standardizing of all rules related to lights used as private aids to navigation (PATONs).

On June 24, 2002, we published a notice of proposed rulemaking entitled Allowing Alternative Source to Incandescent Light in Private Aids to Navigation in the **Federal Register** (67 FR 42512). We received three letters commenting on the proposed rule. No public hearing was requested and none was held.

Background

The Marine Safety Council, as it then was, recommended this rulemaking to provide owners of PATONs with more options for selecting equipment. This rule may reduce lifecycle cost, reduce the consumption of power, and simplify the maintenance of PATONs by allowing the use of lighting technologies other than those based on tungsten-incandescent light sources.

Discussion of Comments and Changes

We received three comments on this rule as proposed. The first commenter stated support for allowing alternatives to incandescent lights in private aids to navigation, but opined that the rule was deficient since it would not require the owners of such lights to maintain them.

Our response: We agree that maintenance requirements are essential, but we disagree that PATON owners do not have a requirement to maintain them. Existing 33 CFR 66.01–20 requires that all classes of private aids to navigation be maintained in proper operating condition and § 66.01–45 makes it clear that only those authorized to maintain PATONs may do so.

To assist owners in maintaining PATONs, we have required manufacturers to provide each purchaser a data sheet that accompanies the PATON equipment at the time of sale with the following information: the recommended service life of the optic, light source, and batteries. They must also indicate a replacement interval to ensure that the equipment meets the minimum requirements in case of degradation of the light or lens.

The commenter also stated that replacement bulbs, particularly tungsten-filament ones, are very expensive and that because of this some owners might replace the specialty-type base of the original light with an Edison-screw-type base and use household bulbs.

Our response: This final rule requires each owner, under ''application procedure,'' to document his or her aid's make, model, advertised intensity, and lamp source. The Coast Guard will maintain this information in a database that will help Coast Guard inspectors verify that the proper equipment is installed.

The second commenter pointed out that, in addition to applying to private aids to navigation in 33 CFR part 66, the standards also apply to lights used on artificial islands and fixed structures regulated under 33 CFR part 67 by the requirements of 33 CFR 67.01–1(b). The commenter urged the Coast Guard to establish a luminous-intensity standard in eventual 33 CFR 66.01–11(a)(3) for any light required to have a nominal range of 5 nautical miles.

Our response: We agree that all requirements under 33 CFR part 67 regarding the light signals supersede the requirements under 33 CFR part 66. However, to be consistent with the operational ranges, we are adding requirements for a 5-nautical-mile light

signal to part 66. We are also changing the intensity requirements to reflect minimum intensity, subject to change due to local environmental conditions, at the discretion of the District Commander.

The same commenter urged the Coast Guard to remove ''90 percent visibility'' standards from 33 CFR 67.20–5, 67.25–5(a), and 67.30–5(a), and rely on the provisions of 33 CFR 67.01–1(b) to invoke the luminous-intensity standard of eventual 33 CFR 66.01–11(a)(3).

Our response: Part 66 generally pertains to voluntary PATONs. Part 67 refers to PATONs required by statute or regulation for facilities that could pose a danger to navigation. This being so, we believe that a more stringent requirement is necessary. In addition, District Commanders generally require greater than the minimum intensities for PATON lights because of local environmental conditions; therefore, the standard of 90-percent visibility is a legitimate requirement for 33 CFR part 67.

The same commenter stated that the preamble to the proposed rule (67 FR 42513, 2nd column, 6th paragraph) implied that existing lights would not have to meet these new standards; however, rather than refer to existing lights, the proposed regulatory text for 33 CFR 66.01–12 referred to a ''new application'' for a private aid. This leaves uncertainty (and attendant liability) regarding applicability of 33 CFR 66.01–11 to those existing lights under 33 CFR parts both 66 and 67 that may be subject to the ''new application.'' For example, the existing regulations require the filing of an application for lights that are relocated (such as the obstruction lights on mobile offshore drilling units), or are subject to transfer of ownership in accordance with 33 CFR 66.01–55. The commenter urged the Coast Guard to clearly state that lights already in service can remain in service as long as they continue to meet the standards for luminosity and effective intensity in effect at the time they are placed in service.

Our response: If an owner must file a new application as a result of modifying, replacing, or installing a new light, his or her PATON must comply with the new standards. Changes in ownership or relocation of a moveable structure such as a mobile offshore drilling unit, while requiring a new application, would not require replacement of existing lighting equipment unless the environmental conditions of the new location demanded it.

The commenter stated that new 33 CFR 66.01–14(a)(4), which would require a manufacturer to provide a label indicating the date a light is placed in service, does not make sense.

Our response: We agree. After careful consideration, we modified the requirement so that the label indicates only the model and serial number of the lantern. The District Commander will maintain that information, details of the application, and the manufacturer's recommended replacement interval in a database accessible to Coast Guard inspectors.

The third commenter stated that 33 CFR 66.01–11 of the NPRM designates only three types of lights: 1-candela lights, 2-candela lights, and 10-candela lights. Lights of much higher candlepower are required for PATONs to attain the desired detection range.

Our response: We agree. We have changed the intensity requirements to reflect the minimum intensities required for given ranges. The District Commander will determine actual required intensity after considering local conditions including background lighting and visibility.

The commenter recommended deleting any references to ''nominal range'' and any correlating of intensity to such range.

We agree. We changed the term ''nominal range'' to ''range.''

The commenter suggested that, to make the rules for PATONs equivalent to those for Federal aids to navigation, we should require at least 50% of the effective intensity within ±4° of the horizontal plane for LED lights in alignment with current USCG in-house requirements for LED buoy lanterns (Specification G–SEC498A)—if not for all LED lights, then at least for LED lights greater than 10 candela.

Our response: We disagree. Federal aids to navigation currently have an approximate vertical divergence of ±2° to 50% of effective intensity. This vertical divergence is adequate for PATONs. There is no need to impose stricter requirements on the public.

The commenter suggested that under 33 CFR 66.01–11(a) (1) we should add the words ''* * * except range and sector lights''.

We agree. This final rule changes the requirements of §§ 66.01–11(a)(1) and 66.01–11(a)(2) to exclude directional lights.

The commenter stated that under 66.01–11(a)(2), given the limited vertical divergence of some LEDs, there may be no light emitted beyond the minimum angle of ±2°. There should be least 50% of effective intensity within an angle of ±2° of the horizontal plane and 10% to ±4° of the horizontal plane required for all beacons. There should be 50% of effective intensity within an angle of ±4° of the horizontal plane for all buoy lights, and all LED lights over 10 candela.

We disagree. Federal aids to navigation currently have an approximate vertical divergence of ±2° to 50% of effective intensity. We feel that this is an adequate vertical divergence for PATONs and that stricter requirements on the public are unnecessary. In response to the commenter's request for vertical divergence of ±4° at 10% of peak intensity, we feel that specifying the divergence at 50% of peak intensity is adequate; no additional breakdowns for divergence are necessary.

The commenter stated that under 33 CFR 66.01–11(a)(3), in keeping with the purpose stated in the proposed rule to ''make the rules for PATONs equivalent to those for Federal aids to navigation'', we should require a minimum effective intensity for PATONs. This minimum should correspond to the existing Federal minimum of 9 candelas.

We disagree. We will not establish a minimum intensity of 9 candela, because this might nullify PATONs in the range of 1 to 2 nautical miles. Requiring lights that produce a minimum intensity of 9 candelas may require owners of PATONs to unnecessarily purchase hardware that exceeds the requirements for their site. This would create an unnecessary burden for these owners.

The commenter stated that, under 33 CFR 66.01–11(a)(6), there is a relationship among the initial intensity of a new light, the minimum intensity required by the proposed and existing regulations (33 CFR parts 67 and 149), and the recommended interval for replacement when a light's intensity degrades to a value below the minimal required intensity. The recommended service life of the light sources, or lens, will depend on the initial candela of a new light and the level of degradation the candela could suffer before it fell below the minimal required intensity.

Our response: A lantern must meet the minimum requirements of 33 CFR part 66 throughout its service life. The manufacturer must determine a recommended replacement interval based on degradation of the lens or light source.

The commenter stated that, under 33 CFR 66.01–1(a)(7), a 10-day-reserve battery capacity is seldom sufficient for proper operation of a solar power supply designed to operate year-round without a low-voltage disconnect. We should require the use of lanterns with a minimum recharge capacity that exceeds the current consumption of

each LED during the month of least insolation at the site of the lantern.

Our response: Our major solar-powered lighthouses operate with an autonomy of 10 days, so we feel this reserve capacity is adequate for lanterns as well. A low-voltage disconnect helps preserve the battery if the lantern is housed in a sealed, self-contained power system. This rule requires the reconnect voltage to be high enough to prevent the light from short-cycling daily. We agree that power production for the site should exceed the load during the worst average month of insolation and are adding that requirement to § 66.01–11(a)(7).

Under 33 CFR 66.01–11(a)(7), the commenter recommended that we should require bird spikes (or some other bird-avoidance-apparatus) on all lights to prevent degrading the performance of both lenses and solar panels due to soiling by birds.

We disagree. Bird spikes should not be a requirement. Each manufacturer can determine whether its design encourages roosting of birds that could affect performance of the PATON and incorporate necessary means to discourage them, if necessary.

After careful consideration, we modified the requirement under 33 CFR 66.01–14 for the label to include only the model and serial number of the lantern. The District Commander will maintain that information, details of the application, and the manufacturer's recommended replacement interval in a database accessible by Coast Guard inspectors.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Cost of Rule

This final rule will impose minimal costs on manufacturers of PATONs. Costs will stem from the requirement that each PATON powered by an LED must bear information about the replacement interval of the light source. This information will be unique for many of the units sold each year, requiring manufacturers to calculate replacement intervals for about six models of PATONs so powered. Each model will have several possible replacement intervals depending on consumers' specifications. There is no market today for such PATONs, so it is impossible to know how many unique replacement intervals will be published. The cost estimate is thus based on an approximation, assuming that each manufacturer will calculate about ten different replacement intervals for an average of six different such PATONs in the first year. The range of costs for the ten international manufacturers of such PATONs could be as much as $16,500 for a total of 300 hours in the first year. The costs in following years are uncertain, because new manufacturers are likely to enter the market once this rule is enacted and significantly increase the number of such PATONs produced each year.

Manufacturers must also print model numbers and serial numbers labels on all PATONs. However, it is already industry practice to print this information on PATONs, so manufacturers are currently in compliance with Coast Guard requirements for labels. Therefore, we expect that these requirements will add no costs to the manufacture of either PATONs or labels.

Benefits of Rule

This final rule allows owners of PATONs to choose from not only tungsten bulbs, which are currently permitted, but also the new technology of LEDs. These consume less power and have a longer lifespan than the sources currently permitted. Purchasers of PATONs powered by LEDs are likely to reduce their electricity costs and spend less time maintaining their PATONs. Existing rules do not allow manufacturers to sell LEDs for use in PATONs.

Small Entities

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

The Coast Guard conducted a survey of industry, and discovered that there are now two domestic manufacturers of tungsten-incandescent-lighting sources used for aids to navigation. Only one of them qualifies as small according to the standards of the Small Business Administration. This rule, however, allows the small company to continue selling tungsten-incandescent PATONs. Barring unforeseen changes in the market for PATONs, we do not expect that the legalization of PATONs powered by LEDs will have any significant impact on the sale of cheaper, and more widely available, tungsten-incandescent PATONs.

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

Assistance for Small Entities

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

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

Collection of Information

This final rule calls for a new collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520]. There is no current market for PATONs powered by LEDs, so there is no determination of how many distinct models of such PATONS will be produced with unique replacement intervals. In the year proceeding promulgation of this rule, three domestic manufacturers of such PATONs are likely to produce about six models of such PATONs. Each model will have about ten unique replacement intervals based on various combinations of light-source characteristics. On these assumptions, the annual paperwork burden will be around 90 hours. At $55 (the hourly rate for a non-Federal employee doing this work), the cost should be around $4950 in the year proceeding promulgation.

As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to OMB for its review of the collection of information. OMB has approved the

collection. The part numbers are 33 CFR parts 66 and 67; the corresponding approval number from OMB is Control Number 1625–0011, which expires on July 31, 2005.

You need not respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have considered the environmental impact of this final rule and concluded that preparation of an Environmental Impact Statement or Environmental Assessment is not necessary. This rule has been thoroughly reviewed by the Coast Guard, and the undersigned has determined it to be categorically excluded, under Categorical Exclusion 34(e), from further environmental documentation. This determination accords with Section 2.B.2 and Figure 2–1 of NEPA implementing procedures, COMDTINST M16475.1D.

List of Subjects in 33 CFR Part 66

Navigation (water).

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 66 as follows:

PART 66—PRIVATE AIDS TO NAVIGATION

■ 1. Revise the citation of authority for part 66 to read as follows:

Authority: 14 U.S.C. 83, 84, 85; 43 U.S.C. 1333; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 66.01–5, revise the introductory text and paragraphs (a) and (f) to read as follows:

§ 66.01–5 Application procedure.

To establish and maintain, discontinue, change, or transfer ownership of a private aid to navigation, you must apply to the Commander of the Coast Guard District in which the aid is or will be located. You can find application form CG–2554 at *http://www.uscgboating.org/safety/aton/aids.htm* or you can request a paper copy by calling the Boating Safety Information line at (800) 368–5674. You must complete all parts of the form applicable to the aid concerned, and must forward the application to the District Commander. You must include the following information:

(a) The proposed position of the aid to navigation by two or more horizontal angles, bearings and distance from charted landmarks, or the latitude and longitude as determined by GPS or differential GPS. Attach a section of chart or sketch showing the proposed position.

* * * * *

(f) For lights: The color, characteristic, range, effective intensity, height above water, and description of illuminating apparatus. Attach a copy of the manufacturer's data sheet to the application.

* * * * *

■ 3. Revise § 66.01–10 to read as follows:

§ 66.01–10 Characteristics.

The characteristics of a private aid to navigation must conform to those prescribed by the United States Aids to Navigation System set forth in subpart B of part 62 of this subchapter.

■ 4. Add § 66.01–11 to read as follows:

§ 66.01–11 Lights.

(a) Except for range and sector lights, each light approved as a private aid to navigation must:

(1) Have at least the effective intensity required by this subpart omnidirectionally in the horizontal plane, except at the seams of its lens-mold.

(2) Have at least 50% of the effective intensity required by this subpart within ±2° of the horizontal plane.

(3) Have a minimum effective intensity of at least 1 candela for a range of 1 nautical mile, 3 candelas for one of 2 nautical miles, 10 candelas for one of 3 nautical miles, and 54 candelas for one of 5 nautical miles. The District Commander may change the requirements for minimum intensity to account for local environmental conditions. For a flashing light this intensity is determined by the following formula:

$$Ie=G/(0.2+t_2-t_1)$$

Where:

Ie = Effective intensity

G = The integral of the instantaneous intensity of the flashed light with respect to time

t_1 = Time in seconds at the beginning of the flash

t_2 = Time in seconds at the end of the flash $t_2 - t_1$ is greater than or equal to 0.2 seconds.

(4) Unless the light is a prefocused lantern, have a means of verifying that the source of the light is at the focal point of the lens.

(5) Emit a color within the angle of 50% effective intensity with color coordinates lying within the boundaries defined by the corner coordinates in Table 66.01–11(5) of this part when plotted on the Standard Observer Diagram of the International Commission on Illumination (CIE).

TABLE 66.01–11(5)—COORDINATES OF CHROMATICITY

Color	Coordinates of chromaticity	
	x axis	y axis
White	0.500	0.382
	0.440	0.382
	0.285	0.264
	0.285	0.332
	0.453	0.440
	0.500	0.440
Green	0.305	0.689
	0.321	0.494
	0.228	0.351
	0.028	0.385
Red	0.735	0.265
	0.721	0.259
	0.645	0.335
	0.665	0.335
Yellow	0.618	0.382
	0.612	0.382
	0.555	0.435
	0.560	0.440

(6) Have a recommended interval for replacement of the source of light that ensures that the lantern meets the minimal required intensity stated in paragraph (a)(3) of this section in case of degradation of either the source of light or the lens.

(7) Have autonomy of at least 10 days if the light has a self-contained power system. Power production for the prospective position should exceed the load during the worst average month of insolation. The literature concerning the light must clearly state the operating limits and service intervals. Low-voltage disconnects used to protect the battery must operate so as to prevent sporadic operation at night.

(b) The manufacturer of each light approved as a private aid to navigation must certify compliance by means of an indelible plate or label affixed to the aid that meets the requirements of § 66.01–14.

■ 5. Add § 66.01–12 to read as follows:

§ 66.01–12 May I continue to use the private aid to navigation I am currently using?

If, after March 8, 2004, you modify, replace, or install any light that requires a new application as described in § 66.01–5, you must comply with the rules in this part.

■ 6. Add § 66.01–13 to read as follows:

§ 66.01–13 When must my newly manufactured equipment comply with these rules?

After March 8, 2004, equipment manufactured for use as a private aid to navigation must comply with the rules in this part.

■ 7. Add § 66.01–14 to read as follows:

§ 66.01–14 Label affixed by manufacturer.

(a) Each light, intended or used as a private aid to navigation authorized by this part, must bear a legible, indelible label (or labels) affixed by the manufacturer and containing the following information:

(1) Name of the manufacturer.

(2) Model number.

(3) Serial number.

(4) Words to this effect: ''This equipment complies with requirements of the U.S. Coast Guard in 33 CFR part 66.''

(b) This label must last the service life of the equipment.

(c) The manufacturer must provide the purchaser a data sheet containing the following information:

(1) Recommended service life based on the degradation of either the source of light or the lamp.

(2) Range in nautical miles.

(3) Effective intensity in candela.

(4) Size of lamp (incandescent only).

(5) Interval, in days or years, for replacement of dry-cell or rechargeable battery.

Dated: November 18, 2003.

David S. Belz,

Rear Admiral, Coast Guard, Assistant Commandant for Operations.

[FR Doc. 03–29650 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD07–03–152]

RIN 1625–AA08

Special Local Regulations; 2003 Boca Raton Holiday Boat Parade, Riviera Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being established for the 2003 Boca Raton Holiday Boat Parade, Riviera Beach, Florida. The event will be held on December 20, 2003, on the waters of the Intracoastal Waterway between the C–15 canal, just North of Bella Marra, and the Hillsboro Boulevard bridge spanning the Intracoastal Waterway. These regulations exclude non-participant vessels from the regulated area, which includes the parade route, staging area, and viewing area. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: This rule is effective from 6 p.m. until 9 p.m. on December 20, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD07–03–152) and are available for inspection or copying at Coast Guard Group Miami, 100 MacArthur Causeway, Miami Beach, Florida, 33139 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: BMC Vaughn, Coast Guard Group Miami, Florida at (305) 535–4317.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM would be contrary to public safety interests and unnecessary. These regulations are needed to minimize danger to the public resulting from numerous spectator and participant craft in close proximity to each other around the staging, parade and viewing areas of an event that will occur in a relatively short period of time. Moreover, the regulation will be in effect for only 3 hours. For the same reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The 2003 Boca Raton Holiday Boat Parade is a nighttime parade of approximately 60 pleasure boats that range in length from 15 feet to 100 feet decorated with holiday lights. It is anticipated that approximately 50 spectator craft will view the parade. The parade will form in a staging area on the Intracoastal Waterway at the C–15 Canal, just North of Bella Marra at

approximately 26°25′ N, then proceed south on the Intracoastal Waterway (ICW) to Hillsboro Boulevard Bridge at approximately 26°19′ N, where the parade will disband. The regulated area includes the staging area in the vicinity of the C–15 canal, and the parade route.

Discussion of Rule

The special local regulations for this event prohibit non-participant vessels from entering the regulated area, which includes the staging area for the parade, in the vicinity of the mouth of the C–15 canal, and the parade route south along the Intracoastal Waterway to the Hillsboro Boulevard Bridge. During transit of the parade, these regulations prohibit non-participating vessels from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel, or within 50 feet on either side of the outboard parade vessels in the regulated area, unless authorized by the Coast Guard patrol commander.

The staging area and parade route encompass the Intracoastal Waterway from the C–15 Canal south to the Hillsboro Boulevard Bridge. No anchoring is permitted in the staging area.

Regulatory Evaluation

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

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the regulated area from 6 p.m. to 9 p.m. on December 20, 2003. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be in effect for only 3 hours late in the day when vessel traffic is low. Any traffic that needs to pass through the regulated area will be allowed to pass with the permission of the Coast Guard patrol commander once the parade participants have moved further along the parade route.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. Small businesses may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandate Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph 34(h), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (34)(h), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 100.35T–07–152 to read as follows:

§ 100.35T–07–152 2003 Boca Raton Holiday Boat Parade, Riviera Beach, FL.

(a) *Regulated area.* The regulated area encompasses the staging area and parade route for the 2003 Boca Raton Holiday Boat Parade, which includes all waters of the Intracoastal Waterway from the C–15 Canal south to the Hillsboro Boulevard Bridge.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated patrol commander for the event by Commander, Coast Guard Group Miami, Florida.

(c) *Special Local Regulations.* (1) *Staging area.* Entry or anchoring in the staging area, in the vicinity of the mouth of the C–15 canal where it intersects the Intracoastal Waterway, by non-participating vessels is prohibited, unless authorized by the patrol commander.

(2) *Parade route.* During the transit of parade vessels, non-participating vessels are prohibited from approaching within 500 feet ahead of the lead parade vessel, 500 feet astern of the last participating vessel in the parade, or within 50 feet either side of the outboard parade vessels, unless authorized by the patrol commander.

(c) *Effective period:* This section becomes effective at 6 p.m. and terminates at 9 p.m. on December 20, 2003.

Dated: November 24, 2003.

Harvey E. Johnson, Jr.,

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

[FR Doc. 03–30376 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 74, 78 and 101

[ET Docket No. 95–18, ET Docket No. 00–258, IB Docket No. 01–185; FCC 03–280]

Allocation of Spectrum at 2 GHz for Use by the Mobile-Satellite Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document modifies the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees in the 1990–2025 MHz band and Fixed Service (FS) microwave licensees in the 2180–2200 MHz band. These actions are taken in light of our recent decision to reallocate 30 megahertz of 2 GHz MSS spectrum to new Fixed and Mobile services as part of our Advanced Wireless Services (AWS) proceeding, and to allow MSS licensees to provide an Ancillary Terrestrial Component (ATC) in conjunction with their MSS networks. We have also considered a number of outstanding petitions for reconsideration filed in response to our initial decision to reallocate these bands to MSS. Together, these decisions will resolve outstanding issues relating to the introduction of MSS at 2 GHz and the consequential relocation of BAS and FS licensees in these bands, which in turn will set the stage for the introduction of a variety of new and highly anticipated advanced services into these bands.

DATES: Effective January 7, 2004.

FOR FURTHER INFORMATION CONTACT: Jamison Prime, Office of Engineering and Technology, (202) 418–7474.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 95–18, ET Docket No. 00–258, and IB Docket No. 01–185, FCC 03–280, adopted November 5, 2003, and released November 10, 2003. The full text of this Commission decision is available on the Commission's Internet site at *http://www.fcc.gov*. It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's duplication contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554; (202) 863–2893; fax (202) 863–2898; e-mail *qualexint@aol.com*.

Summary of the Third Report and Order and Third Memorandum Opinion and Order

1. In the Third Report and Order and Third Memorandum Opinion and Order the Commission retains in substantial part the BAS and FS relocation procedures that new MSS entrants in the 2 GHz band will follow and that were originally adopted in the Commission's *MSS Second Report and Order*, 65 FR 48174, August 7, 2000. The modifications we make herein respond to comments filed in response to the *Further Notice of Proposed Rulemaking*, 66 FR 47518, September 13, 2001, in the AWS proceeding and the Notice of Proposed Rulemaking, 66 FR 47621, September 13, 2001, in the MSS–ATC proceeding. In both of those actions, the Commission sought comment on how the introduction of new services into the 2 GHz MSS band would affect the existing BAS and FS relocation procedures. We also address petitions for reconsideration filed in response to the *MSS Second Report and Order*. Specifically, we make the following decisions herein:

For relocation of BAS in the 1990–2025 MHz band by new MSS entrants, we:

- Require the relocation of BAS incumbents in all television markets to the final (Phase II) plan at 2025–2110 MHz. This will eliminate the necessity of relocating BAS licensees to an interim (Phase I) channel plan as part of the previously adopted two-phase approach to relocation.
- Retain the requirement that all BAS operations in markets 1–30 must be relocated prior to the initiation of new MSS in the band.
- Amend the rules to specify that the time period for calculating a one-year mandatory BAS negotiation period for markets 1–30 and the ten-year sunset period commence upon publication of this Report and Order in the **Federal Register**.
- Require the relocation of all fixed BAS stations on channels 1 and 2 nationwide prior to the initiation of new MSS in the band.
- Decline to require the reimbursement of relocation expenses for BAS facilities for which initial

applications were filed at the Commission after adoption of the *MSS Second Report and Order*.

• Modify our final (Phase II) BAS channel plan to provide for seven channels of 12 megahertz each, and a 500 kilohertz data return link (DRL) band at both ends of the seven channels.

• Permit BAS licensees to operate indefinitely on their existing 17-megahertz wide channels in the 2025–2110 MHz band on a secondary basis, if they so choose.

• Clarify that an assignment or transfer of control does not disqualify a BAS incumbent from relocation eligibility.

For FS microwave relocation by MSS/ATC licensees in the 2180–2200 MHz band, we:

• Clarify that TIA TSB 10–F, or its successor, is an appropriate interference standard that may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band.

• Clarify that FS incumbents relocated through the negotiation process are eligible for reimbursement for relocation to leased facilities or alternative media, but decline to extend reimbursement eligibility to FS incumbents that voluntarily self-relocate.

• Decline to establish separate ''rolling'' negotiation periods for each FS incumbent as they are approached by MSS licensees for relocation negotiation.

• Amend the rules to specify that the time period for calculating the mandatory FS negotiation periods and the ten-year sunset period commence upon publication of the *Report and Order* in the **Federal Register**.

• Clarify that an assignment or transfer of control does not disqualify a FS incumbent from relocation eligibility.

• Decline to require MSS licensees to relocate FS incumbents from which the MSS operation would only receive, but not cause, interference prior to the ten-year sunset date.

2. The Third Report and Order and Third Memorandum Opinion and Order also address BAS and FS relocation issues as they pertain to 2 GHz MSS licensees as part of an overall effort to promote the rapid introduction of MSS into the 2 GHz bands. As such, we combine a Report and Order addressing the relevant comments that discuss BAS and Fixed Service relocation issues in two proceedings, ET Docket 00–258 and IB Docket No. 01–185, with a Memorandum Opinion and Order addressing petitions that seek reconsideration or clarification of relocation decisions made in the MSS Second Report and Order. The issues we consider generally relate to relocation timing, reimbursement eligibility, negotiation commencement, and technical/interference matters. Our decisions are designed to account for the actions the Commission has taken in the subsequent proceedings, described above, regarding the reallocation of a portion of the MSS band and the introduction of ATC services by MSS licensees.

3. As an initial matter, we are not altering the fundamental workings of the relocation process that was adopted in the *MSS Second Report and Order*. For example, throughout the AWS proceeding, commenters representing incumbent licensees' interests have urged us to maintain the general relocation principles of the Emerging Technologies proceeding even if we expand the nature and scope of services in the band. We agree.

4. In order to provide for MSS entry into the band in accordance with construction milestones, MSS licensees generally will have to relocate BAS and FS incumbents. We note that, due to the reallocation of the 1990–2000 MHz and 2020–2025 MHz bands in the AWS proceeding, non-MSS licensees that may begin service later will benefit from the band clearing paid for by MSS licensees. For this reason, we will provide an equitable mechanism by which MSS licensees can recover some of the relocation costs incurred from other licensees who will benefit from the band clearing in the 1990–2000 MHz and 2020–2025 MHz segments of the 1990–2025 MHz band. Thus, licensees benefiting from MSS licensees' efforts to clear incumbent BAS from the 1990–2025 MHz band will be expected to share the costs of this relocation.

5. However, because the nature and scope of new Fixed and Mobile service licensees that will operate in the 1990–2000 MHz and 2020–2025 MHz bands has not yet been determined, we do not set forth herein a comprehensive set of procedures that new Fixed and Mobile service providers (including AWS entrants) in these bands must follow to relocate incumbent BAS licensees and/or to reimburse MSS licensees that will have incurred relocation costs. We will instead consider such matters in a separate, future proceeding. This is because the decisions we make with respect to these bands may affect the manner by which we apply the general cost-sharing principles embodied in the Emerging Technologies procedures. For example, it is not clear how we would apply our traditional cost-sharing principles were we to use portion of the bands to provide relocation spectrum for Nextel's operations in the 800 MHz band or for MDS licensees in the 2150–2160/62 MHz band, to relocate federal government operations, or to provide interference separation between new AWS licensees and existing users in adjacent spectrum bands. We expect, however, that licensees that ultimately benefit from spectrum cleared by MSS shall bear the cost of reimbursing MSS licensees for the accrual of that benefit.

6. Some petitioners also note the complexity that introducing different services with potentially different geographic licensing schemes will have on cost-sharing in the band. For example, PCIA has suggested, inter alia, that we authorize a third-party clearinghouse to administer relocation matters. We likewise defer consideration of this issue because we have not yet adopted service rules for the Fixed and Mobile allocation in the band and, therefore, do not know the characteristics of new licensees that will share the 2 GHz band with the existing MSS licensees. We will be able to make more meaningful decisions with respect to these and other cost-sharing procedures at a future time.

7. Finally, since the actions taken herein include the relocation of existing services and the addition of new services within the subject frequency bands, there may be some impact on international coordination arrangements currently in effect. Therefore, operation in the border areas may be constrained pending the completion of consultations with foreign administrations, as necessary, and until existing agreements are revised and new agreements are developed, as appropriate.

Report and Order—BAS

8. We believe that the core interests that the Commission considered when it crafted the *MSS Second Report and Order* remain valid. The band will still host MSS licensees, and the unique, integrated nature of BAS has not changed. What has changed is that, in light of the decisions the Commission made in the AWS proceeding, we can expect additional new licensees to occupy the 1990–2025 MHz band.

9. Of the 15 megahertz of spectrum that we have reallocated from MSS in the 1990–2025 MHz band to support new Fixed and Mobile services, two thirds occupies the lower end (1990–2000 MHz) of the band and one third is situated at the upper end (2020–2025 MHz). The twenty megahertz of spectrum that remains for the four MSS licensees is situated in the 2000–2020 MHz portion of the band. Phase I of the transition was crafted so that BAS

licensees would cease use of the frequencies occupied by the existing BAS channel 1 (1990–2008 MHz) in order to allow MSS entry into the band, but could continue to use channel 2 until there were a significant number of MSS entrants so as to require use of the 2008–2025 MHz band. Now, however, more than half of the Phase I spectrum will be used for new Fixed and Mobile applications, such as AWS. Because each MSS licensee will be eligible to choose a five megahertz Selected Assignment in the revised MSS allocation, only one MSS licensee will be able to operate in the portion of the band that contains spectrum that will be available under Phase I of the relocation plan. In the best case—one in which the first MSS entrant selects the lowest portion of the band—the entry of the second MSS licensee will trigger Phase II of the relocation plan. If the first MSS licensee instead were to choose an assignment at 2005 MHz, 2010 MHz or 2015 MHz, its entry would immediately trigger Phase II.

10. We conclude that the practical effect of these changed circumstances is that new MSS licensees will begin using Phase II spectrum (2008–2025 MHz) sooner than was anticipated in the *MSS Second Report and Order*. Under the revised MSS allocation, no more than one MSS licensee may operate in the Phase I spectrum. The second MSS licensee seeking to begin operations (assuming the first chooses 2000–2005 MHz as its Selected Assignment) would initiate the Phase II relocation process. In order to meet the milestone requirements for MSS licensees—which require, for example, that non-GSO MSS licensees construct and launch the first two satellites in their system by January 17, 2005—MSS licensees will need to act quickly to deploy their systems and it is therefore highly likely that BAS relocation to the Phase I channels would not be complete when Phase II starts.

11. The initiation of the Phase I relocation and quick transition to Phase II would undercut one rationale for a two-phase transition—that the potential to leave substantial amounts of spectrum unused for a long period of time would result in inefficient use of valuable 2 GHz spectrum. In addition, a two-phase transition was an appropriate means of spreading out overall MSS relocation costs when it appeared that MSS licensees would begin operations within the Phase I spectrum and would not need Phase II spectrum until much later—after their systems had grown and matured. Under that scenario, a multi-phase approach would reduce initial costs to MSS entrants because a smaller number of BAS licensees (those in markets 1–100) would need to be relocated during Phase I, and because it is more likely that existing BAS equipment could be retuned (versus replaced) in order to operate in 14.5–15 megahertz-wide channels (versus the final 12.5 megahertz-wide channels). This plan also would have minimized the initial costs incurred by the Phase I MSS licensees. At that time, MSS system proponents were ''at widely differing points in the process of preparing to begin service.'' Now, due to impending milestones, the difference in time between an ''early'' MSS entrant and a ''later'' MSS entrant will necessarily be small.

12. Were we to retain the two-phase relocation approach, MSS licensees would be responsible for the costs of relocating some BAS licensees to the Phase I channel plan, plus the costs of relocating all BAS licensees to the Phase II channel plan soon after. This situation would negate any cost-spreading benefits that were envisioned by a two-phase approach, and might even increase overall relocation costs over a relatively short term. If Phase II of the transition is initiated during the time in which Phase I relocations are taking place, BAS operations may be on three different band plans, and some BAS licensees would face the disruption and down time associated with being twice relocated in a short period of time.

13. The *MSS Second Report and Order* also adopted a two-phase relocation plan because of the ''significant likelihood'' that little or no new equipment that would operate in the Phase II channels would be manufactured in time for MSS to begin service. Much of the new equipment was anticipated to be purchased during Phase II of the transition, at which time the Commission predicted that digital BAS equipment would ''benefit from more time for design development, becoming higher capacity, smaller, less expensive, and less power-intensive.'' Such developments have taken place. BAS manufacturers now offer extensive lines of digital equipment that are designed to operate in a variety of channel widths, including the narrow channels associated with Phase II. Moreover, digital equipment has been available for a sufficient time, in such quantity, and such cost that broadcast stations buying new equipment have begun purchasing digital ENG equipment. At the time the Commission developed its relocation plan, digital equipment for one BAS link was estimated to cost $93,000. Recent filings in the docket reflect lower cost projections. SBE now estimates relocation costs for a BAS link to be between $20,000 and $25,000 (for a receive site) and between $40,000 and $55,000 (for a typical ENG vehicle). ICO has derived similar cost estimates, based on its separate informal discussions with manufactures of 2 GHz capable digital BAS equipment. A survey of the broadcast industry conducted by the Ad Hoc 2 GHz Reallocation Committee in September 2003 estimated the total population of 2 GHz transmitters and receivers in use at television stations in the United States and projected an overall cost of $397 million to convert 2 GHz ENG services to digital operation and as much as $115 million to convert 2 GHz fixed links to digital operation. We note that the BAS relocation cost estimates based on the Ad Hoc Survey compare favorably to overall 2 GHz MSS relocation costs of up to $3 billion that had been estimated when the MSS allocation was initially proposed and support our overall conclusion that BAS equipment that can operate in the Phase II frequencies is now both readily available and available at a cost that is less than that which was anticipated at the time the relocation plan was adopted.

14. Collectively, all of these factors make the Phase I relocation plan no longer practical. We will initiate Phase II of the transition by way of this *Report and Order*. Our decision to initiate Phase II immediately is consistent with suggestions made by several commenters, including SBE. As a practical matter, because the rapid introduction of Phase II that would likely occur were we to retain the existing rules would eviscerate the benefits associated with Phase I of the transition, this decision simplifies what would otherwise become a complex relocation procedure with minimal attendant benefits. For the reasons described above, we can no longer conclude maintaining the existing two-phase relocation procedures strikes the appropriate balance that is ''not unreasonably burdensome upon MSS, while also fair to the incumbents.'' Given the subsequent developments in the 1990–2025 MHz band, our decision to initiate Phase II more effectively meets this goal.

15. The initiation of Phase II will allow us to supersede the remaining mandatory negotiation period for Phase I, which was due to end on November 13, 2003. Because the rules we adopt herein may not take effect before November 13, we will, effective immediately, extend the stay of the Phase I mandatory negotiation period that was adopted in the *Third Suspension Order* until such time that the rules become effective.

16. We will also retain the existing market-segmented approach whereby MSS licensees relocate BAS facilities in markets 1–30 before they begin operations, markets 31–100 within three years after MSS begins operations, and markets 101 and above within five years after MSS begins operations. Those parties that asked us to require that all BAS markets be relocated at once base their arguments, in large part, on the difficulties that will be faced by BAS licensees operating on different channel plans. The Commission previously considered these arguments in the *MSS Second Report and Order*, and ultimately concluded that a market-segmented approach was best suited to balance the needs of the current and future users of the band, notwithstanding the added challenges to BAS operations. Nevertheless, we also recognize that by initiating Phase II, BAS licensees in markets 31–100 will have to operate on five, as opposed to six, channels for up to three years. This situation would occur under our current rules if Phase II is initiated before Phase I is complete. Although licensees will benefit by being certain that they will be relocated to a final band plan in a set time period and in a single step, we also recognize that operation of five channels will create short-term burdens for some BAS licensees.

17. There are several factors can serve to mitigate any difficulties that may occur in coordinating BAS use in nearby markets that operate on different channel plans during the short duration of the transition. Although the final channel plan calls for the operation of seven channels in a smaller amount of spectrum, the bands of three of the new channels will be fully within the bands of three of the existing BAS channels, as is illustrated in Table 1 on page 10 of this *3rd R&O and 3 MO&O*. In addition, at least some new BAS equipment is expected to be designed so that it can readily be programmed to operate on both new and old BAS channels. We also note that use of BAS channels 8 and 9 is unaffected by the transition. Our decision to initiate Phase II relocation procedures will, in some ways, actually serve to reduce the difficulties associated with BAS licensees operating on different channel plans in different markets at the same time. Because there are now only two channel plans for the BAS band, licensees will not have to account for the possibility of concurrent BAS use of three separate channel plans.

18. MSS licensees—for whom cost deferral continues to be a concern—will continue to occupy former BAS frequencies. We see no reason to change our decision to require relocation on a market-segmented basis because other types of new licensees will also occupy the band. As SBE notes, it is unclear whether MSS or new terrestrial licensees will be the first to deploy service. Because MSS licensees have significant up-front costs and cannot engage in a gradual buildout because of the large geographic reach of an MSS signal, a MSS licensee that is the first entrant in the band will still be required to pay substantial up-front BAS relocation costs and seek pro-rata reimbursement from subsequent licensees, without the benefit of having had a revenue stream as it builds out its system. A market-differentiated approach allows for important cost-spreading benefits, particularly because the cost deferrals that were anticipated with a delay between Phase I and Phase II are no longer available. For example, although the Ad Hoc Survey shows that the greatest projected relocation costs will occur in markets 1–30, these costs are approximately 40 percent of the estimated cost to relocate all markets. Those commenters that assert that the market-segmented approach is unnecessary incorrectly assume that non-MSS licensees will be the first to initiate service in the 1990–2025 MHz band and, as a result, do not account for the unique needs of MSS licensees. In addition, the introduction of ATC does not alter our conclusion: because MSS licensees are obligated to begin satellite service before offering terrestrial services, our decision to permit ATC operations will not reduce up-front costs or provide an earlier revenue stream to defray such costs.

19. Finally, we find that the other factors that led to the adoption of a market-segmented approach are still valid. Because new equipment is readily available, one concern that drove the original two-phase relocation plan—that additional time would be needed for equipment manufactures to develop and build equipment that operated in the Phase II channels—is no longer at issue. Nevertheless, we recognize that it will still take time to retune or replace existing BAS equipment. For example, SBE estimates that it takes one month to transition one electronic news gathering transmit and receive system at an average television station. To require the relocation of all BAS facilities before MSS or other new licensees begin service in the band would result in intolerable delays in a process that has already been marked by longer-than-anticipated entry of new services into the band. Such a course would severely undermine the ability of MSS licensees to secure entry into the band. Accordingly, our decision to retain a market-segmented approach allows us to maintain a relocation plan that is not overly burdensome to MSS entrants but that is still fair to incumbents in the band.

20. The elimination of Phase I requires the slight modification of several procedures. First, the restriction on the use of the 2023–2025 MHz band until all BAS incumbents have been relocated to the final band plan is no longer appropriate. This restriction was designed to allow BAS licensees to use channel 2 under a channel plan that we will no longer be using. Moreover, we have subsequently reallocated the 2023–2025 MHz band to fixed and mobile services. Next, we re-establish the mandatory negotiation period between new licensees and BAS licensees in the top 30 markets. As discussed previously, this negotiation period was scheduled to end on November 13, 2002, for Phase I, under the terms of the *Third Suspension Order*. Now that we have resolved the issues that prompted us to suspend expiration of the mandatory negotiation period, we anticipate that MSS licensees will move quickly to resume the negotiation process to relocate BAS incumbents in the 1990–2025 MHz band. As such, we establish a new mandatory negotiation period between MSS licensees and BAS incumbents in markets 1–30 (and for all fixed BAS facilities regardless of market, as described in the Memorandum Opinion and Order, *infra*) that ends one year from publication of this Report and Order in the **Federal Register**. This time period is appropriate to maintain the balance of equities between MSS licensees and BAS incumbents given the amount of time that has already passed since adoption of the *MSS Second Report and Order,* and the upcoming MSS milestone requirements. We also modify our rules to make explicit that a one-year mandatory negotiation period for BAS markets 31 and above starts when the first MSS licensee begins operations. Finally, we specify that the relocation procedures will apply to the BAS markets as they existed upon adoption of the *MSS Second Report and Order*—June 27, 2000. Because these rules are based on a ranking of DMAs, and because DMAs and their rank are subject to modification, it is important for us to specify a fixed point in time in order to prevent potential confusion or frustrate negotiations between parties.

21. Under our existing rules, BAS licensees in markets 31 and above would have had to stop using BAS channel 2 after the Phase II negotiations

began but before MSS operations actually commenced in the 2008–2025 MHz band. Because BAS incumbents have not had the benefits of relocation under Phase I, we find this requirement is overly burdensome and we will ease our rules to allow all BAS licensees to use channels 1 and 2 (*i.e.* the 1990–2025 MHz band) while new licensees are negotiating with BAS licensees in the top 30 markets. BAS operations on the 1990–2025 MHz band in these markets must instead end once the first MSS licensee begins service.

22. We decline to consider more comprehensive modifications to our relocation procedures. We reject the Joint Commenters' suggestion that we explore such revisions as part of a Notice of Proposed Rulemaking as unnecessarily burdensome and time consuming. The modified version of the existing plan we are adopting serves the goals of our relocation policy and also accounts for the special circumstances involved in the transition of BAS and introduction of satellite services into the band.

Memorandum Opinion and Order—BAS

23. *Sunset Date.* In its Petition for Partial Reconsideration, NAB/MSTV requests that the sunset date after which new MSS licensees are not required to relocate BAS operations be eliminated, or at a minimum, revised to take effect ten years after the start of Phase II negotiations. We continue to believe that a sunset date is a vital component of the Emerging Technologies relocation principles. As stated in the MSS Second Report and Order, a sunset date provides a measure of certainty for new technology licensees, while giving incumbents time to prepare for the eventuality of moving to another frequency band. We recognize that the unresolved issues relating to MSS deployment have resulted in limited negotiation between BAS and MSS licensees to date. Now that we have addressed allocation matters for the 2 GHz MSS band, we find that revising a sunset date is appropriate. Further, our decision to initiate the Phase II negotiation period by way of this Report and Order is similar to our earlier decision to begin the Phase I negotiation period after publication of the MSS Second Report and Order in the **Federal Register**, which also began the original sunset date. In both cases, the beginning of the negotiation period marks a starting point for active negotiations between incumbents and new licensees. Accordingly, we are revising the sunset date as follows: a new licensee's obligation to relocate an incumbent BAS operator in the 1990–2025 MHz band will end ten years after the publication of this Report and Order in the **Federal Register**.

24. *Special Considerations for Fixed Facilities.* Under the two-phase relocation policy, BAS licensees would first cease operations on the 1990–2008 MHz band once MSS operations begin and, during Phase II, would stop using the 2008–2025 MHz band. In their Petition for Reconsideration of the *MSS Second Report and Order,* the Broadcast Filers ask that we expand mandatory relocation to those BAS facilities operating on channel 1 (1990–2008 MHz) in markets 31 and above that cannot be retuned and refiltered to accommodate the Phase I channelization. SBE, in a substantially similar request, asks that we require the relocation of all non-frequency agile links in both BAS channels 1 and 2 (1990–2025 MHz) outside the top 30 markets. This situation has the potential to disrupt some BAS operations and uniquely burden a limited class of licensees in a manner not considered in the *MSS Second Report and Order*. While the Commission found in the *MSS Second Report and Order* that the number of BAS channels could be reduced during the transition, it discussed the aggregate need for seven channels in a particular market and not the unique needs of incumbent licensees in the 1990–2025 MHz band with facilities that cannot operate on the remaining available channels. Many BAS facilities that potentially could have been retuned to operate in the interim Phase I channels will likely need to be replaced with spectrally efficient digital equipment in order to operate in the narrow Phase II channels. The elimination of BAS operations in the 1990–2025 MHz band can be expected to have a significant effect on fixed BAS facilities, such as intercity relays and studio-to-transmitter links. By contrast, mobile BAS facilities are generally licensed from band edge to band edge (*i.e.* authorized to operate in any one of the BAS channels) and should not suffer such harm. Accordingly, we will expand our relocation procedures to require fixed facilities operating on the 1990–2025 MHz band in markets 31 and above that are licensed on a primary basis to be relocated on the same schedule as other BAS facilities in the top 30 markets. If a suitable replacement channel cannot be found within a BAS market for a BAS channel 1 or 2 facility and the parties are unable to agree to an alternative relocation plan as part of the mandatory negotiation process, then the MSS licensee will not be obligated to replace that facility until such time that it is obligated to relocate all BAS facilities in that market. In this situation, the incumbent BAS licensee will still be required to cease use of the 1990–2025 MHz band once the first new licensee begins operations. The relocation of fixed stations on channels 1 and 2 in markets 31 and above will follow the same procedures that we established for the relocation of facilities in BAS markets 1–30, including a mandatory negotiation period that ends one year from publication of this Report and Order in the **Federal Register**.

25. *Subsequently Licensed BAS Stations.* In the *MSS Second Report and Order*, the Commission decided that those BAS facilities where the receipt date of the initial application was prior to June 27, 2000, the adoption date of the *MSS Second Report and Order*, could continue to operate on a primary basis until relocated or the sunset date. Initial applications filed after that date have been licensed on a secondary basis and, therefore, are not eligible for relocation. We find that the relocation eligibility cut-off date remains appropriate and, therefore, are denying petitions for reconsideration. None of the subsequent decisions to allow new services in the band or pleadings filed in response to the *MSS Second Report and Order* affects the fundamental decision to provide for an 85 megahertz BAS allocation. Holders of BAS licenses issued after the *MSS Second Report and Order* have known that the Commission proposed to reduce the 2 GHz BAS band to the 85 megahertz allocation in the 2025–2110 MHz band and have an opportunity to consider any additional expenses that may be associated with phased relocation as well as the development, availability, and Commission approval of digital equipment that can be used in the band.

26. *Phase II BAS Channel Plan.* SBE asks us to modify the channel plan that was adopted in the *MSS Second Report and Order* in order to provide consistent channel spacing. The use of seven 12 megahertz-wide channels will also allow for two 500 kilohertz-wide data return link (''DRL'') bands—one at each end of the re-farmed 2025–2110 MHz BAS band. These DRL bands would be available for narrowband downstream control channels to TVPU transmitters (such as an ENG truck) for applications such as transmitter power control. We find merit in this proposal. As SBE notes, a prime benefit of this plan is that manufacturers will be able to design for uniform bandwidth ratios. Moreover, by providing for two 500 kilohertz-wide DRL bands, we can promote efficient use of the band by BAS licensees.

Replacement of the current Phase II channel plan with the revised band plan could reduce MSS and other licensees' overall costs to relocate BAS. We revise our Phase II channel plan to specify seven 12 megahertz-wide channels and two 500 kilohertz-wide DRL bands. We will continue to permit split channel operation by BAS licensees operating on the Phase II channel plan. Although we did not prohibit such operation, and did not intend to suggest such a prohibition, we find it beneficial to clarify this issue. We also believe that BAS licensees should have the ability to continue to operate on channels 3–7 under the ''old'' channel plan, if they so elect. We will not prohibit BAS licensees from continuing to use the existing channel plan, so long as they restrict their use to the 2025–2110 MHz band when they are no longer permitted to use the 1990–2025 MHz band segment. Because the continued use of the existing channel plan could disrupt BAS licensees that have relocated to the Phase II channel plan and lead to the difficulties in coordination that SBE describes, we will permit continued use of the ''old'' channel plan only if all BAS licensees in a market will agree to such operation. Moreover, BAS licensees in such markets must operate on a secondary basis to other BAS licensees using the Phase II channel plan and must be prepared for the potential disruption associated with secondary operation, such as the interference likely to be caused by a BAS licensee operating on the Phase II channels that enters the market to cover a sporting event or breaking news story.

27. *Additional Issues.* Because the BAS relocation is segmented by market, BAS licensees in one market could be operating on a different channel plan than BAS licensees in adjacent markets for part of the relocation period. Several parties have asked for clarification of the procedures by which BAS operations will be protected from harmful interference during and after the transition. SBE describes situations in which large market BAS facilities cause interference in adjacent smaller markets even while operating within the bounds of the larger market, and predicts that BAS licensees operating in the smaller market may need to reconfigure their systems in order to eliminate or avoid interference. To the extent that such interference is similar to interference that small market stations have previously received from their large market neighbors, we expect the parties to use the same coordination procedures that they have previously employed to resolve these issues. Moreover, the Commission previously considered comments by SBE and NAB/MSTV regarding the complexities associated with the operation of BAS equipment on different channels in different markets, and found a simultaneous cut-over to be impractical. While these mitigation options may not be available in all cases, we find the cooperative procedures of BAS entities will minimize any negative effects. We also clarify that an assignment or transfer of control will not disqualify an incumbent in the 2 GHz BAS band from relocation eligibility so long as the facility is not rendered more expensive to relocate as a result.

Report and Order—FS

28. *ATC Inteference to FS.* We affirm that TIA TSB 10–F, or its successor standard, is an appropriate standard for purposes of triggering relocation obligations by new terrestrial (ATC or AWS) entrants in the 2 GHz band. Due to the technical similarity of MSS terrestrial operations to PCS which operates in nearby bands and for which TSB 10–F is well-suited, we conclude that the criteria specified in TSB 10–F should be equally suitable to determine where sharing would be possible between FS and MSS terrestrial operations in the 2180–2200 MHz band.

29. Furthermore, consistent with the approach we adopted for MSS satellite operations in the *MSS Second Report and Order*, where an initial MSS licensee of terrestrial ATC operations relocates both links of a paired FS microwave link, any subsequent licensee(s) that benefit from the relocation will be required to participate in the reimbursement of the initial licensee. We decline, however, to adopt API's suggestion that we require the initial MSS licensee of ATC to relocate both paired FS links and, instead, leave that decision to be resolved in the first instance through the relocation negotiation process. As a practical matter, we again note that when one path of a paired FS link is relocated, it is often necessary due to technical considerations to relocate both path links. Consequently, even without a mandatory requirement, we believe that both links will, in practice, be relocated in most instances. In particular, since the FS transmit/receive electronics, antenna and tower are often highly integrated, it would likely be more expensive and complex to relocate just one link due to the additional retuning and retrofitting—above and beyond that normally involved with paired links—that would be required to ensure seamless operation with the legacy link under the comparable facility requirement. The general result is that there should be a clear financial and technical incentive for MSS/ATC licensees to relocate both paired links as at the same time.

30. On the other hand, there can be individual situations where it is both economically and technically feasible within reason to relocate just one of the paired links. To the extent such a situation occurs, we do not believe that MSS/ATC licensees should be *per se* deprived of this option by regulation. In any event, FS licensees are ensured of comparable facilities under the relocation rules and they have a year under these rules to determine if a satisfactory result has been achieved. Therefore, we continue to believe that leaving the decision of whether to relocate both paired links to the negotiation process is the better and more flexible approach.

31. *Self-relocation to leased facilities or alternative media.* As an initial matter, we affirm that FS incumbents that are relocated through the negotiation process are eligible for reimbursement for relocation to leased facilities or alternative media. This is consistent with the approach we have previously taken in the *Emerging Technologies* and *Microwave Cost-Sharing* proceedings. We decline, however, to extend reimbursement eligibility or automatic reimbursement credits as requested by Blooston to FS incumbents that voluntarily self-relocate to leased facilities or alternative media. In addition to the reasons discussed in the MO&O section with regard to Joint Petitioners' and SBC's related requests, we find that a reimbursement scheme for voluntary self-relocation was not envisioned by the MSS/FS relocation plan and would likely require a clearinghouse to administer reimbursement claims. We believe that initiating a plan for reimbursing those who voluntarily relocate is not warranted and that a further rulemaking at this stage to consider such a plan would only serve to delay MSS entry in the 2 GHz band.

32. *Negotiation periods.* In response to the *AWS Further Notice*, API and the Association of Public-Safety Communications Officials-International (APCO) urge that we clarify that each FS incumbent approached by an MSS licensee for relocation negotiations would receive the benefit of a full two year (or three year for Public Safety) negotiation period. We decline to establish such ''rolling'' negotiation periods during which each FS incumbent would be allowed a full two or three year mandatory negotiation period that would be triggered when

notified by an MSS licensee of its desire to negotiate. Such a scheme would result in a large number of unrelated mandatory negotiation periods that would tend to further delay the overall relocation process in the band. We believe that such discontinuity would be likely to create considerable confusion and lack of finality as compared with a single uniform negotiation period for all FS incumbents.

Memorandum Opinion and Order—FS

33. *Ten-year sunset period.* We do not believe it would be in the public interest to delay further the start of the mandatory negotiation period for a further uncertain period of time (*i.e.*, until whenever the first MSS licensee seeks to negotiate relocation of an FS incumbent). Therefore, we are specifying that the date of publication of this Report and Order and Memorandum Opinion and Order in the **Federal Register** will be the starting date of the mandatory negotiation period between MSS licensees and FS incumbents, as well as the starting date of the related ten-year sunset period for relocation of FS licensees by MSS licensees in the 2180–2200 MHz band. Similarly, we believe that the duration of the mandatory negotiation period should be modified—from two years for non-public safety and three years for public safety—to one year and two years, respectively. Given the amount of time that has already passed since adoption of the MSS Second Report and Order and the upcoming MSS milestone requirements, we believe that this modification is appropriate to maintain the balance of equities between MSS licensees and FS incumbents.

34. We decline to adopt the Joint Petitioner's request that MSS licensees be required to notify FS incumbents of their intention to relocate incumbents within 90 days of the start of the mandatory negotiation period. Under the relocation plan adopted in *MSS Second Report and Order*, we have placed substantial relocation burdens on MSS licensees with respect to FS—in addition to BAS—incumbents in the 2 GHz band. In order to help balance these substantial burdens, we believe that MSS licensees should be afforded maximum flexibility in choosing the timing of negotiations during the mandatory negotiation period. At the same time, we find that the negotiation starting date that we have adopted herein will provide sufficient notice for all FS incumbents to factor such relocation into their business plans. Therefore, we affirm that MSS licensees may elect to notify FS incumbents of their desire to enter into relocation negotiations at any time during the mandatory negotiation period and will not be required to provide anticipatory notice prior to doing so. Taken together, we believe that these actions balance the public interests in providing the opportunity for early entry of new MSS operations while maintaining the integrity of incumbent FS services in the 2 GHz band.

35. *Assignment or transfer of control.* We agree with the Joint Petitioners' analysis that our policy on assignment or transfer of control of incumbent FS licensees needs to be clarified. Therefore, consistent with our finding in the 18 GHz Relocation Proceeding, we clarify that an assignment or transfer of control will not disqualify an FS incumbent in the 2180–2200 MHz band from relocation eligibility so long as the facility is not rendered, as a result, more expensive to relocate. On the other hand, FS stations newly authorized after the date of publication of the *MSS Second Report and Order* (*i.e.*, September 6, 2000) will not be eligible for relocation. In addition, FS stations making changes that are otherwise classified as major modifications under § 1.929(a) will not be eligible for relocation.

36. *Interference to MSS Operations.* Joint Petitioners and Enron urge that MSS licensees be obligated to relocate incumbents prior to the ten-year sunset whenever the MSS licensee would receive interference from incumbent FS operations in addition to whenever interference is caused to FS incumbents. Enron further asserts that the current provisions ignore half of the interference picture prior to the sunset and would allow MSS licensees to engage in ''cherry picking'' where they commence operations in order to minimize initial relocation expenses during their start-up phase. Petitioners correctly observe that, prior to the ten-year sunset for FS relocation in the 2 GHz band, we require MSS licensees to relocate FS incumbent licensees after coordination and a determination according to TIA TSB–86 that interference would be caused to an FS incumbent. Subsequent to the sunset, FS microwave licensees will be required to relocate at their own expense within six months of presentation of a written demand by a MSS licensee that determines it ''will receive harmful interference according to TIA TSB–86, or that has received actual harmful interference from the FS licensee.''

37. We decline to require MSS licensees to relocate FS incumbents from which they receive—but do not cause—interference prior to the end of the sunset period. As a practical matter, we believe that MSS licensees will act in their own best interests to maximize the marketability of their service when dealing with any interference that might be received from FS incumbents. In that regard, nothing in the *MSS Second Report and Order* or our finding herein prohibits an MSS licensee from making an individual business decision to resolve instances of interference received from an FS incumbent prior to the sunset date through a voluntary arrangement with the FS licensee. Such an arrangement could include terms for relocating the incumbent FS operation. Consequently, rather than making such relocation mandatory, we believe that it is better for each MSS licensee to make its own business case decision whether to relocate FS incumbents from which it may receive interference in light of the quality of service the MSS licensee seeks to provide.

38. Furthermore, as the Commission stated in the *MSS Second Report and Order* with regard to balancing the relocation burdens on each service, MSS licensees in the 2 GHz band will face unusually high costs in gaining early access to spectrum because of the nationwide nature of their service. Requiring MSS licensees to relocate only those FS incumbents to which interference is caused prior to the sunset period is but one step the Commission has taken to minimize the relocation expense for MSS licensees and, thereby, provide their early access to the 2 GHz band. Indeed, the Commission found in the *MSS Second Report and Order* that many of the adopted measures will work hardships upon the incumbents in order to minimize relocation costs to MSS licensees. At the same time, requiring MSS licensees to relocate FS incumbents who are caused interference by MSS operations prior to the sunset will ensure the integrity and continuity of the services provided to the public by incumbent FS licensees during the ten-year sunset period. Furthermore, the sunset date for FS relocation serves the public interest by providing certainty to the relocation process, prevents MSS licensees from being obliged to pay relocation expenses indefinitely, and provides incumbents with ample time to either negotiate relocation or plan for relocation themselves. Therefore, we affirm that MSS licensees are not required to relocate FS incumbents from which they receive, but do not cause, interference prior to the sunset date. After the sunset date, FS incumbents will be required to relocate at their own expense upon demand by a MSS licensee that determines it will receive

harmful interference according to TIA TSB–86 (or TSB–10F in the case of ATC operations by MSS licensees), or that has received actual harmful interference from the FS licensee. We do not find these provisions to be inconsistent as suggested by petitioners. Instead, we find that they are complementary toward achieving our underlying goal of crafting a relocation process that strikes a fair balance for all parties.

39. *Voluntary self-relocation.* Joint petitioners and SBC request that we clarify that incumbents in the 2110–2150 MHz or 2165–2200 MHz bands that voluntarily self-relocate may participate in 2 GHz band relocation cost sharing in similar fashion to the relocation plan we adopted for Personal Communications Services (PCS) in a separate proceeding. ICO responds that such an approach is inappropriate in this proceeding because, unlike the situation in the PCS cost-sharing proceeding cited by Joint Petitioners, MSS may not identify their selected 2 GHz frequencies until they have placed their first satellite in its intended orbit.

40. We decline to extend cost-sharing eligibility to self-relocating FS incumbents. Under the plan adopted in the *MSS Second Report and Order*, relocation of incumbent FS microwave links need occur only if there is harmful interference. We find that allowing self-relocating FS incumbents to share in relocation costs would circumvent our intention of limiting relocation to those FS incumbents receiving interference which cannot be resolved through the coordination process and a TSB–86 (or TSB 10–F for terrestrial ATC to FS) interference determination. Furthermore, we find that requiring relocation under those circumstances would inordinately increase the relocation cost burden on MSS licensees.

Final Regulatory Flexibility Analysis

41. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in each of the following documents: the *Further Notice of Proposed Rulemaking* component of the *First Report and Order and Further Notice of Proposed Rulemaking*[2] *and the Third Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*[3] in ET Docket No 95–18, the *Notice of Proposed Rulemaking*[4] in IB Docket No. 01–185, and the *Further Notice of Proposed Rulemaking component of the Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*[5] in ET Docket No. 00–258. The Commission sought written public comments on the proposals in the *Further Notice of Proposed Rulemaking*, the *Third Notice of Proposed Rulemaking, the Notice of Proposed Rulemaking and the Further Notice of Proposed Rulemaking*, including comment on each IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[6]

A. Need for, and Objectives of, the Third R&O and Third MO&O

42. The goal of the *Third Report and Order and Third Memorandum Opinion and Order* is twofold. First, in the *Third Report and Order*, we modify the rules that new 2 GHz Mobile-Satellite Service (MSS) licensees are to follow when relocating incumbent Broadcast Auxiliary Service (BAS) licensees that currently operate within the 1990–2025 MHz band and when relocating Fixed Service (FS) microwave licensees that currently operate within the 2180–2200 MHz band. For the 1990–2025 MHz band, we immediately initiate Phase II of a planned two-phase relocation plan. In conjunction with the beginning of Phase II, we restart negotiation periods between MSS licensees and BAS incumbents to run for the publication of the *Third Report and Order and Third Memorandum Opinion and Order* in the **Federal Register**. These actions are necessary because the *Third Report and Order*[7] in ET Docket No. 00–285 reallocated the 1990–2025 MHz band to allow for both MSS licensees and new fixed and mobile service licensees to occupy the band. The allocation of a portion of the 1990–2025 MHz band to new fixed and mobile services means that MSS licensees will no longer be the only parties involved in the relocation of BAS incumbents that currently occupy the band. MSS licensees will operate in a reduced amount of spectrum from 2000–2020 MHz, and will now need to relocate BAS incumbents from spectrum that was designated as part of Phase II of the BAS relocation plan. Accordingly, incumbent BAS licensees must be relocated of this Phase II spectrum much more quickly that was anticipated when MSS was to occupy the entire 1990–2025 MHz band. It is also necessary to reset the negotiation periods to recognize the initiation of Phase II, the entry of new licensees into the band, and the lack of negotiation that was expected to have taken place between MSS and BAS licensees by this time. For the 2180–2200 MHz band, we affirm that the TIA TSB 10–F interference standard may be used for determining interference from MSS ATC stations to incumbent FS operations in the 2 GHz band. This modification was necessary because the *Order*[8] in IB Docket No. 01–185 allowed MSS licensees to incorporate Ancillary Terrestrial Components into their systems. The 10–F standard is appropriate for the interference analysis of such non-satellite system components.

43. In the *Third Memorandum Opinion and Order*, we both grant and deny petitions for reconsideration and clarification of the above-referenced *First Report and Order and Further Notice of Proposed Rulemaking*. With respect to the 1990–2025 MHz band, we grant petitions and revise the sunset date (*i.e.* the date by which new licensees are no longer obligated to relocate incumbents in the band);

[1] *See* 5 U.S.C. 603. The RFA, see 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

[2] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *First Report and Order and Further Notice of Proposed Rule Making*, 12 FCC Rcd 7388 (1997), 62 FR 19509 and 62 FR 19538, April 22, 1997, respectively.

[3] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95–18, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 13 FCC Rcd 23949 (1998) 63 FR 69606 and 63 FR 69562, December 17, 1998.

[4] 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, IB Docket No. 01–185, *Notice of Proposed Rulemaking*, 16 FCC Rcd 15532 (2001), 66 FR 47621, September 13, 2001.

[5] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 16 FCC Rcd 16043 (2001), 66 FR 47591, September 13, 2001.

[6] *See* 5 U.S.C. 604.

[7] Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems, ET Docket No. 00–258, *Third Report and Order, Third Notice of Proposed Rulemaking, and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003), 68 FR 12015 and 68 FR 11986, March 13, 2003, respectively.

[8] 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 Bands, IB Docket No. 01–185, Report and Order and Notice of Proposed Rulemaking, 18 FCC Rcd 1962 (2003), 68 FR 33640, June 5, 2003, Errata (rel. March 7, 2003), appeal pending, AT&T Wireless Services, Inc. and Cellco Partnership d/b/a Verizon Wireless v. FCC, No. 03–1191 (D.C. Cir. filed July 8, 2003).

require that fixed facilities operating in BAS channels 1 and 2 (1990–2008 MHz and 2008–2025 MHz, respectively) be relocated prior to the initiation of MSS service; and modify the channel plan for the frequency band to which BAS operations will be relocated. We otherwise deny the petitions relating to the 1990–2025 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to recognize the entry of new fixed and mobile service licensees in the 1990–2025 MHz band and the lack of negotiations to date between MSS and BAS licensees; to provide relief to fixed BAS facilities that would otherwise have to cease operation for three years or more; and to provide a new BAS channel plan that promotes efficiencies in equipment manufacture and operation by incorporating uniform channel sizes. For the 2180–2200 MHz band, we adopt a date certain from which FS–MSS negotiations and the sunset date run, and clarify that a transfer or assignment will not affect a FS licensee's relocation rights. We otherwise deny the petitions relating to the 2180–2200 MHz band and retain our previously adopted relocation rules. The changes we adopt are necessary to provide clarity to the relocation process, and serve to reduce the notification requirements for MSS licensees regarding initiation of the negotiation period that were required under the previous relocation rules.

44. Collectively, the rules we adopt in the *Third Report and Order and Third Memorandum Opinion and Order* are designed to allow for the rapid provision of MSS in the 2 GHz band by resolving outstanding issues relating to the relocation of incumbent users in the 1990–2025 MHz and 2180–2200 MHz bands. These actions are based on our response to petitions for reconsideration and clarification filed in the docket, in conjunction with the proposals we set forth in the *Notice of Proposed Rulemaking* in IB Docket No. 01–185 and the *Further Notice of Proposed Rulemaking* component of the *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in ET Docket No. 00–258.

B. Sumary of Significant Issues Raised by Public Comments in Response to the IRFA

45. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

46. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[9] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' [10] In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[11] A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[12]

47. *Fixed Microwave Services.* Microwave services include both common carrier [13] and private-operational fixed [14] services. The SBA has developed a small business size standard for Cellular and Other Wireless Telecommunication, of which these fixed microwave services are a part, and which consists of all such firms having 1,500 or fewer employees.[15] According to Census Bureau data for 1997, in this category there was a total of 977 firms that operated for the entire year.[16] Of this total, 965 firms had employment of 999 or fewer employees, and an additional twelve firms had employment of 1,000 employees or more.[17] Thus, under this size standard, the majority of firms can be considered small.

48. *Broadcast Auxiliary Service (BAS).* BAS involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: (1) For TV BAS, we will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million;[18] (2) For Aural BAS, we will use the size standard for Radio Stations, which consists of all such companies having annual receipts of no more than $6 million;[19] (3) For Remote Pickup BAS we will use the small business size standard for Television Broadcasting when used by a TV station and that for Radio Stations when used by such a station.

49. According to Commission staff review of BIA Publications, Inc. Master Access Television Analyzer Database as of May 16, 2003, about 814 of the 1,220 commercial television stations in the United States had revenues of $12 million or less. We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations [20] must be included.[21] Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. There are also 2,127 low power television stations (LPTV).[22] Given the nature of this service, we will presume that all LPTV licensees qualify as small entities under the SBA size standard. According to Commission staff review of BIA Publications, Inc., Master Access Radio Analyzer Database, as of May 16, 2003, about 10,427 of the 10,945 commercial radio stations in the United States had revenue of $6 million or less. We note,

[9] 5 U.S.C. 604(a)(3).

[10] 5 U.S.C. 601(6).

[11] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.''

[12] 15 U.S.C. 632.

[13] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's Rules).

[14] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[15] 13 CFR 121.201, NAICS code 517212 (changed from 513322 in October 2002).

[16] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513322 (issued October 2000).

[17] Id. The census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.''

[18] 13 CFR 121.201, NAICS code 515120.

[19] Id. NAICS code 515112.

[20] ''Concerns are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.'' 13 CFR 121.103(a)(1).

[21] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic concern's size.'' 13 CFR 121.103(a)(4).

[22] FCC News Release, ''Broadcast Station Totals as of September 30, 2002'' (Nov. 6, 2002).

however, that many radio stations are affiliated with much larger corporations with much higher revenue, and, that in assessing whether a business concern qualifies as small under the above definition, such business (control) affiliations [23] are included.[24] Our estimate, therefore, likely overstates the number of small businesses that might be affected by our action.

50. *Cable Antenna Relay Service (CARS).* CARS includes transmitters generally used to relay cable programming within cable television system distribution systems. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million. According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[25] Of this total, 1,180 firms had annual receipts of under $10 million, and an additional 52 firms had receipts of $10 million to $24,999,999.00.[26] Thus, under this standard, the majority of firms can be considered small.

51. *Geostationary, Non-Geostationary Orbit, Fixed Satellite, or Mobile Satellite Service Operators (including 2 GHz MSS systems).* The Commission has not developed a definition of small entities applicable to geostationary or non-geostationary orbit, fixed-satellite or mobile-satellite service operators. The SBA has developed a small business size standard for Satellite Telecommunications Carriers, which consists of all such companies having $12.5 million or less in annual receipts.[27] According to Census Bureau data for 1997, there were 324 firms that operated for the entire year.[28] Of this total, 273 firms had annual receipts under $10 million, and an additional twenty-four firms had annual receipts of $10 million to $24,999,990.[29] Thus, under this size standard, the majority of firms can be considered small.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

52. The *Third Report and Order and Third Memorandum Opinion and Order* modifies relocation rules that were originally adopted in the *Second Report and Order and Second Memorandum Opinion and Order* in this docket. To a large degree, the item contains no new reporting, recordkeeping, or other compliance requirements. For example, we retain the requirement that all BAS operations in markets 1–30 be relocated prior to the initiation of MSS in the band; decline to change the qualifications by which a BAS licensee is eligible for relocation; continue to permit BAS licensees to operate on a 17-megahertz wide channel plan within the reduced BAS spectrum band if all licensees within a market so choose; and do not alter the relocation process for FS licensees (such as adding provisions to permit self-relocation or adopting ''rolling'' negotiation periods). Because we previously addressed the reporting, recordkeeping, and other compliance requirements associated with these matters as part of the FRFA adopted in the *Second Report and Order and Second Memorandum Opinion and Order*, we incorporate by reference those aspects of the reporting and other compliance requirements that remain unchanged.

53. Our decision, however, modifies several dates associated with the relocation of BAS and FS incumbents. Specifically, the duration of the mandatory negotiation period for BAS markets 1–30, FS stations, and the sunset date are all based on the publication date of the item in the **Federal Register**. We previously froze the mandatory negotiation period for BAS relocation—originally scheduled to end on September 6, 2003—because unresolved issues relating to MSS deployment had limited the negotiations between MSS and BAS licensees.[30] Because the *Third Report and Order and Third Memorandum Opinion and Order* adopts rules and procedures that will allow the relocation of BAS and FS licensees to continue, we establish new dates associated with relocation of BAS and FS incumbents. Because the new dates are designed to afford parties that are involved in the relocation with time frames that are substantially similar to those that were previously adopted, the change in dates will have no adverse impact on all parties involved in the relocation, including smaller entities.

54. The initiation of Phase II of the BAS relocation and the requirement that all fixed BAS stations operating on channels 1 and 2 be relocated prior to the initiation of MSS operations both have the potential to affect the compliance burdens associated with relocation. The initiation of Phase II of the relocation process will reduce the overall relocation burdens for MSS by eliminating the expense and reporting requirements that are associated with Phase I. There will be no disruption and no uncertainty for BAS licensees because the rules adopted herein provide sufficient time for fixed facilities to relocate without losing their ability to operate on their existing primary status.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''[31]

56. In response to Petitions for Reconsideration of the *Second Report and Order and Second Memorandum Opinion and Order,* we concluded that the temporary loss of BAS channels 1 and 2 during relocation would have the potential to disrupt fixed BAS operations and uniquely burden licensees. For example, loss of the studio-to-transmitter links would likely necessitate television broadcast stations to obtain alternate facilities to transport their signal to their transmitter for broadcast. Otherwise, these licensees would have to wait for as many as five years before their facilities would be relocated. Because we are reluctant to impose such a delay which would unacceptably jeopardize television operations that rely on fixed BAS facilities on channels 1 and 2, we decline to exempt smaller entities from

[23] ''Concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.'' 13 CFR 121.103(a)(1).

[24] ''SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size.'' 13 CFR 121.103(a)(4).

[25] 13 CFR 121.201, NAICS code 517510 (changed from 513220 in October 2002).

[26] Id.

[27] 13 CFR 121.201, NAICS code 517410 (changed from 513340 in October 2002).

[28] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Receipt Size of Firms Subject to Federal Income Tax: 1997,'' Table 4, NAICS code 513340 (issued October 2000).

[29] Id.

[30] Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile-Satellite Service, ET Docket No. 95–18, *Order,* 17 FCC Rcd 15141 (2002).

[31] 5 U.S.C. 603(c)(1)–(c)(4).

the rule requiring the rapid relocation of these facilities.

57. We retained the general rule that staggers the relocation of BAS facilities based on a market-size approach. Under this rule, the burden of MSS entrants to relocate BAS facilities is staggered over time, based on the size of a particular BAS market. Unlike mobile BAS operations, which can typically be tuned to operate on different channels, fixed BAS facilities are tuned to a single channel. Because of the importance of these fixed channels and because the temporary loss of channels 1 and 2 could uniquely impair operations for BAS licensees with fixed facilities tuned to these channels, we concluded that such facilities should be relocated without delay. We also rejected proposals that would have MSS relocate all BAS facilities, regardless of their fixed or mobile status or the size of market in which they operate. Although this action would have provided the same relief for fixed BAS facilities operating on channels 1 and 2, a wholesale front-loaded relocation of all BAS facilities would have imposed significant burdens on MSS licensees, including those MSS licensees that are small entities.

F. Report to Congress

58. The Commission will send a copy of the *Third Report and Order and Third Memorandum Opinion and Order* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.[32] In addition, the Commission will send a copy of the Second Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of this *Third Report and Order and Third Memorandum Opinion and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.[33]

Ordering Clauses

59. Pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f), 303(g) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f), 303(g) and 303(r), this Third Report and Order and Third Memorandum Opinion and Order IS ADOPTED and that parts 2, 74, 78, and 101 of the Commission's Rules ARE AMENDED as specified in rule changes, effective January 7, 2004.

60. Pursuant to sections 4(i), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), and 303(r), and 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d), the expiration date of the initial two-year mandatory BAS negotiation period for Phase I set forth in the *Second Report and Order* in ET Docket No. 95–18 IS HEREBY SUSPENDED until the effective date of the rules adopted in this *Third Report and Order and Third Memorandum Opinion and Order*, effective immediately upon release of this order, consistent with the terms discussed in the order.

61. Pursuant to sections 4(i), 302, 303(e), 303(f), 303(g), 303(r) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 302, 303(e), 303(f), 303(g) and 405, that the petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE GRANTED to the extent discussed in the Third Report and Order and Third Memorandum Opinion and Order.

62. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*) and Celsat America, Inc. ARE DISMISSED AS MOOT.

63. The petitions for reconsideration in ET Docket No. 95–18 filed by Joint Petitioners (CICC, FWCC, *et al*), Enron North America Corp., SBC Communications, Inc., Broadcast Filers (Cosmos Broadcasting Corp., Cox Broadcasting, *et al*), Society of Broadcast Engineers, Inc., and National Association of Broadcasters and the Association for Maximum Service Television, Inc., ARE DENIED in all other respects.

64. The Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Third Report and Order and Third Memorandum Opinion and Order, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

65. The proceeding in ET Docket No. 95–18 IS TERMINATED.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 74 and 101

Radio.

47 CFR Part 78

Cable television, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 74, 78 and 101 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended by revising footnotes NG156, NG168, NG177 and NG178 in the list of non-Federal Government (NG) Footnotes to read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG156 The band 2000–2020 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to June 27, 2000, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2000–2020 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG168 The band 2180–2200 MHz is also allocated to the fixed and mobile services on a primary basis for facilities where the receipt date of the initial application was prior to January 16, 1992, and on a secondary basis for all other initial applications. Not later than December 9, 2013, the band 2180–2200 MHz is allocated to the fixed and mobile services on a secondary basis.

* * * * *

NG177 In the bands 1990–2000 MHz and 2020–2025 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to June 27, 2000, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 (''Advanced Wireless Services''). Not later than December 9, 2013, all such facilities in the bands 1990–2000 MHz and 2020–

[32] *See* 5 U.S.C. 801(a)(1)(A).

[33] *See* 5 U.S.C. 604(b).

2025 MHz shall operate on a secondary basis to Advanced Wireless Services.

NG178 In the band 2165–2180 MHz, where the receipt date of the initial application for facilities in the fixed and mobile services was prior to January 16, 1992, said facilities shall operate on a primary basis and all later-applied-for facilities shall operate on a secondary basis to any service licensed pursuant to the allocation adopted in FCC 03–16, 68 FR 11986, March 13, 2003 (''Advanced Wireless Services''). Not later than December 9, 2013, all such facilities in the band 2165–2180 MHz shall operate on a secondary basis to Advanced Wireless Services.

* * * * *

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 3. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, 336(f), 336(h) and 554.

■ 4. Section 74.602 is amended by revising paragraph (a)(3)(i), and by revising and redesignating paragraph (a)(3)(ii) as (a)(3)(iii) and by adding a new paragraph (a)(3)(ii) and by removing and reserving paragraph (a)(4) to read as follows:

§ 74.602 Frequency assignment.

(a) * * *

(3)(i) After January 7, 2004, stations may adhere to the channel plan specified in paragraph (a) of this section, or the following channel plan in Band A:

Channel A1r—2025.5–2037.5 MHz
Channel A2r—2037.5–2049.5 MHz
Channel A3r—2049.5–2061.5 MHz
Channel A4—2061.5–2073.5 MHz
Channel A5r—2073.5–2085.5 MHz
Channel A6r—2085.5–2097.5 MHz
Channel A7r—2097.5–2109.5 MHz

(ii) Stations adhering to the channel plan specified in paragraph (a)(3)(i) of this section may also use the following 40 data return link (DRL) channels to facilitate their operations in the 2025.5–2109.5 MHz band:

Lower band DRL channels

2025.000–2025.025 MHz
2025.025–2025.050 MHz
2025.050–2025.075 MHz
2025.075–2025.100 MHz
2025.100–2025.125 MHz
2025.125–2025.150 MHz
2025.150–2025.175 MHz
2025.175–2025.200 MHz
2025.200–2025.225 MHz
2025.225–2025.250 MHz
2025.250–2025.275 MHz
2025.275–2025.300 MHz
2025.300–2025.325 MHz
2025.325–2025.350 MHz
2025.350–2025.375 MHz
2025.375–2025.400 MHz
2025.400–2025.425 MHz
2025.425–2025.450 MHz
2025.450–2025.475 MHz
2025.475–2025.500 MHz

Upper band DRL channels

2109.500–2109.525 MHz
2109.525–2109.550 MHz
2109.550–2109.575 MHz
2109.575–2109.600 MHz
2109.600–2109.625 MHz
2109.625–2109.650 MHz
2109.650–2109.675 MHz
2109.675–2109.700 MHz
2109.700–2109.725 MHz
2109.725–2109.750 MHz
2109.750–2109.775 MHz
2109.775–2109.800 MHz
2109.800–2109.825 MHz
2109.825–2109.850 MHz
2109.850–2109.875 MHz
2109.875–2109.900 MHz
2109.900–2109.925 MHz
2109.925–2109.950 MHz
2109.950–2109.975 MHz
2109.975–2110.000 MHz

(iii) Broadcast Auxiliary Service, Cable Television Remote Pickup Service, and Local Television Transmission Service licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, will be required to use the Band A channel plan in paragraph (a)(3)(i) of this section after completion of relocation by an Emerging Technologies licensee in accorance with § 74.690 of this chapter. Licensees declining relocation and licensees in Nielsen DMAs 31–210, as such DMAs existed on September 6, 2000, will be required to discontinue use of the 1990–2025 MHz on the date that the first Mobile-Satellite Service licensee begins operations in the 2000–2020 MHz band.

(4) [reserved]

* * * * *

■ 5. Section 74.690 is amended by revising paragraphs (a), (b), and (e) to read as follows:

§ 74.690 Transition of the 1990–2025 MHz band from the Broadcast Auxiliary Service to emerging technologies.

(a) Licensees proposing to implement Mobile-Satellite Services using emerging technologies (MSS Licensees) may negotiate with Broadcast Auxiliary Service licensees operating on a primary basis and fixed service licensees operating on a primary basis in the 1990–2025 MHz band (Existing Licensees) for the purpose of agreeing to terms under which the Existing Licensees would relocate their operations to the 2025–2110 MHz band, to other authorized bands, or to other media; or, alternatively, would discontinue the use of the 1990–2025 MHz band when MSS operations commence in the 2000–2020 MHz band.

(b) An Existing Licensee in the 1990–2025 MHz band allocated for licensed emerging technology services will maintain primary status in the band until the Existing Licensee's operations are relocated by a MSS Licensee or are discontinued under the terms of paragraph (a) of this section.

* * * * *

(e) Subject to the terms of this paragraph (e), the relocation of Existing Licensees will be carried out in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this chapter. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, and all fixed stations operating in the 1990–2025 MHz band on a primary basis, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as ''mandatory negotiations,'' as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees and fixed stations after December 8, 2004.

(ii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified in § 74.602(a)(3) of this part must discontinue use of all operations in the 1990–2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in Nielsen DMAs 31–210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntary relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (e), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen

Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025–2110 MHz band using the channels A03-A07 as specified in the Table in § 74.602(a) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 74.602(a)(3) of this part. All negotiations must produce solutions that adhere to the market area's band plan.

(3) [reserved]

(4) [reserved]

(5) As of the date the first MSS licensee begins operations in the 1990–2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31–100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS licensee, Existing Licensees must cease operations in the 1990–2025 MHz band within six months.

PART 78—CABLE TELEVISION RELAY SERVICE

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

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

■ 7. Section 78.18 is amended by revising paragraph (a)(6)(ii) to read as follows:

§ 78.18 Frequency assignments.

(a) * * *

(6) * * *

(ii) After a licensee has been relocated in accordance with the provisions of § 78.40, operations will be in the band 2025–2110 MHz. The following channel plan will apply, subject to the provisions of § 74.604 of this part:

Frequency Band (MHz)
2025.5–2037.5
2037.5–2049.5
2049.5–2061.5
2061.5–2073.5
2073.5–2085.5
2085.5–2097.5
2097.5–2109.5

* * * * *

■ 8. Section 78.40 is amended by revising paragraph (f) to read as follows:

§ 78.40 Transition of the 1990–2025 MHz band from the Cable Television Relay Service to emerging technologies.

* * * * *

(f) Subject to the terms of this paragraph (f), the relocation of Existing Licensees will be carried out in the following manner:

(1) Existing Licensees and MSS licensees may negotiate individually or collectively for relocation of Existing Licensees to one of the channel plans specified in § 74.602(a)(3) of this part. Parties may not decline to negotiate, though Existing Licensees may decline to be relocated.

(i) MSS licensees must relocate all Existing Licensees in Nielsen Designated Market Areas (DMAs) 1–30, as such DMAs existed on September 6, 2000, prior to beginning operations, except those Existing Licensees that decline relocation. Such relocation negotiations shall be conducted as ''mandatory negotiations,'' as that term is used in § 101.73 of this chapter. If these parties are unable to reach a negotiated agreement, MSS Licensees may involuntarily relocate such Existing Licensees after December 8, 2004.

(ii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, Broadcast Auxiliary Service licensees and fixed service licensees that are not operating on the new channel plan specified § 78.18(a)(6)(ii) must discontinue use of all operations in the 1990–2025 MHz band.

(iii) On the date that the first MSS licensee begins operations in the 2000–2020 MHz band, a one-year mandatory negotiation period begins between MSS licensees and Existing Licensees in DMAs 31–210, as such DMAs existed on September 6, 2000. After the end of the mandatory negotiation period, MSS licensees may involuntary relocate any Existing Licensees with which they have been unable to reach a negotiated agreement. As described elsewhere in this paragraph (f), MSS Licensees are obligated to relocate these Existing Licensees within the specified three- and five-year time periods.

(2) Before negotiating with MSS licensees, Existing Licensees in Nielsen Designated Market Areas where there is a BAS frequency coordinator must coordinate and select a band plan for the market area. If an Existing Licensee wishes to operate in the 2025–2110 MHz band using the channel plan specified in § 78.18(a)(6)(i) of this part, then all licensees within that Existing Licensee's market must agree to such operation and all must operate on a secondary basis to any licensee operating on the channel plan specified in § 78.18(a)(6)(ii). All negotiations must produce solutions that adhere to the market area's band plan.

(3) [reserved]

(4) [reserved]

(5) As of the date the first MSS Licensee begins operations in the 1990–2025 MHz band, MSS Licensees must relocate Existing Licensees in DMAs 31–100, as they existed as of September 6, 2000, within three years, and in the remaining DMAs, as they existed as of September 6, 2000, within five years.

(6) On December 9, 2013, all Existing Licensees will become secondary in the 1990–2025 MHz band. Upon written demand by any MSS Licensee, Existing Licensees must cease operations in the 1990–2025 MHz band within six months.

■ 9. Section 78.103(e), the table is amended by revising footnote 1 to read as follows:

§ 78.103 Emissions and emission limitations.

* * * * *

[1] After a licensee has been relocated in accordance with § 78.40, the maximum authorized bandwidth in the frequency band 2025 to 2010 MHz will be 12 megahertz.

PART 101—FIXED MICROWAVE SERVICES

■ The authority citation for part 101 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

■ 10. Section 101.69 is amended by revising paragraph (d) to read as follows:

§ 101.69 Transition of the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands from the fixed microwave services to personal communications services and emerging technologies.

* * * * *

(d) Relocation of FMS licensees in the 2180–2200 MHz band by Mobile-Satellite Service (MSS) licensees, including MSS licensees providing Ancillary Terrestrial Component (ATC) service, will be subject to mandatory negotiations only. Mandatory negotiation periods are defined as follows:

(1) The mandatory negotiation period for non-public safety incumbents will end December 8, 2004.

(2) The mandatory negotiation period for public safety incumbents will end December 8, 2005.

■ 11. Section 101.73 is amended by revising paragraph (d) introductory text to read as follows:

§ 101.73 Mandatory negotiations.

* * * * *

(d) *Provisions for Relocation of Fixed Microwave Licensees in the 2180–2200*

MHz band. Notwithstanding references to voluntary negotiation periods elsewhere in this section, relocation of FMS licensees in the 2180–2200 MHz band by Mobile-Satellite Service (MSS) licensees (including MSS licensees providing Ancillary Terrestrial Component ''ATC'' service) will be subject to mandatory negotiations only. Mandatory negotiations will commence on January 7, 2004. Mandatory negotiations will be conducted with the goal of providing the fixed microwave licensee with comparable facilities, defined as facilities possessing the following characteristics:

* * * * *

■ 12. Section 101.79 is amended by revising the section heading and paragraph (a) to read as follows:

§ 101.79 Sunset provisions for licensees in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands.

(a) FMS licensees will maintain primary status in the 1850–1990 MHz, 2110–2150 MHz, and 2160–2200 MHz bands unless and until an ET (including MSS/ATC) licensee requires use of the spectrum. ET licensees are not required to pay relocation costs after the relocation rules sunset (*i.e.* ten years after the voluntary period begins for the first ET licensees in the service; or, in the case of the 2180–2200 MHz band, ten years after the mandatory negotiation period begins for MSS/ATC licensees in the service). Once the relocation rules sunset, an ET licensee may require the incumbent to cease operations, provided that the ET licensee intends to turn on a system within interference range of the incumbent, as determined by TIA Bulletin 10-F (for terrestrial-to-terrestrial situations) or TIA Bulletin TSB–86 (for MSS satellite-to-terrestrial situations) or any standard successor. ET licensee notification to the affected FMS licensee must be in writing and must provide the incumbent with no less than six months to vacate the spectrum. After the six-month notice period has expired, the FMS licensee must turn its license back into the Commission, unless the parties have entered into an agreement which allows the FMS licensee to continue to operate on a mutually agreed upon basis.

* * * * *

■ 13. Section 101.99 is redesignated as § 101.82.

[FR Doc. 03–30310 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–3641, MM Docket No. 99–277, RM–9666]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Channel 3 of Corpus Christi, Inc., substitutes DTV channel 8 for DTV channel 47 at Corpus Christi. *See* 64 FR 50055, September 15, 1999. DTV channel 8 can be allotted to Corpus Christi in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–39–30 N. and 97–36–04 W. with a power of 160, HAAT of 289 meters and with a DTV service population of 491 thousand. Since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government has been obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective January 5, 2004.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–277, adopted November 13, 2003, and released November 19, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com.*

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

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

PART 73—[AMENDED]

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

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

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Texas, is amended by removing DTV channel 47 and adding DTV channel 8 at Corpus Christi.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–30308 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AJ02

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 402

[Docket No. 030506115–3298–02]

RIN 0648–AR05

Joint Counterpart Endangered Species Act Section 7 Consultation Regulations

AGENCIES: U.S. Fish and Wildlife Service, Interior; Bureau of Land Management, Interior; National Park Service, Interior; Bureau of Indian Affairs, Interior; Forest Service, Agriculture; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule codifies joint counterpart regulations for consultation under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (ESA), to streamline consultation on proposed projects that support the National Fire Plan (NFP), an interagency strategy approved in 2000 to reduce risks of catastrophic wildland fires and restore fire-adapted ecosystems. These counterpart regulations were developed, as part of the President's Healthy Forests Initiative announced in August 2002, by the U.S. Department of the Interior's Fish and Wildlife Service (FWS) and the U.S. Department of Commerce's National Oceanic and Atmospheric Administration, National Marine Fisheries Service (NMFS) (singly or jointly, Service), in cooperation with the U.S. Department of Agriculture's Forest Service (FS) and the Department of

Interior's Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), and National Park Service (NPS). These counterpart regulations, authorized in general at 50 CFR 402.04, provide an optional alternative to the existing section 7 consultation process described in 50 CFR part 402, subparts A and B. The counterpart regulations complement the general consultation regulations in part 402 by providing an alternative process for completing section 7 consultation for agency projects that authorize, fund, or carry out actions that support the NFP. The alternative consultation process contained in these counterpart regulations eliminates the need to conduct informal consultation and eliminates the requirement to obtain written concurrence from the Service for those NFP actions that the Action Agency determines are ''not likely to adversely affect'' (NLAA) any listed species or designated critical habitat.

DATES: This rule is effective on January 7, 2004.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Chief, Division of Consultation, Habitat Conservation Planning, Recovery and State Grants, at the above address (Telephone 703/358–2171, Facsimile 703/358–1735) or Phil Williams, Chief, Endangered Species Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 (301/713–1401; facsimile 301/713–0376).

SUPPLEMENTARY INFORMATION:

Background

Implementation of National Fire Plan

In response to several years of catastrophic wildland fires throughout the United States culminating in the particularly severe fire season in 2000, when over 6.5 million acres of wildland areas burned, President Clinton directed the Departments of the Interior and Agriculture to develop a report outlining a new approach to managing wildland fires and restoring fire-adapted ecosystems. The report, entitled Managing the Impact of Wildfires on Communities and the Environment, was issued September 8, 2000. This report set forth ways to reduce the impacts of fires on rural communities, a short-term plan for rehabilitation of fire-damaged ecosystems, and ways to limit the introduction of invasive species and address natural restoration processes. The report, and the accompanying budget requests, strategies, plans, and direction, have become known as the NFP. The NFP is intended to reduce risk to communities and natural resources from wildland fires through rehabilitation, restoration and maintenance of fire-adapted ecosystems, and by the reduction of accumulated fuels or highly combustible fuels on forests, woodlands, grasslands, and rangelands.

In August 2002, during another severe wildland fire season in which over 7.1 million acres of wildlands burned, President Bush announced the Healthy Forests Initiative. The initiative was intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize the damage caused by catastrophic wildfires by reducing unnecessary regulatory obstacles that have at times delayed and frustrated active land management activities. Because of nearly a century of policies to exclude fire from performing its historical role in shaping plant communities, fires in our public forests and rangelands now threaten people, communities, and natural resources in ways never before seen in our Nation's history.

Many of the Nation's forests and rangelands have become unnaturally dense as a result of past fire suppression policies. Today's forests contain previously unrecorded levels of fuels, while highly flammable invasive species now pervade many rangelands. As a result, ecosystem health has suffered significantly across much of the Nation. When coupled with seasonal droughts, these unhealthy forests and rangelands, overloaded with fuels, are vulnerable to unnaturally severe wildland fires. The geographic scope of the problem is enormous, with estimates approaching 200 million acres of forest and rangeland at risk of catastrophic fire. The problem has been building across the landscape for decades. Its sheer size makes it impossible to treat all the acres needing attention in a few years or even within the next decade.

In 2002 alone, the Nation experienced over 88,000 wildland fires that cost the Federal Government $1.6 billion to suppress. Many of these wildfires significantly impacted threatened or endangered species. The Biscuit Fire burned an area of 499,570 acres in Oregon and California that included 49 nest sites and 50,000 acres of designated critical habitat for the threatened northern spotted owl, and 14 nesting areas and 96,000 acres of designated critical habitat for the threatened marbled murrelet. The estimated fire suppression cost was $134,924,847. The Rodeo-Chediski fire in Arizona, the largest fire in the State's post-settlement history, burned through 462,614 acres, including 20 nesting areas for the threatened Mexican spotted owl. Unless fuel loads can be reduced on the thousands of acres classified at high risk of catastrophic wildfires, more adverse effects like those of the 2002 fire season are certain to occur.

The long-term strategy for the NFP is to correct problems associated with the disruption of natural fire cycles as a result of fire suppression policy or the presence of fire-prone non-native invasive species and to minimize risks to public safety and private property due to the increase in amount and complexity of the urban/wildland interface. The NFP calls for a substantial increase in the number of acres treated annually to reduce unnaturally high fuel levels, which will decrease the risks to communities and to the environment caused by unplanned and unwanted wildland fire. These types of preventative actions will help ensure public safety and fulfill the goals of the President's Healthy Forests Initiative.

The FS, BIA, BLM, and NPS, as Federal land management agencies, play an important role in implementing actions under the NFP that will reduce the potential risks of catastrophic wildland fire. The FWS also develops and carries out actions in support of the NFP on National Wildlife Refuges or National Fish Hatcheries. These five agencies constitute the Action Agencies who may use the counterpart regulations contained herein. The types of projects being conducted by these agencies under the NFP include prescribed fire (including naturally occurring wildland fires managed to benefit resources), mechanical fuels treatments (thinning and removal of fuels to prescribed objectives), emergency stabilization, burned area rehabilitation, road maintenance and operation activities, ecosystem restoration, and culvert replacement actions. Prompt implementation of these types of actions will substantially improve the condition of the Nation's forests and rangelands and substantially diminish potential losses of human lives and property caused by wildland fires. The Service and the Action Agencies are adopting these counterpart regulations to accelerate the rate at which these types of activities can be implemented so that the likelihood of catastrophic wildland fires is reduced.

Federal Fuels Treatment Activities

Each of the Action Agencies has substantial experience in planning and implementing projects that further the goals of reducing risks associated with wildland fires, while improving the condition of our public lands and wildlife habitat. The FS works collaboratively with its partners to design and implement projects to meet a variety of land and resource management objectives, including projects to improve habitat for wildlife and fish species. Through several hundred rehabilitation, restoration and hazardous fuels reduction projects under the NFP, the FS treats over 2 million acres each year to benefit natural resources, people, and communities. All of these projects have long-term multiple resource benefits, and several have short-term wildlife benefits as well. On the Winema and Fremont National Forests in Oregon, a thousand acres of forest were thinned and underburned to protect stands and large trees from wildfire, and to increase the longevity of those trees used by bald eagles for nesting and roosting. On the Santa Fe National Forest in New Mexico, after habitat loss due to the Cerro Grande Fire, ground cover in the form of large fallen woody material was restored to benefit the Jemez Mountain salamander. Habitat that had been damaged by post-wildland fire debris flows has been restored to reduce erosion and benefit Yellowstone cutthroat trout on the Custer National Forest in Montana. On the Jefferson National Forest in Virginia, prescribed fire is used every 3 years on Mt. Rogers to maintain the grassy bald area in a grass-forb stage and prevent woody vegetation from becoming established that would out compete rare plant species. Similarly, on the National Forests in Mississippi, prescribed burning reduces woody vegetation and fuels, encourages fire-dependent perennials, and restores and expands remnants of native prairie.

The BIA has planned many beneficial projects under the NFP that are designed to reduce wildland fire risk on Indian lands and to increase public safety around tribal and non-tribal communities. For example, one project will utilize both mechanical treatments and prescribed fire in lodgepole pine and Engelmann spruce forests to reduce fuel loadings and protect residents and residences around the Blackfeet Indian Reservation communities of East Glacier, Little Badger, Babb, St. Mary, Heart Butte, and Kiowa, in northwestern Montana. A second project would also utilize mechanical treatments and prescribed fire to reduce fuel loadings in Douglas-fir, ponderosa pine, and grass fuel types that pose a high level of risk to the residents around the Rocky Boy's Indian Reservation communities of Box Elder Village, Box Elder Creek, Rocky Boy Townsite, Duck Creek, and Parker Canyon, in Central Montana. A third project would reduce fuels in about 1,300 acres of pine, juniper, oak, and grasses, by combining prescribed fire with mechanical fuels treatment techniques on Zuni Tribal forest and woodland resources in New Mexico. This project would create fuel breaks in large contiguous fuels that are at high risk for catastrophic wildfires. Finally, a fourth project will stabilize and rehabilitate 276,000 acres of White Mountain Apache Tribal lands severely damaged in the Rodeo-Chediski Fire. This project will reduce the potential threats to human life and property in surrounding communities, along with threats to cultural resources, water quantity and quality, and soil productivity.

Across the Nation, NPS is implementing numerous projects to support the goals of the NFP. Park superintendents use prescribed fire (including wildland fire), mechanical fuels treatments, and invasive species control to restore or maintain natural ecosystems, to mitigate the effects of past fire suppression policies, and to protect communities from catastrophic wildfires. NPS fire management and restoration efforts generally focus on restoring ecosystem processes rather than on the management of specific species. However, these projects provide important long-term habitat benefits to a variety of threatened or endangered species. For example, Great Smoky Mountains National Park is completing a 1,034-acre yellow pine restoration burn, the largest prescribed burn in the Park's history. The central purpose of the Park's use of fire is to replicate as nearly as possible the role that naturally occurring fires played in shaping and maintaining the Park's biologically diverse ecosystems, while also minimizing the risk of future wildfires. At Washita Battlefield National Historic Site, the use of prescribed fire is intended to restore and maintain grassland/prairie habitats in a healthy condition. The operation was an interagency effort between the FS and the NPS. Similarly, Gulf Islands National Seashore has conducted prescribed burns for habitat restoration and to reduce hazardous fuels. These burns both restore key vegetative communities and provide habitat for relocated gopher tortoises. Other projects have improved habitat for red-cockaded woodpeckers at Big Thicket National Preserve and bald eagles at Lavabeds National Monument. All of these fuels treatment projects will enhance public safety for the communities around the Parks.

The BLM is proceeding with many NFP projects to restore dense pinyon pine and juniper forests and woodlands, nearly devoid of understory shrubs, grasses, and forbs, to a more natural savannah, or open woodland conditions. In the Farmington Field Office, New Mexico, the Pump Mesa project is a multiple phase project to open up the pinyon pine and juniper forest canopy by thinning, wood removal, and prescribed burning, to make space, sunlight, water, and nutrients available for the manual seeding of native understory species that were formerly present on the site. Densities of trees in the pinyon pine systems have increased to the point that large proportions of these woodlands have become highly combustible, supporting crown fires that can produce catastrophic habitat loss for wildlife and high risk to nearby communities. In the Richfield Field Office, the Praetor Slope Fuel Reduction project will mechanically displace patches of juniper and sagebrush to reduce the risk created by large, dense contiguous areas of fuel, while creating valuable deer and elk range, complete with islands and feathered woodlands that provide necessary animal cover. In the Central Montana Fire Management Zone, a number of small and moderate-sized prescribed burns, such as in Cow Creek, Little Bull Whacker, and Fergus Triangle, have been completed to increase wildlife habitat diversity, reduce fuel loads, and increase forage for both livestock and wildlife.

Endangered Species Act Section 7 Consultation

Section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of the Service, insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in destruction or adverse modification of designated critical habitat. Section 7(b) of the ESA describes the consultation process, which is further developed in regulations at 50 CFR 402.

The existing ESA section 7 regulations require an action agency to complete formal consultation with the Service on any proposed action that may affect a listed species or designated critical habitat, unless following either a biological assessment or informal

consultation with the Service, the action agency makes a determination that a proposed action is ''not likely to adversely affect'' any listed species or designated critical habitat and obtains written concurrence from the Service for the NLAA determination. The alternative consultation process contained in these counterpart regulations will allow the Service to provide training, oversight, and monitoring to an Action Agency through an alternative consultation agreement (ACA) that enables the Action Agency to make an NLAA determination for a project implementing the NFP without informal consultation or written concurrence from the Service.

Using the existing consultation process, the Action Agencies have consulted with the Service on many thousands of proposed actions that ultimately received written concurrence from the Service for NLAA determinations. Those projects had only insignificant or beneficial effects on listed species or posed a discountable risk of adverse effects. The concurrence process for such projects has diverted some of the consultation resources of the Service from projects in greater need of consultation. With the anticipated increase in fire plan projects, the concurrence process could cause delays. These counterpart regulations are being implemented to proactively reduce these anticipated delays and to increase the Service's capability to focus on Federal actions requiring formal consultation by eliminating the requirement to provide written concurrence for actions within the scope of these counterpart regulations.

The Action Agencies have engaged in thousands of formal and informal consultations with the Service in the 30 years since the passage of the ESA, and have developed substantial scientific, planning, mitigation, and other expertise to support informed decision-making and to meet their responsibilities under ESA section 7 to avoid jeopardy and contribute to recovery of listed species. To meet their obligations, the Action Agencies employ large staffs of qualified, experienced, and professional wildlife biologists, fisheries biologists, botanists, and ecologists to help design, evaluate, and implement proposed activities carried out under land use and resource management plans. All of the Action Agencies consult with the Service on actions that implement land use and resource management plans that contribute to the recovery of proposed and listed species and the ecosystems upon which they depend. In particular, the informal consultation and concurrence process has given the Action Agencies considerable familiarity with the standards for making NLAA determinations for their proposed actions.

The Action Agencies have developed familiarity with the standards over time through various activities. The Action Agencies develop proposals and evaluate several thousand actions for possible effects to listed species and designated critical habitat. Agency biologists are members of listed species recovery teams, contribute to management plans that provide specific objectives and guidelines to help recover and protect listed species and designated critical habitat, and cooperate on a continuing basis with Service personnel. In many parts of the country, personnel from the Action Agencies and the Service participate in regular meetings to identify new management projects and the effects to proposed and listed species through formalized streamlined consultation procedures.

The Action Agencies' established biological expertise and active participation in the consultation process provides a solid base of knowledge and understanding of how to implement section 7 of the ESA. By taking advantage of this expertise within the Action Agencies, the counterpart regulations process will help ensure more timely and efficient decisions on planned NFP actions while retaining the protection for listed species and designated critical habitat required by the ESA and other applicable regulations. The Service can rely upon the expertise of the Action Agencies to make NLAA determinations that are consistent with the ESA and its implementing regulations. Moreover, the Action Agencies are committed to implementing this authority in a manner that will be equally as protective of listed species and designated critical habitat as the current procedures that require written concurrence from the Service.

The Healthy Forests Initiative builds from the recognition that more timely environmental reviews of proposed fire plan projects will provide greater benefits to the range, forest lands, and wildlife by reducing the risk of catastrophic wildfire while the reviews are pending. These counterpart regulations provide an additional tool for accomplishing faster reviews. Streamlining the NLAA concurrence process offers a significant opportunity to accelerate NFP projects while providing equal or greater protection of the resources. Under current procedures, the Action Agencies must already complete and document a full ESA analysis to reach an NLAA determination. The counterpart regulations permit a project to proceed following an Action Agency's NLAA determination without an overlapping review by the Service, where the Service has provided specific training and oversight to achieve comparability between the Action Agency's determination and the likely outcome of an overlapping review by the Service. These counterpart regulations should significantly accelerate planning, review, and implementation of NFP actions, and by doing so, should contribute to achieving the habitat management and ecosystem restoration activities contemplated under the NFP.

Summary of Comments Received

On June 5, 2003 (68 FR 33806), we proposed the rule that would establish the joint counterpart regulations for consultation under section 7 of the ESA to streamline consultation on proposed projects that support the NFP. The comment period closed on August 4, 2003. On October 9, 2003 (68 FR 58298), we reopened the comment period on the proposed rule and provided a notice of availability for the Environmental Assessment. The second comment period closed on November 10, 2003. During these two comment periods, the Service received more than 50,000 comments on the proposed rule from a large variety of entities, including State, County, Tribal agencies, industry, conservation groups, religious groups, coalitions, and private individuals. The Service and the Action Agencies considered all of the information and recommendations received from all interested parties on the proposed regulation during the public comment period and appreciated the comments received on the proposed rule. The Service received numerous comments on the scope of the National Fire Plan, for example, appropriate fire cycles, thinning and restoration practices, which were beyond the narrow scope of the proposed rulemaking for the counterpart regulations.

The following is a summary of the comments on the proposed counterpart regulations, and the Service's response.

State and Tribe Comments

We received comments from three States and two Tribal agencies.

Issue: One State recommended including the State fish and wildlife agencies during the development of the ACAs and, where appropriate, during the development of documentation in support of NLAA determinations. Including the States would better ensure

that the best available scientific information is used during the determination analysis by the Action Agencies.

Response: We agree that the State agencies likely have biological information that will be relevant in making an NLAA determination. The Services currently have a joint policy (59 FR 34275) in which we request any information from the State that might be relevant, as well as notify the State of any action that might adversely affect any proposed or listed species or designated critical habitat. The Service will encourage each of the Action Agencies to embrace this policy as a component of the ACA.

Issue: One State, and several commenters, expressed concern that this proposed regulation does not go far enough to improve the overall efficiency of the consultation process and, therefore, should be opened up to all projects, not just fire plan projects. A few commenters suggested including the Corps of Engineers and Environmental Protection Agency in the list of Action Agencies.

Response: These counterpart regulations have been proposed as part of the President's Healthy Forests Initiative to accelerate the rate at which fire plan projects can be implemented. Once these counterpart regulations are adopted and implemented, the Services believe that other agencies may decide that similar counterpart regulations would help to expedite other types of actions. The EPA has already published an advance notice of rulemaking for developing counterpart regulations for pesticides (68 FR 3785, January 24, 2003). The Services will take up any such proposals from other agencies in the future as circumstances may warrant.

Issue: One State and several commenters were concerned that these counterpart regulations relieve the Service of its duties and the resources that will be spent creating a new process could be used more efficiently by the Service to carry out its duties under the ESA.

Response: We agree that the Services will likely experience a small short-term increase in administrative burden as they begin to implement the training and oversight components of the regulations and ACAs. However, this short term burden will be more than balanced out by a substantial long term increase in Service efficiency resulting from a reduction in resources required to review projects that ultimately receive a NLAA concurrence letter. We believe that by removing the need to provide NLAA concurrence letters on NFP projects, the Services will be able to devote greater resources to analyzing and coordinating on projects that do have adverse effects on listed species and designated critical habitat. We believe this shift in resources will not only accelerate NFP projects, but will also generally expedite consultations on other projects, which will make the most efficient use of the Services time. This will ultimately provide more conservation to listed species, thus fulfilling the objectives of the ESA.

Issue: The two Tribal comments stated that the Action Agency will still need to complete a biological assessment for its action. In addition, both tribal commenters requested government-to-government consultation.

Response: We agree that an Action Agency will still need to complete a biological assessment for an action when required by the ESA. The regulations at 50 CFR 402.12 require the preparation of a biological assessment for those Federal actions that are ''major construction activities.'' Given that these counterpart regulations only address those fire plan projects that are not likely to adversely affect listed species or critical habitat, we do not anticipate that a large majority of these actions would otherwise require preparation of a biological assessment.

The standards for making an NLAA determination remain unchanged by these counterpart regulations. These counterpart regulations do not change the analysis that is conducted for determining how a proposed project affects listed species or critical habitat. Therefore, this counterpart regulation will maintain the same level of protection for listed species or designated critical habitat. As such, we do not believe that tribal resources will be affected by implementation of this rule and government-to-government consultation is not necessary at this stage in the process.

General Comments

Issue: Many commenters felt that the proposed counterpart regulations will give some interest groups, such as logging companies and other commercial interests, free reign over public land, which will increase commercial timber sales, and that this result is not in the best interest of the species or the public.

Response: This regulation will apply only to those projects that are within the scope of the NFP and are not likely to adversely affect listed species or critical habitat. Commercial timber sales that adversely affect listed species and designated critical habitat will still need to be analyzed through formal consultation. We believe that implementation of the counterpart regulations will allow the Service to focus its efforts on Federal actions that are likely to adversely affect listed species and critical habitat. This will ultimately benefit listed species.

Issue: Several commenters noted that the proposed rule has failed to offer any empirical evidence substantiating the claim that the regulatory obstacles have unnecessarily delayed active land management activities.

Response: The Healthy Forests Initiative is intended to accelerate implementation of the fuels reduction and ecosystem restoration goals of the NFP in order to minimize damage caused by catastrophic wildfires. Accordingly, the issue is not whether the regulatory process has delayed NFP projects, but rather whether it can be streamlined so as to expedite the projects. The number of consultations conducted for NFP projects is currently relatively low; however the Service anticipates that the number of consultations requested for projects that implement the NFP will increase substantially in the future, as additional funding and effort is directed toward implementation of the NFP. Due to the beneficial effects that this initiative will have to fish and wildlife resources, the Services are ensuring that actions supporting the NFP that are NLAA listed species or critical habitat are not delayed.

Issue: Many commenters believe that the Action Agencies do not have the expertise to make the determinations without concurrence from the Service. They believe that the Service is the expert agency and without the Service's input many of the decisions will have a negative impact on listed species. In particular, the commenters believe that the Action Agencies do not know the biology of the species or the other indirect or cumulative effects that should be factored into the analysis.

Response: The Action Agencies employ large staffs of professional wildlife biologists, botanists, and ecologists to meet their obligations under the Act and other natural resource management laws they implement. The primary responsibility of these professionals is to evaluate how proposed projects will affect listed species and critical habitat.

The counterpart regulations contain a process for making sure that the Action Agencies have the necessary skills to make the NLAA determinations without Service concurrence. First, the Service and the Action Agencies will jointly develop a training program that will

allow each Action Agency's staff to develop and maintain the same skills that the Service has in making the NLAA determinations. Second, the ACA will include provisions for incorporating new information on currently listed species and new species and critical habitat into the Action Agency's effects analysis of proposed actions. These two provisions of the ACA will provide the Action Agency with the same expertise and information that the Service possesses. This process will maximize the use of the Service and Action Agencies' resources by incorporating this additional knowledge into the Action Agencies' current wealth of expertise.

Issue: One commenter noted that both the Service and NMFS have policies regarding the use of high quality scientific and commercial data in making decisions. FS and BLM do not have similar policies presenting a challenge to prevent them from making the best decisions possible. One commenter noted that streamlining to speed up accomplishments of one goal may result in decisions being made on inadequate data, lack of perspective on other goals and values, and lack of knowledge of other alternatives, therefore risking failure of making sound and wise decisions. Many commenters believe that, by eliminating the Service, the Action Agencies will not make sound decisions; that is, they will not be considering all of the facts and possible ramifications.

Response: Section 7 of the ESA requires that each agency shall use the best available scientific and commercial information. This standard applies to any analysis that the Action Agency may make, as well as the Service. It is the responsibility of the Action Agency to become aware of all of the information necessary to make the determinations. In signing the ACA, the Action Agency is agreeing to take on the responsibility of making decisions using the best scientific and commercial data available. It is common practice for the Service and the Action Agency to share information in the field, and we expect this practice will continue with the implementation of these counterpart regulations.

The jointly developed training program will allow the Action Agency staff to develop and maintain the same skills that the Service has in making the NLAA determinations. In addition, the Service will retain oversight authority and, through the periodic review and the monitoring program, will evaluate whether the Action Agency has implemented the regulation consistent with the best available scientific and commercial information, the ESA, and the section 7 regulations.

Issue: Several commenters stated that the definition of NFP project is overly broad and the Action Agencies could grant discretion to undertake projects that are directly at odds with the philosophy and purpose of the NFP.

Response: The definition according to the counterpart regulations of a fire plan project is ''an action determined by the Action Agency to be within the scope of the NFP as defined in this section.'' The Action Agency will have the responsibility to justify whether any action it is undertaking falls within the NFP scope. Several examples of typical projects, such as mechanical treatments or prescribed fire, are listed in the preamble for the regulation. While the definition is broad, the Action Agency will ultimately have to determine if the action will further the goals of the NFP to reduce risks associated with wildland fires, while improving the condition of our public lands and wildlife habitat.

Issue: Many commenters believe that the different missions between the Action Agencies and the Service will not allow the Action Agencies to make decisions that would be ''equally as protective of listed species and critical habitat.'' In fact many commenters noted that historically, the action agencies have pursued environmentally damaging projects that were in direct conflict with their own policy. Many commenters suggested that eliminating the Service concurrence is like asking the fox to watch the henhouse. One State noted that they believe the elimination of oversight and environmental review will allow the Action Agencies to abuse the discretion.

Response: The Action Agencies are legally obligated to implement the ESA, and have large staffs of professional biologists fully able to do so. These counterpart regulations do not change the standards that apply in assessing the effects of the action. As stated in § 402.31 of the counterpart regulations, the process established in the counterpart regulation will be as protective to listed species and designated critical habitat as the process established in subpart B of the regulations.

As discussed in the oversight section, § 402.34, the Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of the counterpart regulations, section 7 of the Act, or the terms of the ACA. Therefore, we believe that sufficient training, monitoring, and oversight is built in to the process to ensure that the Action Agencies will appropriately implement their responsibilities under section 7 and these regulations.

Issue: Several commenters noted that informal consultation allows the Service to work with the Action Agency to reduce the adverse effects of a project on listed species or critical habitat. Those instances where the Service does not concur with the Action Agencies are the very reason for the consultation with the expert wildlife agencies. Many commenters summarized this thought by stating that the counterpart regulations will eliminate the checks and balances inherent in the Act.

Response: These proposed counterpart regulations do not eliminate the Action Agency's ability to request informal consultation or to engage in day-to-day technical assistance with the Service when making NLAA determinations on fire plan projects. Some commenters may have misconstrued the ultimate use of this authority, which is for actions that support the NFP that are NLAA only. The section 7 standards remain unchanged by the counterpart regulations.

In addition, through the oversight provisions of § 402.34, the Service will work with the Action Agencies to determine whether the Action Agency is implementing the regulation accordingly.

Issue: A couple of commenters thought the Service should make organizational or structural changes to expedite the review process. One commenter suggested a process comprised of a series of stages that would increase the complexity of analysis, if warranted. Another commenter suggested that the process could be further streamlined by using a programmatic consultation approach.

Response: The Service considered administrative changes and agreements that would help streamline reviews in the Environmental Assessment for the Counterpart Regulations, September 30, 2003. As discussed in the EA, the Service and the Action Agencies currently have several agreements in place. While such agreements streamline the process significantly by improving coordination between the consulting agencies, the process still requires involvement of the Service in the concurrence decisions on projects that are NLAA listed species or critical habitat. These types of streamlining processes can work well to meet statutory timelines, but they still encumber the Service's biologists in requiring concurrences for NLAA actions and thereby diverting their attention from actions that require formal consultation. We believe these

counterpart regulations will accelerate the process of approval for fire plan projects and allow the Service to devote more time to analyzing and coordinating on projects that have adverse effects on listed species and designated critical habitat.

Issue: A few commenters suggested using the counterpart regulation to also modify the timeline for formal consultation. At a minimum, it was suggested to set a deadline that is shorter than 90 days for the consultation and 45 days for preparation of the biological opinion.

In addition, a couple of commenters suggested that the counterpart regulation is governed only by the statute and therefore the final regulation could change the NLAA standard such that any project with net benefits is not likely to adversely affect. The commenters noted that, without this modification, the proposed rule will likely be inefficient to streamline consultation. In addition, the rule should be allowed to change the threshold levels for ''may affect.''

Response: The focus of the counterpart regulations was to provide an optional alternative to the standard section 7 consultation process that would be consistent with 50 CFR 402.04. The Service is not constrained by the statutory language in that it may (and often does) complete consultations in less than 90 days. The Service has already issued clarifying policy about the importance of considering the long-term benefits of fuel reduction projects such that revising the NLAA standards as part of these regulations is unnecessary to accomplish the goal of streamlining for the Healthy Forests Initiative.

Issue: Contractors of the Action Agency and local governments should be allowed to be a full participant in the consultation process from beginning to end.

Response: This regulation does not change the statutory or regulatory process for applicants to participate in the consultation. We expect that applicants will continue to have participation in the areas of the consultation process that are appropriate.

Issue: Many commenters believe that adoption of this counterpart regulation violates the plain language of the statute, which states that ''each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action * * *''. Specifically, they assert that the proposed counterpart regulations violate sections 7(a)(2), 7(a)(4) and 7(b). By allowing the Action Agencies to reach their own conclusions without the Service concurrence, the Service would not be allowed to provide reasonable and prudent alternatives, reasonable and prudent measures, or to conduct a jeopardy analysis.

Response: The Services have concluded that the counterpart regulation does not violate the language or spirit of the ESA. The counterpart regulation makes no changes to the statutory requirement for formal consultation on agency actions that are likely to adversely affect listed species or designated critical habitat. The counterpart regulation builds upon the fundamental distinction in the current Subpart B consultation regulations between the formal consultation required for more significant projects and the lesser form of consultation required for actions that are not likely to adversely affect listed species or designated critical habitat. Neither informal consultation nor NLAA concurrence is specified in the ESA. The counterpart regulation creates a new, carefully-structured training, monitoring and oversight relationship between the Service and the Action Agency as an alternative for the individual project-based concurrence system that was created in the Subpart B regulatory framework. The counterpart regulation creates a system where the Action Agency is trained and supervised to perform NLAA determinations just as the Service would in a concurrence letter, with less delay and equal protection for listed species and designated critical habitat.

The Service believes that through implementation of the ACA and through the oversight discussed in § 402.34, the counterpart regulations comply with the statute, and the Action Agencies are insuring, in consultation with and with assistance of the Secretary, that any action is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat. Through the periodic review and monitoring program, the Service will provide assistance to the Action Agency by recommending changes to the Action Agency's implementation of the ACA, if necessary. Consultation will continue to occur through the implementation of the ACAs and the ongoing review and monitoring program.

Issue: One commenter believed that the proposed rule violates section 7(c)(1) of the ESA. The commenter suggested that 7(c) places a mandatory duty on Federal Action Agencies to initiate consultation and communication with the Service on all projects.

Response: Section 7(c) of the Act requires each Federal Agency to prepare a biological assessment for the purpose of identifying any endangered or threatened species, which is likely to be affected by an action. Consistent with congressional intent (H.R. Conf. Rep. 96–697, 1979), the regulations at 50 CFR 402.12 specify that this requirement applies only to those Federal actions that are ''major construction activities.'' Given that these counterpart regulations address only those fire plan projects that are not likely to adversely affect listed species or critical habitat, we do not anticipate a large majority of these actions would otherwise require preparation of a biological assessment.

Section-by-Section Analysis

Procedures

Issue: Several commenters suggested that the ACAs should be subject to a 60-day public review and comment period. A few commenters noted that the rule is also unclear as to whether the ACAs are subject to NEPA. Many commenters were concerned that the timetable for developing the ACAs would prolong the implementation of the rule. One commenter suggested that the ACAs should be developed prior to finalization of the counterpart regulations.

Response: The ACAs will be made available to the public as stated in the proposed rule. The details of the individual ACAs will conform to the elements described in the procedures section. The individual ACAs will most likely be categorically excluded from the NEPA requirements. However, with any categorical exclusion, conditions at the time may warrant more environmental analysis consistent with the Action Agencies' requirement to identify extraordinary circumstances under 40 CFR 1508.4. The NEPA determination will be made at the time the individual ACAs are proposed. The Service anticipates that development of the ACAs, for those Action Agencies that want to implement the counterpart regulations, will begin immediately following finalization of the counterpart regulations.

Issue: Many commenters believed that the details outlined in the regulations regarding training, standards, incorporating new information, and the periodic monitoring and program evaluation should be specified in the regulation and not the ACA.

Response: The Service and the Action Agencies wanted to allow maximum flexibility for each individual Action Agency's needs with regard to the specific requirements in the ACA. For

instance, the training program for the Forest Service nationwide, which has had extensive experience with section 7 consultation, may be different from the BIA nationwide in which several districts may have more experience than others. Allowing the details of, the training program for example, to be further discussed in the ACA allows for the program to be tailored for each particular Action Agency.

Staff Positions

Issue: One commenter believes that the ACA should list the Action Agency staff making the determinations by name including their academic and professional experience. Then the Service should make sure their skill level is appropriate to make the determinations.

Response: The counterpart regulations and the subsequent ACAs have established a system whereby the Action Agency can make the determinations without concurrence by the Service. The Action Agencies are committed to implementing this authority in a manner that will be equally protective of listed species and critical habitat as the current procedures. In implementing the ACA, the Action Agency will retain full responsibility for compliance with section 7 of the ESA. Given that responsibility, the Action Agency will determine the appropriate skill level for making the determinations.

Training

Issue: Several commenters acknowledged that the Action Agencies already employ the biological expertise necessary to make the NLAA determination; therefore, the training program does not need to be complex, and instead there should be a procedure to certify personnel without training. One commenter suggested just having periodic refresher courses.

Response: While we agree that the Action Agencies already have familiarity with the standards for making an NLAA determination, we believe that a focused training program that discusses how the Service analyzes the NLAA determination when concurrence is requested will achieve an even higher level of protection for listed species and designated critical habitat.

Issue: One commenter suggested that the training program should include principles of conservation biology, the life history of the species of which the determinations will be made, animal ecology, plant ecology, and environmental impact analysis.

Response: The Action Agencies currently make the NLAA determinations based on the recommendations from professional biologists who are employed or contracted by the Action Agencies. The training program envisioned in the counterpart regulation will focus on the fundamental aspects of section 7 that the Action Agency staff will need to understand when making the NLAA determination without the Service concurrence.

Standards

Issue: One State and a few other commenters suggested that uniform national standards should be in the regulation not the ACA, including the specific standards and procedures for implementing the ACA and assuring that the direct and indirect effects of the proposed action will not have an adverse effect on listed species.

Response: The overall standards for making an NLAA determination remain unchanged by these counterpart regulations. The ACA will include specific standards that the individual Action Agency will be applying in assessing the effects of the action. Since the ACAs are between the Service and the individual Action Agency, the specific standards in each ACA can be more individualized for the fire plan projects that each Action Agency may undertake.

Issue: Several commenters noted that any standard developed for effects analysis should not result in a new consultation process that produces unnecessarily lengthy, detailed analyses or require analyses that seek data that are nonexistent or unreliable.

Response: The Service and the Action Agencies agree. The purpose of the counterpart regulations is to accelerate the process of approving NFP projects by reducing the time and effort needed to conduct a consultation for NFP activity that is not likely to adversely affect listed species or designated critical habitat. These counterpart regulations will not change the section 7 standards, only the process by which consultation is conducted.

Monitoring

Issue: One commenter suggested that the periodic review and monitoring program should have on-site audits that occur quarterly and audits of the NLAA decisions that are conducted monthly, with a corrective action plan prepared by the Action Agency, if warranted. If the corrective action plan is not submitted on time, the ACA is automatically void.

Response: The Service and the Action Agencies will determine the most appropriate periodic review and monitoring program for each individual Action Agency. The counterpart regulations do contemplate, if appropriate, the termination of the ACA.

Issue: One commenter suggested that the Action Agencies should conduct the monitoring and periodic review program and then provide the Service with a report.

Response: The Service believes that, to maintain oversight over the program, the periodic review and monitoring must be done jointly between the Service and the Action Agency. This will allow the Service to recommend whether the terms of the ACA should be modified.

Oversight

Issue: The two State commenters, the tribes, and a number of other commenters believe that specific information should be included to clarify under what conditions an Action Agency's ACA may be suspended or revoked should the Action Agencies fail to meet their new ESA responsibilities.

Response: We anticipate that the ACA will provide the detail, specific to each Action Agency, for the periodic review and monitoring program. The agencies anticipate that the details of such items as timing and procedures will be described in the ACA. In addition, the ACA will specify the information that will be necessary to provide for the periodic review. Section 402.33(a)(2)(vi) specifically states that the Action Agency will be responsible for maintaining the necessary records to allow the Service to complete the periodic program evaluation. The Oversight section of the counterpart regulations discusses the standards that the Service will use to evaluate the Action Agencies' implementation of the regulation.

Issue: Several commenters believe that enforcement of the ACA will be problematic because suspension of an ACA resulting from failure to comply will not affect the validity of prior NLAA determinations. If an Action Agency is found violating the mandate of section 7, such a violation will have no bearing upon past projects enabled by the violation. One commenter suggested simply changing 402.34 to ''Service Director is required to terminate the ACA if * * *''

Response: We disagree that enforcement will be an issue. The Action Agencies must comply with the terms of the ACA and the counterpart regulations prescribe the remedy for any failure by an Action Agency to comply

with the terms of the ACA. If, through the periodic review and monitoring program, the Service determines that implementation of this regulation is not consistent with the best available information, the ESA, or the section 7 regulations, then the Service will work with the Action Agency to correct the issue. If the consistency issues persist, the Service Director has the ability to terminate the ACA for an individual sub-unit of the Action Agency. This should not call into question any of the other sub-units' determinations or any of the determinations prior to the issue at hand. The Service Director always retains discretion to terminate the ACA with the Action Agency if it fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. The terms of the ACA are intended to be enforceable only through the remedies available to the Services under the counterpart regulations.

Revisions to the Proposed Rule

In § 402.31, we changed ''The purpose of these counterpart regulations is to improve the consultation * * *'' to read, ''The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation * * *.'' The change is made to clarify that the intent of these counterpart regulations is to accelerate the rate at which fire plan projects are processed without changing the section 7 consultation standards.

Description/Overview of the Final Rule

Regulations at 50 CFR 402.04 provide that ''the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service.'' The preamble to the 1986 regulations for implementing section 7 of the ESA states that ''such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7.'' The approach in these counterpart regulations is consistent with § 402.04 because it leaves the standards for making NLAA determinations unchanged. The joint counterpart regulations establish an optional alternative process to conduct consultation under section 7 of the ESA for actions that the FS, BIA, BLM, FWS, or NPS might authorize, fund, or carry out to implement the NFP. The procedures outlined in these counterpart regulations differ from the existing procedures in 50 CFR part 402 subparts A and B, § 402.13 and § 402.14(b), by allowing an Action Agency to enter into an ACA with the Service that will allow the Action Agency to make an NLAA determination on a proposed NFP project without informal consultation or written concurrence from the Service. Further, Action Agencies operating under these counterpart regulations retain full responsibility for compliance with section 7 of the ESA.

Under the counterpart regulations, the Action Agencies will enter into an ACA with either FWS, NMFS or both. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. By following the procedures in these counterpart regulations and the ACA, the Action Agencies fulfill their ESA section 7 consultation responsibility for actions covered under these regulations.

The purpose of the jointly developed training program between the Action Agency and the Service is to ensure that the Action Agency consistently interprets and applies the relevant provisions of the ESA and the regulations (50 CFR part 402) relevant to these counterpart regulations with the expectation that the Action Agency will reach the same conclusions as the Service. We expect that the training program will be consistent among Action Agencies, subject to differing needs and requirements of each agency, and will rely upon the ESA Consultation Handbook as much as possible. The training program may include jointly developed guidelines for conducting the ESA section 7 effects analysis for the particular listed species and critical habitat that occur in the jurisdiction of the Action Agency requesting the agreement. Training may also emphasize the use of project design criteria for listed species where they have been developed between the Service and the Action Agency.

Because the Service maintains information on listed species, the Service may supply any new information it receives that would be relevant to the effects analysis that the Action Agencies will conduct to make the NLAA determinations. In addition, the Service will coordinate with the Action Agency when new species are proposed for listing or new critical habitat is proposed.

The Service will use monitoring and periodic program reviews to evaluate an Action Agency's performance under the ACA at the end of the first year of implementation and then at intervals specified in the ACA. The evaluation may be on a subunit basis (*e.g.*, a particular National Forest or BLM district) where different subunits of an Action Agency begin implementation of the ACA at different times. The Service will evaluate whether the implementation of this regulation by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations. The result of the periodic program review may be to recommend changes to the Action Agency's implementation of the ACA. These recommendations could include suspending or excluding any participating Action Agency subunit, but more likely may include additional training. The Service will retain discretion for terminating the ACA if the requirements under the counterpart regulations are not met. However, any such suspension, exclusion, or termination will not affect the legal validity of NLAA determinations made prior to the suspension, exclusion, or termination.

Upon completion of an ACA, the Action Agency and the Service will implement the training program outlined in the ACA. At the Action Agency's discretion, the training program may be designed such that some subunits may begin implementing the ACA before agency personnel in other subunits are fully trained. The Action Agency will assume full responsibility for the adequacy of the NLAA determinations that it makes.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule because it may raise novel legal or policy issues, and was reviewed by the Office of Management and Budget

(OMB) in accordance with the four criteria discussed below.

(a) This counterpart regulation will not have an annual economic effect of $100 million or more or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. The counterpart regulations do not pertain to commercial products or activities or anything traded in the marketplace.

(b) This counterpart regulation is not expected to create inconsistencies with other agencies' actions. FWS and NMFS are responsible for carrying out the Act.

(c) This counterpart regulation is not expected to significantly affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) OMB has determined that this rule may raise novel legal or policy issues and, as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions), unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to the Regulatory Flexibility Act, we certified to the Small Business Administration that these regulations would not have a significant economic impact on a substantial number of small entities. The purpose of the rule is to increase the efficiency of the ESA section 7 consultation process for those activities conducted to implement the NFP. The changes will lead to the same protections for listed species as the section 7 consultation regulations at 50 CFR part 402 and will only eliminate the need for the Action Agency to conduct informal consultation with and obtain written concurrence from the Service for those NFP actions that the Action Agency determines are ''not likely to adversely affect'' (NLAA) any listed species or designated critical habitat.

Regulations at 50 CFR 402.04 provide that ''the consultation procedures may be superseded for a particular Federal agency by joint counterpart regulations among that agency, the Fish and Wildlife Service, and the National Marine Fisheries Service.'' The preamble to the 1986 regulations for implementing section 7 states that ''such counterpart regulations must retain the overall degree of protection afforded listed species required by the [ESA] and these regulations. Changes in the general consultation process must be designed to enhance its efficiency without elimination of ultimate Federal agency responsibility for compliance with section 7.''

Under the counterpart regulations, the Action Agencies will enter into an Alternative Consultation Agreement (ACA) with either or both of the Services as appropriate. The ACA will include: (1) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations; (2) a program for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency; (3) provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis on proposed actions; (4) provisions for the Action Agency to maintain a list of fire plan projects that received NLAA determinations under the agreement; and (5) a mutually agreed upon program for monitoring and periodic program evaluations. The purpose of the training program is to ensure the Action Agency consistently interprets and applies the relevant provisions of the ESA and regulations (50 CFR 402), with the expectation that the Action Agency will reach the same conclusion as the Service.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The joint counterpart ESA section 7 regulations apply only to ESA section 7 determinations made by one of the five Federal Action Agencies that implement the NFP; (2) the rule will only remove the requirement for the Action Agencies to conduct informal consultation with and obtain written concurrence from FWS or NMFS on those NFP actions they determine that are NLAA listed species or designated critical habitat; and (3) the regulations are designed to reduce potential economic burdens on the Services and Action Agencies by improving the efficiency of the process. Therefore, we certify that this action will not have a significant economic impact on a substantial number of small businesses, organizations, or governments pursuant to the RFA.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

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

(a) These counterpart regulations will not ''significantly or uniquely'' affect small governments. A Small Government Agency Plan is not required. We expect that these counterpart regulations will not result in any significant additional expenditures.

(b) These counterpart regulations will not produce a Federal mandate on State, local, or tribal governments or the private sector of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. These counterpart regulations impose no obligations on State, local, or tribal governments.

Takings

In accordance with Executive Order 12630, these counterpart regulations do not have significant takings implications. These counterpart regulations pertain solely to ESA section 7 consultation coordination procedures, and the procedures have no impact on personal property rights.

Federalism

In accordance with Executive Order 13132, these counterpart regulations do not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Commerce regulations under section 7 of the ESA, we coordinated development of these counterpart regulations with

appropriate resource agencies throughout the United States.

Civil Justice Reform

In accordance with Executive Order 12988, this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We promulgate these counterpart regulations consistent with 50 CFR 402.04 and section 7 of the ESA.

Paperwork Reduction Act

This rule would not impose any new requirements for collection of information that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This rule will not impose new record keeping or reporting requirements on State or local governments, individuals, businesses, or organizations. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

National Environmental Policy Act

These counterpart regulations have been developed by FWS and NMFS, jointly with FS, BIA, BLM, and NPS according to 50 CFR 402.04. The FWS and NMFS are considered the lead Federal agencies for the preparation of this rule, pursuant to 40 CFR 1501. We have analyzed these counterpart regulations in accordance with the criteria of the National Environmental Policy Act (NEPA), the Department of the Interior Manual (318 DM 2.2(g) and 6.3(D)), and National Oceanic and Atmospheric Administration (NOAA) Administrative Order 216–6 and have determined, after preparation of an environmental assessment, that the action does not have any significant effects. A Finding Of No Significant Impact has been prepared.

Government-to-Government Relationship With Indian Tribes

In accordance with the Secretarial Order 3206, ''American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act'' (June 5, 1997); the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951); E.O. 13175; and the Department of the Interior's 512 DM 2, we understand that we must relate to recognized Federal Indian Tribes on a Government-to Government basis. These counterpart regulations do not directly affect Tribal resources. These counterpart regulations may have an indirect effect on Native American Tribes as the Bureau of Indian Affairs may, at its discretion, implement the procedures outlined in the counterpart regulations for those activities affecting Tribal resources that they may authorize, fund, or carry out under the NFP. The analysis that is conducted for determining how a proposed project affects listed species or critical habitat remains unchanged by these counterpart regulations. Therefore, tribal resources will be unaffected by implementation of this rule and government-to-government consultation is not necessary.

List of Subjects in 50 CFR Part 402

Endangered and threatened species.

Final Regulation Promulgation

■ For the reasons set forth in the preamble, the Service amends part 402, title 50 of the Code of Federal Regulations as follows:

PART 402—[AMENDED]

■ 1. The authority citation for part 402 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. Add a new Subpart C to read as follows:

Subpart C—Counterpart Regulations For Implementing the National Fire Plan

Sec.
402.30 Definitions.
402.31 Purpose.
402.32 Scope.
402.33 Procedures.
402.34 Oversight.

Subpart C—Counterpart Regulations for Implementing the National Fire Plan

§ 402.30 Definitions.

The definitions in § 402.02 are applicable to this subpart. In addition, the following definitions are applicable only to this subpart.

Action Agency refers to the Department of Agriculture Forest Service (FS) or the Department of the Interior Bureau of Indian Affairs (BIA), Bureau of Land Management (BLM), Fish and Wildlife Service (FWS), or National Park Service (NPS).

Alternative Consultation Agreement (ACA) is the agreement described in § 402.33 of this subpart.

Fire Plan Project is an action determined by the Action Agency to be within the scope of the NFP as defined in this section.

National Fire Plan (NFP) is the September 8, 2000, report to the President from the Departments of the Interior and Agriculture entitled ''Managing the Impact of Wildfire on Communities and the Environment'' outlining a new approach to managing fires, together with the accompanying budget requests, strategies, plans, and direction, or any amendments thereto.

Service Director refers to the FWS Director or the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration.

§ 402.31 Purpose.

The purpose of these counterpart regulations is to enhance the efficiency and effectiveness of the consultation process under section 7 of the ESA for Fire Plan Projects by providing an optional alternative to the procedures found in §§ 402.13 and 402.14(b) of this part. These regulations permit an Action Agency to enter into an Alternative Consultation Agreement (ACA) with the Service, as described in § 402.33, which will allow the Action Agency to determine that a Fire Plan Project is ''not likely to adversely affect'' (NLAA) a listed species or designated critical habitat without formal or informal consultation with the Service or written concurrence from the Service. An NLAA determination for a Fire Plan Project made under an ACA, as described in § 402.33, completes the Action Agency's statutory obligation to consult with the Service for that Project. In situations where the Action Agency does not make an NLAA determination under the ACA, the Action Agency would still be required to conduct formal consultation with the Service when required by § 402.14. This process will be as protective to listed species and designated critical habitat as the process established in subpart B of this part. The standards and requirements for formal consultation under subpart B for Fire Plan Projects that do not receive an NLAA determination are unchanged.

§ 402.32 Scope.

(a) Section 402.33 establishes a process by which an Action Agency may determine that a proposed Fire Plan Project is not likely to adversely affect any listed species or designated critical habitat without conducting formal or informal consultation or obtaining written concurrence from the Service.

(b) Section 402.34 establishes the Service's oversight responsibility and the standard for review under this subpart.

(c) Nothing in this subpart C precludes an Action Agency at its discretion from initiating early, informal, or formal consultation as described in §§ 402.11, 402.13, and 402.14, respectively.

(d) The authority granted in this subpart is applicable to an Action Agency only where the Action Agency

has entered into an ACA with the Service. An ACA entered into with one Service is valid with regard to listed species and designated critical habitat under the jurisdiction of that Service whether or not the Action Agency has entered into an ACA with the other Service.

§ 402.33 Procedures.

(a) The Action Agency may make an NLAA determination for a Fire Plan Project without informal consultation or written concurrence from the Director if the Action Agency has entered into and implemented an ACA. The Action Agency need not initiate formal consultation on a Fire Plan Project if the Action Agency has made an NLAA determination for the Project under this subpart. The Action Agency and the Service will use the following procedures in establishing an ACA.

(1) *Initiation:* The Action Agency submits a written notification to the Service Director of its intent to enter into an ACA.

(2) *Development and Adoption of the Alternative Consultation Agreement:* The Action Agency enters into an ACA with the Service Director. The ACA will, at a minimum, include the following components:

(i) A list or description of the staff positions within the Action Agency that will have authority to make NLAA determinations under this subpart C.

(ii) Procedures for developing and maintaining the skills necessary within the Action Agency to make NLAA determinations, including a jointly developed training program based on the needs of the Action Agency.

(iii) A description of the standards the Action Agency will apply in assessing the effects of the action, including direct and indirect effects of the action and effects of any actions that are interrelated or interdependent with the proposed action.

(iv) Provisions for incorporating new information and newly listed species or designated critical habitat into the Action Agency's effects analysis of proposed actions.

(v) A mutually agreed upon program for monitoring and periodic program evaluation to occur at the end of the first year following signature of the ACA and periodically thereafter.

(vi) Provisions for the Action Agency to maintain a list of Fire Plan Projects for which the Action Agency has made NLAA determinations. The Action Agency will also maintain the necessary records to allow the Service to complete the periodic program evaluations.

(3) *Training:* Upon completion of the ACA, the Action Agency and the Service will implement the training program outlined in the ACA to the mutual satisfaction of the Action Agency and the Service.

(b) The Action Agency may, at its discretion, allow any subunit of the Action Agency to implement this subpart as soon as the subunit has fulfilled the training requirements of the ACA, upon written notification to the Service. The Action Agency shall at all times have responsibility for the adequacy of all NLAA determinations it makes under this subpart.

(c) The ACA and any related oversight or monitoring reports shall be made available to the public through a notice of availability in the **Federal Register**.

§ 402.34 Oversight.

(a) Through the periodic program evaluation set forth in the ACA, the Service will determine whether the implementation of this subpart by the Action Agency is consistent with the best available scientific and commercial information, the ESA, and section 7 regulations.

(b) The Service Director may use the results of the periodic program evaluation described in the ACA to recommend changes to the Action Agency's implementation of the ACA. If and as appropriate, the Service Director may suspend any subunit participating in the ACA or exclude any subunit from the ACA.

(c) The Service Director retains discretion to terminate the ACA if the Action Agency fails to comply with the requirements of this subpart, section 7 of the ESA, or the terms of the ACA. Termination, suspension, or modification of an ACA does not affect the validity of any NLAA determinations made previously under the authority of this subpart.

Dated: November 26, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Dated: December 3, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30393 Filed 12–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 031126295–3295–01; I.D. 111703B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Area; Interim 2004 Harvest Specifications for Groundfish

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

ACTION: Interim final rule.

SUMMARY: NMFS issues interim 2004 total allowable catch (TAC) amounts for each category of groundfish, Community Development Quota (CDQ) reserve amounts, American Fisheries Act (AFA) pollock allocations and sideboard amounts, and prohibited species catch (PSC) allowances and prohibited species quota (PSQ) reserves for the groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI). The intended effect is to conserve and manage the groundfish resources in the BSAI.

EFFECTIVE DATE: The interim harvest specifications are effective from 0001 hours, Alaska local time (A.l.t.), January 1, 2004, until the effective date of the final 2004 harvest specifications for BSAI groundfish, which will be published in the **Federal Register**.

ADDRESSES: Copies of the Environmental Assessment (EA) prepared for this action, the final 2002 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 2002, and the final 2003 SAFE report, dated November 2003, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809) or from its home page at *http://www.fakr.noaa.gov/npfmc*.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or *mary.furuness@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implementing the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) govern the groundfish fisheries in the BSAI. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it under the Magnuson-Stevens Fishery

Conservation and Management Act (Magnuson-Stevens Act). General regulations that also pertain to the U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council met in October 2003 to review scientific information concerning groundfish stocks including the 2002 SAFE report and the EA (see **ADDRESSES**) and recommended proposed 2004 specifications. The Council recommended a proposed total acceptable biological catch (ABC) of 3,127,003 metric tons (mt) and a proposed total TAC of 1,998,443 mt for the 2004 fishing year. The proposed TAC amounts for each species were based on the best available biological and socioeconomic information.

Under § 679.20(c)(1), NMFS published in the **Federal Register** proposed harvest specifications for groundfish in the BSAI for the 2004 fishing year (68 FR 67642, December 3, 2003). That document contains a detailed discussion of the proposed 2004 TACs, initial TACs (ITACs) and related apportionments, CDQ reserves, ABC amounts, overfishing levels, PSC allowances, PSQ reserve amounts, and associated management measures of the BSAI groundfish fishery.

This action provides interim harvest specifications and apportionments thereof for the 2004 fishing year that will become available on January 1, 2004, and remain in effect until superseded by the final 2004 harvest specifications. Background information concerning the 2004 groundfish harvest specification process on which this interim action is based is provided in the above mentioned proposed specification document.

Establishment of Interim TACs

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the TAC for this species be fully allocated among the CDQ program, incidental catch allowance (ICA), and inshore, catcher/processor, and mothership directed fishery allowances.

Regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve, with the exception of squid, be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Regulations at § 679.20(a)(5)(i)(A) require that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Regulations at § 679.20(c)(2) require interim specifications to be effective at 0001 hours, A.l.t., January 1, and remain in effect until superseded by the final groundfish harvest specifications. Regulations at § 679.20(c)(2)(ii) provide that the interim specifications will be established as one-fourth of each proposed ITAC amount and apportionment thereof (not including pollock, Pacific cod, Atka mackerel, and the hook-and-line and pot gear allocation of sablefish), one-fourth of each proposed PSQ reserve and PSC allowance established at § 679.21, and the proposed first seasonal allowance of pollock, Pacific cod and Atka mackerel TAC. As stated in the proposed specifications (68 FR 67642, December 3, 2003), no harvest of groundfish is authorized before the effective date of this action implementing the interim specifications.

Interim 2004 BSAI Groundfish Harvest Specifications

Table 1 provides interim TAC and CDQ amounts and apportionments thereof. Amendment 77 to the FMP, approved by the Secretary of Commerce on October 20, 2003, provides for apportioning the BSAI Pacific cod TAC among hook-and-line and pot gear sectors. A final rule implementing Amendment 77 was published on December 1, 2003 (68 FR 67086), and will be effective by January 1, 2004. Amendment 77 will allocate the 18.3 percent pot gear allocation as: 15 percent to pot catcher vessels and 3.3 percent to pot catcher processors. Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the hook-and-line and pot gear allocations of sablefish for the CDQ reserve or for sablefish managed under the Individual Fishing Quota (IFQ) program. As a result, directed fishing for the hook-and-line and pot gear allocations of CDQ sablefish and IFQ sablefish is prohibited until the effective date of the final 2004 groundfish specifications.

TABLE 1.—INTERIM 2004 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Pollock:[2]			
AFA Inshore	BS	259,119	
AFA Inshore	SCA Limit[3]	41,769	
AFA Catcher/Processors[4]	BS	207,295	
Catch by C/Ps	BS	189,675	
Catch by CVs[4]	BS	17,620	
Unlisted C/P Limit[4]	BS	1,036	
AFA Catcher/Processors[4]	SCA Limit[3]	145,106	
AFA Mothership	BS	51,824	
AFA Mothership	SCA Limit[3]	36,277	
CDQ	BS		59,670
CDQ	SCA Limit[3]		41,769
ICA	BS	46,990	
ICA	AI	1,000	
ICA	Bogoslof District	50	
Excessive Harvesting Limit[5]	BS	90,692	
Excessive Processing Limit[5]	BS	155,471	
Total Pollock		566,278	59,670

TABLE 1.—INTERIM 2004 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]—Continued

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Pacific Cod[6]	Jig	1,411	
	Hook-and-line	42,937	
	Catcher/Processors		
	Hook-and-line Catcher Vessels	161	
	Pot Catcher/Processors	1,771	
	Pot Catcher Vessels	8,051	
	Catcher Vessels <60 Hook-and-line, Pot	1,252	
	ICA	500	
	Trawl Catcher Vessels	29,014	
	Trawl Catcher/Processors	20,724	
CDQ			15,563
Total Pacific Cod		105,821	15,563
Sablefish[7 8]	BS Trawl	283	14
	BS Hook-and-line and Pot	N/A	N/A
	AI Trawl	151	11
	AI Hook-and-line and Pot	N/A	N/A
Total Sablefish		434	25
Atka mackerel[9]	Western AI	8,496	1,499
	Western HLA Limit	5,097	
	Central AI	12,201	2,153
	Central HLA Limit	7,321	
	Eastern AI/BS		781
	Jig Gear	89	
	Other Gear	8,763	
Total Atka Mackerel		29,549	4,433
Yellowfin Sole	BSAI	17,797	1,570
Rock Sole	BSAI	9,350	825
Greenland Turbot	BS	570	50
	AI	281	25
Total Greenland Turbot		850	75
Arrowtooth Flounder	BSAI	2,550	225
Flathead Sole	BSAI	4,250	375
Other flatfish[10]	BSAI	638	56
Alaska plaice	BSAI	2,125	188
Pacific Ocean Perch	BS	300	27
	Western AI	1,227	108
	Central AI	701	62
	Eastern AI	734	65
Total Pacific Ocean Perch		2,962	262
Northern Rockfish	BS	26	2
	AI	1,249	110
Total Northern Rockfish		1275	112
Shortraker/Rougheye[11]	BS	29	3
	AI	177	16
	AI Trawl	53	
	AI Non-trawl	124	
Total Shortraker/Rougheye		206	19
Other Rockfish[12]	BS	204	18
	AI	135	12
Total Other Rockfish		339	30
Squid	BSAI	419	
"Other Species"[13]	BSAI	6,866	606

TABLE 1.—INTERIM 2004 TAC AMOUNTS FOR GROUNDFISH AND APPORTIONMENTS THEREOF FOR THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA[1]—Continued

Species and component (if applicable)	Area and/or gear (if applicable)	Interim TAC	Interim CDQ
Total interim TAC		751,709	84,034

[1] Amounts are in mt. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) management area unless otherwise specified. With the exception of pollock, and for purposes of these specifications, the BS includes the Bogoslof District.

[2] After subtraction for the CDQ reserve and ICA, the pollock ITAC is allocated as a directed fishing allowance (DFA). Ten percent of the pollock TAC is allocated to the pollock CDQ reserve (§ 679.20(a)(5)(i)(A)). NMFS is allocating 3.5 percent of the pollock as an ICA (§ 679.20(a)(5)(i)(A)(*1*)). The first seasonal apportionment of pollock for all sectors is 40 percent of the annual DFA.

[3] The Steller sea lion conservation area (SCA) limits harvest to 28 percent of each sector's annual DFA until April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of the SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[4] Under § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors. The AFA unlisted catcher/processors are limited from exceeding a harvest amount of 0.5 percent of the DFA allocated to the AFA catcher/processor sector. § 679.20(a)(5)(i)(A)(*4*)(*iii*).

[5] Regulations at § 679.20(a)(5)(i)(A)(*6*) require that NMFS establish an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs. Regulations at § 679.20(a)(5)(i)(A)(*7*) require that NMFS establish an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[6] After subtraction of the reserves, the ITAC amount for Pacific cod is allocated: 2 percent to vessels using jig gear, 51 percent to hook-and-line or pot gear, and 47 percent to trawl gear. The Pacific cod allocation to trawl gear is split evenly between catcher vessels and catcher/processors (*see* § 679.20(a)(7)(i)). The Pacific cod allocation to hook-and-line or pot gear is further allocated as an ICA and as the following directed fishing allowances: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 3.3 percent to pot catcher/processors, 15 percent to pot catcher vessels, 1.4 percent to catcher vessels under 60 feet LOA using hook-and-line or pot gear (*see* § 679.20(a)(7)(i)(c)). The first seasonal allowances of the ITAC gear apportionments are in effect on January 1 as an interim TAC. The first seasonal allocations are 60 percent of the annual TAC, except for vessels using jig gear (40 percent), trawl catcher/processors (50 percent) and trawl catcher vessels (70 percent).

[7] Sablefish gear allocations are as follows: In the BS subarea, trawl gear is allocated 50 percent, and hook-and-line and pot gear are allocated 50 percent of the TAC. In the AI subarea, trawl gear is allocated 25 percent, and hook-and-line and pot gear are allocated 75 percent of the TAC (*see* § 679.20(a)(4)(iii) and (iv)). One-fourth of the ITAC amount for trawl gear is in effect January 1 as an interim TAC amount.

[8] The sablefish hook-and-line gear fishery is managed under the Individual Fishing Quota (IFQ) program and subject to regulations contained in subpart D of 50 CFR part 679. Twenty percent of the sablefish hook-and-line and pot gear final TAC amount will be reserved for use by CDQ participants. (*see* § 679.31(c).) Existing regulations at § 679.20(c)(2)(ii) do not provide for an interim specification for the CDQ nontrawl sablefish reserve or for an interim specification for sablefish managed under the IFQ program. In addition, in accordance with § 679.7(f)(3)(ii), retention of sablefish caught with fixed gear is prohibited unless the harvest is authorized under a valid IFQ permit and IFQ card. In 2004, IFQ permits and IFQ cards will not be valid before the effective date of the 2004 final specifications. Thus, fishing for sablefish with fixed gear is not authorized under these interim specifications. *See* subpart D of 50 CFR part 679 and § 679.23(g) for guidance on the annual allocation of IFQ and the sablefish fishing season.

[9] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern Aleutian subarea and the BS subarea ITAC be allocated to the jig gear fleet. The amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season. The harvest limitation area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central AI.

[10] "Other flatfish" includes all flatfish species except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, arrowtooth flounder, yellowfin sole and Alaska plaice.

[11] Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear.

[12] "Other rockfish" includes all Sebastes and Sebastolobus species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[13] "Other species" includes sculpins, sharks, skates, and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Interim Allocation of PSC Limits for Crab, Halibut, and Herring

Under § 679.21(e), annual PSC limits are specified for red king crab, *Chionoecetes bairdi* Tanner crab, and *C. opilio* crab in applicable Bycatch Limitation Zones (*see* § 679.2) of the Bering Sea subarea, and for Pacific halibut and Pacific herring throughout the BSAI. Regulations at § 679.21(e) authorize the apportionment of each PSC limit into PSC allowances for specified fishery categories. Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for halibut, crab, and salmon is reserved as a PSQ reserve for use by the groundfish CDQ program.

Regulations at § 679.20(c)(2)(ii) provide that one-fourth of each proposed PSQ reserve and PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year, until superseded by the final harvest specifications. The PSQ reserves and fishery specific interim PSC allowances for halibut and crab are specified in Table 2 and are in effect at 0001 hours, A.l.t., January 1, 2004.

TABLE 2.—INTERIM 2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab animals Zone 1[1]	*C. opilio* (animals) COBLZ[2]	*C. bairdi* (animals)	
					Zone 1[1]	Zone 2[1]
Trawl fisheries:						
Yellowfin sole	222	35	4,166	694,245	85,211	447,115
Rock sole/other flatfish/flat. sole[4]	195	5	14,946	242,283	91,330	149,039
Red King Crab Savings Subarea[3]			5,231			

TABLE 2.—INTERIM 2004 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab animals Zone 1[1]	*C. opilio* (animals) COBLZ[2]	*C. bairdi* (animals)	
					Zone 1[1]	Zone 2[1]
Turbot/arrowtooth/sablefish[5]	.....	2	.....	10,060	.....	.....
Rockfish—July 1–December 31	17	2	.....	10,059	.....	2,747
Pacific cod	359	5	3,270	31,184	45,778	81,044
Midwater trawl pollock	.....	296	.....	.....	.....	.....
Pollock/Atka mackerel/other[6]	58	37	50	18,107	4,306	6,868
Total Trawl PSC	850	382	22,432	1,005,938	226,625	686,813
Non-trawl fisheries:						
Pacific cod—Total	194	.....	.....	.....	.....	.....
Other non-trawl—Total	14	.....	.....	.....	.....	.....
Groundfish pot & jig	exempt	.....	.....	.....	.....	.....
Sablefish hook-and-line	exempt	.....	.....	.....	.....	.....
Total non-trawl PSC	207					
PSQ Reserve[7]	86	.....	1,818	81,562	18,375	55,687
Grand total	1,144	382	24,250	1,087,500	245,000	742,500

[1] Refer to § 679.2 for definitions of areas.
[2] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at 50 CFR part 679, Figure 13.
[3] In October 2003, the Council proposed limiting red king crab for trawl fisheries within the Red King Crab Savings Subarea (RKCSS) to 35 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).
[4] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), greenland turbot, rock sole, yellowfin sole and arrowtooth flounder.
[5] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[6] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.
[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

Directed Fishing Closures

In accordance with § 679.20(d)(1)(i), if the Administrator, NMFS, Alaska Region (Regional Administrator) determines that any allocation or apportionment of a target species or ''other species'' category has been or will be reached, the Regional Administrator may establish a directed fishing allowance for that species or species group. If the Regional Administrator establishes a directed fishing allowance, and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district (§ 697.20(d)(1)(iii)). Similarly, under regulations at § 679.21(e), if the Regional Administrator determines that a fishery category's bycatch allowance of halibut, red king crab, *C. bairdi* crab or *C. opilio* crab for a specified area has been reached, the Regional Administrator will prohibit directed fishing for each species in that category in the specified area.

The Regional Administrator has determined that the remaining allocation amounts in Table 3 will be necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year.

TABLE 3.—INTERIM DIRECTED FISHING CLOSURES

Area	Species	Incidental catch amount, in mt
Bogoslof District	Pollock	50
Aleutian Islands subarea	Pollock	1,000
	Northern Rockfish	1,249
	Shortraker/rougheye rockfish trawl	53
	Shortraker/rougheye rockfish non trawl	124
	''Other rockfish''	135
Bering Sea subarea	Pacific ocean perch	300
	''Other rockfish''	204
	Northern rockfish	26
	Shortraker/rougheye rockfish	29
Bering Sea and Aleutian Islands	''Other Species''	6,866

Consequently, in accordance with § 679.20(d)(1)(i), the Regional Administrator establishes the directed fishing allowances for the above species or species groups as zero.

Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is immediately prohibiting directed fishing for these species in the specified areas. These closures will remain in effect from 0001 hrs, A.l.t., January 1, 2004, until superseded by the final 2004 harvest specifications for BSAI groundfish.

In addition, the BSAI Zone 1 annual red king crab allowance specified for the trawl rockfish fishery (§ 679.21(e)(3)(iv)(D)) is 0 mt and the BSAI first seasonal halibut bycatch allowance specified for the trawl rockfish fishery is 0 mt. The BSAI annual halibut bycatch allowance specified for the trawl Greenland turbot/arrowtooth flounder/sablefish fishery categories is 0 mt (§ 679.21(e)(3)(iv)(c)). Therefore, in accordance with § 679.21(e)(7)(ii) and (v), NMFS is prohibiting directed fishing for rockfish by vessels using trawl gear in Zone 1 of the BSAI and directed fishing for Greenland turbot/arrowtooth flounder/sablefish by vessels using trawl gear in the BSAI from 0001 hrs., A.l.t., January 1, 2004, until superseded by the final 2004 harvest specifications for BSAI groundfish. NMFS is also prohibiting directed fishing for rockfish outside Zone 1 in the BSAI until 1200 hrs, A.l.t, July 4, 2004.

While these closures are in effect, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a fishing trip. These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 679. Areas are defined in § 679.2. In the BSAI, ''Other rockfish'' includes *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, shortraker, rougheye, and northern rockfish.

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4 set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. Table 4 lists the interim pollock allocations to the seven inshore catcher vessel pollock cooperatives for 2004. Allocations for cooperatives and vessels not participating in cooperatives are not made for the AI subarea because the Aleutian Islands (AI) subarea has been closed to directed fishing for pollock.

TABLE 4.—INTERIM 2004 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catach histories[1]	Percentage of inshore sector allocation	Interim cooperative allocation
Akutan Catcher Vessel Association—Aldebaran, Arctic Explorer, Arcturus, Blue Fox, Cape Kiwanda, Columbia, Dominator, Exodus, Flying Cloud, Golden Dawn, Golden Pisces, Hazel Lorraine, Intrepid Explorer, Leslie Lee, Lisa Melinda, Majesty, Marcy J, Margaret Lyn, Nordic Explorer, Northern Patriot, Northwest Explorer, Pacific Ram, Pacific Viking, Pegasus, Peggy Jo, Perseverance, Predator, Raven, Royal American, Seeker, Sovereignty, Traveler, Viking Explorer	245,527	28.085	72,773
Arctic Enterprise Association—Bristol Explorer, Ocean Explorer, Pacific Explorer	36,807	4.210	10,909
Northern Victor Fleet Cooperative—Anita J., Collier Brothers, Commodore, Excalibur II, Goldrush, Half Moon Bay, Miss Berdie, Nordic Fury, Pacific Fury, Poseidon, Royal Atlantic, Sunset Bay, Storm Petrel	73,656	8.425	21,831
Peter Pan Fleet Cooperative—Amber Dawn, American Beauty, Elizabeth F, Morning Star, Ocean Leader, Oceanic, Providian, Topaz, Walter N	18,693	2.138	5,541
Unalaska Cooperative—Alaska Rose, Bering Rose, Destination, Great Pacific, Messiah, Morning Star, MS Amy, Progress, Sea Wolf, Vanguard, Western Dawn	106,737	12.209	31,636
UniSea Fleet Cooperative—Alsea, American Eagle, Argosy, Auriga, Aurora, Defender, Gun-Mar, Mar-Gun, Nordic Star, Pacific Monarch, Seadawn, Starfish, Starlite	202,479	23.161	60,015
Westward Fleet Cooperative—A.J., Alaskan Command, Alyeska, Arctic Wind, Caitlin Ann, Chelsea K, Dona Martita, Fierce Allegiance, Hickory Wind, Ocean Hope 3, Pacific Challenger, Pacific Knight, Pacific Prince, Starward, Viking, Westward I	189,942	21.727	56,298
Open access AFA vessels	395	0.045	117
Total inshore allocation	874,238	100	259,119

[1] According to regulations at 679.62(e)(1) the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

According to regulations at § 679.20(a)(5)(i)(a)(*3*), NMFS must subdivide the inshore allocation into allocations for cooperatives and vessels not fishing in a cooperative. In addition, according to regulations at § 679.22(a)(7)(vii), NMFS must establish harvest limits inside the Steller Sea Lion Conservation Area (SCA) and provides a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA during the A season. Accordingly, table 5 lists the interim apportionment of the Bering Sea subarea inshore pollock allocation into allocations for vessels fishing for an inshore cooperative and for vessels fishing for the inshore open access sector and establishes a cooperative sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in table 5.

TABLE 5.—INTERIM 2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS, IN MT, TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

	A season TAC	A season inside SCA[1]
Cooperative sector:		
Vessels > 99 ft	n/a	163,459
Vessels ≤ 99 ft	n/a	17,842

TABLE 5.—INTERIM 2004 BERING SEA SUBAREA POLLOCK ALLOCATIONS, IN MT, TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY—Continued

	A season TAC	A season inside SCA[1]
Total	259,002	181,301
Open access sector	117	[2] 82
Total inshore	259,119	181,383

[1] The Steller Sea Lion Conservation area (SCA) is established at § 679.22(a)(7)(vii).

[2] SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(c)(*2*) which specifies that ''the Regional Administrator will prohibit directed fishing for pollock by vessels catching pollock for processing by the inshore component greater than 99 ft (30.2 m) LOA before reaching the inshore SCA harvest limit during the A season to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening.''

Listed AFA Catcher/Processor Sideboards

In 2003, the formula for setting AFA catcher/processor sideboard limits for non-pollock groundfish changed from calculations made for sideboard limits in 2000 through 2002. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The interim 2004 catcher/processor sideboard limits are set out in Table 6.

All non-pollock groundfish that is harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the interim sideboard limits in Table 6. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the interim 2004 sideboard limits for the listed catcher/processors.

TABLE 6.—INTERIM 2004 BSAI AFA LISTED CATCHER/PROCESSOR GROUNDFISH SIDEBOARDS, IN MT

Target species	Area	1995–1997			Interim 2004 TAC available to trawl C/Ps	Interim 2004 C/P sideboard limit
		Retained catch	Available TAC	Ratio		
Pacific cod trawl	BSAI	12,424	51,450	0.241	20,724	4,994
Sablefish trawl	BS	8	1,736	0.005	283	1
	AI	0	1,135	0.000	151	0
Atka mackerel	Western AI	.....	.....	.....	.....	.....
	A season [1]	n/a	n/a	0.200	8,496	1,699
	HLA limit [2]	.....	.....	.....	5,097	0
	Central AI	.....	.....	.....	.....	.....
	A season [1]	n/a	n/a	0.115	12,201	1,403
	HLA limit [2]	.....	.....	.....	7,321	0
Yellowfin sole	BSAI	100,192	527,000	0.190	17,797	3,381
Rock sole	BSAI	6,317	202,107	0.031	9,350	290
Greenland turbot	BS	121	16,911	0.007	850	6
	AI	23	6,839	0.003	570	2
Arrowtooth flounder	BSAI	76	36,873	0.002	2,550	5
Flathead sole	BSAI	1,925	87,975	0.022	4,250	94
Alaska plaice	BSAI	3,243	.....	0.035	2,125	74
Other flatfish	BSAI	3,243	92,428	0.035	638	22
Pacific ocean perch	BS	12	5,760	0.002	300	1
	Western AI	54	12,440	0.004	1,227	5
	Central AI	3	6,195	0.000	701	0
	Eastern AI	125	6,265	0.020	734	15
Northern rockfish	BS	8	.....	0.008	26	0
	AI	83	13,254	0.006	1,249	7
Shortraker/rougheye	BS	8	.....	0.008	29	0
Trawl	AI	42	2,827	0.015	53	1
Other rockfish	BS	18	1,026	0.018	204	4
	AI	22	1,924	0.011	135	1
Squid	BSAI	73	3,670	0.020	419	8
Other species	BSAI	553	65,925	0.008	6,866	55

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the available TAC in the Western Aleutian District, and 11.5 percent of the available TAC in the Central Aleutian District.

[2] HLA limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (§ 679.2). In 2004, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts. Pacific cod harvest by trawl gear in the Aleutian Islands HLA, west of 178 degrees W. long. is prohibited during the Atka mackerel HLA directed fisheries.

Regulations at § 679.64(a)(5) establish a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of PSC amounts taken in the non-pollock groundfish fisheries by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997. PSC amounts taken by listed catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 7. These data were used to calculate the PSC catch ratios for pollock catcher/processors shown in Table 7. The 2004 interim PSC limits available to trawl catcher/processors are multiplied by the ratios to determine the PSC sideboard limits for listed AFA catcher/processors in the 2004 interim non-pollock groundfish fisheries.

PSC that is caught by listed AFA catcher/processors participating in any

non-pollock groundfish fishery listed in Table 7 will accrue against the interim 2004 PSC sideboard limits for the listed AFA catcher/processors. Regulations at § 679.21(e)(3)(v), authorize NMFS to close directed fishing for non-pollock groundfish for listed AFA catcher/processors once an interim 2004 PSC sideboard limit listed in Table 7 is reached.

Crab or halibut PSC that is caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/other species fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 7.—INTERIM 2004 BSAI AFA LISTED CATCHER/PROCESSOR PROHBITIED SPECIES SIDEBOARD LIMITS[1]

PSC species	1995–1997			Interim 2004 PSC available to trawl C/Ps	Interim 2004 C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch/Total PSC		
Halibut mortality	955	11,325	0.084	851	71
Red king crab	3,098	473,750	0.007	22,432	157
C. opilio	2,323,731	15,139,178	0.153	1,005,938	153,908
C. bairdi:					
Zone 1	385,978	2,750,000	0.140	226,625	31,728
Zone 2	406,860	8,100,000	0.050	686,813	34,341

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.

AFA Catcher Vessel Sideboards Limits

Regulations at § 679.64(b) establish a formula for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). The interim 2004 AFA catcher vessel sideboard limits are shown in Tables 8 and 9.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or incidental catch, will be deducted from the interim sideboard limits listed in Table 8.

TABLE 8.—INTERIM 2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARDS LIMITS, IN MT

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Interim 2004 TAC	Interim 2004 catcher vessel sideboard limit
Pacific cod	BSAI	.....	.....	.....
	Jig gear	0.0000	1,411	0
	Hook-and-line CV	.....	.....	0
	Jan 1–Jun 10	0.0006	161	0
	Pot gear	.....	.....	0
	Jan 1–Jun 10	0.0006	9,822	6
	CV <60 feet LOA using hook-and-line or pot gear	0.0006	1,252	1
	Trawl gear, catcher vessel, Jan 20–Apr 1	0.8609	29,014	24,978
Sablefish	BS trawl gear	0.0906	283	26
	AI trawl gear	0.0645	151	10
Atka mackerel	*Eastern AI/BS*	.....	.....	0
	Jig gear	0.0031	89	0
	Other gear	.....	.....	0
	Jan 1–Apr 15	0.0032	4,381	14
	Central AI	.....	.....	0
	Jan 1–Apr 15	0.0001	12,201	1
	HLA limit	0.0001	7,321	1
	Western AI, Jan 1–Apr 15	0	8,496	0
	HLA limit	0.0000	5,097	0
Yellowfin sole	BSAI	0.0647	17,797	1,151
Rock sole	BSAI	0.0341	9,350	319
Greenland Turbot	BS	0.0645	570	37
	AI	0.0205	281	6
Arrowtooth flounder	BSAI	0.0690	2,550	176
Alaska plaice	BSAI	0.0441	2,125	94
Other flatfish	BSAI	0.0441	638	28
POP	BS	0.1000	300	30
	Eastern AI	0.0077	734	6
	Central AI	0.0025	701	2
	Western AI	0.0000	1,227	0
Northern rockfish	BS	0.0280	26	1
	AI	0.0089	1,249	11
Shortraker/Rougheye Trawl	BS	0.0048	29	0
	AI	0.0035	53	0

TABLE 8.—INTERIM 2004 BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARDS LIMITS, IN MT—Continued

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	Interim 2004 TAC	Interim 2004 catcher vessel sideboard limit
Other rockfish	BS	0.0048	204	1
	AI	0.0095	135	1
Squid	BSAI	0.3827	419	160
Other species	BSAI	0.0541	6,866	371
Flathead Sole	BS trawl gear	0.0505	4,250	215

The AFA catcher vessel PSC limit for halibut and each crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. For the BSAI, the interim PSC sideboard limits for AFA catcher vessels are listed in Table 9.

Halibut and crab PSC that is caught by AFA catcher vessels participating in any non-pollock groundfish fishery listed in Table 9 will accrue against the interim 2004 PSC sideboard limits for AFA catcher vessels. Regulations at § 679.21(d)(8) and (e)(3)(v) provide authority to close directed fishing for non-pollock groundfish for AFA catcher vessels once an interim 2004 PSC sideboard limit for the BSAI listed in Table 9 is reached. PSC that is caught by AFA catcher vessels while fishing for pollock in the BSAI will accrue against either the midwater pollock or the pollock/Atka mackerel/''other species'' fishery categories under regulations at § 679.21(e).

TABLE 9.—INTERIM 2004 AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS FOR THE BSAI.[1]

PSC species	Target fishery category[2]	Ratio of 1995–1997 AFA CV retained catch to total retained catch	Interim 2004 PSC Limit	Interim 2004 AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	359	222
	Pacific cod hook-and-line or pot	0.0022	194	0
	Yellowfin sole	0.1144	222	25
	Rock sole/flat. sole/other flatfish[5]	0.2841	195	55
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish (July 4–December 31)	0.0245	17	0
	Pollock/Atka mackerel/Other sp.	0.0227	58	1
Red King Crab	Pacific cod	0.6183	3,270	2,022
Zone 1[4]	Yellowfin sole	0.1144	4,166	477
	Rock sole/flat. sole/other flatfish[5]	0.2841	14,946	4,246
	Pollock/Atka mackerel/Other sp.	0.0227	50	1
C. opilio	Pacific cod	0.6183	31,184	19,281
COBLZ[3]	Yellowfin sole	0.1144	694,245	79,422
	Rock sole/flat. sole/other flatfish[5]	0.2841	242,283	68,833
	Pollock/Atka mackerel/Other sp.	0.0227	18,107	411
	Rockfish	0.0245	10,059	246
	Turbot/Arrowtooth/Sablefish	0.2327	10,060	2,341
C. bairdi	Pacific cod	0.6183	45,778	28,305
Zone 1	Yellowfin sole	0.1144	85,211	9,748
	Rock sole/flat. sole/other flatfish[5]	0.2841	91,330	25,947
	Pollock/Atka mackerel/Other sp.	0.0227	4,306	98
C. bairdi	Pacific cod	0.6183	81,044	50,110
Zone 2	Yellowfin sole	0.1144	447,115	51,150
	Rock sole/flat. sole/other flatfish[5]	0.2841	149,039	42,342
	Pollock/Atka mackerel/Other sp.	0.0227	6,868	156
	Rockfish	0.0245	2,747	67

[1] Halibut amounts are in mt of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at Figure 13 of 50 CFR part 679.
[4] In October 2003, the Council recommended that the red king crab bycatch for trawl fisheries within the Red King Crab Savings Subarea be limited to 35 percent of the total allocation to the rock sole/flathead sole/''other flatfish'' fishery category (§ 679.21(e)(3)(ii)(B)).
[5] ''Other flatfish'' for PSC monitoring includes all flatfish species, except for Pacific halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder.

AFA Catcher/Processor and Catcher Vessel Sideboard Directed Fishing Closures

The Regional Administrator has determined that many of the interim AFA catcher/processor and catcher vessel sideboard limits listed in Table 10 and 11 are necessary as incidental catch to support other anticipated groundfish fisheries for the 2004 fishing year. In accordance with § 679.20(d)(1)(iv), the Regional Administrator establishes the limits listed in Table 10 and 11 as directed fishing allowances. The Regional Administrator finds that many of these directed fishing allowances will be reached before the end of the year. Therefore, in accordance with § 679.20(d)(1)(iii), NMFS is prohibiting directed fishing by AFA catcher/processors for the species in the specified areas set out in Table 10 and directed fishing by non-exempt AFA catcher vessels for the species in the specified areas set out in Table 11.

TABLE 10.—INTERIM AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR SIDEBOARD DIRECTED FISHING CLOSURES.[1]

Species	Area	Gear types	Incidental catch amount
Sablefish trawl	BS	Trawl	1
	AI	Trawl	0
Rock sole	BSAI	all	290
Greenland turbot	BS	all	6
	AI	all	2
Arrowtooth flounder	BSAI	all	5
Pacific ocean perch	BS	all	1
	Western AI	all	5
	Central AI	all	0
	Eastern AI	all	15
Northern rockfish	BS	all	0
	AI	all	7
Shortraker/Rougheye rockfish	BS	all	0
	AI	all	1
Other rockfish	BS	all	4
	AI	all	1
Squid	BSAI	all	8
Other species	BSAI	all	55

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679. Specified amounts are in mt.

TABLE 11.—INTERIM AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD DIRECTED FISHING CLOSURES.[1]

Species	Area	Gear	Incidental catch amount
Pacific cod	BSAI	hook-and-line	0
	BSAI	pot	6
	BSAI	jig	0
Sablefish	BS	trawl	26
	AI	trawl	10
Atka mackerel	Eastern AI/BS	jig	0
	Eastern AI/BS	other	14
	Central AI	all	1
	Western AI	all	0
Greenland Turbot	BS	all	37
	AI	all	6
Arrowtooth flounder	BSAI	all	176
Pacific ocean perch	BS	all	30
	Western AI	all	6
	Central AI	all	2
	Eastern AI	all	0
Northern rockfish	BS	all	1
	AI	all	11
Shortraker/rougheye rockfish	BS	all	0
	AI	trawl	0
Other rockfish	BS	all	1
	AI	all	1
Squid	BSAI	all	160
Other species	BSAI	all	371

[1] Maximum retainable amounts may be found in Table 11 to 50 CFR part 679. Specified amounts are in mt.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

Because this action is a final action by NMFS, analyses required under the Magnuson-Stevens Act must be completed and considered by the agency before promulgation of the interim harvest specifications.

Regulations at 50 CFR 679.20(c)(2) require NMFS to specify harvest specifications to be effective January 1 and to remain in effect until superceded by the final specifications. Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open, resulting in disruption within the fishing industry. NMFS cannot publish interim specifications until proposed specifications are completed, because the interim specifications are derived from the proposed specifications, as required by regulations at 50 CFR 679.20(c)(2).

The proposed specifications are based on the preliminary recommendations of the Plan Team, which were reviewed by the Scientific and Statistical Committee, Advisory Panel, and Council in October, 2003 in projecting 2003 biomass amounts, as identified in the 2002 SAFE Report, for the proposed 2004 ABC, overfishing levels, and TAC amounts. The Plan Team recommendations incorporate the most current data available from a number of sources, including current-year industry catch levels, and current-year trawl and hydro-acoustic surveys. These data are not available in time for Council review prior to the October Council meeting, as the surveys are conducted during the summer months, and industry catch levels reflect current year activity. These updated data sources represent the best available scientific information. These data provide the basis for the proposed and interim specifications.

The proposed specifications, as required by regulations at 50 CFR 679.20(c)(1)(i)(A), must be published as soon as practicable *after* consultation with the Council, which occurs at the Council's October meeting. This requirement, along with the requirement of national standard 2 of the Magnuson-Stevens Act to use the best scientific information available, prevents NMFS from publishing the proposed specifications early enough to provide sufficient time to have a public comment period for the interim specifications, which are derived from the proposed specifications, and to have the interim specifications effective on January 1.

As stated above, disruption of the fishing industry, and consequent impacts to fishing communities and the public, would occur if the interim specifications were not effective January 1. Additionally, the public is provided an opportunity to comment on the proposed specifications, from which the interim specifications are derived. For these reasons, good cause exists under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action as such procedures would be impracticable and contrary to the public interest.

Likewise, the AA finds good cause to waive the 30-day delay in effectiveness date of the interim specifications. Regulations at 50 CFR 679.20(c)(2) requires NMFS to establish interim harvest specifications to be effective on January 1 and to remain in effect until superseded by the publication of final harvest specifications by the Office of the Federal Register. NMFS interprets regulations at § 679.20(c)(2) as requiring the filing of interim specifications with the Office of the Federal Register before any harvest of groundfish is authorized. The interim specifications are based on the proposed 2004 specifications.

The interim specifications rely on data used to propose the 2004 specifications, and those data are not available until the after summer surveys are conducted (see above). Without interim specifications in effect on January 1, the groundfish fisheries would not be able to open on that date, resulting in disruption of the fishing industry. These reasons constitute good cause pursuant to 5 U.S.C. 553(d)(3) to waive the 30-day delay in effectiveness date.

Because these interim specifications are not required to be issued with prior notice and opportunity for public comment pursuant to 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act do not apply. Consequently, no regulatory flexibility analysis has been prepared for this action.

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Dated: December 2, 2003.

William Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–30380 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 235
Monday, December 8, 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 ENERGY

10 CFR Parts 850 and 851

[Docket No. EH–RM–03–WSH]

RIN 1901–AA99

Chronic Beryllium Disease Prevention Programs; Worker Safety and Health

AGENCY: Department of Energy.

ACTION: Proposed rulemaking and opportunity for public comment.

SUMMARY: Pursuant to section 3173 of the Bob Stump National Defense Authorization Act for Fiscal Year 2003 (NDAA), DOE is proposing regulations for worker safety and health at Department of Energy (DOE) workplaces. These proposed regulations are intended to maintain the high level of protection currently afforded workers throughout the DOE complex.

DATES: The comment period for this proposed rule will end on February 6, 2004. The public hearings for this rulemaking will be held on: January 21, 2004 in Arlington, VA (Washington, DC) from 9 a.m. to 12 p.m. and from 1:30 p.m. to 5 p.m.; and February 4, 2004 in Golden CO (Denver) from 9 a.m. to 1 p.m., and from 4 p.m. to 8 p.m. Requests to speak at any of the hearings should be phoned in to Jacqueline D. Rogers, 301–903–5684, by January 20, 2004, for the Arlington, VA (Washington, DC) hearing; and February 2, 2004, for the Golden, CO (Denver) hearing. Each presentation is limited to 10 minutes.

ADDRESSES: Written comments (three copies) on the proposed rule should be addressed to: Jacqueline D. Rogers, U.S. Department of Energy, Docket Number EH–RM–03–WSH; EH–52/270 Corporate Square Building; 1000 Independence Avenue SW, Washington, DC 20585–0270. Alternatively, comments can be filed electronically by e-mail to: *rule851.comments@hq.doe.gov* noting ''Worker Safety and Health Rule Comments'' in the subject line. Where possible, commenters should identify the specific section to which they are responding.

Copies of the public hearing transcripts, written comments received, and any other docket material may be reviewed on the Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/whs/rulemaking.*

The public hearings for this rulemaking will be held at the following addresses:

Arlington, VA (Washington, DC): Marriott Crystal City Hotel, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Golden, CO (Denver): DOE National Renewable Energy Laboratory, Visitor Center, Auditorium, 15013 Denver West Parkway, Golden, CO 80401 (I–70, Exit 263, right at top of exit ramp if coming from Denver, left at stop sign, building on right).

For more information concerning public participation in this rulemaking proceeding, *see* section IV of this notice of proposed rulemaking (Public Comment Procedures).

FOR FURTHER INFORMATION CONTACT: Jacqueline D. Rogers, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0270, 301–903–5684, e-mail: *jackie.rogers@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Proposed Regulations
III. Procedural Review Requirements
A. Review under Executive Order 12866
B. Review under Executive Order 12988
C. Review under Executive Order 13132
D. Review under Executive Order 13175
E. Review under the Regulatory Flexibility Act
F. Review under the Paperwork Reduction Act
G. Review under the National Environmental Policy Act
H. Review under the Unfunded Mandates Reform Act
I. Review under Executive Order 13211
J. Review under the Treasury and General Government Appropriations Act, 1999
K. Review under the Treasury and General Government Appropriations Act, 2001
IV. Public Comment Procedures
A. Written Comments
B. Public Hearing

I. Introduction

DOE has broad authority to regulate worker safety and health with respect to its nuclear and nonnuclear functions pursuant to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 *et seq.*, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911, and the Department of Energy Organization Act (DOEOA), 42 U.S.C. 7101–7352. Specifically, the AEA authorized and directed the Atomic Energy Commission (AEC) to protect health and promote safety during the performance of activities under the AEA. *See* Sec. 31a.(5) of AEA, 42 U.S.C. 2051(a)(5); Sec. 161b. of AEA, 42 U.S.C 2201(b); Sec. 161i.(3) of AEA, 42 U.S.C. 2201(i)(3); and Sec. 161p. of AEA, 42 U.S.C. 2201(p). The ERA abolished the AEC and replaced it with the Nuclear Regulatory Commission (NRC), which became responsible for the licensing of commercial nuclear activities, and the Energy Research and Development Administration (ERDA), which became responsible for the other functions of the AEC under the AEA, as well as several nonnuclear functions. The ERA authorized ERDA to use the regulatory authority under the AEA to carry out its nuclear and nonnuclear function, including those functions that might become vested in ERDA in the future. *See* Sec. 105(a) of ERA, 42 U.S.C. 5815(a); and Sec. 107 of ERA, 42 U.S.C. 5817. The DOEOA transferred the functions and authorities of ERDA to DOE. *See* Sec. 301(a) of DOEOA, 42 U.S.C. 7151(a); Sec. 641 of DOEOA, 42 U.S.C. 7251; Sec. 644 of DOEOA, 42 U.S.C. 7254.

DOE (like its predecessors, the AEC and the ERDA) has implemented this authority in a comprehensive manner by incorporating appropriate provisions on worker safety and health into the contracts under which work is performed at DOE workplaces. During the past decade, DOE has taken steps to ensure that contractual provisions on worker safety and health are tailored to reflect particular workplace environments. In particular, the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations requires DOE contractors to establish an integrated safety management system. 48 CFR 952.223–71 and 970.5223–1. As part of this process, a contractor must define the work to be performed, analyze the potential hazards associated with the work, and identify a set of standards and controls that are sufficient to ensure safety and health if implemented properly. The identified standards and controls are incorporated as contractual

requirements through the *Laws, Regulations and DOE Directives* clause set forth in the DOE procurement regulations. 48 CFR 970.0470–2 and 970.5204–2. Following the enactment of the Price-Anderson Amendments Act of 1988, Pub. L. 100–408, granting the Department the authority to impose civil penalties for nuclear safety violations on contractors with Price-Anderson indemnification agreements, DOE supplemented its contractual based regulatory approach with a further more specific set of rules set forth in 10 CFR parts 820, 830, and 835 to ensure nuclear safety and protection from radiological hazards during the conduct of DOE activities.

In 2002, Congress directed DOE to promulgate regulations on worker safety and health governing contractors with Price-Anderson indemnification agreements rather than rely exclusively on a contractual approach to establish safe and healthy workplaces. Specifically, section 3173 of the NDAA amended the AEA to add section 234C (codified as 42 U.S.C. 2282c) that requires DOE to promulgate worker safety and health regulations that maintain ''the level of protection currently provided to * * * workers.'' Pub. L. 107–314 (December 2, 2002). These regulations are to include ''flexibility * * * to tailor implementation * * * to reflect activities and hazards associated with a particular work environment.'' Section 234C also makes a DOE contractor with such an indemnification agreement that violates these regulations subject to civil penalties similar to the authority Congress granted to DOE in 1988 with respect to civil penalties. Section 234C also directed DOE to insert in such contracts a clause providing for reducing contractor fees and other payments in the event of a violation by a contractor or contractor employee of any regulation promulgated under section 234C while specifying that both sanctions may not be used for the same violation. The Secretary of Energy has approved the issuance of this Notice to propose regulations to implement the statutory mandate of the NDAA.

II. Proposed Regulations

A. Summary

The proposed regulation would set forth the obligations of DOE contractors (which, consistent with section 234C, proposed § 851.3 would define as entities under contract with DOE, including affiliated entities, subcontractors and suppliers) to provide safe and healthy workplaces for workers (which, consistent with section 234C, proposed § 851.3 would define as employees who perform work in a workplace covered by the proposed regulations). In particular, the proposed regulations would require a contractor responsible for a DOE workplace to ensure: (1) that the workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and (2) that work is performed in accordance with the worker safety and health program for the workplace. Consistent with section 234C, the worker safety and health program must be approved by DOE and must achieve a level of protection at least substantially equivalent to the level of protection that existed in workplaces throughout the DOE complex in the year 2002 (*i.e.,* the year of enactment of section 3173 of the NDAA) that are comparable to the workplaces to which the program would apply. When the regulations become effective, no work could be performed at a workplace for which DOE had not approved a worker safety and health program. Consistent with section 234C, DOE approval would be based on a determination that the program would achieve the required level of protection.

A contractor would develop and maintain a single worker safety and health program for all the workplaces at a DOE site for which the contractor is responsible and would coordinate with any other DOE contractors responsible for other workplaces at the site to ensure an integrated and consistent approach to worker safety and health at the site. A contractor would discharge its duties concerning the worker safety and health program in a manner consistent with the integrated safety management process set forth in the clauses, *Integration of Environment, Health and Safety into Work Planning and Execution.* 48 CFR 952.223–71, 970.5223–1. First, the contractor would identify and analyze the workplace environment, the work activities performed there, and the potential hazards to workers. On the basis of this identification and analysis, the contractor would select and document a set of workplace safety and health standards that are necessary and sufficient to protect workers from the identified hazards in a manner that achieves a level of protection substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002.

A contractor should select the combination of appropriate standards that it believes is best designed to achieve the required level of protection in a manner consistent with the Departmental mission it is performing. DOE has included an appendix to the proposed regulations that sets forth a description of worker safety standards and programs generally acceptable for inclusion in a worker safety and health program. This appendix is based on DOE Order 440.1A, which sets forth DOE expectations concerning worker protection and which has been incorporated into most DOE contracts through inclusion of the order's Contractor Requirements Document. This appendix is included only to provide generally acceptable worker safety and health standards and programs and is not intended to prescribe particular standards and programs. The contractor would implement the worker safety and health program for a particular workplace in a manner tailored to fit the particular work environment of that workplace. Radiological hazards would not be covered by the proposed rule to the extent they are regulated by the existing requirements on nuclear safety and radiological protection set forth in 10 CFR parts 820, 830, and 835.

DOE intends to work with its contractors to achieve compliance with the regulations and maintain the high level of protection currently afforded workers. Once the proposed regulations are finalized, if a contractor violated them, DOE could take appropriate enforcement action against the contractor, including, in the case of contractors with indemnification agreements, the imposition of civil penalties or the reduction of contract fees.

With respect to a covered workplace operated by DOE, the proposed regulations would make DOE responsible for ensuring work is performed consistent with the requirements of the proposed regulations, including the establishment, maintenance and implementation of a worker safety and health program.

B. Level of Protection

Section 234C mandates the promulgation by DOE of worker safety and health regulations that provide a level of protection substantially equivalent to that provided to DOE contractor workers when the NDAA was enacted. By focusing on level of protection, section 234C envisions regulations that emphasize results (that is, maintaining or improving the level of protection afforded DOE contractor workers), rather than prescribing detailed courses of action that may not be the most effective or sensible way of addressing a given hazard in a particular situation.

The proposed regulations would incorporate the statutorily mandated level of protection as follows. First, proposed § 851.100 would establish the general rule that a DOE contractor responsible for a workplace must ensure: (1) The workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and (2) work is performed in accordance with the worker safety and health program for the workplace. This general rule codifies DOE's current expectations concerning the level of protection DOE contractors must afford workers, as set forth in DOE Order 440.1A. Second, proposed § 851.101(c)(2) would require a worker safety and health program to include a set of workplace safety and health standards that would achieve a level of protection at least substantially equivalent to the level of protection that existed in the DOE complex in workplaces comparable to the workplaces to which the program would apply. Third, proposed § 851.102 would prohibit the performance of work at a workplace one year after publication of the final rule unless DOE had approved the worker safety and health program for the workplace on the basis of a determination that the worker safety and health program would achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable workplaces in 2002.

C. Flexibility

Section 234C mandates DOE to promulgate worker safety and health regulations that include sufficient ''flexibility—(A) to tailor implementation of such regulations to reflect activities and hazards associated with the particular work environment; (B) to take into account special circumstances at a facility that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse; and, (C) to achieve national security missions of the Department of Energy in an efficient and timely manner.'' This provision acknowledges the diversity and uniqueness of the DOE complex and the need to tailor worker safety and health programs to fit particular workplaces.

As a general matter, the proposed regulations would achieve the mandated flexibility by building on the practices and procedures already being undertaken by contractors as part of integrated safety management systems. Specifically, proposed § 851.101(c) would incorporate the essential features of integrated safety management, including: (1) Defining the work; (2) analyzing the hazards; (3) identifying a set of standards necessary and sufficient to control the hazards; (4) implementing the set of standards properly in a manner tailored to reflect the workplace environment; and (5) providing for continuous feedback and improvement. Adherence to this approach should result in the selection of a set of standards tailored to fit the expected work and hazards and the implementation of those standards in a manner tailored to reflect actual workplace conditions.

The proposed regulations also would include specific provisions to address the statutory requirements on flexibility. Proposed § 851.101(a)(2) would require the tailoring of a worker safety and health program to reflect the activities and hazards in a particular workplace. Proposed § 851.101(c)(4) would require a worker safety and health program to provide for tailored implementation of selected standards. Proposed § 851.101(e) would require a worker safety and health program to contain special provisions for transitional workplaces (which would be defined in proposed § 851.3 as facilities that are, or are expected to be, permanently closed and that are expected to be demolished, or title to which are expected to be transferred to another entity for reuse) and national security workplaces (which would be defined as workplaces where DOE undertakes national security missions). Examples of transitional workplaces could include: those sites that are undergoing decontamination, deactivation, dismantlement, or decommissioning; environmental restoration sites; or inactive sites where no ongoing operations are being performed beyond surveillance and maintenance activities.

D. Consistency With Integrated Safety Management

Proposed § 851.101(a) would require contractors to develop worker safety and health programs. These programs should be established in a manner that is consistent with the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations. 48 CFR 952.223–71, 970.5223–1. As discussed in the preceding sections, the proposed regulations build on existing contract practices and processes to achieve safe and healthy workplaces and incorporate the essential features of integrated safety management. DOE has drafted the proposed regulations to be complementary to integrated safety management. Accordingly, DOE expects contractors to comply with the proposed regulations in a manner that takes advantage of work already done as part of integrated safety management and to minimize duplicative or otherwise unnecessary work.

As a general matter, DOE expects that, if contractors at a DOE site have fulfilled their contractual responsibilities for integrated safety management properly, little, if any, additional work would be necessary to establish the worker safety and health program required by the proposed regulations. Contractors should undertake new analysis and develop new documents only to the extent existing analysis and documents are not sufficient for purposes of the proposed regulations. In determining the allowability of costs incurred by contractors to develop approved worker safety and health programs, the Department will consider whether the amount and nature of a contractor's expenditures are necessary and reasonable in light of the fact that the contractor has an approved integrated safety management system in place.

E. Worker Safety and Health Program

1. Program

To ensure achievement of the required level of protection, proposed § 851.100(b) would require the contractor responsible for a workplace to perform work in accordance with an approved worker safety and health program for the workplace. Proposed § 851.101(b)(1) would require the worker safety and health program to provide for eliminating, limiting or mitigating identified workplace hazards in a manner that is necessary and sufficient to provide adequate protection of workers.

Proposed §§ 851.101(a) and (d)(1) would require a contractor to prepare and maintain a single worker safety and health program that would apply to all the workplaces at a DOE site for which the contractor was responsible. At a site where there were multiple contractors responsible for various workplaces at the site, proposed § 851.101(d)(2)(B) would require the contractors responsible for covered workplaces at the site to coordinate with each other to ensure that the worker safety and health programs at the site were integrated and consistent.

2. Identification and Analysis of Work and Hazards

As part of the process of developing a worker safety and health program, proposed § 851.101(c)(1) would require a contractor to identify and analyze: (1)

The work to be performed; (2) the work environment including designs and features of facilities, equipment, operations and procedures important to a safe and healthful workplace; (3) existing and potential workplace hazards; and (4) the risk of worker injury or illness associated with the identified workplace hazards. Proposed § 851.3 would define ''workplace hazard'' to mean ''a physical, chemical, or biological hazard with any potential to cause illness, injury, or death to a person.''

Proposed § 851.101(c)(1) would require a contractor to identify and analyze the work and the hazards at the site, facility, activity and workplace level as appropriate. The proposed regulations do not contemplate that a contractor would need to conduct a comprehensive examination of every workplace for which the contractor is responsible at a site in preparing the worker safety and health program. Rather, a contractor would address those hazards that are common to an entire site on a site-wide basis such as fire protection. Then, to the extent appropriate, a contractor would address the hazards associated with particular facilities or activities on a facility or activity basis. Finally, where a particular workplace presented unique circumstances that might require special attention, a contractor would examine that workplace. In analyzing hazards, a contractor would focus on identifying all the hazards that need to be addressed in the worker safety and health plan rather than producing a quantitative risk analysis.

In addition, proposed § 851.101(c)(4)(C) would require the contractor to describe in sufficient detail the extent to which the program is integrated on a site, facility, activity and workplace level, taking into account differences and similarities between the work, hazards, and workplace safety and health standards. An important part of this description would be the extent of the initial identification and analysis and how further identification and analysis would be conducted in particular workplaces to ensure the flow down of the selected standards and their proper implementation in a manner tailored to fit particular workplace environments. This description also would address coordination among worker safety and health programs at a site with multiple programs. The guidance documents prepared for integrated safety management systems contain thorough discussions on identifying and analyzing work and hazards. *See, e.g., Integrated Safety Management System Guide,* DOE Guide 450.4–1B (Mar. 1, 2001).

3. Selection of Set of Workplace Safety and Health Standards

Central to the worker safety and health program for a workplace is the development of a set of ''workplace safety and health standards'' that provide a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. Proposed § 851.3 would define a ''workplace safety and health standard'' to mean ''a standard or program which addresses a covered workplace hazard by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe and healthful covered workplace.'' With the exception of the beryllium standard established by 10 CFR part 850, which contractors must continue to comply with, proposed § 851.101(c)(2) and (3) would permit a contractor to select any combination of appropriate workplace safety and health standards that would achieve the required level of protection.

Appendix A to the proposed regulations contains a description of workplace safety and health standards and programs generally acceptable for inclusion in a worker safety and health program. DOE has derived Appendix A from existing DOE Order 440.1A, which sets forth DOE's expectations for protecting worker safety and health and identifies a number of generally acceptable worker protection standards and programs, including: (1) Certain Occupational Health and Safety Administration (OSHA) standards (29 CFR part 1910); shipyard employment (29 CFR part 1915); marine terminals (29 CFR part 1917); health and safety regulations for longshoring (29 CFR part 1918); health and safety regulations for construction (29 CFR part 1926); and occupational health and safety standards for agriculture (29 CFR part 1928); (2) American Conference of Governmental Industrial Hygienists' threshold limit values for exposures to chemical substances, physical agents and biological substances where they are more protective than the OSHA standards; (3) certain American National Standards Institute (ANSI) standards (ANSI Z136.1 *Safe Use of Lasers;* ANSI Z88.2 *Practices for Respiratory Protection;* ANSI Z49.1 *Safety in Welding, Cutting and Allied Processes*); (4) the National Fire Protection Association's standards for fire protection and electrical safety; (5) the American Society for Mechanical Engineer's standards for boiler and pressure safety; and (6) programs in areas such as firearms safety, explosives safety, industrial hygiene, occupational medicine, and motor vehicle safety.

Appendix A would serve as a guidance document. With the exception of the beryllium standard, the proposed regulations do not mandate the selection of any particular standard or program, including those described in Appendix A. Rather, the proposed regulations obligate a contractor to focus on the objective of safe and healthy workplaces and to select a set of standards and programs that will achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. DOE would be responsible for reviewing the set of standards and programs that a contractor proposed to select as part of the approval of the contractor's worker safety and health program and for assuring itself those standards and programs would meet that level of protection.

Proposed § 851.101(c)(3)(A) would require the incorporation of chronic beryllium disease prevention programs approved under 10 CFR part 850 into the set of workplace safety and health standards. DOE is proposing several technical and conforming amendments to the current beryllium regulations in part 850 which would align that part with the proposed worker safety and health regulations. The scope of § 850.1 would be amended to state that 10 CFR part 850 provides for establishment of a chronic beryllium disease prevention program (CBDPP) that supplements and is deemed an integral part of the worker safety and health program under 10 CFR part 851. The enforcement provision in § 850.4 would also be amended to state that DOE may take appropriate steps pursuant to 10 CFR part 851 to enforce compliance by contractors with part 850 and any DOE-approved CBDPP. This would allow DOE to assess civil penalties under 10 CFR part 851 for violations of the CBDPP under 10 CFR part 850.

4. Implementation

In order for the selected workplace safety and health standards to achieve the required level of protection, the contractor responsible for a workplace must implement them properly in a manner tailored to a particular workplace environment. Proposed § 851.101(c)(4) would require the worker safety and health program to describe how work will be performed in accordance with the selected workplace safety and health standards. This description would identify how the

contractor responsible for a workplace would: (1) Select and use procedures, controls, and work processes in a tailored manner in particular workplaces to implement the selected standards; and (2) select controls on the basis of the following hierarchy in descending order: engineering controls, administrative controls, work practices, and personal protective equipment. Where appropriate, the program might identify specific procedures, controls and work processes and describe how these procedures, controls and work processes would be used to achieve a tailored implementation. At a minimum, proposed § 851.101(c)(4)(C) would require a description of the process by which the set of selected workplace safety and health standards would flow down to a particular workplace, including how a contractor would select the procedures, controls, and work processes to implement the standards in a tailored manner for particular covered workplaces. This description would address the extent to which the flowdown might require additional analysis at the facility, activity and workplace levels. In addition, proposed § 851.101(c)(4)(C) would require a description of how the program was integrated on site, facility, activity and workplace levels, taking into account differences and similarities between the work, hazards, and workplace safety and health standards and, if applicable, coordinated with other worker safety and health programs at the site.

Implementation should focus on workplace hazards that are more likely to cause serious harm to workers. Accordingly, proposed § 851.101(c)(6) would require the worker safety and health program to prioritize the abatement of hazards on the basis of a qualitative evaluation of the relative risk to workers posed by identified workplace hazards. In addition, proposed § 851.101(c)(7) would require a worker safety and health program to address how implementation would incorporate certain features into the worker safety and health program. These features include line management commitment, information and training, ongoing workplace monitoring and observation, medical surveillance and applicability to subcontractors.

5. Evaluation and Feedback

A key element for a successful worker safety and health program is feedback and continuous improvement. Proposed § 851.101(c)(5) would require a contractor to describe how it will update and maintain the program on a continuous basis. The contractor would describe its procedures and processes for feedback activities such as lessons learned, training, updating, document control, and configuration control that may support a worker safety and health program. Moreover, the process of defining the scope of work, analyzing the hazards associated with the work, and identifying a set of standards should be an iterative process performed continually to provide feedback and improvement. This iterative process would provide a contractor with the information necessary to make continual changes and improvements to all aspects of the program and to comply with proposed § 851.102(c) that would require a contractor to evaluate and update a worker safety and health program to reflect changes in the work and the hazards. In addition to contractor initiated revisions, proposed § 851.102(c)(3) would require a contractor to modify a worker safety and health program to incorporate any changes, conditions, or workplace safety and health standards directed by DOE.

F. Submission, Approval and Revision of Worker Safety and Health Programs

1. DOE Approval

Beginning one year after publication of the final rule, proposed § 851.102(a) would prohibit work from being performed at a DOE workplace unless the Program Secretarial Officer (PSO) (which proposed § 851.3 would define as ''the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor) had approved the worker safety and health program for the workplace on the basis of a determination that the program would achieve a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002. A worker protection evaluation report would document the approval and determination. As part of the approval process, the PSO could direct the contractor to modify the worker safety and health program.

To approve the program, DOE would review the content and quality of the worker safety and health program for a DOE site to determine whether the rigor and detail were appropriate for the complexity and hazards expected at workplaces located at the site. DOE also would review the sufficiency of the analysis of work and hazards that supported the program. After approval of a program, DOE would focus its attention on how well a contractor performed in providing safe and healthy workplaces, rather than on the details of how the contractor developed the program.

2. Submittal and Compliance Dates

Proposed § 851.102(b) would require a contractor to submit a worker safety and health program to DOE for approval 180 days after publication of the final rule. This date would give a DOE contractor six months to submit a plan after the issuance of the final rule. The Act provides that the regulations shall take effect one year after the promulgation date of the regulations. DOE would not undertake enforcement actions pursuant to this rule on the basis of conduct prior to the effective date. DOE believes these dates should give contractors ample time to submit programs for approval and begin implementation since contractors already have a contractual obligation to have worker protection programs that should satisfy all or most of the requirements set forth in the proposed regulations.

3. Annual Update

Proposed § 851.102(c) would require a contractor to maintain the worker safety and health program for a workplace by evaluating and updating the worker safety and health program to reflect changes in the work and the hazards. On an annual basis, the contractor would have to submit either an updated worker safety and health program to DOE for approval or a letter stating that no changes were necessary in the currently approved worker safety and health program. Annual updates are an important tool in meeting the requirement for continuous feedback and evaluation and allow a contractor to notify DOE of changes occurring during the past year such as new work to be performed, changes in the facility, building of new facilities or decommissioning of old facilities, associated hazards and performance problems. Only those changes in the workplace that have a potential to impact the worker safety and health program would need to be reflected in the worker safety and health program.

G. Guidance Documents

Proposed § 851.8 would explicitly limit the potential role of a ''guidance document'' as a source of enforceable worker safety and health requirements. DOE would continue to issue guidance documents to assist contractors in developing their worker safety and health programs, including selecting a set of standards and describing implementing procedures, controls, and work processes, but contractors would

not be obligated to use them. Rather, contractors' only obligation would be to comply with the regulations themselves.

Proposed § 851.8 would broadly define the term ''guidance document'' to include any document that sets forth information related to implementing or otherwise complying with a requirement set forth in the proposed regulations and that DOE has not adopted as a legally binding requirement through notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553). This definition would include proposed Appendices A and B, DOE and industry standards, and any document in the DOE directive system or other informal statement of policy regardless of which DOE official approved or signed the document. Use of the terms ''shall'' or ''must'' in a guidance document does not change the non-mandatory character and effect of the document.

Proposed § 851.8(a) would make clear to contractors and DOE officials that guidance documents do not create legally enforceable requirements. Proposed § 851.8(b) would prohibit DOE officials from inspecting or investigating a DOE site to identify violations of the proposed regulations by determining whether a contractor's actions or omissions were consistent with a guidance document. DOE intends that such inspections and investigations will, ordinarily, focus on whether a contractor's actions or omissions comply with the requirements under its worker safety and health program, or on rare occasions, on whether such actions or omissions comply with requirements of a compliance order issued for cause by the Secretary under § 851.6. Proposed § 851.8(c) would identify the limited circumstances in which a guidance document can give rise to an enforceable requirement. Specifically, a guidance document can give rise to an enforceable requirement only to the extent it is explicitly: (1) included by a contractor in the set of workplace safety and health standards identified pursuant to § 851.101(c)(3)(B) of the proposed regulations; or (2) selected or used by a contractor as a procedure, control, or work process to perform work in a tailored manner for particular covered workplaces in accordance with § 851.101(c)(4) of the proposed regulations. Only in these circumstances may DOE pursue an enforcement action on the basis of action inconsistent with a guidance document and, in these circumstances, DOE would base the enforcement action on a provision of the contractor's plan and not the guidance document itself.

Proposed § 851.8 would serve two purposes. First, by precluding imposition of a *de facto* set of requirements in the guise of guidance, it would ensure that, as required by section 234C(a)(3) of the AEA, DOE's implementing regulations include flexibility to tailor implementation of such regulations to reflect activities and hazards associated with a particular work environment. Put more succinctly, proposed § 851.8 would reinforce site-specific integrated safety management as the guiding principle for the proposed regulations. Second, proposed § 851.8 is responsive to potential contractor criticism that reliance on generally applicable, informal policy directives in the area of worker safety and health instead of duly promulgated rules under the Administrative Procedure Act promotes regulatory instability across the DOE complex which is antithetical to effective integrated safety management and to accomplishment of DOE's national security and research missions. Proposed § 851.8 would thus reinforce the shift from a DOE directive-driven regime characterized by informal DOE policies to a regulatory regime characterized by generally applicable rules that have the force and effect of law with respect to DOE officials, as well as with respect to regulated contractors. Moreover, proposed § 851.8 recognizes the responsibility and obligation of a contractor, in the first instance, to select the procedures, controls, and work processes to use in achieving safe and healthy workplaces and implementing its worker safety and health program.

H. Workers Rights

Workers at DOE sites currently have a number of rights related to assuring a safe and healthy workplace. Proposed § 851.103 would list these rights and make clear that workers may exercise these rights without fear of reprisal. Specifically, the proposed regulations would maintain the rights of workers to: (1) Participate in activities described in this section on official time; (2) have access to DOE safety and health publications, the DOE-approved worker safety and health program for the DOE site and the standards, controls and procedures applicable to the covered workplace; (3) observe monitoring or measuring of hazardous agents; (4) have access to monitoring and measuring results and be notified when such results indicate the worker was overexposed to hazardous materials; (5) accompany DOE personnel during an inspection of the workplace; (6) request and receive results of inspections and accident investigations; (7) express concerns related to worker safety and health; (8) decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures; (9) stop work, through the worker's supervisor, when the worker discovers employee exposures to imminent danger conditions or other serious hazards, provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with established procedures; and (10) have access to an appropriate safety and health poster that informs the worker of relevant rights and responsibilities.

I. Enforcement

1. Civil Penalties

Section 234Cb. of the AEA provides that ''a person (or any subcontractor or supplier of the person) who has entered into an agreement of indemnification under section 170d. (or any subcontractor or supplier of the person) that violates (or is the employer of a person that violates) any regulation promulgated under [section 234C] shall be subject to a civil penalty of not more than $70,000 for each such violation.'' For continuing violations, section 234C provides that each day of the violation shall constitute a separate violation for the purposes of computing the civil penalty to be imposed.

Proposed § 851.4(c) would implement this statutory provision by making a contractor whose contract with DOE contains an indemnification agreement (or any subcontractor or supplier thereto) and who violates (or whose employee violates) any requirement of the proposed regulations subject to a civil penalty of not more than $70,000 for each such violation. In the case of a continuing violation, each day of the violation would constitute a separate violation for the purpose of computing the amount of the civil penalty.

2. Contract Fee Reductions

Section 234Cc. of the AEA requires DOE to include provisions in DOE contracts for an appropriate reduction in the fees or amounts paid to the contractor if the contractor or a contractor employee violates the regulations required by section 234C. The Act requires these provisions to be included in each DOE contract with a contractor who has entered into an

agreement of indemnification under section 170d. of the AEA (the Price-Anderson Act). The contract provisions must specify the degrees of violations and the amount of the reduction attributable to each degree of violation.

DOE is implementing this statutory mandate to include provisions for the reduction in fees in contracts for violations of this part pursuant to the contract's *Conditional Payment of Fee* clause. Most DOE management and operating contracts currently contain such a clause providing for reductions of earned fee, fixed fee, profit, or share of cost savings that may otherwise be payable under the contract if performance failures relating to environment, safety and health occur. *See* 48 CFR 970.5215–3, *Conditional Payment of Fee, Profit, or Incentives* (applicable to DOE management and operating contracts and other contracts designated by the Procurement Executive). DOE proposed to amend this clause to set forth the specific criteria and conditions that may precipitate a reduction of earned or fixed fee, profit, or share of cost savings under the contract. The clause would establish reduction ranges that correlate to three specified degrees of performance failures relating to environment, safety and health. *See* 66 FR 8560 (Feb. 1, 2001) (notice of proposed rulemaking). In the final rule, DOE intends to clarify that the term ''environment, health and safety'' includes matters relating to ''worker health and safety'' and to apply the same reduction ranges and degrees of performance failure to worker safety and health. In a parallel provision, proposed § 851.4(b) also would implement this statutory mandate by making a contractor who fails to comply with the requirements of the general rule in proposed § 851.100 subject to a reduction in fees or other payments under a contract with DOE pursuant to the contract's *Conditional Payment of Fee* clause.

3. Relationship of Civil Penalties and Contract Fee Reductions

As a general matter, DOE intends to use civil penalties as the remedy for most violations where DOE may elect between remedies. DOE expects to invoke the provisions for reducing contract fees only in cases involving especially egregious violations or that indicate a general failure to perform under the contract with respect to worker safety and health. Such violations would call into question a contractor's commitment and ability to achieve the fundamental obligation of providing safe and healthy workplaces for workers because of factors such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. Because such violations indicate a general failure to perform under the contract with respect to worker safety and health where both remedies are available and DOE elects to use a reduction in fee, DOE would expect to reduce fees substantially under the *Conditional Payment of Fee* clause.

4. Limitations on Penalties

Section 234Cd. imposes three specific limitations on DOE's authority to seek monetary remedies. Specifically, DOE may not (1) both reduce contract fees and assess civil penalties for the same violation of a worker protection requirement; (2) assess both civil penalties authorized by section 234A (nuclear safety and radiological protection regulations) and by section 234C (worker safety and health regulations) for the same violation; and, (3) with respect to those nonprofit contractors specifically listed as exempt from civil penalties for nuclear safety violations in subsection d. of section 234A of the AEA, assess an aggregate amount of civil penalties and contractor penalties in a fiscal year in excess of the total amount of fees paid by DOE to that nonprofit entity in that fiscal year. Proposed §§ 851.4(d), (e) and (f) sets forth these statutory limitations.

5. Enforcement Procedures

Proposed subpart C of part 851 sets forth the administrative procedures DOE would use to issue enforcement actions and impose civil penalties. In general, DOE has based these procedures on the existing procedural regulations for nuclear safety enforcement in 10 CFR part 820, which has provided the basis for implementing a successful nuclear safety compliance program since the mid 1990s. *See* Procedural Rules for DOE Nuclear Activities, 10 CFR part 820, 58 FR 43680 (Aug. 17, 1993), amended, 62 FR 52481 (Oct. 8, 1997) and 65 FR 15220 (Mar. 22, 2000). The proposed procedures would provide for investigations and inspections, subpoenas, informal conferences, enforcement letters, settlements, consent orders, preliminary notices of violations, and final notices of violations. Contractors would take administrative appeals of final notices of violations to DOE's Office of Hearings and Appeals rather than an administrative law judge as provided for in 10 CFR part 820. Unlike section 234A of the AEA, section 234C does not provide for the use of administrative law judges and other procedural mechanisms. A decision of the Office of Hearings and Appeals would exhaust a contractor's administrative remedies with respect to a final notice of violation and would constitute a final order of DOE.

The proposed regulations would assign responsibility for carrying out these enforcement procedures to the ''Director,'' which proposed § 851.3 would define as ''the DOE Official to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of'' the proposed regulations. DOE expects this function would be assigned to the current Director of the Office of Price-Anderson Enforcement in the Office of Environment, Health and Safety, who is the person to whom the Secretary has assigned the responsibility for enforcing the DOE nuclear safety regulations in 10 CFR parts 820, 830, and 835.

While proposed § 851.201(j) would permit the Director to send an enforcement letter to a contractor to communicate DOE's expectations for compliance with the proposed regulations, the primary responsibility lies with the Program Secretarial Officer for ensuring that a contractor has an approved worker safety and health program that is adequate to achieve a level of protection at least substantially equivalent to the level of protection that existed in 2002 for DOE workplaces comparable to those covered workplaces addressed by the program and that has sufficient detail to allow the Director to conduct inspections or investigations to determine compliance. Proposed § 851.201(j) would make clear that an enforcement letter may not create the basis for any legally enforceable requirement under this part.

With respect to exercising certain functions that might be interpreted as giving direction to DOE's National Nuclear Security Administration's contractors, proposed § 851.206 would make the Administrator of the NNSA responsible for exercising such functions. These functions would be signing and issuing subpoenas, orders to compel attendance, orders disclosing information obtained during an investigation, preliminary notices of violation and final notices of violation. In taking such actions, the NNSA Administrator would consider the Director's recommendations. A similar division of responsibilities has been made for enforcing the DOE nuclear safety regulations under part 820. *See Memorandum of Understanding between NNSA and the Assistant*

Secretary for Environment, Health and Safety, Jan. 12, 2001, *http://tis-nt.eh.doe.gov/enforce/handbks/20010108mou.pdf.* Under both part 820 and proposed part 851, the Director would continue to be able to sign enforcement letters and consent orders applicable to NNSA contractors.

6. General Statement of Enforcement Policy

As a guidance document for enforcing this rule, DOE is proposing to issue a general statement of enforcement policy as Appendix B. The proposed policy would set forth the general framework which DOE would follow to ensure compliance with the proposed regulations and to issue enforcement actions and exercise civil penalty authority. The proposed policy would not be binding and would not create any legally enforceable requirements pursuant to this part. It would only provide guidance as to how DOE generally expects to seek compliance with the proposed regulations and to deal with any violations of the proposed regulations.

The proposed policy is intended to achieve dual purposes of promoting proactive behavior on the part of DOE contractors to improve worker safety and health performance and of deterring contractors from violating the proposed regulations. The proposed policy would encourage DOE contractors to self-identify, report and correct worker safety and health noncompliances and would provide adjustment factors to escalate or mitigate civil penalties on the basis of the nature of the violation and the behavior of the contractor.

To accomplish these purposes, the proposed policy would incorporate the basic outlines of DOE's well-established nuclear safety enforcement program in part 820. The enforcement policy would utilize the part 820 severity levels I, II, and III and related adjustment factors. These severity levels and adjustment factors in the policy incorporate concepts OSHA uses in its enforcement program including whether a violation is serious, other-than-serious, willful, repeated, or *de minimis*.

Specifically, the proposed policy would provide guidance on the treatment of violations in three severity levels. A severity level I violation would be a serious violation, which would involve the potential that death or serious physical harm could result from a condition in a workplace, or from one or more practices, means, methods, operations, or processes used in connection with a workplace. A severity level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty or $70,000.

A severity level II violation is an other-than-serious violation, which would involve a potential that the most serious injury or illness that might result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to exposed employees but does have a direct relationship to their safety and health. A severity level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty or $35,000.

A severity level III violation is a *de minimis* violation. DOE may evaluate minor noncompliances to determine if generic or specific problems exist and consider them in the aggregate as a more serious violation. A severity level III violation would be subject to a base civil penalty up to 10% of the maximum base civil penalty or $7,000.

DOE could modify or remit these base civil penalties consistent with mitigation and adjustment factors set forth in the proposed policy. Factors include the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge. These factors are the same as those used for part 820 and are similar to the adjustment factors in the proposed *Conditional Payment of Fee* rule but the factors in the proposed fee rule include additional focus on performance under the contract.

Regarding the factor of ability of DOE contractors to pay the civil penalties, the policy provides that it is not DOE's intention that the economic impact of a civil penalty would put a DOE contractor out of business. The policy would also provide that when a contractor asserts that it cannot pay the proposed penalty, DOE would evaluate the relationship of affiliated entities to the contractor such as parent corporations.

Based on the adjustment factors relating to a noncompliance, DOE could mitigate a civil penalty from the statutory maximum of $70,000 per violation per day. Mitigation factors used to reduce a civil penalty include whether a DOE contractor promptly identified and reported a violation and took effective corrective actions. Factors used to increase penalties (but not over the statutory maximum of $70,000) would include whether a violation is repeated or involves willfulness, death, serious physical harm, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdowns in management controls.

As noted previously, when both remedies are available, DOE may consider a reduction in contract fees if a violation is especially egregious or indicates a general failure to perform under the contract with respect to worker safety and health. In determining whether to refer a violation to the appropriate DOE official responsible for administering reductions in fee pursuant to the *Conditional Payment of Fee* clause, the Director will generally focus on the factors stated above, such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. In cases where DOE may elect between civil penalties and a contract penalty, these kinds of factors may also lead DOE to consider a reduction in fee if they raise doubts about a contractor's overall performance or ability to perform its contract with proper regard for worker safety and health.

In proposing the base civil penalties for the types of violations in this policy, DOE set the starting base amounts at levels higher than the average OSHA penalty for several reasons. DOE's activities are conducted by large, experienced management and operating contractors and their subcontractors and suppliers. Through the contractual relationships that DOE has with these entities, DOE is in constant dialogue concerning the management and operation of DOE's sites and the performance of its governmental missions. DOE has the authority to require these contractors to develop their own worker safety and health programs for DOE approval and to select standards tailored to the work and the hazards. Moreover, DOE may unilaterally direct contractors to include various provisions in their programs. Thus, the Director is in a position to enforce against these programs and can provide incentives for proactive compliance. The policy strongly encourages self-identification of violations, self-reporting, tracking systems and corrective action programs. Moreover, DOE also has the authority and flexibility to coordinate and choose either a civil penalty or fee reduction remedy based on the enforcement policy and the fee reduction contract clause. The proposed enforcement structure of this rule fits the DOE complex better than would a generic system as found in OSHA's enforcement programs.

Finally, as a tool for implementing the enforcement policy, DOE intends to

provide a voluntary computerized database system to allow contractors to report worker safety and health noncompliances. DOE intends to enhance its Noncompliance Tracking System (NTS), currently used for reporting of noncompliances of the DOE nuclear safety requirements, to permit its use for reporting noncompliances with this rule. DOE will develop appropriate reporting thresholds unique to worker safety and health to assure that the system will focus on issues with the greatest potential consequences for worker safety and health.

J. Scope of the Rule

1. DOE Contractors and DOE-Operated Workplaces

Proposed § 851.1 would establish the scope of the proposed regulations as governing the conduct of activities by or on behalf of DOE. The regulations would thus apply to activities performed by DOE contractors and by DOE at covered workplaces at DOE sites, except for workplaces regulated by the naval nuclear propulsion program or by the Occupational Safety and Health Administration (OHSA). Proposed § 851.3 would define a ''covered workplace'' as a place where work is conducted by or on behalf of DOE where DOE has oversight responsibility for safety and health and would define ''DOE site'' as a DOE-owned or leased area or location where DOE activities and operations are performed at one or more facilities or locations. While the proposed regulations would obligate a contractor to ensure its employees performed work in accordance with the proposed regulations, the proposed regulations would not make individual employees subject to enforcement actions or the imposition of penalties.

DOE is proposing to limit the scope of the proposed regulations to DOE sites. However, DOE invites public comment concerning whether the proposed regulations also should cover activities performed away from a DOE site, such as transportation.

DOE is also proposing to apply the proposed regulations to covered workplaces operated by DOE. Proposed § 851.9 would require that for DOE-operated workplaces, DOE must ensure that work is performed consistent with the proposed regulations including the establishment, maintenance and implementation of a worker safety and health program. Proposed § 851.9 would apply to government-owned, government-operated facilities related to DOE's mission, including certain laboratories or operations conducted by DOE, as well as general federal government office workplaces in buildings in Washington DC, Germantown, Maryland, or DOE site offices in the field. Thus, this rule is intended to provide protection to workers who are contractor employees and to workers who are federal employees.

Section 234C mandates DOE to promulgate regulations to cover DOE facilities that are operated by contractors covered by agreements of indemnification under the Price-Anderson Act, 42 U.S.C. 2210(d). The proposed regulations go beyond that mandate to continue DOE's current practice of exercising its statutory authority to direct its contractors to perform work in a manner that protects the safety and health of workers, without regard to whether the contractor is covered by an agreement of indemnification. As a practical matter, the Price-Anderson Act requires DOE to include an agreement of indemnification in every contract that has the potential to involve any activity with any risk of a nuclear incident. As a result, nearly all DOE contracts include an agreement of indemnification, with the exception of contracts relating to the petroleum strategic reserves sites, power administrations, and certain nonnuclear laboratories. While section 234C is not the source of DOE's authority to promulgate the proposed regulations, it is the source of DOE's authority to impose civil penalties. Thus, proposed § 851.4(c) would limit the imposition of civil penalties to contractors covered by an agreement of indemnification. Proposed § 851.4(b) would not limit contractual enforcement actions to contractors covered by an agreement of indemnification since section 234C is not the source of DOE's authority to use contract mechanisms to achieve safe and healthy workplaces.

The proposed regulations also would continue DOE's current practice of exercising its statutory authority to direct its contractors to perform work in a manner that protects the safety and health of workers, without regard to whether the workers are engaged in a nuclear or nonnuclear activity. Section 234C is not limited to nuclear activities in mandating the promulgation of worker protection regulations.

2. OSHA Exclusion

DOE currently exercises its statutory authority broadly throughout the DOE complex to provide safe and healthful workplaces. In a few cases, however, DOE has elected not to exercise its authority and to defer to regulation by OSHA under the Occupational Safety and Health (OSH) Act (29 U.S.C. 651 *et seq.*). Proposed § 851.2(a)(1) would continue the status quo by not covering those facilities regulated by OSHA on December 2, 2002, the date the NDAA was enacted. The OSHA-regulated facilities are: Western Area Power Administration; Southwestern Power Administration; Southeastern Power Administration; Bonneville Power Administration; National Energy Technology Laboratory (NETL), Morgantown, WV; National Energy Technology Laboratory (NETL), Pittsburgh, PA; Strategic Petroleum Reserve (SPR); National Petroleum Technology Office; Albany Research Center; Naval Petroleum & Oil Shale Reserves in CO, UT, & WY; and Naval Petroleum Reserves in California. *See* 65 FR 41492 (July 5, 2000).

3. Naval Reactors

Section 234C explicitly excludes activities conducted under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 106–65. Accordingly, proposed § 851.2(a)(2) would exclude workplaces regulated by Naval Reactors.

4. Radiological Hazards

Proposed § 851.2(b) would exclude radiological hazards from the hazards covered by the proposed regulations to the extent they are already regulated by the DOE nuclear safety requirements in 10 CFR parts 820, 830, and 835. These existing rules already deal with radiological hazards in a comprehensive manner through methods such as the Quality Assurance Program Plan, the Safety Basis, the Documented Safety Analysis, and the Radiation Protection Program Plan. The proposed regulations are intended to complement the nuclear safety requirements. Personnel responsible for implementing worker protection and nuclear safety requirements would be expected to coordinate and cooperate in instances where the requirements overlapped. The two sets of requirements should be integrated and applied in a manner that guards against unintended results and provides reasonable assurance of adequate worker protection.

K. Information Requirements

Proposed § 851.5 would require a contractor (1) to maintain complete and accurate records as necessary to substantiate compliance with the proposed regulations; (2) to neither conceal nor destroy any relevant information concerning noncompliance or potential noncompliance with the proposed regulations; and (3) to

maintain complete and accurate information in all material respects. Proposed § 851.5(d) would make clear that a contractor must safeguard classified, confidential, and controlled information, including Restricted Data or national security information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

DOE considered but decided not to propose new reporting requirements in support of the proposed regulations. DOE will continue to use contractual provisions to require contractors to report worker safety and health information which may be used to assess the performance and effectiveness of worker safety and health programs. This information is generally maintained in large, specialized databases which necessitate management flexibility. The primary directive on environment, safety and health reporting that DOE includes in contracts is DOE Order 231.1A. This order requires contractors to record, maintain and post records related to occupational fatalities, injuries, and illnesses occurring among their employees (and subcontractors) arising out of work primarily performed at DOE-owned or -leased facilities. Other relevant reporting directives include occurrence reporting and processing of operations information; performance indicators and analysis of operations information; and accident investigations.

DOE recently has taken steps to eliminate unnecessary reporting requirements related to the subject matter of the proposed regulations. DOE remains committed to reducing the reporting burden where reporting requirements do not contribute to worker safety and health. Accordingly, DOE requests comments on how the reporting burden could be further minimized consistent with that objective. Comments should specify the reporting requirements that give rise to the burden and discuss the reasons for their elimination or suggest how they could be modified to minimize the burden without impairing worker safety and health.

L. Compliance Order

Proposed § 851.6 would make clear that the Secretary of Energy has the authority to issue a Compliance Order that identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part; mandates a remedy, work stoppage, or other action; and states the reasons for the remedy, work stoppage, or other action. The compliance order would be a final order that is effective immediately. This mechanism is nearly identical to the provisions in 10 CFR 820.41 and is intended to operate in a similar manner.

M. Interpretations by Office of General Counsel

Proposed § 851.7 would make clear the Office of the General Counsel would have sole responsibility for formulating and issuing any interpretation concerning a requirement in the proposed regulations. Any other written or oral response to any written or oral question would not constitute an interpretation or basis for action inconsistent with the proposed regulations.

III. Procedural Review Requirements

A. Review Under Executive Order 12866

Today's proposed regulatory action has been determined to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), as amended by Executive Order 13258 (67 FR 9385, February 26, 2002). Accordingly, DOE submitted this notice of proposed rulemaking to the Office of Information and Regulatory Affairs of the Office of Management and Budget, which has completed its review.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, Section 3(a) of Executive Order 12988, ''Civil Justice Reform'' (61 FR 4779, February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in Section 3(a) and Section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

C. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 10, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions.

Today's regulatory action has been determined not to be a ''policy that has federalism implications,'' that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under Executive Order 13132 (64 FR 43255, August 10, 1999). Accordingly, no ''federalism summary impact statement'' was prepared or subjected to review under the Executive Order by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under Executive Order 13175 (65 FR 67249, November 6, 2000) on ''Consultation and Coordination with Indian Tribal Governments,'' DOE may not issue a discretionary rule that has ''tribal implications'' and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that the proposed rule would not have such effects and concluded that Executive Order 13175 does not apply to this proposed rule.

E. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires that an agency prepare an initial regulatory flexibility analysis for any regulation which a general notice of proposed rulemaking is required, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)).

Today's proposed regulation would establish DOE's requirements for worker safety and health at DOE sites. The contractors who manage and operate DOE facilities would be principally responsible for implementing the rule requirements. DOE considered whether these contractors are ''small businesses,'' as that term is defined in

the Regulatory Flexibility Act's (5 U.S.C. 601(3)). The Regulatory Flexibility Act's definition incorporates the definition of ''small business concern'' in the Small Business Act, which the Small Business Administration (SBA) has developed through size standards in 13 CFR part 121. The DOE contractors subject to the proposed rule exceed the SBA's size standards for small businesses. In addition, DOE expects that any potential economic impact of this proposed rule on small businesses would be minimal because DOE sites perform work under contracts to DOE or the prime contractor at the site. DOE contractors are reimbursed through their contracts with DOE for the costs of complying with DOE safety and health program requirements. They would not, therefore, be adversely impacted by the requirements in this proposed rule. For these reasons, DOE certifies that today's proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. *See* 68 FR 7990 at III.1. and III.1.c. (February 19, 2003).

F. Review Under the Paperwork Reduction Act

The information collection provisions of this proposed rule are not substantially different from those contained in DOE contracts with DOE prime contractors covered by this rule and were previously approved by the Office of Management and Budget (OMB) and assigned OMB Control No. 1910–5103. That approval covered submission of a description of an integrated safety management system required by the *Integration of Environment, Health and Safety into Work Planning and Execution* clause set forth in the DOE procurement regulations. 48 CFR 952.223–71 and 970.5223–1, 62 FR 34842, 34859–60 (June 17, 1997). If contractors at a DOE site fulfill their contractual responsibilities for integrated safety management properly, the worker safety and health program required by the proposed regulations should require little if any new analysis or new documents to the extent that existing analysis and documents are sufficient for purposes of the proposed regulations. Accordingly, no additional Office of Management and Budget clearance is required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and the procedures implementing that Act, 5 CFR 1320.1 *et seq.*

G. Review Under the National Environmental Policy Act

DOE currently implements its broad authority to regulate worker safety and health through internal DOE directives incorporated into contracts to manage and operate DOE facilities, contract clauses and DOE regulations. This proposed rule would implement the statutory mandate to promulgate worker safety and health regulations for DOE facilities that would provide a level of protection for workers at DOE facilities that is substantially equivalent to the level of protection currently provided to such workers and to provide procedures to ensure compliance with the rule. DOE anticipates that the contractor's work and safety programs required by this regulation would be based on existing programs and that this rule would generally not require the development of a new program. DOE has therefore concluded that promulgation of these regulations would fall into the class of actions that would not individually or cumulatively have a significant impact on the human environment as set forth in the DOE regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the rule would be covered under the categorical exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021, which applies to the establishment of procedural rulemakings. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by states, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the proposed rule published today does not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy, Supply, Distribution, or Use), 66 FR 28355 (May 22, 2001) requires preparation and submission to OMB of a Statement of Energy Effects for significant regulatory actions under Executive Order 12866 that are likely to have a significant adverse effect on the supply, distribution, or use of energy. DOE has determined that the proposed rule published today would not have a significant adverse effect on the supply, distribution, or use of energy and thus the requirement to prepare a Statement of Energy Effects does not apply.

J. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a ''Family Policymaking Assessment'' for any proposed rule that may affect family well-being. The proposed rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, *note*) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). DOE has reviewed today's notice of proposed rulemaking under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

IV. Public Comment Procedures

A. Written Comments

Interested individuals are invited to participate in this proceeding by submitting data, views, or arguments with respect to this proposed rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. To help the DOE review the submitted comments, commenters are

requested to reference the paragraph (*e.g.*, § 851.4(a)) to which they refer where possible.

All information provided by commenters will be available for public inspection at the DOE Freedom of Information Reading Room, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays. The docket file material for this rulemaking will be under ''EH–RM–03–WSH.''

DOE also intends to enter all written comments on a Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/whs/rulemaking*. To assist DOE in making public comments available on a Web site, interested persons are to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice of proposed rulemaking.

If you submit information that you believe to be exempt by law from public disclosure, you should submit one complete copy, as well as two copies from which the information claimed to be exempt by law from public disclosure has been deleted. DOE is responsible for the final determination with regard to disclosure or nondisclosure of the information and for treating it accordingly under the Freedom of Information Act section on ''Handling Information of a Private Business, Foreign Government, or an International Organization,'' 10 CFR 1004.11.

B. Public Hearings

Public hearings will be held at the time, date, and place indicated in the **DATES** and **ADDRESSES** sections of this notice of proposed rulemaking. Any person who is interested in making an oral presentation should, by 4:30 p.m. on the date specified, make a phone request to the number in the **DATES** section of this notice of proposed rulemaking. The person should provide a daytime phone number where he or she may be reached. Persons requesting an opportunity to speak will be notified as to the approximate time they will be speaking. Each presentation is limited to 10 minutes. Persons making oral presentations should bring three copies of their statement to the hearing and submit them at the registration desk.

DOE reserves the right to select the persons who will speak. In the event that requests exceed the time allowed, DOE also reserves the right to schedule speakers' presentations and to establish the procedures for conducting the hearing. A DOE official will be designated to preside at each hearing, which will not be judicial or evidentiary. Only those persons conducting the hearing may ask questions. Any further procedural rules needed to conduct the hearing properly will be announced by the DOE presiding official.

A transcript of each hearing will be made available to the public. DOE will retain the record of the full hearing, including the transcript, and make it available on the Web site specially established for this proceeding. The Internet Web site is *http://www.eh.doe.gov/whs/rulemaking*. If DOE must cancel the hearing, it will make every effort to give advance notice.

Prior to holding the public hearings, DOE intends to hold one or more informal information workshops to allow contractors, workers and their representatives to familiarize themselves with the proposed regulation. DOE expects to hold these workshops which could include video or telephone conferencing, approximately three weeks after publication of the proposed regulation and will make information on times and locations available as soon as arrangements are finalized.

List of Subjects

10 CFR Part 850

Beryllium, Chronic beryllium disease, Hazardous substances, Lung diseases, Occupational safety and health, Reporting and recordkeeping requirements.

10 CFR Part 851

Civil penalty, Federal buildings and facilities, Occupational safety and health, Safety, Reporting and recordkeeping requirements.

Issued in Washington, DC, on December 2, 2003.

Beverly Cook,

Assistant Secretary of Environment, Safety, and Health.

For the reasons set forth in the preamble, the Department of Energy proposes to amend chapter III of title 10 of the Code of Federal Regulations as follows:

PART 850—CHRONIC BERYLLIUM DISEASE PREVENTION PROGRAM

1. The authority citation for part 850 is revised to read as follows:

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 29 U.S.C. 668; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*, E.O. 12196, 3 CFR 1981 comp., at 145 as amended.

2. Section 850.1 is revised to read as follows:

§ 850.1 Scope.

This part provides for establishment of a chronic beryllium disease prevention program (CBDPP) that supplements and is deemed an integral part of the worker safety and health program under part 851 of this chapter.

3. Section 850.4 is revised to read as follows:

§ 850.4 Enforcement.

DOE may take appropriate steps pursuant to part 851 of this chapter to enforce compliance by contractors with this part and any DOE-approved CBDPP.

4. A new part 851 is added to chapter III to read as follows:

PART 851—WORKER SAFETY AND HEALTH

Subpart A—General Provisions

Sec.
851.1 Scope.
851.2 Exclusions.
851.3 Definitions.
851.4 Enforcement.
851.5 Information and records.
851.6 Compliance Order.
851.7 Interpretation.
851.8 Guidance documents.
851.9 DOE operated workplaces.

Subpart B—Worker Safety and Health Program

851.100 General rule.
851.101 Worker safety and health program.
851.102 DOE approval of worker safety and health program.
851.103 Worker rights.

Subpart C—Enforcement Process

851.200 Purpose.
851.201 Investigations and inspections.
851.202 Settlement.
851.203 Preliminary notice of violation.
851.204 Final notice of violation.
851.205 Administrative appeal.
851.206 Direction to NNSA contractors.

Appendix A to Part 851—Generally Acceptable Worker Safety and Health Standards and Programs

Appendix B to Part 851—General Statement of Enforcement Policy

Authority: 42 U.S.C. 2201(i)(3), (p); 42 U.S.C. 2282c; 42 U.S.C. 5801 *et seq.*; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart A—General Provisions

§ 851.1 Scope.

This part governs the conduct of activities at DOE sites by or on behalf of DOE.

§ 851.2 Exclusions.

(a) This part does not apply to a DOE site:

(1) Regulated by the Occupational Safety and Health Administration (OSHA) on December 2, 2002; or

(2) Operated under the authority of the Director, Naval Nuclear Propulsion, pursuant to Executive Order 12344, as set forth in Public Law 98–525, 42 U.S.C. 7158 note.

(b) This part does not apply to radiological hazards to the extent regulated by 10 CFR parts 820, 830, or 835.

§ 851.3 Definitions.

The following definitions apply to this part:

AEA means the Atomic Energy Act of 1954, 42 U.S.C. 2011 *et seq.*

Consent order means any written document, signed by the Director and a contractor, containing stipulations or conclusions of fact or law and a remedy acceptable to both DOE and the contractor.

Contractor means any entity, including affiliated entities such as a parent corporation, under contract with DOE (or any subcontractor or supplier thereto).

Covered workplace means a place where work is conducted by or on behalf of DOE where DOE has oversight responsibility for safety and health.

DOE means the United States Department of Energy, including the National Nuclear Security Administration.

DOE site means a DOE-owned or leased area or location where activities and operations are performed at one or more facilities or locations by or on behalf of DOE.

Director means the DOE Official(s) to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part.

Final notice of violation means a document that determines a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for the determination;

(3) Any remedy, including the amount of any civil penalty; and

(4) A statement explaining the reasoning behind any remedy.

Final order means an order of DOE that represents final agency action and, where appropriate, imposes a remedy with which the recipient of the order must comply.

General Counsel means the General Counsel of DOE.

Guidance document means a document that sets forth information related to implementing or otherwise complying with a requirement of this part and that DOE has not adopted as a legally binding requirement through notice and comment rulemaking under the Administrative Procedure Act (5 U.S.C. 553).

Interpretation means a statement by the General Counsel concerning the meaning or effect of a requirement of this part which relates to a specific factual situation but may also be a ruling of general applicability where the General Counsel determines such action to be appropriate.

National security workplace means a covered workplace where national security missions are performed.

NNSA means the National Nuclear Security Administration.

Preliminary notice of violation means a document that sets forth the preliminary conclusions that a contractor has violated or is continuing to violate a requirement of this part and includes:

(1) A statement specifying the requirement of this part to which the violation relates;

(2) A concise statement of the basis for alleging the violation;

(3) Any remedy, including the amount of any proposed civil penalty; and

(4) A statement explaining the reasoning behind any proposed remedy.

Program Secretarial Officer (PSO) means the Assistant Secretary, Deputy Administrator, Program Office Director, or equivalent DOE official who has primary line management responsibility for a contractor.

Remedy means any action necessary or appropriate to rectify, prevent, or penalize a violation of a requirement of this part, including a compliance order, the assessment of civil penalties, the reduction of fees or other payments under a contract, the requirement of specific actions, or the modification, suspension or recission of a contract.

Secretary means the Secretary of Energy.

Transitional workplace means a covered workplace that is, or is expected to be, permanently closed and that is expected to be demolished, or title to which is expected to be transferred to another entity for reuse on behalf of an entity other than DOE.

Worker means an employee who performs work at a covered workplace.

Worker protection evaluation report means the report prepared by DOE to document the basis for approval by DOE of a worker safety and health program, including any conditions for approval.

Worker safety and health program means a program that provides reasonable assurance of a safe and healthful workplace.

Workplace hazard means a physical, chemical, or biological hazard with any potential to cause illness, injury, or death to a person.

Workplace safety and health standard means a standard or program which addresses a workplace hazard by requiring conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide a safe and healthful workplace.

§ 851.4 Enforcement.

(a) The requirements in this part are subject to enforcement by all appropriate means.

(b) A contractor that violates (or whose employee violates) § 851.100 of this part is subject to a reduction in fees or other payments under a contract with DOE, pursuant to the contract's *Conditional Payment of Fee* clause.

(c) A contractor who has entered into an agreement of indemnification under section 170d. of the AEA (or any subcontractor or supplier thereto) and who violates (or whose employee violates) any requirement of this part is subject to a civil penalty of not more than $70,000 for each such violation. If any violation under this subsection is a continuing violation, each day of the violation shall constitute a separate violation for the purpose of computing the civil penalty.

(d) DOE may not penalize a contractor under both paragraphs (b) and (c) of this section for the same violation of a requirement of this part.

(e) In the case of an entity described in subsection d. of section 234A of the AEA, the total amount of contract penalties under paragraph (b) and civil penalties under paragraph (c) of this section in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year.

(f) DOE may not penalize a contractor under both sections 234A and 234C of the AEA for the same violation.

§ 851.5 Information and records.

(a) A contractor must maintain complete and accurate records as necessary to substantiate compliance with the requirements of this part.

(b) A contractor may neither conceal nor destroy any information concerning noncompliance or potential noncompliance with the requirements of this part.

(c) Any information pertaining to a requirement in this part provided to DOE by any contractor or maintained by any contractor for inspection by DOE shall be complete and accurate in all material respects.

(d) Nothing in this part shall relieve any contractor from safeguarding classified, confidential, and controlled information, including Restricted Data or national security information, in accordance with the applicable provisions of federal statutes and the rules, regulations, and orders of any federal agency.

§ 851.6 Compliance Order.

(a) The Secretary may issue to any contractor a Compliance Order that:

(1) Identifies a situation that violates, potentially violates, or otherwise is inconsistent with a requirement of this part;

(2) Mandates a remedy, work stoppage, or other action; and, (3) States the reasons for the remedy, work stoppage, or other action.

(b) A Compliance Order is a final order that is effective immediately unless the Order specifies a different effective date.

(c) Within 15 calendar days of the issuance of a Compliance Order, the recipient of the Order may request the Secretary to rescind or modify the Order. A request does not stay the effectiveness of a Compliance Order unless the Secretary issues an order to that effect.

§ 851.7 Interpretation.

(a) The Office of the General Counsel is solely responsible for formulating and issuing any interpretation concerning a requirement in this part.

(b) Any written or oral response to any written or oral question which is not provided pursuant to paragraph (a) of this section does not constitute an interpretation and does not provide any basis for action inconsistent with a requirement of this part.

§ 851.8 Guidance documents.

(a) Except as provided in paragraph (c) of this section, a guidance document does not establish any requirement legally enforceable pursuant to this part.

(b) Except as provided in paragraph (c) of this section, DOE may not conduct an inspection or investigation to determine compliance with this part on the basis of whether a contractor's actions or omissions are inconsistent with a guidance document.

(c) A provision of a guidance document is legally enforceable pursuant to this part only to the extent it is explicitly:

(1) Included by a contractor in the set of workplace safety and health standards identified pursuant to § 851.101(c)(3)(ii)(B) of this part; or

(2) Selected or used by a contractor as a procedure, control, or work process to perform work in a tailored manner for particular covered workplaces in accordance with § 851.101(c)(4).

§ 851.9 DOE operated workplaces.

With respect to a covered workplace operated by DOE, DOE must ensure work is performed consistent with the requirements of this part, including the establishment, maintenance and implementation of a worker safety and health program.

Subpart B—Worker Safety and Health Program

§ 851.100 General rule.

The contractor responsible for a covered workplace must ensure:

(a) The covered workplace is free from recognized hazards that are causing or are likely to cause death or serious bodily harm; and

(b) Work is performed in accordance with the worker safety and health program for the covered workplace, as approved by DOE.

§ 851.101 Worker safety and health program.

(a) A contractor responsible for one or more workplaces at a DOE site must establish and maintain a worker safety and health program for those workplaces.

(b) A worker safety and health program must:

(1) Provide for eliminating, limiting or mitigating the identified workplace hazards in a manner that is necessary and sufficient to provide adequate protection of workers; and

(2) Be tailored to reflect the activities and hazards in particular work environments.

(c) In establishing a worker safety and health program, a contractor must:

(1) Identify and analyze, as appropriate at the site, facility, activity and workplace level:

(i) The work to be performed;

(ii) The work environment, including designs and features of facilities, equipment, operations and procedures important to a safe and healthful workplace;

(iii) Existing and potential workplace hazards; and

(iv) The risk of worker injury or illness associated with the identified workplace hazards.

(2) Include a set of workplace safety and health standards that achieves a level of protection at least substantially equivalent to the level of protection that existed in comparable DOE workplaces in 2002;

(3) Select and document the included set of workplace safety and health standards that are necessary and sufficient to provide adequate protection of workers:

(i) With respect to beryllium, by incorporating the chronic beryllium disease prevention program adopted pursuant to part 850 of this chapter; and

(ii) With respect to other workplace hazards identified and analyzed pursuant to (c)(1) of this section by identifying and incorporating a set of provisions that are necessary and sufficient to protect workers from the identified hazards, provided that the set is based on:

(A) The workplace safety and health standards in Appendix A of this part;

(B) Other workplace safety and health standards; or

(C) A combination of the workplace safety and health standards in paragraphs (c)(3)(ii)(A) and (c)(3)(ii)(B) of this section.

(4) Describe in sufficient detail how work will be performed in accordance with the set of selected workplace safety and health standards, including:

(i) Selection process and use of procedures, controls, and work processes in a tailored manner for particular covered workplaces;

(ii) Preference for implementation on the basis of the following hierarchy in descending order: engineering controls, administrative controls, work practices, and personal protective equipment; and

(iii) Integration of the program on site, facility, activity and workplace levels, taking into account differences and similarities between the work, hazards, and workplace safety and health standards and, if applicable, coordination with other worker safety and health programs at the site;

(5) Describe how feedback and continuous improvement will be provided for elements of the worker safety and health program.

(6) Prioritize the abatement of hazards on the basis of risks to workers;

(7) Address how the following features will be incorporated into the worker safety and health program:

(i) Line management commitment;

(ii) Information and training;

(iii) Ongoing workplace monitoring and observation;

(iv) Medical surveillance; and

(v) Applicability to subcontractors.

(d)(1) If a contractor is responsible for more than one covered workplace at a DOE site, the contractor must establish and maintain a single worker safety and health program for the workplaces at the site for which the contractor is responsible

(2) If more than one contractor is responsible for covered workplaces at a DOE site, each contractor must:

(i) Establish and maintain a worker safety and health program for the

workplaces for which the contractor is responsible; and

(ii) Coordinate with the other contractors responsible for covered workplaces at the site to ensure that the worker safety and health programs at the site are integrated and consistent.

(e) If a worker safety and health program sets forth a reasonable basis for characterizing particular workplaces as:

(1) Transitional workplaces, it must provide sufficient flexibility to take into account the special circumstances of those workplaces; or

(2) National security workplaces, it must provide sufficient flexibility to achieve national security missions in an efficient and timely manner in those workplaces.

§ 851.102 DOE approval of worker safety and health program.

(a) Beginning one year after publication of the final rule, no work may be performed at a covered workplace unless the PSO has approved the worker safety and health program for the workplace through the issuance of a worker protection evaluation report that determines the worker safety and health program will achieve a level of protection at least substantially equivalent to the level of protection that existed in 2002 for DOE workplaces comparable to those covered workplaces addressed by the program.

(b) Within 180 days after publication of the final rule, a contractor responsible for establishing a worker safety and health program must submit for DOE approval a worker safety and health program that meets the requirements of this subpart.

(c) A contractor must maintain a worker safety and health program by:

(1) Evaluating and updating the worker safety and health program to reflect changes in the activities and hazards;

(2) Annually submitting to DOE either an updated worker safety and health program for approval or a letter stating that no changes are necessary in the currently approved worker safety and health program; and

(3) Incorporating in the worker safety and health program any changes, conditions, or workplace safety and health standards directed by DOE.

§ 851.103 Worker rights.

A worker at a covered workplace has the right, without reprisal, to:

(a) Participate in activities described in this section on official time;

(b) Have access to:

(1) DOE safety and health publications;

(2) The DOE-approved worker safety and health program for the covered workplace; and

(3) The standards, controls and procedures applicable to the covered workplace;

(c) Observe monitoring or measuring of hazardous agents;

(d) Have access to monitoring and measuring results and be notified when such results indicate the worker was overexposed to hazardous materials;

(e) Accompany DOE personnel during an inspection of the workplace;

(f) Request and receive results of inspections and accident investigations;

(g) Express concerns related to worker safety and health;

(h) Decline to perform an assigned task because of a reasonable belief that, under the circumstances, the task poses an imminent risk of death or serious bodily harm to the worker coupled with a reasonable belief that there is insufficient time to seek effective redress through the normal hazard reporting and abatement procedures;

(i) Stop work, through the worker's supervisor, when the worker discovers employee exposures to imminently dangerous conditions or other serious hazards; provided that any stop work authority must be exercised in a justifiable and responsible manner in accordance with established procedures; and

(j) Have access to an appropriate safety and health poster that informs the worker of relevant rights and responsibilities.

Subpart C—Enforcement Process

§ 851.200 Purpose.

This subpart establishes the procedures for investigating the nature and extent of a violation of the requirements of this part, for determining whether a violation of a requirement of this part has occurred, and for imposing an appropriate remedy.

§ 851.201 Investigations and inspections.

(a) The Director may initiate and conduct investigations and inspections relating to the scope, nature and extent of compliance by a contractor with the requirements of this part and take such action as the Director deems necessary and appropriate to the conduct of the investigation or inspection.

(b) Any person may request the Director to initiate an investigation or inspection pursuant to paragraph (a) of this section. A request for an investigation or inspection sets forth the subject matter or activity to be investigated or inspected as fully as possible and includes supporting documentation and information.

(c) The Director must inform any contractor that is the subject of an investigation or inspection in writing at the initiation of the investigation or inspection of the general purpose of the investigation or inspection.

(d) DOE shall not disclose information or documents that are obtained during any investigation or inspection unless the Director directs or authorizes the public disclosure of the investigation. Upon such authorization, the information or documents are a matter of public record and disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and part 1004 of this title.

(e) A request for confidential treatment of information for purposes of the Freedom of Information Act does not prevent disclosure by the Director if the Director determines disclosure to be in the public interest and otherwise permitted or required by law.

(f) During the course of an investigation or inspection, any contractor may submit any document, statement of facts or memorandum of law for the purpose of explaining the contractor's position or furnish information which the contractor considers relevant to a matter or activity under investigation or inspection.

(g) The Director may convene an informal conference to discuss any situation that might be a violation of a requirement of this part, its significance and cause, any correction taken or not taken by the contractor, any mitigating or aggravating circumstances, and any other useful information. A conference is not normally open to the public and DOE does not make a transcript of the conference. The Director may compel a contractor to attend the conference.

(h) If facts disclosed by an investigation or inspection indicate that further action is unnecessary or unwarranted, the Director may close the investigation without prejudice to further investigation or inspection at any time that circumstances so warrant.

(i) If facts disclosed by an investigation or inspection indicate that corrective action is necessary or warranted, the Director may issue an enforcement letter that closes the investigation subject to the implementation of the corrective actions identified in the enforcement letter.

(j) The Director may issue enforcement letters that communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's

safety and health program; provided that an enforcement letter may not create the basis for any legally enforceable requirement pursuant to this part.

(k) The Director may sign, issue and serve subpoenas.

§ 851.202 Settlement.

(a) DOE encourages settlement of a proceeding under this subpart at any time if the settlement is consistent with this part. The Director and a contractor may confer at any time concerning settlement. A settlement conference is not open to the public and DOE does not make a transcript of the conference.

(b) Notwithstanding any other provision of this part, the Director may resolve any issues in an outstanding proceeding under this subpart with a consent order.

(1) The Director and the contractor, or a duly authorized representative, must sign the consent order and indicate agreement to the terms contained therein.

(2) A contractor does not need to admit in a consent order that a requirement of this part has been violated.

(3) DOE does not need to make a finding in a consent order that a contractor has violated a requirement of this part.

(4) A consent order must set forth the relevant facts which form the basis for the order and what remedy, if any, is imposed.

(5) A consent order shall constitute a final order.

§ 851.203 Preliminary notice of violation.

(a) Based on a determination by the Director that there is a reasonable basis to believe a contractor has violated or is continuing to violate a requirement of this part, the Director may issue a preliminary notice of violation to the contractor.

(b) The Director must send a preliminary notice of violation by certified mail, return receipt requested.

(c) A preliminary notice of violation must indicate:

(1) The date, facts, and nature of each act or omission upon which each alleged violation is based;

(2) The particular provision of the regulation involved in each alleged violation;

(3) The proposed remedy for each alleged violation, including the amount of any civil penalty; and

(4) The right of the contractor to submit a written reply to the Director within 30 calendar days of receipt of the preliminary notice of violation.

(d) A reply to a preliminary notice of violation must contain a statement of all relevant facts pertaining to an alleged violation.

(1) The reply must:

(i) State any facts, explanations and arguments which support a denial of the alleged violation;

(ii) Demonstrate any extenuating circumstances or other reason why a proposed remedy should not be imposed or should be mitigated;

(iii) Discuss the relevant authorities which support the position asserted, including rulings, regulations, interpretations, and previous decisions issued by DOE; and

(iv) Furnish full and complete answers to any questions set forth in the preliminary notice.

(2) Copies of all relevant documents must be submitted with the reply.

(e) If a contractor fails to submit a written reply within 30 calendar days of receipt of a preliminary notice of violation:

(1) The contractor relinquishes any right to appeal any matter in the preliminary notice; and

(2) The preliminary notice, including any proposed remedies therein, constitutes a final order.

§ 851.204 Final notice of violation.

(a) If a contractor submits a written reply within 30 calendar days of receipt of a preliminary notice of violation, the Director must review the submitted reply and make a final determination whether the contractor violated or is continuing to violate a requirement of this part.

(b) Based on a determination by the Director that a contractor has violated or is continuing to violate a requirement of this part, the Director may issue to the contractor a final notice of violation that states concisely the determined violation and any remedy, including the amount of any civil penalty imposed on the contractor. The final notice of violation must state that the contractor may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, subpart G.

(c) The Director must send a final notice of violation by certified mail, return receipt requested.

(d) If a contractor fails to submit a petition for review to the Office of Hearings and Appeals within 30 calendar days of receipt of a final notice of violation pursuant to § 851.205:

(1) The contractor relinquishes any right to appeal any matter in the final notice; and

(2) The final notice, including any remedies therein, constitutes a final order.

§ 851.205 Administrative appeal.

(a) Any contractor that receives a final notice of violation may petition the Office of Hearings and Appeals for review of the final notice in accordance with part 1003, subpart G of this title, within 30 calendar days from receipt of the final notice.

(b) In order to exhaust administrative remedies with respect to a final notice of violation, the contractor must petition the Office of Hearings and Appeals for review in accordance with paragraph (a) of this section.

§ 851.206 Direction to NNSA contractors.

(a) Notwithstanding any other provision of this part, the NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors:

(1) Subpoenas;

(2) Orders to compel attendance;

(3) Disclosures of information or documents obtained during an investigation or inspection;

(4) Preliminary notices of violations; and

(5) Final notices of violations.

(b) The NNSA Administrator shall act after consideration of the Director's recommendation.

Appendix A to Part 851—Generally Acceptable Worker Safety and Health Standards and Programs

I. Safety and Health Standards

A. Title 29 of the Code of Federal Regulations (CFR), Part 1910, ''Occupational Safety and Health Standards.''

B. Title 29 CFR Part 1915, ''Shipyard Employment.''

C. Title 29 CFR Part 1917, ''Marine Terminals.''

D. Title 29 CFR Part 1918, ''Safety and Health Regulations for Longshoring.''

E. Title 29 CFR Part 1926, ''Safety and Health Regulations for Construction.''

F. Title 29 CFR Part 1928, ''Occupational Safety and Health Standards for Agriculture.''

G. American Conference of Governmental Industrial Hygienists (ACGIH), ''Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices'' (most recent edition), when ACGIH Threshold Limit Values (TLVs) are lower (more protective) than Occupational Safety and Health Administration (OSHA) Permissible Exposure Limits. When ACGIH TLVs are used as exposure limits, DOE operations must nonetheless comply with the other provisions of any applicable OSHA-expanded health standard.

H. Exposure limits and technical requirements of the American National Standards Institute (ANSI) Z136.1, *Safe Use of Lasers.*

I. ANSI Z88.2, *Practices for Respiratory Protection.*

J. ANSI Z49.1, *Safety in Welding, Cutting and Allied Processes,* Sections 4.3 and E4.3 (of the 1994 edition or equivalent sections of subsequent editions).

K. National Fire Protection Association (NFPA) 70, *National Electrical Code.*

L. National Fire Protection Association 70E, *Electrical Safety Requirements for Employee Workplaces.*

M. Appropriate etiologic agents guidelines and best practices. *See* most current edition of U.S. Department of Health and Human Services Centers for Disease Control and Prevention (CDC) Publication 93–8395, *Biosafety in Microbiological and Biomedical Laboratories;* National Institutes of Health (NIH) publication *Guidelines for Research Involving Recombinant DNA Molecules;* and World Health Organization (WHO) publication *Guidelines for the Safe Transport of Infectious Substances and Diagnostic Specimens.*

II. Safety and Health Programs

A. Construction Safety

1. For each construction operation presenting hazards not experienced in previous project operations or for work performed by a different subcontractor, the construction contractor prepares a task analysis (job hazard analysis) and has it approved prior to commencement of affected work. These analyses identify foreseeable hazards and planned protective measures, provide drawings and/or other documentation of protective measures that a Professional Engineer or other competent person is required to prepare, and define the qualifications of competent persons required for workplace inspections.

2. Inform workers of foreseeable hazards and the protective measures described within the approved task analysis prior to beginning work on the affected construction operation.

3. During periods of active construction, the construction manager has a designated representative on site at all times to conduct and document daily inspections of the workplace; to identify and correct hazards and instances of noncompliance with project safety and health requirements. If immediate corrective action is not possible or the hazard falls outside of project scope, the construction contractor immediately notify affected workers, post appropriate warning signs, implement needed interim control measures, and notify the construction manager of actions taken.

4. The construction contractor prepares and has approved prior to beginning any on-site project work a written project safety and health plan that gives a proposal for implementing the above information. The construction contractor also designates the individual(s) responsible for on-site implementation of the plan, specify qualifications for those individuals, and provide a list of those project operations for which a task analysis is to be performed.

B. Fire Protection

1. Implement a comprehensive fire protection program that includes appropriate facility and site-wide fire protection, fire alarm notification and egress features, and access to a fully staffed, trained, and equipped fire department that is capable of responding in a timely and effective manner to site emergencies.

2. An acceptable fire protection program includes those fire protection criteria and procedures, analyses, hardware and systems, apparatus and equipment, and personnel. This also includes meeting the applicable building code and National Fire Protection Association Codes and Standards or exceeding them (when necessary to meet safety objectives), unless DOE has granted explicit written relief.

3. Fire watcher requirements in National Fire Protection Association (NFPA) 51B, Section 3–3.3 (of the 1994 edition or equivalent section of subsequent editions), are expanded to include responsibility for the safety of the welder(s) in addition to that of the facility.

C. Firearms Safety

1. Establish firearms safety policies and procedures to address safety concerns and the personal protective equipment required. Establish procedures for: storage, handling, cleaning, and maintenance of firearms and associated ammunition; activities such as loading, unloading, and exchanging firearms; use of pyrotechnics and/or explosive projectiles; handling misfires and duds; live fire operations; and training and exercises using engagement simulation systems.

2. Staff members responsible for the direction and operation of the firearms safety program are professionally qualified and have sufficient time and authority to implement the established program. Firearms instructors and armorers are Safeguards and Security Central Training Academy-certified to conduct the level of activity provided.

3. Conduct formal appraisals assessing implementation of procedures, personnel responsibilities, and duty assignments to ensure overall policy objectives and performance criteria are being met by qualified safety personnel.

4. Implement provisions related to firearms safety training, qualification, or re-qualification. Personnel successfully complete and demonstrate understanding of initial firearms safety training before being issued any firearms.

(a) Personnel authorized to carry firearms have access to instruction manuals for each type of duty firearms with which they are armed while on duty. Authorized armed personnel demonstrate both technical and practical knowledge of firearms handling and safety on a semi-annual basis. This demonstration supported by limited scope performance tests, and documents the results of such testing.

(b) All firearms training lesson plans incorporate safety for all aspects of firearms training task performance standards. The lesson plans follow the standards and criteria set forth by the Safeguards and Security Central Training Academy's standard training programs. Conduct safety briefings before any live fire training commences, in accordance with DOE M 473.2–1, *Firearms Qualification Courses Manual.*

(c) Develop a safety analysis and have approved by the Operations Office Manager for the facilities and operation of each live fire range. Complete and have approved a safety analysis prior to implementation of any new training. Incorporate the results of these analyses into procedures, lesson plans, exercise plans, and limited scope performance tests.

(d) Post site-specific firing range safety procedures at all ranges.

(e) Request approval from the DOE Operations Office for the location and use of a live fire range.

5. Transportation, handling, placarding, and storage of munitions conform to the applicable requirements of DOE M 440.1–1, *DOE Explosives Safety Manual.*

D. Explosives Safety

Applicable explosives operations comply with DOE M 440.1–1. Contractor facility management determines the applicability of the requirements to research and development laboratory type operations consistent with the DOE level of protection criteria in the Manual. The administration and management of the Explosives Safety Manual and any deviations from it follows the process specified in Chapter I, Sections 3 and 4, of the Manual. Revisions to the Manual are made through concurrence of the DOE Explosives Safety Committee.

E. Industrial Hygiene

Industrial hygiene programs include the following elements:

1. Initial or baseline surveys of all work areas or operations to identify and evaluate potential worker health risks and periodic resurveys and/or exposure monitoring as appropriate.

2. Coordination with planning and design personnel to anticipate and control health hazards that proposed facilities and operations would introduce.

3. Documented exposure assessment for chemical, physical, and biological agents and ergonomic stressors using recognized exposure assessment methodologies and use of accredited industrial hygiene laboratories.

4. Specification of appropriate controls based on the following hierarchy: engineering; work practices; and personal protective equipment to limit hazardous exposure to acceptable levels. Use of respiratory protection equipment tested under the DOE Respirator Acceptance Program when National Institute for Occupational Safety and Health-approved respiratory protection does not exist for DOE tasks. For security operations conducted in accordance with Presidential Directive Decision 39, U.S. Policy on Counter Terrorism, use of Department of Defense military type masks for respiratory protection by security personnel is acceptable.

5. Professionally and technically qualified industrial hygienists to manage and implement the industrial hygiene program.

F. Occupational Medicine

1. The earliest possible detection and mitigation of occupational illness and injury is the goal of these services. The physician responsible for delivery of medical services is responsible for the planning and implementation of the occupational medical program.

2. Maintenance of a Healthful Work Environment.

(a) The responsible physician performs targeted examinations based on an up-to-date knowledge of work site risk; identify potential or actual health effects resulting from worksite exposures; and communicate

the results of health evaluations to management and to those responsible for mitigating worksite hazards.

(b) Contractor management provides to the physician employee job task and hazard analysis information; and summaries of potential worksite exposures of employees prior to mandatory health examinations.

3. Employee Health Examinations. Health examinations are conducted by an occupational health examiner under the direction of a licensed physician in accordance with current sound and acceptable medical practices. The content of health examinations is the responsibility of the physician responsible for the delivery of medical services.

(a) The following classes of examinations are for providing initial and continuing assessment of employee health: pre-placement in accordance with the Americans with Disabilities Act (42 U.S.C. 12101); qualification examinations; fitness for duty; medical surveillance and health monitoring; return to work health evaluations; and termination examinations.

(b) The physician or his/her designee informs contractor management of appropriate employee work restrictions.

4. Monitored Care. Contractor management notifies the physician responsible for the delivery of medical services or his or her designee when an employee has been absent because of an injury or illness for more than 5 consecutive workdays or experiences excessive absenteeism.

5. Employee Counseling and Health Promotion. The physician responsible for delivery of medical services reviews and approves the medical aspects of contractor-sponsored or -supported employee assistance, alcohol, and other substance abuse rehabilitation programs; approve and coordinate all contractor-sponsored or -supported wellness programs; and ensure that immunization programs for blood-borne pathogens and biohazardous waste programs conform to OSHA regulations and Centers for Disease Control guidelines for those employees at risk to these forms of exposure.

6. Medical Records. Develop and maintain an employee medical record for each employee for whom medical services are provided. Observe employee medical records confidentiality, adequately protect and permanently store them.

7. Emergency and Disaster Preparedness. The physician responsible for the delivery of medical services is responsible for the medical portion of the site emergency and disaster plan. Integrate the medical portion with the overall site plan and with the surrounding community emergency and disaster plan.

8. Organizational Staffing. Ensure that the physician responsible for the delivery of medical services is a graduate of a school of medicine or osteopathy who meets the licensing requirements applicable to the location in which the physician works. Occupational medical physicians, occupational health nurses, physician's assistants, nurse practitioners, psychologists, and other occupational health personnel are graduates of accredited schools and is licensed, registered, or certified as required by Federal or State law where employed.

G. Pressure Safety

1. Establish safety policies and procedures to ensure pressure systems are designed, fabricated, tested, inspected, maintained, repaired, and operated by trained and qualified personnel in accordance with applicable and sound engineering principles.

2. Ensure that all pressure vessels, boilers, air receivers, and supporting piping systems conform to the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Safety Code; the American National Standards Institute/ASME B.31 Piping Code; and/or the strictest applicable state and local codes.

3. When national consensus codes are not applicable (because of pressure range, vessel geometry, use of special materials, etc.), implement measures to provide equivalent protection and ensure safety equal to or superior to the intent of the ASME code. Measures include the following:

(a) Design drawings, sketches, and calculations are reviewed and approved by an independent design professional. Documented organizational peer review is acceptable.

(b) Qualified personnel are used to perform examinations and inspections of materials, in-process fabrications, non-destructive tests, and acceptance tests.

(c) Documentation, traceability, and accountability are maintained for each unique pressure vessel or system, including descriptions of design, pressure, testing, operation, repair, and maintenance.

H. Motor Vehicle Safety

A. Motor Vehicle Safety Program protects the safety and health of all drivers and passengers in Government-owned or -leased motor vehicles and powered industrial equipment. The Motor Vehicle Safety Program is tailored for the individual DOE site or facility, based on an analysis of the needs of that particular site or facility, and addresses the following areas:

1. Minimum licensing requirements (including appropriate testing and medical qualification) for personnel operating motor vehicles and powered industrial equipment.

2. Requirements for the use of seat belts and provision of other safety devices.

3. Training for specialty vehicle operators.

4. Requirements for motor vehicle maintenance and inspection.

5. Uniform traffic and pedestrian control devices and road signs.

6. On-site speed limits and other traffic rules.

7. Awareness campaigns and incentive programs to encourage safe driving.

8. Enforcement provisions.

I. Biological Safety

1. Comply with appropriate regulatory measures for the safe possession, handling, transfer, use, or receipt of biological agents, including select agents or toxins, at DOE facilities. *See* 42 CFR part 73 Possession, Use and Transfer of Select Agents and Toxins, 9 CFR part 121 Possession, Use and Transfer of Biological Agents and Toxins, 7 CFR part 331 Possession, Use and Transfer of Biological Agents and Toxins, and 29 CFR 1910.1030, Occupational Exposures to Bloodborne Pathogens, and adhere to the guidance of the CDC publication, *Biosafety in Microbiological and Biomedical Laboratories* (BMBL), as noted in section I, paragraph M of this appendix.

2. Establish an Institutional Biosafety Committee (IBC) or equivalent, which will be responsible for reviewing any work with biological agents, including select agents and toxins, for compliance with appropriate CDC, Department of Agriculture, NIH, requirements and WHO and other international, Federal, State and local guidelines and assessment of containment level, facilities, procedures, practices, and training and expertise of personnel. In addition, this committee should review for compliance the site security, safeguards, and emergency management plans and procedures as related to work with etiologic agents.

3. Maintain a readily retrievable inventory and status of biological agents, including select agents and toxins and confirm compliance with the requirements of this appendix in a written statement to the head of the DOE field element within 60 days of incorporation of this appendix into the contract. Provide to the responsible field and area office, through the laboratory IBC (or its equivalent), an annual status report describing the status and inventory of biological agents, including select agents and toxins and program.

4. Inform the head of the appropriate DOE field element of each Laboratory Registration/Select Agent Program registration application package requesting registration of a laboratory facility at Biosafety Level 2, 3, or 4, for the purpose of transferring, receiving, or handling select agents or toxins.

5. Inform the head of the appropriate DOE field element of each CDC Form EA–101, Transfer of Select Agents, upon initial submission of the Form EA–101 to a vendor or other supplier requesting or ordering a select agent for possession, transfer, receipt, and handling in the registered facility. Inform DOE of final disposition and/or destruction of the select agent, within 10 days of completion of the Form EA–101.

6. Confirm the site safeguards and security plans or security plan, and emergency management programs address biological agents, including select agents and toxins.

7. Establish an immunization policy for personnel working with biological agents based on the recommendations contained in the U.S. Public Health Service Advisory Committee on Immunization Practices (ACIP) and as updated in the CDC *Morbidity and Mortality Weekly Report.* The ACIP provides basic guidance, but specific immunization actions should be based on the DOE facility evaluation of risk and benefit of immunization.

Appendix B to Part 851—General Statement of Enforcement Policy

I. Introduction

(a) This policy statement sets forth the general framework through which the U.S. Department of Energy (DOE) will seek to ensure compliance with its worker safety and health regulations, and, in particular, exercise the civil penalty authority provided

to DOE in section 3173 of Public Law 107–314, Bob Stump National Defense Authorization Act for Fiscal Year 2003 (December 2, 2002) (''NDAA''), amending the Atomic Energy Act (''AEA'') to add section 234C. The policy set forth herein is applicable to violations of safety and health regulations in this part by DOE contractors, including DOE contractors who are indemnified under the Price Anderson Act, 42 U.S.C. 2210(d), and their subcontractors and suppliers (hereafter collectively referred to as DOE contractors). This policy statement is not a regulation and is intended only to provide general guidance to those persons subject to the regulations in this part. It is not intended to establish a ''cookbook'' approach to the initiation and resolution of situations involving noncompliance with the regulations in this part. Rather, DOE intends to consider the particular facts of each noncompliance situation in determining whether enforcement sanctions are appropriate and, if so, the appropriate magnitude of those sanctions. DOE may well deviate from this policy statement when appropriate in the circumstances of particular cases. This policy statement is not applicable to activities and facilities covered under E.O. 12344, 42 U.S.C. 7158 note, pertaining to Naval Nuclear Propulsion, and other activities excluded from the scope of the rule.

(b) The DOE goal in the compliance arena is to enhance and protect the safety and health of workers at DOE facilities by fostering a culture among both the DOE line organizations and the contractors that actively seeks to attain and sustain compliance with the regulations in this part. The enforcement program and policy have been developed with the express purpose of achieving safety inquisitiveness and voluntary compliance. DOE will establish effective administrative processes and positive incentives to the contractors for the open and prompt identification and reporting of noncompliances, performance of effective root cause analysis, and initiation of comprehensive corrective actions to resolve both noncompliance conditions and program or process deficiencies that led to noncompliance.

(c) In the development of the DOE enforcement policy, DOE recognizes that the reasonable exercise of its enforcement authority can help to reduce the likelihood of serious incidents. This can be accomplished by providing greater emphasis on a culture of safety in existing DOE operations, and strong incentives for contractors to identify and correct noncompliance conditions and processes in order to protect human health and the environment. DOE wants to facilitate, encourage, and support contractor initiatives for the prompt identification and correction of problems. DOE will give due consideration to such initiatives and activities in exercising its enforcement discretion.

(d) DOE may modify or remit civil penalties in a manner consistent with the mitigation and adjustment factors set forth in this policy with or without conditions. DOE will carefully consider the facts of each case of noncompliance and will exercise appropriate discretion in taking any enforcement action. Part of the function of a sound enforcement program is to assure a proper and continuing level of safety vigilance. The reasonable exercise of enforcement authority will be facilitated by the appropriate application of safety requirements to DOE facilities and by promoting and coordinating the proper contractor and DOE safety compliance attitude toward those requirements.

II. Purpose

The purpose of the DOE enforcement program is to promote and protect the safety and health of workers at DOE facilities by:

(a) Ensuring compliance by DOE contractors with the regulations in this part.

(b) Providing positive incentives for DOE contractors:

(1) Timely self-identification by contractors of worker safety deficiencies,

(2) Prompt and complete reporting of such deficiencies to DOE,

(3) Prompt correction of safety deficiencies in a manner that precludes recurrence, and,

(4) Identification of modifications in practices or facilities that can improve worker safety and health.

(c) Deterring future violations of DOE requirements by a DOE contractor.

(d) Encouraging the continuous overall improvement of operations at DOE facilities.

III. Statutory Authority

The Department of Energy Organization Act, 42 U.S.C. 7101–7385o, the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. 5801–5911 and the Atomic Energy Act of 1954, as amended, (AEA) 42 U.S.C. 2011, require DOE to protect the public safety and health, as well as the safety of workers at DOE facilities, in conducting its activities, and grant DOE broad authority to achieve this goal. Section 234C of the AEA makes DOE contractors covered by the DOE Price-Anderson indemnification system, and their subcontractors and suppliers, subject to civil penalties for violations of the worker safety and health requirements promulgated in this part. 42 U.S.C. 2282c.

IV. Responsibilities

(a) The Director, as the principal enforcement officer of the DOE, has been delegated the authority to conduct enforcement investigations and conferences, issue Notices of Violations and proposed civil penalties, Enforcement Letters, Consent Orders, subpoenas, orders to compel attendance and disclosure of information or documents obtained during an investigation or inspection. The Secretary issues Compliance Orders.

(b) The NNSA Administrator, rather than the Director, signs, issues and serves the following actions that direct NNSA contractors: subpoenas; orders to compel attendance; disclosure of information or documents obtained during an investigation or inspection; Preliminary Notices of Violations; and Final Notices of Violations. The NNSA Administrator acts after consideration of the Director's recommendation.

V. Procedural Framework

(a) Title 10 CFR part 851 sets forth the procedures DOE will use in exercising its enforcement authority, including the issuance of Notices of Violation and the resolution of an administrative appeal in the event a DOE contractor elects to petition the Office of Hearings and Appeals for review.

(b) Pursuant to 10 CFR part 851 subpart C, the Director initiates the enforcement process by initiating and conducting investigations and inspections and issuing a Preliminary Notice of Violation (PNOV) with or without a proposed civil penalty. The DOE contractor is required to respond in writing to the PNOV within 30 days, either admitting the violation and waiving its right to contest the proposed civil penalty and paying it, admitting the violation but asserting the existence of mitigating circumstances that warrant either the total or partial remission of the civil penalty, or denying that the violation has occurred and providing the basis for its belief that the PNOV is incorrect. After evaluation of the DOE contractor's response, the Director may determine that no violation has occurred, that the violation occurred as alleged in the PNOV but that the proposed civil penalty should be remitted in whole or in part, or that the violation occurred as alleged in the PNOV and that the proposed civil penalty is appropriate, notwithstanding the asserted mitigating circumstances. In the latter two instances, the Director will issue a Final Notice of Violation (FNOV) or an FNOV and proposed civil penalty.

(c) An opportunity to challenge an FNOV is provided in administrative appeal provisions. 10 CFR 851.205. Any contractor that receives an FNOV may petition the Office of Hearings and Appeals for review of the final notice in accordance with 10 CFR part 1003, Subpart G, within 30 calendar days from receipt of the final notice. An administrative appeal proceeding is not initiated until the DOE contractor against which an FNOV has been issued requests an administrative hearing rather than waiving its right to contest the FNOV and proposed civil penalty, if any, and paying the civil penalty. However, it should be emphasized that DOE encourages the voluntary resolution of a noncompliance situation at any time, either informally prior to the initiation of the enforcement process or by consent order before or after any formal proceeding has begun.

VI. Severity of Violations

(a) Violations of the worker safety and health requirements in this part have varying degrees of safety and health significance. Therefore, the relative importance of each violation must be identified as the first step in the enforcement process. Violations of the worker safety and health requirements are categorized in three levels of severity to identify their relative seriousness. Notices of Violation are issued for noncompliance which, when appropriate, propose civil penalties commensurate with the severity level of the violations involved.

(b) To assess the potential safety and health impact of a particular violation, DOE will categorize violations of worker safety and health requirements as follows:

(1) A Severity Level I violation is a serious violation. A serious violation shall be deemed to exist in a place of employment if there is a potential that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment. A Severity Level I violation would be subject to a base civil penalty of up to 100% of the maximum base civil penalty of $70,000.

(2) A Severity Level II violation is an other-than-serious violation. An other-than-serious violation occurs where the most serious injury or illness that would potentially result from a hazardous condition cannot reasonably be predicted to cause death or serious physical harm to employees but does have a direct relationship to their safety and health. A Severity Level II violation would be subject to a base civil penalty up to 50% of the maximum base civil penalty ($35,000).

(3) A Severity Level III violations is a *de minimis* violation. As a general matter, these minor violations will be identified as noncompliances and tracked to assure that appropriate remedial/corrective action is taken to prevent their recurrence, and evaluated to determine if generic or specific problems exist. If circumstances demonstrate that a number of related minor noncompliances have occurred in a reasonable time frame (*e.g.* all identified during the same assessment), or that related minor noncompliances have recurred despite the DOE contractor's having had sufficient opportunity to correct the problem, DOE may choose in its discretion to consider the noncompliances in the aggregate as a more serious violation warranting a Severity Level III designation, a Notice of Violation and a possible civil penalty. A Severity Level III violation would be subject to a base civil penalty up to 10% of the maximum base civil penalty ($7,000).

(c) Isolated minor violations of worker safety and health regulations will not be the subject of formal enforcement action through the issuance of a Notice of Violation.

(d) The severity level of a violation will be dependent, in part, on the degree of culpability of the DOE contractor with regard to the violation. Thus, inadvertent or negligent violations will be viewed differently from those in which there is gross negligence, deception or willfulness. In addition to the significance of the underlying violation and level of culpability involved, DOE will also consider the position, training and experience of the person involved in the violation. Thus, for example, a violation may be deemed to be more significant if a senior manager of an organization is involved rather than a foreman or non-supervisory employee. In this regard, while management involvement, direct or indirect, in a violation may lead to an increase in the severity level of a violation and proposed civil penalty, the lack of such involvement will not constitute grounds to reduce the severity level of a violation or mitigate a civil penalty. Allowance of mitigation in such circumstances could encourage lack of management involvement in DOE contractor activities and a decrease in protection of worker safety and health.

(e) Other factors which will be considered by DOE in determining the appropriate severity level of a violation are the duration of the violation, the past performance of the DOE contractor in the particular activity area involved, whether the DOE contractor had prior notice of a potential problem, and whether there are multiple examples of the violation in the same time frame rather than an isolated occurrence. The relative weight given to each of these factors in arriving at the appropriate severity level will be dependent on the circumstances of each case.

(f) DOE expects contractors to provide full, complete, timely, and accurate information and reports. Accordingly, the severity level of a violation involving either failure to make a required report or notification to the DOE or an untimely report or notification will be based upon the significance of, and the circumstances surrounding, the matter that should have been reported. A contractor will not normally be cited for a failure to report a condition or event unless the contractor was actually aware or should have been aware of the condition or event which it failed to report.

VII. Enforcement Conferences

(a) Should DOE determine, after completion of all assessment and investigation activities associated with a potential or alleged violation of the worker safety and health requirements, that there is a reasonable basis to believe that a violation has actually occurred, and the violation may warrant a civil penalty or issuance of an enforcement action, DOE will normally hold an enforcement conference with the DOE contractor involved prior to taking enforcement action. DOE may also elect to hold an enforcement conference for potential violations which would not ordinarily warrant a civil penalty or enforcement action but which could, if repeated, lead to such action. The purpose of the enforcement conference is to assure the accuracy of the facts upon which the preliminary determination to consider enforcement action is based, discuss the potential or alleged violations, their significance and causes, and the nature of and schedule for the DOE contractor's corrective actions, determine whether there are any aggravating or mitigating circumstances, and obtain other information which will help determine the appropriate enforcement action.

(b) DOE contractors will be informed prior to a meeting when that meeting is considered to be an enforcement conference. Such conferences are informal mechanisms for candid pre-decisional discussions regarding potential or alleged violations and will not normally be open to the public. In circumstances for which immediate enforcement action is necessary in the interest of worker safety and health, such action will be taken prior to the enforcement conference, which may still be held after the necessary DOE action has been taken.

VIII. Enforcement Letter

(a) In cases where DOE has decided not to conduct an investigation or inspection or issue a Preliminary Notice of Violation (PNOV), DOE may send an Enforcement Letter to the contractor signed by the Director. The Enforcement Letter is intended to communicate the basis of the decision not to pursue enforcement action for a noncompliance. The Enforcement Letter is intended to direct contractors to the desired level of worker safety and health performance. It may be used when DOE concludes the specific noncompliance at issue is not of the level of significance warranted to conduct an investigation or inspection or for issuance of a PNOV. Even where a noncompliance may be significant, the Enforcement Letter recognizes that the contractor's actions may have attenuated the need for enforcement action. The Enforcement Letter will typically recognize how the contractor handled the circumstances surrounding the noncompliance and address additional areas requiring the contractor's attention and DOE's expectations for corrective action. The Enforcement Letter notifies the contractor that when verification is received that corrective actions have been implemented, DOE will close the matter.

(b) In general, Enforcement Letters communicate DOE's expectations with respect to any aspect of the requirements of this part, including identification and reporting of issues, corrective actions, and implementation of the contractor's safety and health program. DOE might, for example, wish to recognize some action of the contractor that is of particular benefit to worker safety and health that is a candidate for emulation by other contractors. On the other hand, DOE may wish to bring a program shortcoming to the attention of the contractor that, but for the lack of worker safety and health significance of the immediate issue, might have resulted in the issuance of a PNOV. An Enforcement Letter is not an enforcement action. An Enforcement Letter cannot provide the basis for a legally enforceable requirement pursuant to this part. Accordingly, a reference to a guidance document in an Enforcement Letter does not make the provisions of the guidance document mandatory or otherwise legally enforceable. There must be an independent basis for making provisions of a guidance document mandatory such as explicit incorporation in the worker safety and health program.

(c) With respect to many noncompliances, an Enforcement Letter may not be required. When DOE decides that a contractor has appropriately corrected a noncompliance or that the significance of the noncompliance is sufficiently low, it may close out an investigation simply through an annotation in the DOE Noncompliance Tracking System (NTS). A closeout of a noncompliance with or without an Enforcement Letter may only take place after DOE has confirmed that corrective actions have been completed.

IX. Enforcement Actions

(a) This section describes the enforcement sanctions available to DOE and specifies the conditions under which each may be used. The basic sanctions are Notices of Violation and civil penalties.

(b) The nature and extent of the enforcement action is intended to reflect the

seriousness of the violation involved. For the vast majority of violations for which DOE assigns severity levels as described previously, a Notice of Violation will be issued, requiring a formal response from the recipient describing the nature of and schedule for corrective actions it intends to take regarding the violation.

1. Notice of Violation

(a) A Notice of Violation (either a Preliminary or Final Notice) is a document setting forth the conclusion of DOE that one or more violations of the worker safety and health requirements has occurred. Such a notice normally requires the recipient to provide a written response which may take one of several positions described in section V of this policy statement. In the event that the recipient concedes the occurrence of the violation, it is required to describe corrective steps which have been taken and the results achieved; remedial actions which will be taken to prevent recurrence; and the date by which full compliance will be achieved.

(b) DOE will use the Notice of Violation as the standard method for formalizing the existence of a violation and, in appropriate cases as described in this section, the Notice of Violation will be issued in conjunction with the proposed imposition of a civil penalty. In certain limited instances, as described in this section, DOE may refrain from the issuance of an otherwise appropriate Notice of Violation. However, a Notice of Violation will virtually always be issued for willful violations, if past corrective actions for similar violations have not been sufficient to prevent recurrence and there are no other mitigating circumstances, or if the circumstances otherwise warrant increasing lower severity level violations to a higher severity level.

(c) DOE contractors are not ordinarily cited for violations resulting from matters not within their control, such as equipment failures that were not avoidable by reasonable quality assurance measures, proper maintenance, or management controls. With regard to the issue of funding, however, DOE does not consider an asserted lack of funding to be a justification for noncompliance with the worker safety and health requirements.

(d) DOE expects the contractors which operate its facilities to have the proper management and supervisory systems in place to assure that all activities at DOE facilities, regardless of who performs them, are carried out in compliance with all the worker safety and health requirements. Therefore, contractors are normally held responsible for the acts of their employees and subcontractor employees in the conduct of activities at DOE facilities. Accordingly, this policy should not be construed to excuse personnel errors.

(e) The limitations on remedies under Sec. 234C will be implemented as follows:

(1) DOE may assess civil penalties of not more than $70,000 per violation per day on contractors (and their subcontractors and suppliers) that are indemnified by the Price-Anderson Act, 42 U.S.C. 2210(d). 10 CFR 851.4(c). DOE will not assess civil penalties on contractors (and their subcontractors and suppliers) that are not indemnified under the Price-Anderson Act.

(2) DOE may seek contract fee reductions through the contract's Conditional Payment of Fee Clause in the Department of Energy Acquisition Regulation (DEAR). *See* 10 CFR 851.4(b); 48 CFR parts 923, 952, 970. Policies for contract fee reductions are not established by this policy statement. The contracting officer must coordinate with the Director, the DOE Official to whom the Secretary has assigned the authority to investigate the nature and extent of compliance with the requirements of this part, before pursuing contract fee reduction in the event of a violation relating to the enforcement of worker safety and health concerns. Likewise, the Director must coordinate with the contracting officer when conducting investigations and pursuing an enforcement action.

(3) For the same violation of a worker safety and health requirement in this part, DOE may pursue either civil penalties (for indemnified contractors and their subcontractors and suppliers) or a contract fee reduction, but not both. 10 CFR 851.4(d).

(4) An upper ceiling applies to civil penalties assessed on certain contractors specifically listed in 170d. of the Atomic Energy Act, 42 U.S.C. 2282a(d), for activities conducted at specified facilities. For these contractors, the total amount of civil penalties and contract penalties in a fiscal year may not exceed the total amount of fees paid by DOE to that entity in that fiscal year. 10 CFR 851.4(e).

(5) DOE will not issue civil penalties under both this part and under the nuclear safety procedural regulations in 10 CFR part 820 for the same violation. 10 CFR 851.4(f).

(f) Regarding the relationship of civil penalties and contract fee reductions where DOE may elect between remedies, DOE generally intends to use civil penalties as the remedy for most violations. Where DOE may elect between remedies, the Director may refer a violation to the appropriate DOE official responsible for administering the *Conditional Payment of Fee* clause to consider invoking the provisions for reducing contract fees if the violation is especially egregious or indicates a general failure to perform under the contract with respect to worker safety and health. In determining whether to refer a violation, the Director generally would focus on factors such as willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls. Such factors involved in a violation would call into question a contractor's commitment and ability to achieve the fundamental obligation of providing safe and healthy workplaces for workers.

2. Civil Penalty

(a) A civil penalty is a monetary penalty that may be imposed for violations of requirements of this part. *See* 10 CFR 851.4(b). Civil penalties are designed to emphasize the need for lasting remedial action, deter future violations, and underscore the importance of DOE contractor self-identification, reporting and correction of violations of the worker safety and health requirements in this part.

(b) Absent mitigating circumstances as described below, or circumstances otherwise warranting the exercise of enforcement discretion by DOE as described in this section, civil penalties will be proposed for Severity Level I and II violations.

(c) DOE will impose different base level penalties considering the severity level of the violation by Price-Anderson indemnified contractors. Table 1 shows the daily base civil penalties for the various categories of severity levels. However, as described above in section IV, the imposition of civil penalties will also take into account the gravity, circumstances, and extent of the violation or violations and, with respect to the violator, any history of prior similar violations and the degree of culpability and knowledge.

(d) Regarding the factor of ability of DOE contractors to pay the civil penalties, it is not DOE's intention that the economic impact of a civil penalty be such that it puts a DOE contractor out of business. Contract termination, rather than civil penalties, is used when the intent is to terminate these activities. The deterrent effect of civil penalties is best served when the amount of such penalties takes this factor into account. However, DOE will evaluate the relationship of affiliated entities to the contractor (such as parent corporations) when the contractor asserts that it cannot pay the proposed penalty.

(e) DOE will review each case involving a proposed civil penalty on its own merits and adjust the base civil penalty values upward or downward appropriately. As indicated above, Table 1 identifies the daily base civil penalty values for different severity levels. After considering all relevant circumstances, civil penalties may be raised or lowered based upon the adjustment factors described below in this section. In no instance will a civil penalty for any one violation exceed the statutory limit of $70,000. However, it should be emphasized that if the DOE contractor is or should have been aware of a violation and has not reported it to DOE and taken corrective action despite an opportunity to do so, each day the condition existed may be considered a separate violation and, as such, subject to a separate civil penalty. Further, as described in this section, the duration of a violation will be taken into account in determining the appropriate severity level of the base civil penalty.

TABLE 1—SEVERITY LEVEL BASE CIVIL PENALTIES

Severity level	Base civil penalty amount (percentage of maximum per violation per day)
I	100
II	50
III	10

3. Adjustment Factors

(a) DOE's enforcement program is not an end in itself, but a means to achieve

compliance with the worker safety and health requirements in this part, and civil penalties are to emphasize the importance of compliance and to deter future violations. The single most important goal of the DOE enforcement program is to encourage early identification and reporting of worker protection deficiencies and violations of the worker safety and health requirements in this part by the DOE contractors themselves rather than by DOE, and the prompt correction of any deficiencies and violations so identified. DOE believes that DOE contractors are in the best position to identify and promptly correct noncompliance with the worker safety and health requirements in this part. DOE expects that these contractors should have in place internal compliance programs which will ensure the detection, reporting and prompt correction of worker protection related problems that may constitute, or lead to, violations of the worker safety and health requirements in this part, before, rather than after, DOE has identified such violations. Thus, DOE contractors will almost always be aware of worker safety and health problems before they are discovered by DOE. Obviously, worker safety and health is enhanced if deficiencies are discovered (and promptly corrected) by the DOE contractor, rather than by DOE, which may not otherwise become aware of a deficiency until later on, during the course of an inspection, performance assessment, or following an incident at the facility. Early identification of worker safety and health-related problems by DOE contractors has the added benefit of allowing information which could prevent such problems at other facilities in the DOE complex to be shared with all appropriate DOE contractors.

(b) Pursuant to this enforcement philosophy, DOE will provide substantial incentive for the early self-identification, reporting and prompt correction of problems which constitute, or could lead to, violations of the worker safety and health requirements. Thus, application of the adjustment factors set forth below may result in a reduced or no civil penalty being assessed for violations that are identified, reported, and promptly and effectively corrected by the DOE contractor.

(c) On the other hand, ineffective programs for problem identification and correction are unacceptable. Thus, for example, where a contractor fails to disclose and promptly correct violations of which it was aware or should have been aware, substantial civil penalties are warranted and may be sought, including the assessment of civil penalties for continuing violations on a per day basis.

(d) Further, in cases involving factors of willfulness, repeated violations, death, serious injury, patterns of systemic violations, flagrant DOE-identified violations, repeated poor performance in an area of concern, or serious breakdown in management controls, DOE intends to apply its full statutory enforcement authority where such action is warranted.

4. Identification and Reporting

Reduction of the base civil penalty shown in Table 1 may be given when a DOE contractor identifies the violation and promptly reports the violation to the DOE. In weighing this factor, consideration will be given to, among other things, the opportunity available to discover the violation, the ease of discovery and the promptness and completeness of any required report. No consideration will be given to a reduction in penalty if the DOE contractor does not take prompt action to report the problem to DOE upon discovery, or if the immediate actions necessary to restore compliance with the worker safety and health requirements are not taken.

5. Self-Identification and Tracking Systems

(a) DOE strongly encourages contractors to self-identify noncompliances with the worker safety and health requirements before the noncompliances lead to a string of similar and potentially more significant events or consequences. When a contractor identifies a noncompliance through its own self-monitoring activity, DOE will normally allow a reduction in the amount of civil penalties, unless prior opportunities existed for contractors to identify the noncompliance. DOE will normally not allow a reduction in civil penalties for self-identification if significant DOE intervention was required to induce the contractor to report a noncompliance.

(b) Self-identification of a noncompliance is possibly the single most important factor in considering a reduction in the civil penalty amount. Consideration of self-identification is linked to, among other things, whether prior opportunities existed to discover the violation, and if so, the age and number of such opportunities; the extent to which proper contractor controls should have identified or prevented the violation; whether discovery of the violation resulted from a contractor's self-monitoring activity; the extent of DOE involvement in discovering the violation or in prompting the contractor to identify the violation; and the promptness and completeness of any required report. Self-identification is also considered by DOE in deciding whether to pursue an investigation.

(c) DOE will use the voluntary Noncompliance Tracking System (NTS) which allows contractors to elect to report noncompliances. In the guidance document supporting the NTS, DOE will establish reporting thresholds for reporting items of noncompliance of potentially greater worker safety and health significance into the NTS. Contractors may, however, use their own self-tracking systems to track noncompliances below the reporting threshold. This self-tracking is considered to be acceptable self-reporting as long as DOE has access to the contractor's system and the contractor's system notes the item as a noncompliance with a DOE safety and health requirement. For noncompliances that are below the reportability thresholds, DOE will credit contractor self-tracking as representing self-reporting. If an item is not reported in NTS but only tracked in the contractor's system and DOE subsequently finds the facts and their worker safety and health significance have been significantly mischaracterized, DOE will not credit the internal tracking as representing appropriate self-reporting.

6. Self-Disclosing Events

(a) DOE expects contractors to demonstrate acceptance of responsibility for worker safety and health by proactively identifying noncompliance conditions in their programs and processes. In deciding whether to reduce any civil penalty proposed for violations revealed by the occurrence of a self-disclosing event, DOE will consider the ease with which a contractor could have discovered the noncompliance and the prior opportunities that existed to discover the noncompliance. When the occurrence of an event discloses noncompliances that the contractor could have or should have identified before the event, DOE will not generally allow a reduction in civil penalties for self-identification, even if the underlying noncompliances were reported to DOE. If a contractor simply reacts to events that disclose potentially significant consequences or downplays noncompliances which did not result in significant consequences to worker safety and health, such contractor actions do not lead to the improvement in worker safety and health contemplated by Part 851.

(b) The key test is whether the contractor reasonably could have detected any of the underlying noncompliances that contributed to the event. Examples of events that provide opportunities to identify noncompliances include, but are not limited to:

(1) Prior notifications of potential problems such as those from DOE operational experience publications or vendor equipment deficiency reports;

(2) Normal surveillance, quality assurance assessments, and post-maintenance testing;

(3) Readily observable parameter trends; and

(4) Contractor employee or DOE observations of potential worker safety and health problems.

(c) Failure to utilize these types of events and activities to address noncompliances may result in higher civil penalty assessments or a DOE decision not to reduce civil penalty amounts.

(d) Alternatively, if, following a self-disclosing event, DOE finds that the contractor's processes and procedures were adequate and the contractor's personnel generally behaved in a manner consistent with the contractor's processes and procedures, DOE could conclude that the contractor could not have been reasonably expected to find the single procedural noncompliance that led to the event and thus, might allow a reduction in civil penalties.

7. Corrective Action To Prevent Recurrence

The promptness (or lack thereof) and extent to which the DOE contractor takes corrective action, including actions to identify root cause and prevent recurrence, may result in an increase or decrease in the base civil penalty shown in Table 1. For example, very extensive corrective action may result in DOE's reducing the proposed civil penalty from the base value shown in Table 1. On the other hand, the civil penalty may be increased if initiation of corrective action is not prompt or if the corrective action is only minimally acceptable. In weighing this factor, consideration will be

given to, among other things, the appropriateness, timeliness and degree of initiative associated with the corrective action. The comprehensiveness of the corrective action will also be considered, taking into account factors such as whether the action is focused narrowly to the specific violation or broadly to the general area of concern.

8. DOE's Contribution to a Violation

There may be circumstances in which a violation of a DOE worker safety and health requirement results, in part or entirely, from a direction given by DOE personnel to a DOE contractor to either take or forbear from taking an action at a DOE facility. In such cases, DOE may refrain from issuing an NOV, or may mitigate, either partially or entirely, any proposed civil penalty, provided that the direction upon which the DOE contractor relied is documented in writing, contemporaneously with the direction. It should be emphasized, however, that pursuant to 10 CFR 851.7, no interpretation of a requirement of this part is binding upon DOE unless issued in writing by the Office of the General Counsel. Further, as discussed above in this policy statement, lack of funding by itself will not be considered as a mitigating factor in enforcement actions.

9. Exercise of Discretion

Because DOE wants to encourage and support DOE contractor initiative for prompt self-identification, reporting and correction of problems, DOE may exercise discretion as follows:

(a) In accordance with the previous discussion, DOE may refrain from issuing a civil penalty for a violation which meets all of the following criteria:

(1) The violation is promptly identified and reported to DOE before DOE learns of it or the violation is identified by a DOE independent assessment, inspection or other formal program effort.

(2) The violation is not willful or a violation that could reasonably be expected to have been prevented by the DOE contractor's corrective action for a previous violation.

(3) The DOE contractor, upon discovery of the violation, has taken or begun to take prompt and appropriate action to correct the violation.

(4) The DOE contractor has taken, or has agreed to take, remedial action satisfactory to DOE to preclude recurrence of the violation and the underlying conditions which caused it.

(b) DOE will not issue a Notice of Violation for cases in which the violation discovered by the DOE contractor cannot reasonably be linked to the conduct of that contractor in the design, construction or operation of the DOE facility involved, provided that prompt and appropriate action is taken by the DOE contractor upon identification of the past violation to report to DOE and remedy the problem.

(c) In situations where corrective actions have been completed before termination of an inspection or assessment, a formal response from the contractor is not required and the inspection or integrated performance assessment report serves to document the violation and the corrective action. However, in all instances, the contractor is required to report the noncompliance through established reporting mechanisms so the noncompliance issue and any corrective actions can be properly tracked and monitored.

(d) If DOE initiates an enforcement action for a violation, and as part of the corrective action for that violation, the DOE contractor identifies other examples of the violation with the same root cause, DOE may refrain from initiating an additional enforcement action. In determining whether to exercise this discretion, DOE will consider whether the DOE contractor acted reasonably and in a timely manner appropriate to the safety significance of the initial violation, the comprehensiveness of the corrective action, whether the matter was reported, and whether the additional violation(s) substantially change the safety significance or character of the concern arising out of the initial violation.

(e) It should be emphasized that the preceding paragraphs are solely intended to be examples indicating when enforcement discretion may be exercised to forego the issuance of a civil penalty or, in some cases, the initiation of any enforcement action at all. However, notwithstanding these examples, a civil penalty may be proposed or Notice of Violation issued when, in DOE's judgment, such action is warranted on the basis of the circumstances of an individual case.

X. Inaccurate and Incomplete Information

(a) A violation of the worker safety and health requirements to provide complete and accurate information to DOE, 10 CFR 851.5, can result in the full range of enforcement sanctions, depending upon the circumstances of the particular case and consideration of the factors discussed in this section. Violations involving inaccurate or incomplete information or the failure to provide significant information identified by a DOE contractor normally will be categorized based on the guidance in section VI, ''Severity of Violations.''

(b) DOE recognizes that oral information may in some situations be inherently less reliable than written submittals because of the absence of an opportunity for reflection and management review. However, DOE must be able to rely on oral communications from officials of DOE contractors concerning significant information. In determining whether to take enforcement action for an oral statement, consideration will be given to such factors as:

(1) The degree of knowledge that the communicator should have had regarding the matter in view of his or her position, training, and experience;

(2) The opportunity and time available prior to the communication to assure the accuracy or completeness of the information;

(3) The degree of intent or negligence, if any, involved;

(4) The formality of the communication;

(5) The reasonableness of DOE reliance on the information;

(6) The importance of the information that was wrong or not provided; and

(7) The reasonableness of the explanation for not providing complete and accurate information.

(c) Absent gross negligence or willfulness, an incomplete or inaccurate oral statement normally will not be subject to enforcement action unless it involves significant information provided by an official of a DOE contractor. However, enforcement action may be taken for an unintentionally incomplete or inaccurate oral statement provided to DOE by an official of a DOE contractor or others on behalf of the DOE contractor, if a record was made of the oral information and provided to the DOE contractor thereby permitting an opportunity to correct the oral information, such as if a transcript of the communication or meeting summary containing the error was made available to the DOE contractor and was not subsequently corrected in a timely manner.

(d) When a DOE contractor has corrected inaccurate or incomplete information, the decision to issue a citation for the initial inaccurate or incomplete information normally will be dependent on the circumstances, including the ease of detection of the error, the timeliness of the correction, whether DOE or the DOE contractor identified the problem with the communication, and whether DOE relied on the information prior to the correction. Generally, if the matter was promptly identified and corrected by the DOE contractor prior to reliance by DOE, or before DOE raised a question about the information, no enforcement action will be taken for the initial inaccurate or incomplete information. On the other hand, if the misinformation is identified after DOE relies on it, or after some question is raised regarding the accuracy of the information, then some enforcement action normally will be taken even if it is in fact corrected.

(e) If the initial submission was accurate when made but later turns out to be erroneous because of newly discovered information or advances in technology, a citation normally would not be appropriate if, when the new information became available, the initial submission was promptly corrected.

(f) The failure to correct inaccurate or incomplete information that the DOE contractor does not identify as significant normally will not constitute a separate violation. However, the circumstances surrounding the failure to correct may be considered relevant to the determination of enforcement action for the initial inaccurate or incomplete statement. For example, an unintentionally inaccurate or incomplete submission may be treated as a more severe matter if a DOE contractor later determines that the initial submission was in error and does not promptly correct it or if there were clear opportunities to identify the error.

XI. Secretarial Notification and Consultation

The Secretary will be provided written notification of all enforcement actions involving proposed civil penalties. The Secretary will be consulted prior to taking action in the following situations:

(a) Any action the Director, or the NNSA Administrator concerning actions involving

NNSA contractors, believes warrants the Secretary's involvement; or

(b) Any proposed enforcement action for which the Secretary asks to be consulted.

[FR Doc. 03–30287 Filed 12–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–390–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900 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 Dassault Model Mystere-Falcon 900 series airplanes. This proposal would require revising the Abnormal Procedures section of the airplane flight manual to advise the flightcrew to avoid use of certain display modes during approaches. This proposal also would require replacing certain symbol generators of the Electronic Flight Information System (EFIS) with modified symbol generators. This action is necessary to prevent distraction of the flightcrew during a critical phase of flight due to certain EFIS displays flashing or going blank, which could result in loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 7, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–390–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–390–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 Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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–390–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–390–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 Dassault Model Mystere-Falcon 900 series airplanes. The DGAC advises that, in certain phases of flight, especially during approach, the quantity of data to be processed may lead to saturation of the processors of certain symbol generators used by the Electronic Flight Information System (EFIS). This may cause the EFIS display to flash or go blank. This condition, if not corrected, could result in distraction of the flightcrew during a critical phase of flight, which could result in loss of control of the airplane.

Explanation of Relevant Service Information

Dassault has issued Temporary Change No. 86 to the Abnormal Procedures section of the Mystere-Falcon 900 Airplane Flight Manual (AFM). That Temporary Change advises the flightcrew that certain EFIS displays may blink or blank due to overload of certain symbol generators, and advises the flightcrew to avoid using certain display modes during approaches to decrease the load on the display processor.

Dassault has also issued Service Bulletin F900–281, Revision 1, dated October 3, 2001. That service bulletin describes procedures for replacing certain symbol generators with modified symbol generators. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DGAC classified the temporary change to the AFM and the service bulletin as mandatory and issued French airworthiness directive 2001–466–033(B), dated October 3, 2001, 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 § 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 revising the Abnormal Procedures section of the AFM to advise the flightcrew to avoid using certain display modes during approaches, and accomplishing the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed AD and Referenced Service Bulletin

Operators should note that, although the Accomplishment Instructions of the referenced service bulletin describe procedures for completing and returning a card recording compliance with the service bulletin, this proposed AD would not require this action.

Cost Impact

We estimate that 93 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $6,045, or $65 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed replacement, at an average labor rate of $65 per work hour. Required parts would be provided by the parts manufacturer at no charge. Based on these figures, the cost impact of this proposed action on U.S. operators is estimated to be $6,045, or $65 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:

Dassault Aviation: Docket 2001–NM–390–AD.

Applicability: Model Mystere-Falcon 900 series airplanes, certificated in any category; serial numbers (S/Ns) 1 through 168 inclusive, and 170 through 178 inclusive; equipped with an SPZ 8000 avionics system.

Compliance: Required as indicated, unless accomplished previously.

To prevent distraction of the flightcrew during a critical phase of flight due to certain Electronic Flight Information System (EFIS) displays flashing or going blank, which could result in loss of control of the airplane, accomplish the following:

Airplane Flight Manual Revision

(a) Within 30 days after the effective date of this AD, revise the Abnormal Procedures section of the Mystere-Falcon 900 Airplane Flight Manual (AFM) to include the information in Temporary Change (TC) No. 86. That TC advises the flightcrew that certain EFIS displays may blink or blank due to overload of certain symbol generators, and advises the flightcrew to avoid using certain display modes during approaches to decrease the load on the display processor. Operate the airplane per the limitations and procedures in the TC.

Note 1: The requirements of paragraph (a) may be done by inserting a copy of TC No. 86 in the AFM. When this TC has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, and TC No. 86 may be removed from the AFM, provided the relevant information in the general revision is identical to that in TC No. 86.

Replacement of Symbol Generators

(b) Within 18 months after the effective date of this AD, do paragraphs (b)(1) and (b)(2) of this AD, per Dassault Service Bulletin F900–281, Revision 1, dated October 3, 2001, except that it is not necessary to complete the compliance card.

(1) Replace all SG–820 symbol generators having part numbers (P/Ns) 7007356–901 or –902, or P/Ns 7007356–903 or –904 without Honeywell Modification S; with symbol generators having a P/N and a Honeywell modification level listed in the ''NEW P/N'' column of the table under paragraph 3.A. of the service bulletin.

(2) Replace all MG–820 symbol generators having P/Ns 7009289–801 or –802, or P/Ns 7009289–803 or –804 without Honeywell Modification V, with symbol generators having a P/N and a Honeywell modification level listed in the ''NEW P/N'' column of the table under paragraph 3.B. of the service bulletin.

Parts Installation

(c) As of the effective date of this AD, no person may install a symbol generator having a P/N and a modification level listed in the ''OLD P/N'' column of the tables under paragraphs 3.A. and 3.B. of Dassault Service Bulletin F900–281, Revision 1, dated October 3, 2001.

Alternative Methods of Compliance

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

Note 2: The subject of this AD is addressed in French airworthiness directive 2001–466–033(B), dated October 3, 2001.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30333 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –200C, –300, –400, and –500 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 Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections for corrosion and cracking of the pivot hinge pins of the horizontal stabilizer, certain follow-on inspections, and replacement of the hinge pins with new or serviceable pins if necessary. This action is necessary to prevent failure of the outer and inner hinge pins due to corrosion or cracking, which could allow the pins to migrate out of the joint and result in intermittent movement of the horizontal stabilizer structure and consequent loss of controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–90–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. 2003–NM–90–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 Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Nancy Marsh, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6440; fax (425) 917–6590.

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 Alert 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 2003–NM–90–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. 2003–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of corrosion in the pivot hinge pins that attach the horizontal stabilizer center section to the Body Station 1156 support bulkhead on certain Boeing Model 737–300, –400, and –500 series airplanes. Corrosion has been found on outer primary pins and inner failsafe pins made from both 4330 steel and 15–5 PH corrosion-resistant steel (CRES). Investigation has revealed the presence of heavy corrosion on areas of the outer pin not protected by chrome plating and of heavy corrosion on all areas of the inner pin. Such corrosion or cracking could lead to pin failure and allow the pins to migrate out of the joint, resulting in intermittent movement of the horizontal stabilizer structure and consequent loss of controllability of the airplane.

Similar Airplanes

The pivot hinge pins of the horizontal stabilizer on certain Boeing Model 737–100, –200, and 200C series airplanes are identical to those on the affected Model 737–300, –400, and –500 series airplanes. Therefore, all of these models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001, which describes procedures for performing repetitive detailed and magnetic particle inspections for corrosion and cracking of the hinge pin joints of the horizontal stabilizer. The alert service bulletin also describes procedures for replacing the hinge pins with new or serviceable pins if necessary. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

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 alert service bulletin described previously, except as discussed below.

Differences Between the Proposed Rule and the Alert Service Bulletin

Where the Accomplishment Instructions of the alert service bulletin specify a certain area of inspection of the outer pin as area that ''includes the tapered shank, the adjacent thread relief radius, and the threaded end, * * *,'' this AD specifies the area that ''includes the tapered shank, the adjacent thread relief radius, or the threaded end, * * * .'' Additionally, where the Accomplishment Instructions of the alert service bulletin specify a certain other area of inspection of the outer pin as area that ''includes the straight shank and the head, * * * ,'' this AD specifies the area that ''includes the straight shank or the head, * * * '' The manufacturer has advised us that it has notified opertors of its intention to revise the referenced alert service bulletin to reflect these corrections.

Although the alert service bulletin specifies that operators should contact the manufacturer for disposition of certain corrosion conditions, this proposed AD would require operators to repair those conditions per a method approved by the FAA.

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

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

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

Cost Impact

There are approximately 3,132 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,250 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the detailed inspection specified in paragraph (a) of the proposed AD, and that the average labor rate is $65 per work hour. Since the requirements of paragraph (a) of this proposed AD apply to the total affected fleet, the cost impact of the inspections required by paragraph (a) of this proposed AD on U.S. operators is estimated to be $81,250, or $65 per airplane, per inspection cycle.

It would take approximately 6 work hours per airplane, per inspection, to accomplish the detailed and magnetic particle inspections described in Part 2 of the Accomplishment Instructions of the specified alert service bulletin. We estimate that if all airplanes were required to accomplish those inspections, the estimated cost impact of the affected airplanes would be $487,500 or $390 airplane, per inspection cycle.

It would take approximately 12 work hours per airplane, per inspection, to accomplish the detailed and magnetic particle inspections described in Part 3 of the Accomplishment Instructions of the specified alert service bulletin. We estimate that if all airplanes were required to accomplish those inspections, the estimated cost impact of the affected airplanes would be $975,000, or $780 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:

Boeing: Docket 2003–NM–90–AD.

Applicability: Model 737–100, –200, –200C, –300, –400, and –500 series airplanes having line numbers 1 through 3132 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the outer and inner pivot hinge pins due to corrosion or cracking, which could allow the pins to migrate out of the joint and result in intermittent movement of the horizontal stabilizer structure and consequent loss of controllability of the airplane; accomplish the following:

(a) For all airplanes: Within 90 days after the effective date of this AD, perform a detailed inspection of the pivot hinge pin joints for corrosion and, with hand pressure, check for movement of the hinge pins within the joints of the horizontal stabilizer, per Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001. Repeat the detailed inspections and check at intervals not to exceed 180 days until the initial inspection specified in paragraph (b), (d), (f), or (h) of this AD, as applicable, is performed.

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.''

(1) If no corrosion is found, and if the hinge pins cannot be moved with hand pressure, the hinge pins are serviceable. No further action is required by this paragraph.

(2) If any pin can be moved with hand pressure, before further flight, remove and inspect both pins and perform follow-on corrective actions per Part 3 of the Accomplishment Instructions of the alert service bulletin.

(3) If any corrosion is found, before further flight, remove and perform a detailed inspection of the pin(s) per Figure 2 (inner pin) or Figure 3 (inner and outer pins), as applicable, of the Accomplishment Instructions of the Alert Service Bulletin; and perform follow-on corrective actions, per the Accomplishment Instructions of the alert service bulletin.

(b) For Models 737–100, –200, and 200C series airplanes: Within 3,000 flight hours or 24 months after the effective date of this AD, whichever occurs first, perform a detailed inspection and magnetic particle inspection for corrosion and cracking of the horizontal stabilizer hinge pins, per Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (b)(3) and (b)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(3) If an outer pin is cracked in the area that includes the straight shank or the head, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA.

(c) For Models 737–100, –200, –200C series airplanes: Thereafter, repeat the inspections required by paragraph (b) of this AD at the times specified in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, repeat the inspection at intervals not to exceed 6,000 flight hours or 48 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 grease (Mastinox 6856K), repeat the inspections at intervals not to exceed 3,000 flight hours or 24 months, whichever occurs first.

(d) For Models 737–100, –200, and –200C series airplanes: Within 12,000 flight hours or 96 months after the effective date of this AD, whichever occurs first, perform a detailed inspection and magnetic particle inspection for corrosion and cracking of the horizontal stabilizer hinge pins, per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (d)(3) and (d)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(3) If an outer pin is cracked in the area that includes the straight shank and the head, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, repair per a method approved by the Manager, Seattle ACO.

(e) For Models 737–100, –200, –200C series airplanes: Thereafter, repeat the inspections required by paragraph (d) of this AD at the times specified in paragraph (e)(1) or (e)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, thereafter, repeat the inspections at intervals not to exceed 12,000 flight hours or 96 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 grease (Mastinox 6856K), thereafter, repeat the inspections at intervals not to exceed 6,000 flight hours or 48 months, whichever occurs first.

(f) For Model 737–300, –400, and –500 series airplanes: Within 4,000 flight hours or 24 months from the effective date of this AD, whichever occurs first, inspect the horizontal stabilizer hinge pins, per Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (f)(3) and (f)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(3) If an outer pin is cracked in the area that includes the straight shank or the head, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pins with new or serviceable pins, per the Accomplishment Instructions of the alert service bulletin.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin, per the Accomplishment Instructions of the alert service bulletin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, repair per a method approved by the Manager, Seattle ACO.

(g) For Model 737–300, –400, and –500 series airplanes: Thereafter, repeat the inspections required by paragraph (f) of this AD at the times specified in paragraph (g)(1) or (g)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, therafter, repeat the inspections at intervals not to exceed 8,000 flight hours or 48 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 (Mastinox 6856K), repeat the inspections at intervals not to exceed 4,000 flight hours or 24 months, whichever occurs first.

(h) For Model 737–300, –400, and –500 series airplanes: Within 16,000 flight hours or 96 months from the effective date of this AD, whichever occurs first, perform a detailed inspection and magnetic particle inspection for corrosion or cracking of the horizontal stabilizer hinge pins per Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 737–55A1077, dated December 6, 2001.

(1) If no corrosion or cracking is found, before further flight, reinstall the pin unless the condition of the other pin in that joint requires that both pins be replaced. (See paragraphs (h)(3) and (h)(4) of this AD.)

(2) If an outer pin is cracked in the area that includes the tapered shank, the adjacent thread relief radius, or the threaded end, but the inner pin is damage free, before further flight, replace the outer pin with a new or serviceable pin.

(3) If an outer pin is cracked in the area that includes the straight shank or the head, before further flight, replace both the inner and outer pin with new or serviceable pins.

(4) If any cracks are found on an inner pin, before further flight, replace both the inner and outer pin with new or serviceable pins.

(5) On any pin, if corrosion is found on a threaded area or in the thread relief radius adjacent to the threads, before further flight, replace the pin with a new or serviceable pin.

(6) If any corrosion is found on an area of the pin that is not threaded or in a thread relief radius adjacent to threads, before further flight, contact the Manager, Seattle ACO.

(i) For Model 737–300, –400, and –500 series airplanes: Thereafter, repeat the inspections required by paragraph (h) of this AD at the times specified in paragraph (i)(1) or (i)(2) of this AD, as applicable.

(1) If BMS 3–27 grease (Mastinox 6856K) is used, thereafter, repeat the inspections at intervals not to exceed 16,000 flight hours or 96 months, whichever occurs first.

(2) If BMS 3–33 grease is used as a substitute for BMS 3–27 (Mastinox 6856K), thereafter, repeat the inspections at intervals not to exceed 8,000 flight hours or 48 months, whichever occurs first.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30334 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No.2003–NM–58–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, DC–9–15F, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–33F, DC–9–34, DC–9–34F, DC–9–33F, and DC–9–32F (C–9A, C–9B) Airplanes; and DC–9–20, DC–9–40, and DC–9–50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, that currently requires replacing the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. This action would expand the applicability of the existing AD to include additional airplanes. In addition, this action would provide an optional method for accomplishing the requirements of the existing AD. The actions specified by the proposed AD are intended to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–58–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. 2003–NM–58–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.

FOR FURTHER INFORMATION CONTACT: Elvin K. Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; 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 2003–NM–58–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. 2003–NM–58–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 26, 2001, the FAA issued AD 2001–26–24, amendment 39–12590 (67 FR 497, January 4, 2002), applicable to certain McDonnell Douglas Model DC–9 series airplanes, to require replacement of the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. That action was prompted by instances of smoke emanating from the ballast transformers of the cockpit fluorescent lights. The requirements of that AD are intended to prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has reviewed and approved Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003. The replacement procedure described in Revision 03 is essentially identical to that in Revision 01 of the service bulletin, which was referenced in AD 2001–26–24 as the appropriate source of service information for accomplishing

the required actions in that AD. However, Revision 03 of the service bulletin adds additional airplanes to the effectivity listing that are subject to the identified unsafe condition. In addition, Revision 03 of the service bulletin provides for modification of the transformer ballast assembly as an option to replacement of the assembly as required in AD 2001–26–24. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin DC9–33A114, Revision 03, refers to Elektronika, Inc. Product Improvement Service Bulletin 33–EKA0199–BPC, Revision D, dated November 25, 2002, as an additional source of service information for accomplishment of the modification of the transformer ballast assembly for McDonnell Douglas Model DC–9 series airplanes.

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 supersede AD 2001–26–24 to continue to require replacement of the transformer ballast assembly in the pilot's console with a new, improved ballast assembly. In addition, the proposed AD would expand the applicability of the existing AD to include additional airplanes. The proposed AD would also provide for modification of the transformer ballast assembly as an option to the replacement of the assembly for McDonnell Douglas Model DC–9 series airplanes. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

Explanation of Change to Applicability

In addition to referencing the service bulletin described above, the FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet.

Cost Impact

There are approximately 575 airplanes of the affected design in the worldwide fleet. The FAA estimates that 477 airplanes of U.S. registry would be affected by this proposed AD.

The replacement that is currently required by AD 2001–26–24 and also proposed as an option in this AD action takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts cost approximately between $1,379 and $1,860 per airplane. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be between $688,788 and $918,225, or between $1,444 and $1,925 per airplane.

The new optional modification that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $4,472 per airplane. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $4,602 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or 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 removing amendment 39–12590 (67 FR 497, January 4, 2002), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–58–AD. Supersedes AD 2001–26–24, Amendment 39–12590.

Applicability: Model DC–9–14, DC–9–15, DC–9–15F, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–33F, DC–9–34, DC–9–34F, DC–9–33F, and DC–9–32F (C–9A, C–9B) airplanes; and DC–9–20, DC–9–40, and DC–9–50 series airplanes; as listed in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the ballast transformers due to aging fluorescent tubes that cause a higher power demand on the ballast transformers, which could result in smoke in the cockpit, accomplish the following:

Replacement or Modification

(a) Replace the transformer ballast assembly from the pilot's console with a new, improved ballast assembly per the Work Instructions in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000; or the Accomplishment Instructions in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; or modify the existing ballast transformer assembly per the Accomplishment Instructions in Boeing Alert Service Bulletin DC9–33A114, Revision 03, dated January 16, 2003; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

Note 1: Boeing Alert Service Bulletin DC9–33A114, Revision 03, refers to Elektronika, Inc. Product Improvement Service Bulletin 33–EKA0199–BPC, Revision D, dated November 25, 2002, as an additional source of service information for accomplishment of the modification of the transformer ballast assembly for McDonnell Douglas Model DC–9 series airplanes.

(1) For airplanes listed in McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 01, dated February 15, 2000: Within 12 months after February 8, 2002 (the effective date of AD 2001–26–24, amendment 39–12590).

(2) For airplanes having fuselage numbers 1039 and 1046: Within 12 months after the effective date of this AD.

Parts Installation

(b) As of the effective date of this AD, no person shall install a transformer assembly, part number BA170–1, –11, –21, or –MOD.B, on any airplane.

Prior Replacements

(c) Replacements accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin DC9–33A114, Revision 02, dated March 19, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

(2) Alternative methods of compliance, approved previously per AD 2001–26–24, amendment 39–12590, are approved as alternative methods of compliance with this AD.

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30335 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–82–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR 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 Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes. This proposal would require inspection of fire extinguisher bottles in the engine and the auxiliary power unit (APU) to determine the part number; and replacement of the fire extinguisher bottles with new fire extinguisher bottles, if necessary. This action is necessary to prevent fractured discharge heads, which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled APU fire that could spread to the airplane structure. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–82–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. 2003–NM–82–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 Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4086; telephone (425) 917–6501; fax (425) 917–6590.

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 2003–NM–82–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. 2003–NM–82–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of fractures of the discharge heads on certain fire extinguisher bottles in the engine and auxiliary power unit (APU) of Model 747–400 series airplanes. In one case, the discharge head fractured during installation of the fire extinguisher. In another case, two fire extinguisher bottles discharged during a tailpipe fire were found to have fractured discharge heads. Four other discharge heads were removed from service after an operator performed an x-ray inspection and found hairline cracks. The cause of the cracking and fractures was traced to discharge heads that were manufactured from a cast material, which had sharp edges or burrs on the retaining rings. These sharp edges or burrs caused the discharge head to seat incorrectly. When the discharge head nuts were tightened, the discharge heads fractured at the retaining ring groove. Fractured discharge heads could cause the fire extinguishing agent to leak from the discharge head. As a consequence, there would not be enough fire extinguishing

agent to extinguish a fire in the engine or APU fire zone. This condition, if not corrected, could result in fractured heads which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled APU fire that could spread to the airplane structure.

The subject area on certain Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes is almost identical to that on the affected Model 747–400 series airplanes. Therefore, those Model 747–400 series airplanes may be subject to the same unsafe condition revealed on the Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003, which describes procedures for inspecting the fire extinguisher bottles in the engine and APU to determine the part number; and, if necessary, replacement of the fire extinguisher bottles with new fire extinguisher bottles that have discharge heads machined from forged rather than cast material. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Boeing Alert Service Bulletin 747–26A2272 refers to Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; and Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002; as additional sources of service information for accomplishment of the inspection and replacement, if necessary, for Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes.

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 Boeing service bulletin described previously.

Cost Impact

There are approximately 346 airplanes of the affected design in the worldwide fleet. The FAA estimates that 47 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 inspection, 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 $3,055, 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 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:

Boeing: Docket 2003–NM–82–AD.

Applicability: Boeing Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes, as listed in Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fractured discharge heads, which could cause the fire extinguishing agent to leak, which could result in an uncontrolled engine fire that could spread to the strut and wing, or an uncontrolled auxiliary power unit (APU) fire that could spread to the airplane structure, accomplish the following:

Inspection and Replacement

(a) Within two years after the effective date of this AD: Perform an inspection to determine the part number (P/N) of the fire extinguisher bottles in the engine and the APU per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003.

Note 1: Boeing Alert Service Bulletin 747–26A2272 refers to Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; and Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002; as additional sources of service information for accomplishment of the inspection and replacement, if necessary, for Model 747–100, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, and 747 SR series airplanes.

(1) If no ''Pre SB A820400–26–432'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002, is found installed; and if no ''Pre SB A830800–26–433'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002 is found installed; no further action is required by this paragraph.

(2) If any ''Pre SB A820400–26–432'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002 is found installed; or if any ''Pre SB A830800–26–433'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002 is found installed, prior to further flight, replace the fire extinguisher bottle with a new fire extinguisher bottle having the ''Post SB'' P/N listed in Table 2 of the applicable Kidde Aerospace service bulletin. Do the actions per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–26A2272, dated January 16, 2003.

Parts Installation

(b) As of the effective date of this AD, no person may install on any airplane a Kidde Aerospace fire extinguisher bottle with any ''Pre SB A820400–26–432'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A820400–26–432, dated October 19, 2002; or any ''Pre SB A830800–26–433'' P/N listed in Table 2 of Kidde Aerospace Service Bulletin A830800–26–433, dated October 19, 2002.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30336 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–275–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes Powered by General Electric or Pratt & Whitney Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines, that currently requires repetitive inspections to detect discrepancies of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. That AD also provides an optional terminating action for repetitive inspections. This proposal would expand the area on which the inspections are required. This proposal is prompted by reports of cracking at the third row of fasteners in the midspar fitting. The actions specified by the proposed AD are intended to prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–275–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–275–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 Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Suzanne Masterson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6441; fax (425) 917–6590.

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–275–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–275–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 2, 2001, the FAA issued AD 2001–07–05, amendment 39–12170 (66 FR 18523, April 10, 2001), applicable to certain Boeing Model 767 series airplanes powered by General Electric or Pratt & Whitney engines, to require repetitive inspections to detect discrepancies of the aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary. That AD was also prompted by a report indicating fatigue cracking of an inboard midspar fitting on the number two pylon. The requirements of that AD are intended to prevent fatigue cracking in primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2001–07–05, the FAA has received reports of cracking at the third row of fasteners in the midspar fitting. AD 2001–07–05 requires inspections of only the aft-most two rows consisting of four fastener holes in the horizontal tangs of the midspar fitting. The proposed AD expands the area for the inspections from four aft-most fastener holes in the midspar fitting to eight aft-most fastener holes in the midspar fitting.

Issuance of New Service Information

The FAA has reviewed and approved Boeing Service Bulletin 767–54A0101,

Revision 3, dated September 5, 2002, which describes repetitive inspections of eight aft-most fastener holes in the midspar fitting, rather than only four aft-most fastener holes. Except as discussed below, the inspections described in this service bulletin are essentially identical to those specified in Revision 1 of the service bulletin, which was referenced in AD 2001–07–05 as the appropriate source of service information. Accomplishment of the actions specified in Revision 3 of the service bulletin is intended to adequately address the identified unsafe condition, except as described below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, during the first detailed inspection, this proposed AD allows for inspection of only four of the aft-most fastener holes as an option to inspecting all eight aft-most fastener holes. After the first detailed inspection, repetitive inspections would include all eight aft-most fastener holes as specified in the service bulletin.

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 supersede AD 2001–07–05 to require repetitive inspections to detect discrepancies of the eight aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut, and corrective actions, if necessary.

Editorial Changes to the Existing Requirements

The FAA has changed all references to a ''detailed visual inspection'' in paragraph (a)(1) of AD 2001–07–05 to ''detailed inspection.''

The FAA has also added the words ''before further flight,'' to paragraphs (a)(2)(i) and (a)(2)(ii) of the proposed AD, which were inadvertently omitted from paragraphs (a)(2)(i) and (a)(2)(ii) of AD 2001–07–05. It was our intent to follow the compliance times identified in the referenced service bulletin. We have included the compliance time for clarification.

Cost Impact

There are approximately 625 airplanes of the affected design in the worldwide fleet. The FAA estimates that 263 airplanes of U.S. registry would be affected by this proposed AD.

The detailed inspection that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $17,095, or $65 per airplane, per inspection cycle.

The eddy current inspection that is proposed by the AD action would take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $51,285, or $195 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or 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 removing amendment 39–12170 (66 FR 18523, April 10, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 2002–NM–275–AD. Supersedes AD 2001–07–05, amendment 39–12170.

Applicability: Model 767 series airplanes, as listed in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking in the primary strut structure and reduced structural integrity of the strut, which could result in separation of the strut and engine, accomplish the following:

Requirements of AD 2001–07–05

Repetitive Inspections

(a) Except as provided by paragraph (b) of this AD, before the accumulation of 10,000 total flight cycles, or within 600 flight cycles after May 15, 2001 (the effective date of AD 2001–07–05, amendment 39–12170 (66 FR 18523, April 10, 2001), whichever occurs later: Accomplish the inspections required by paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) Perform a detailed inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect cracking, in accordance with Part 1, ''Detailed Inspection,'' of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000. If no cracking is detected, repeat the inspection thereafter at the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1—Detailed Inspection'' included in Figure 1 of the service bulletin.

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.''

(2) Perform a high frequency eddy current inspection of the four aft-most fastener holes in the horizontal tangs of the midspar fitting of the strut to detect discrepancies (cracking, incorrect fastener hole diameter), in accordance with Part 2, ''High Frequency Eddy Current (HFEC) Inspection,'' of the Accomplishment Instructions of the service bulletin. Accomplish the requirements specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable; and repeat the inspection thereafter at the applicable intervals specified in Table 2, ''Reinspection Intervals for Part 2—HFEC Inspection'' included in Figure 1 of the service bulletin.

(i) If no cracking is detected and the fastener hole diameter is less than or equal to 0.5322 inch, before further flight, rework the hole in accordance with Part 3 of the Accomplishment Instructions of the service bulletin.

(ii) If no cracking is detected and the fastener hole diameter is greater than 0.5322 inch, before further flight, accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD.

(b) For airplanes on which the two aft-most fasteners have been inspected in accordance with Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000, prior to May 15, 2001: Perform the initial inspection of the four aft-most fasteners in accordance with paragraph (a) of this AD before the accumulation of 10,000 total flight cycles, or within 1,500 flight cycles after May 15, 2001, whichever occurs later.

Corrective Actions

(c) If any cracking is detected after accomplishment of any inspection required by paragraph (a) of this AD, before further flight, accomplish the requirements specified in either paragraph (c)(1) or (c)(2) of this AD.

(1) Accomplish the terminating action specified in Part 4 of the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 1, dated February 3, 2000; or Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002. Accomplishment of this paragraph terminates the requirements of this AD.

(2) Replace the midspar fitting of the strut with a serviceable part, or repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Repeat the applicable inspection thereafter at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(d) If any discrepancies (cracking, incorrect fastener hole diameter) are detected during any inspection required by paragraph (a) of this AD, for which the service bulletin specifies that the manufacturer may be contacted for disposition of those repair conditions: Before further flight, accomplish the corrective actions (including fastener hole rework and/or midspar fitting replacement) in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

New Requirements of This AD

Additional Inspections

(e) Within 10,000 total flight cycles, or within 600 flight cycles after the effective date of this AD, whichever occurs later: Perform the inspections specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, on all eight aft-most fastener holes or the four forward fastener holes in the group of eight aft-most fastener holes not inspected per paragraph (a)(1), (a)(2), or (b) of this AD. The inspection must be done per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002. Accomplishment of the applicable inspection on all eight aft-most fastener holes constitutes terminating action for the repetitive inspection requirements of paragraphs (a)(1), (a)(2), and (b) of this AD.

(f) If no cracking or discrepancy is detected during any inspection required by paragraph (e) of this AD: Perform the follow-on actions specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002; and repeat the inspections of all eight aft-most fastener holes thereafter at the applicable intervals specified in Table 1 of this AD.

TABLE 1.—REPETITIVE INSPECTION INTERVALS FOR ALL EIGHT AFT-MOST FASTENER HOLES

If—	Repetitive intervals—
(1) All eight aft-most fastener holes were inspected per paragraph (e) of this AD:	At the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1—Detailed Inspection,'' or Table 2, ''Reinspection Intervals for Part 2—HFEC Inspection,'' as applicable. Both tables are included in Figure 1 of the service bulletin.
(2) Only the four forward fastener holes in the group of eight aft-most fastener holes were inspected per paragraph (e) of this AD:	At the next scheduled repetitive inspection required by paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter at the applicable intervals specified in Table 1, ''Reinspection Intervals for Part 1—Detailed Inspection,'' or Table 2, ''Reinspection Intervals for Part 2—HFEC Inspection,'' as applicable. Both tables are included in Figure 1 of the service bulletin.

Corrective Actions

(g) If any cracking or discrepancy is detected during any inspection required by paragraph (e) of this AD, before further flight: Accomplish the corrective actions described in paragraph (c) of this AD, per the Accomplishment Instructions in Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, except as provided in paragraph (d) of this AD.

Service Bulletin Revisions

(h) Accomplishment of the terminating action in paragraph (c)(1) of this AD, per the original release of Boeing Service Bulletin 767–54A0101, dated September 23, 1999; or Revision 2 of Boeing Service Bulletin 767–54A0101, dated January 10, 2002; is acceptable for compliance with the requirements of this AD. However, as of the effective date of this AD, only the actions described in the Accomplishment Instructions of Boeing Service Bulletin 767–54A0101, Revision 3, dated September 5, 2002, should be used.

Inspections Accomplished Per Previous Issue of Service Bulletin

(i) Inspections required by paragraphs (a) and (b) of this AD that are accomplished before the effective date of this AD per Revision 2 of Boeing Service Bulletin 767–54A0101, dated January 10, 2002; or Revision 3 of Boeing Service Bulletin 767–54A0101, dated September 5, 2002; are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30337 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–305–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777 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 Boeing Model 777 series airplanes. This proposal would require replacing four socket contacts on the four boost pumps of the main fuel tanks with new, high-quality gold-plated contacts, and sealing the backshell of the connector with potting compound. This action is necessary to prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by January 22, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–305–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–305–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 Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Margaret Langsted, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 917–6500; fax (425) 917–6590.

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–305–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–305–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that a number of boost pumps in the main fuel tanks of certain Boeing Model 777 series airplanes have been removed due to evidence of severe heat damage to the main electrical power connector. The boost pumps are installed on the rear spar and in the wheel well. The wing trailing edge and the wheel well compartments may have flammable vapor, and do not have fire detection or extinguishing systems. Heat damaged boost pump electrical connectors, if not corrected, are a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002, which describes procedures for replacing the socket contacts in certain positions for all four boost pumps of the main fuel tanks with high-quality gold-plated contacts; and sealing the backshell of the connector with potting compound. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

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.

Cost Impact

There are approximately 400 airplanes of the affected design in the worldwide fleet. The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $19 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $37,107, or $279 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 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. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

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:

Boeing: Docket 2002–NM–305–AD.

Applicability: Model 777–200 and 777–300 series airplanes, line numbers 001 through 400 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a possible source of ignition in a flammable leakage zone, which could result in an undetected and uncontrollable fire in the wheel well or wing trailing edge, and a possible fuel tank explosion, accomplish the following:

Replace and Seal

(a) Within 18 months after the effective date of this AD, for all four boost pumps of the main fuel tanks, replace the socket contacts in positions 2, 4, 6, and 7 with new, high-quality gold-plated contacts; and seal the backshell of the connector with potting compound; per the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–28–0028, dated October 24, 2002.

Alternative Methods of Compliance

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

Issued in Renton, Washington, on December 1, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–30338 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[WC Docket No. 03–225; FCC 03–265]

Request To Update Default Compensation Rate for Dial-Around Calls From Payphones

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: By this *Notice of Proposed Rulemaking* (NPRM), the Commission commences a proceeding to consider a new default compensation rate for dial-around calls from payphones. The *NPRM* seeks comment on whether to modify the default rate of $0.24 per-call for dial-around payphone calls established more than four years ago.

DATES: Comments are due on or before January 7, 2004. Written comments by the public on the proposed information collections are due on or before January 7, 2004. Reply comments are due on or before January 22, 2004. Written reply comments by the public on the proposed information collections are due on or before January 22, 2004. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collection(s) on or before February 6, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, Room TW–A325, 445 Twelfth Street SW., Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein must be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 Twelfth Street SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov,* and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street NW., Washington, DC 20503, or via the Internet to *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Jon Stover, Wireline Competition Bureau, Pricing Policy Division, (202) 418–0390. For additional information concerning the information collection(s) contained in this document, contact Judith Boley Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket No. 03–225, RM No. 10568, adopted on October 28, 2003, and released on October 31, 2003. The complete text of this NPRM is available for public inspection Monday through Thursday from 8 a.m. to 4:30 p.m. and Friday from 8 a.m. to 11:30 a.m. in the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554. The complete text is available also on the Commission's Internet site at *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365. The complete text of the NPRM may be purchased from the Commission's duplicating contractor, Qualex International, Room CY–B402, 445 Twelfth Street, SW., Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or e-mail at *qualexint@aol.com.*

Synopsis of Notice of Proposed Rulemaking

1. The *NPRM* grants petitions for rulemaking filed by the American Public Communications Council (APCC)

and the RBOC Payphone Coalition (BellSouth Public Communications, Inc., SBC Communications, Inc., and the Verizon telephone companies). The Commission asks whether the $0.24 rate still ensures that all payphone service providers (PSPs) are fairly compensated for each and every completed call as mandated by 47 U.S.C. 276, or whether a change in the default rate is mandated.

2. According to cost studies submitted by APCC and the RBOC Payphone Coalition, per-payphone costs have not changed dramatically since 1998, but falling call volumes at payphones have caused a major increase in per-call costs at marginal payphones. These two groups of PSPs assert that the current dial-around compensation rate is no longer adequate to ensure widespread deployment of payphones because $0.24 no longer provides cost recovery for PSPs.

3. The petitions for rulemaking were opposed by six interexchange carriers (IXCs) and the Attorney General of the State of Texas. While they do not assert that IXCs can implement targeted call blocking at this time, some IXCs contend that the Commission should not change the default compensation rate because market forces by themselves are able to determine the appropriate level of payphone deployment. These IXCs will be afforded an opportunity to demonstrate how PSPs can be effectively compensated in a fully deregulated market.

4. In finding it unnecessary to issue a Notice of Inquiry (NOI), as requested by some IXCs, the Commission decided it is possible to resolve certain methodological and factual issues, to the extent that they are relevant to our ratesetting task, in the course of determining what, if any, modifications the Commission should make to the dial-around compensation rate.

5. The Commission invites comments both on the general issue of whether to prescribe a different payphone compensation rate and on the specific issue of the amount of the rate. The Commission seeks comment on the cost studies presented in the petitions for rulemaking by APCC and the RBOC Payphone Coalition (Coalition). The Commission seeks comment on whether the methodologies reflected in those studies are consistent with the rate methodology the Commission used in *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* CC Docket No. 96–128, *Third Report and Order,* 64 FR 13701, March 22, 1999. The Commission also asks whether the cost information presented in those studies accurately represents the costs currently incurred by payphone service providers. The Commission further invites commenting parties to submit additional studies that support or refute the information presented in the APCC and Coalition studies.

6. In the NPRM, the Commission tentatively concludes that the methodology the Commission adopted in the *Third Report and Order* is the appropriate methodology to use in reevaluating the default dial-around compensation rate. The decision to use that methodology was affirmed by the United States Court of Appeals for the D.C. Circuit. The Commission seeks comment on this tentative conclusion.

7. The Commission also invites comment on whether the methodology should be modified in any way due to changes in the payphone industry since its adoption. For example, some IXCs argue that, due to the elasticity of the demand for dial-around calling, an increase in the dial-around rate would suppress demand to such an extent as to reduce total revenues, resulting in increased removal of payphones. APCC and the Regional Bell Operating Companies (RBOCs), on the other hand, argue that there is no reason to believe that dial-around calling is highly price-elastic. In the *Third Report and Order,* the Commission considered the issue of demand elasticity in determining the appropriate allocation of overhead between dial-around calls and other calls, but was unable to reach a firm conclusion. Thus, elasticity issues bear on both the allocation of overhead and the potential for demand suppression. The Commission seeks further comment on the issue of demand elasticity, including the impact of recent increases in the coin calling rate and the cross-elasticity of demand between payphones and wireless telephone service. The Commission invites the submission of any further data that may have become available on these questions. Also, because monthly call volume is a key driver in determining the per-call compensation rate, the Commission seeks comment on the efficacy and merit of the use in the APCC and Coalition cost studies of marginal payphone monthly call volumes of 233.9 and 219, respectively.

8. The Commission seeks comment on whether the particular inputs the Commission adopted in the *Third Report and Order* for various cost categories continue to be appropriate or whether there are changed conditions that warrant modifications of the particular inputs used in 1999. For example, is the depreciation rate used in the *Third Report and Order* still valid? As another example, WorldCom claims that, given the declining payphone base, estimates of capital costs should be based on the price of second-hand payphones. The Commission invites comment on this and other aspects of the cost studies.

9. The Commission seeks comment on whether additional cost categories are needed beyond those identified in the *Third Report and Order*. Are there other cost categories that should be added or modified beyond those on which the Commission relied in the *Third Report and Order*? Specifically, the APCC and Coalition cost studies add an element for collection costs specific to dial-around compensation, and the Coalition study adds an element for uncollectibles. In the *Third Report and Order*, the Commission declined to include these costs in setting the dial-around rate, finding that the record in that docketed proceeding contained insufficient information to determine the extent to which administration costs vary when the number of coinless calls increases relative to coin calls. AT&T and others argue that the *Third Report and Order* methodology precludes the inclusion of an element for bad debt. The Commission invites comment on whether there is now an adequate record to justify such an element, and the appropriate amount of such an element.

10. The Commission seeks comment on whether and how the Commission should consider the revenues and costs associated with the provision of additional services and activities in conjunction with payphones, such as Internet access or rental of advertising space. Are these revenues and costs relevant to the Commission's marginal payphone analysis, and, if so, how? While APCC argues that such contribution is minimal, is there evidence regarding the extent of the net contribution to payphone cost recovery resulting from these activities? Is there any net contribution? If so, the Commission invites parties to supply such evidence with respect to payphones generally and to marginal payphones in particular.

11. Sprint urges the Commission to reconsider adopting a ''caller-pays'' compensation scheme, in which the caller would deposit coins or other forms of advance payment before making a dial-around call. In the *Third Report and Order*, the Commission noted that some economists would argue that a caller-pays methodology forms the basis for the purest market-based approach. The Commission rejected this approach based on

evidence that Congress disapproved of a caller-pays methodology. For this reason, the Commission tentatively concluded in this NPRM that it should not adopt a ''caller-pays'' methodology. The Commission seeks comment on this tentative conclusion.

12. Nevertheless, the Commission seeks comment on whether circumstances have changed such that it is now appropriate to reconsider a caller-pays approach to payphone compensation. In fact, in the *Third Report and Order*, the Commission concluded that it should monitor the advance of call blocking technology and other marketplace developments before reconsidering a caller-pays approach. As noted in the NPRM, consumers using dial-around services from payphones may be billed by their interexchange carriers at rates higher than both the default compensation rate and the local coin call rate. Thus the convenience of coinless calling may come at a high price to the consumer. The Commission asks parties to provide information about what service providers charge customers for dial-around and other coinless payphone services. More generally, the Commission seeks comment on how it should analyze the costs and benefits of the Commission policy of prescribing a dial-around compensation rate to be paid by service providers to payphone operators in lieu of a caller-pays system. Finally, the Commission seeks comment on Commission authority to allow advance consumer payment for use of payphones. In particular, does 47 U.S.C. 226(e) permit the Commission to conclude that the Commission need not prescribe compensation apart from advance payment by the consumer? Is so, what factual findings or policy goals would support such a conclusion?

Initial Paperwork Reduction Act Analysis

13. This NPRM contains either proposed or modified information collections. As part of its continuing effort to reduce paperwork burdens, the Commission invites the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Comments must be identified as responses to the Initial Paperwork Reduction Act Analysis. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due 60 days from the date of publication of this NPRM in the **Federal Register**. Comments should address: (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 estimates; (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.

Initial Regulatory Flexibility Act Analysis

14. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rule(s) proposed in this Notice of Proposed Rulemaking (NPRM). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA.

15. This present IRFA conforms to the RFA, as amended. *See* 5 U.S.C. 604. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) (CWAA). Title II of the CWAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Commission will send a copy of this NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

Need for, and Objectives of, the Proposed Rules

16. In adopting section 276 in 1996, Public Law No. 104–104, 110 Stat. 56 (1996) (codified at 47 U.S.C. 276), Congress mandated *inter alia* that the Commission ''establish a per call compensation plan to ensure that all payphone service providers are fairly compensated for each and every completed intrastate and interstate call using their payphone * * *.'' In this NPRM, the Commission decided to reexamine the default payphone compensation rate the Commission prescribed in 1999. The overall objective of this proceeding is to evaluate whether changes are necessary to the current default rate of compensation for dial-around calls originating at payphones, in order to ensure that payphone service providers are fairly compensated, promote payphone competition, and promote the widespread deployment of payphone services. The NPRM seeks comment on specific issues related solely to the level of dial-around compensation.

Legal Basis

17. The proposed action is supported by 47 U.S.C. 151, 152, 154(i)-(j), 201, 226 and 276, as well as 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1216.

Description and Estimate of the Number of Small Entities to Which Proposed Rules Will Apply

18. The RFA directs agencies to provide a description of, and an estimate of, the number of small entities that may be affected by the rule(s) proposed herein, where feasible. 5 U.S.C. 604(a)(3). The RFA generally defines ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act, unless the Commission has developed one or more definitions that are more appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632). Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 5 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition in the **Federal Register**.''

19. *Small Incumbent Local Exchange Carriers.* We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' 5 U.S.C. 601(3). The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance

is not ''national'' in scope.[1] The Commission therefore included small incumbent LECs in this RFA analysis, although the Commission emphasizes that this RFA has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

20. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. 13 CFR 121.201, NAICS code 717110. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size (Including Legal Form of Organization),'' Table 5, NAICS code 513310 (issued October of 2000). Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. *Id.* The Commission notes that the census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is ''Firms with 1,000 employees or more.'' Under the size standard of 1,500 or fewer employees, the great majority of Wired Telecommunications Carriers can be considered small.

21. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, North American Industry Classification System (NAICS) code 517110. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, *Trends in Telephone Service* (May 2002) (hereinafter *Telephone Trends Report*), Table 5.3. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of local exchange service are small businesses that may be affected by the rule(s) and policies proposed herein.

22. *Competitive Local Exchange Carriers (CLECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive local exchange services or to competitive access providers (CAPs) or to ''Other Local Exchange Carriers,'' all of which are discrete categories under which Telecommunications Relay Service (TRS) data are collected. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive local exchange carrier services. *Telephone Trends Report,* Table 5.3. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. *Id.* In addition, 55 carriers reported that they were ''Other Local Exchange Carriers.'' *Id.* Of the 55 ''Other Local Exchange Carriers,'' an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and ''Other Local Exchange Carriers'' are small entities that may be affected by the rule(s) and policies proposed herein.

23. *Local Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to the Commission data, 134 companies reported that they were engaged in the provision of local resale services. *Telephone Trends Report,* Table 5.3. Of these 134 companies, an estimated 131 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of local resellers are small entities that may be affected by the rules and policies proposed herein.

24. *Toll Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to the Commission's most recent *Telephone Trends Report* data, 576 companies reported that they were engaged in the provision of toll resale services. *Telephone Trends Report,* Table 5.3. Of these 576 companies, an estimated 538 have 1,500 or fewer employees and 38 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of toll resellers are small entities that may be affected by the rules and policies proposed herein.

25. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to payphone service providers (PSPs). The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to the Commission's most recent *Telephone Trends Report* data, 936 PSPs reported that they were engaged in the provision of payphone services. *Telephone Trends Report,* Table 5.3. Of these 936 PSPs, an estimated 933 have 1,500 or fewer employees and three have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of PSPs are small entities that may be affected by the rules and policies proposed herein.

26. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of interexchange services. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *Telephone Trends Report,* Table 5.3. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the majority of interexchange carriers are small entities that may be affected by the rules and policies proposed herein.

[1] Letter from Jere W.Glover, Chief Counsel of Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of ''small-business concern,'' which the RFA incorporates into its own definition of ''small business.'' See 15 U.S.C. 601 (3) (RFA). SBA regulations interpret ''small business concern'' to include the concept of dominance on a national basis. 13 CFR 121.102 (b).

27. *Operator Service Providers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. *Telephone Trends Report,* Table 5.3. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of operator service providers are small entities that may be affected by the rules and policies proposed herein.

28. *Wired Telecommunication Resellers.* The SBA has developed a size standard for small businesses within the category of Telecommunications Resellers including prepaid calling card providers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517310. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. *Telephone Trends Report,* Table 5.3. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. *Id.* Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies proposed herein.

29. *Satellite Service Carriers.* The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such firms having $12.5 million or less in annual receipts.(13 CFR 121.201, NAICS code 51741). According to Census Bureau data for 1997, in this category there was a total of 324 firms that operated for the entire year (U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Establishment and Firm Size {Including Legal Form of Organization},'' Table 4, NAICS code 513340). Of this total, 273 firms had annual receipts of under $10 million, and an additional twenty-four firms had receipts of $10 million to $24,999,999. *Id.* Thus, under this size standard, the majority of firms can be considered small.

30. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to ''Other Toll Carriers.'' This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. Under that standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517110. According to Commission data, 42 companies reported that their primary telecommunications service activity was the provision of ''Other Toll'' services. *Telephone Trends Report,* Table 5.3. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. *Id.* Consequently, the Commission estimates that most ''Other Toll Carriers'' are small entities that may be affected by the rules and policies proposed herein.

31. *Paging.* The SBA has developed a small business size standard for paging firms. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. 13 CFR 121.201, NAICS code 517211, and 13 CFR 121.201, NAICS code 517212, respectively.

32. *Cellular and other Wireless Telecommunications.* For the census category of Paging, Census Bureau data for 1997 show that there were 1320 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513321 (issued October of 2000). Of this total, 1303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. *Id.* Thus, under this category and associated small business size standard, the great majority of or the census category of Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, ''Employment Size of Firms Subject to Federal Income Tax: 1997,'' Table 5, NAICS code 513322. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small. Consequently, the Commission estimates that most wireless service providers are small entities that may be affected by the rule(s) and policies proposed herein.

33. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 FR 33859, July 1, 1996; see also 47 CFR 24.720(b). For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap*, WT Docket No. 96–59, *Report and Order*, 61 FR 33859, July 1, 1996. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. *See, e.g., Implementation of Section 309(j) of the Communications Act—Competitive Bidding,* PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566, July 22, 1994. No small businesses within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. FCC News, Broadband PCS, D, E and F Block Auction Closes, No. 71744 (rel. Jan. 14, 1997); *see also Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licensees*, WT Docket No. 97–82, *Second Report and Order*, 62 FR 55348, October 24, 1997. On March 23, 1999, the Commission reauctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35.

34. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Based on this

information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C Block bidders, the 93 qualifying bidders in the D, E, and F Block auctions, the 48 winning bidders in the 1999 re-auction, and the 29 winning bidders in the 2001 re-auction, for a total of 260 small entity broadband PCS providers, as defined by the SBA small business size standards and the Commission's auction rules. Consequently, the Commission estimates that 260 broadband PCS providers are small entities that may be affected by the rules and policies proposed herein.

35. *800 MHz and 900 MHz Specialized Mobile Radio Licensees.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the three previous calendar years, respectively. 47 CFR 90.814. In the context of both the 800 MHz and 900 MHz SMR service, the definitions of ''small entity'' and ''very small entity'' have been approved by the SBA. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for its purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small and very small entities in the 900 MHz auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small and very small entities won 263 licenses. In the 800 MHz SMR auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies proposed herein.

36. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. The service is defined in 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). BETRS is defined in 47 CFR 22.757, 22.759. For purposes of this IRFA, the Commission uses the SBA's size standard applicable to Cellular and Other Wireless Telecommunications—an entity employing no more than 1,500 persons. 13 CFR 121.201, NAICS code 517212. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA's size standard. Consequently, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelphone Service that may be affected by the rules and policies proposed herein.

37. *Fixed Microwave Services.* Microwave services include common carrier, private-operational fixed, and broadcast auxiliary radio services. For common carrier fixed microwave services (except Multipoint Distribution Service), *see* 47 CFR part 101 (formerly 47 CFR part 21). Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80, 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations. Auxiliary Microwave Service is governed by 47 CFR part 74. The Auxiliary Microwave Service is available to licensees of broadcast stations and to broadcast and cable network entities. Broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points, such as, a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

38. For purposes of this IRFA, the Commission uses the SBA's size standard for the category Cellular and Other Telecommunications, which is 1,500 or fewer employees. 13 CFR 121.201, NAICS code d to 517212. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to microwave services. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's definition. Consequently, the Commission estimates that there are 22,015 or fewer small common carrier fixed microwave licensees and 61,670 or fewer small private operational-fixed microwave licensees and small broadcast auxiliary radio licensees in the microwave services that may be affected by the rules and policies proposed herein. The Commission notes, however, that the common carrier microwave fixed licensee category includes some large entities.

39. *39 GHz Licensees.* The Commission has created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. *See Amendment of the Commission's Rules Regarding the 37.0–38.6 GHz and 38.6–40.0 GHz Bands*, ET Docket No. 95–183, *Report and Order*, 63 FR 6079, February 6, 1998. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *Id.* The SBA has approved these size standards. *See* Letter to Kathleen O'Brien Ham, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, FCC, from Aida Alvarez, Administrator, SBA (Feb. 4, 1998). The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies proposed herein.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

40. The Commission does not intend that any proposal it may adopt pursuant to this NPRM will increase existing reporting, recordkeeping or other compliance requirements.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

41. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed

approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

42. According to the Petitioners, the existing rate of $.24 does not provide the statutory requirement of fair compensation. Thus, the Commission is concerned that inadequate compensation may undermine the statutory goals of promoting competition among payphone providers while simultaneously ensuring the widespread deployment of payphones. 47 U.S.C. 276. The Commission is further concerned that inadequate payphone compensation may have adverse economic impacts on smaller entities that provide payphone service. The Commission, therefore, is examining various options, including a proposed rule increasing the default rate, to ensure the provision of fair compensation.

43. The Commission, however, recognizes that an alternative approach to increasing the default rate has been proposed by parties who contend that any increase in the default rate may further suppress demand for payphone services. The Commission also recognizes that in proposing this alternative approach, these parties contend that the fully distributed cost methodology may be ripe for reexamination.

44. Another proposed rule under consideration may entail an examination of the revenues generated by non-traditional payphone services such as the provision of internet access. In the alternative, services other than access to the internet, such as data transfer and interactive functionalities may be taken into consideration. Accordingly, the Commission will consider assessments of both the impact of internet access and other new technology services.

45. Finally, the Commission requests comment on any small business related concerns occasioned by proposed rules addressing the reexamination of the default rate, the use of non-traditional payphone services, and other alternatives that may impact small businesses.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

46. None.

Ex Parte Presentations

47. This matter shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.1200 *et seq.* Persons making oral ex parte presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two-sentence description of the views and arguments presented generally is required. Other requirements pertaining to oral and written presentations are set forth in 47 CFR 1.1206(b).

Comment Filing Procedures

48. In order to facilitate review of comments and reply comments, parties must include the name of the filing party and the date of the filing on all comments and reply comments. Comments and reply comments must clearly identify the specific portion of the NPRM to which a particular comment or set of comments is responsive.

49. Comments may be filed by using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 2421 (May 1, 1998). Comments filed through the ECFS may be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters must include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and must include the following words in the body of the message, ''get form <*your e-mail address*<=.'' A sample form and directions will be sent in reply.

50. Comments may be filed by filing paper copies. Parties who choose to file by paper must file an original and five copies of each filing. Two copies of each filing must also be sent to the Chief, Pricing Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street SW., Washington, DC 20554.

51. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be discarded before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capital Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be sent to 445 Twelfth Street SW., Washington, DC 20554. The Commission advises that electronic media not be sent through the U.S. Postal Service. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Ordering Clauses

52. Accordingly, the Petitions for Rulemaking filed by APCC and the RBOC Payphone Coalition *are granted* as set forth herein.

53. Pursuant to the authority contained in 47 U.S.C. 151, 154, 201–205, 215, 218, 219, 220, 226, 276 and 405, this Notice of Proposed Rulemaking *is adopted*.

54. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rules Changes

The Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

Authority: 47 U.S.C. 154, 254(k); secs. 403(b)(2)(B),(c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201,

218, 225, 226, 228, and 254 (k) unless otherwise noted.

2. Revise § 64.1300 (c) to read as follows:

§ 64.1300 Payphone compensation obligation.

* * * * *

(c) In the absence of an agreement as required by paragraph (a) of this section, the carrier is obligated to compensate the payphone service provider at a per-call rate of $0.__.

[FR Doc. 03–30309 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–03–16601]

RIN 2127–AJ12

Federal Motor Vehicle Safety Standards; Low Speed Vehicles

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal addresses two petitions for rulemaking regarding the exclusion of trucks from the definition of ''low-speed vehicle'' (LSV). The proposed definition would expand the LSV class to include trucks, but would limit the class to small vehicles. In addition, the proposed definition is more complete than the current definition.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than February 6, 2004.

ADDRESSES: You may submit comments [identified by the DOT DMS Docket Number] 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 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Requests for Comments 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 discussion of the Privacy Act under the Comments heading.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: *For non-legal issues:* Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–5559, facsimile 202–493–2739, e-mail *gayle.dalrymple@nhtsa.dot.gov.*

For legal issues: Christopher Calamita, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone 202–366–2992, facsimile 202–366–3820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Proposed Change to Definition of Low-speed Vehicle
III. Proposed Effective Date
IV. Comments
V. Regulatory Analyses and Notices

I. Background

On June 17, 1998, the National Highway Traffic Safety Administration (NHTSA) published a final rule establishing a new Federal Motor Vehicle Safety Standard (FMVSS) No. 500, ''Low-speed vehicles,'' and added a definition of ''low-speed vehicle'' (LSV) to 49 CFR 571.3 (63 FR 33194). This new FMVSS and vehicle classification responded to the growing public interest in using golf cars and other similarly sized small vehicles to make short trips for shopping, social and recreational purposes primarily within retirement or other planned, self-contained communities. These vehicles, many of which are electric-powered,[1] offer comparatively low-cost, energy-efficient, low-emission, quiet transportation. Electric LSVs are also known as Neighborhood Electric Vehicles (NEVs). The current definition of LSV is ''a 4-wheeled motor vehicle, other than a truck,[2] whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface.''

In the preamble to the notice of proposed rulemaking, in the preamble to the final rule, in response to petitions for reconsideration of the final rule, and in letters of interpretation of the definition of LSV, we made it clear that our vision of an LSV is a small, lightweight vehicle that could not meet FMVSSs appropriate for larger and heavier vehicles. (The citations for these documents are provided later in this preamble.) In the NPRM, we proposed the ''creation of a new class of vehicle * * * with a definitional criterion of speed alone.'' Trucks were not excluded; however, low-speed vehicles with ''work performing features'' (such as a street sweeper) would have been excluded from the equipment requirement of the proposed standard. Not excluding trucks from the LSV definition would have had the unintended result of rendering some vehicles that already met FMVSSs subject to neither those standards nor even the minimum requirements applying to LSVs. In the preamble to the final rule, we noted:

> vehicles with ''work performing equipment'' (*i.e.*, certain trucks) would have been LSVs under the proposal, although not required to meet Standard No. 500. Under the final rule, these vehicles are no longer included and must continue to meet truck FMVSSs. This change is consistent with the rationale of this rulemaking, which is to eliminate a regulatory conflict involving passenger-carrying vehicles. Further, NHTSA concludes that the truck FMVSSs remain appropriate for trucks with a speed capability between 20 and 25 miles per hour and that these standards have not inhibited their introduction in the past. (63 FR 33194, 33197.)

The trucks under discussion in the above paragraph were heavy vehicles, such as street sweepers and other slow-moving special task vehicles. The

[1] Upon review of LSVs currently manufactured, the agency is not aware of an LSV designed with a non-electric power source.

[2] A ''truck'' is defined at 49 CFR 571.3(b) as ''a motor vehicle with motive power, except a trailer, designed primarily for the transportation of property or special purpose equipment.''

exclusion of trucks added in the final rule was meant to prevent these heavy vehicles, which already complied with the appropriate FMVSS, from falling into the new LSV class.

The purpose of low speed vehicles was represented to us at the public meetings prior to the NPRM to establish the LSV class and in comments to that notice, as convenient, low-cost, low-emission transportation of up to four people within the confines of a planned, often gated, community. However, as of July 2002, 17 states allow LSVs to operate on public roads with speed limits up to 35 miles per hour and one state allows their operation on roads with speed limits of up to 40 miles per hour. The laws of 27 states allow LSV operation on public roads, while not specifically regulating them, and the laws of six states prohibit LSVs on public roads without a specific authorizing regulation.[3]

We continue to urge states to be very careful when contemplating the use of these vehicles on public roads. States must remain aware that LSVs do not have the occupant protection capability of other motor vehicles, that their lightweight makes their occupants very vulnerable in any collision with a non-LSV vehicle, and that the force involved in that collision increases proportional to the square of the velocity of travel. For example, the result of a vehicle collision at 35 mph is twice as severe as the same collision at 25 mph. We continue to anticipate that LSV use on roads outside confined, controlled areas will be limited by the fact that occupants will not want to travel at less than 25 miles per hour in mixed-vehicle traffic for other than very short trips, regardless of how states may or may not restrict their use.

Since the publication of the final rule, we have received two petitions regarding the exclusion of trucks from the definition of LSV. The first was a petition for reconsideration of the final rule by Solectria (seconded by Electric Transportation Coalition) asking us to reconsider the exclusion of trucks from the definition of LSV because Solectria manufactures a micro electric pickup truck. Solectria said its truck was ''suitable'' for many uses off the public roads, such as airport and college properties and in parks. Solectria asked that we amend the definition of LSV to exclude only trucks with a curb weight greater than 2,200 pounds.

In our response to Solectria's petition for reconsideration (65 FR 53219; September 1, 2000), we reiterated the discussion from the preamble to the final rule that we believed excluding trucks from Standard 500 ''ensures that such trucks must continue to meet the Federal standards that have always applied to trucks with a maximum speed of more than 20 miles per hour'' and that we believed the decision to be ''consistent with the rationale of this rulemaking, which is to eliminate a regulatory conflict involving passenger-carrying vehicles.'' We noted that FMVSSs applicable to trucks with a maximum speed between 20 and 25 miles per hour had not inhibited the introduction of such trucks in the past. However, we also stated,

> We are still considering this petition, and have not reached a decision whether to grant or to deny it. Our decision will be reflected in the notice of proposed rulemaking under consideration for establishing performance requirements for safety equipment on LSVs.

Subsequently, the agency received a petition regarding the LSV definition from Global Electric Motorcars (GEM), a DaimlerChrysler company, in January of 2002. GEM asked that NHTSA change the definition of LSV, ''to include ''trucks'' or vehicles designed primarily for the transportation of property or special purpose equipment, so long as they meet the existing vehicle speed limitations of the definition.'' GEM noted that the NPRM stated ''LSVs would include all motor vehicles, other than motorcycles * * *, whose speed * * * does not exceed 25 mph,'' and that the agency recognized, ''that there is no reasonable justification for subjecting low-speed vehicles like golf carts and mini-bikes to full range of safety standards that apply to heavier, faster vehicles.''

GEM contends that excluding trucks from the LSV class ''will severely limit manufacturers'' ability to fully realize the potential benefits of the LSV rule.'' GEM currently produces two- and four-passenger LSVs with a cargo bin and a two-passenger model with a short or long metal cargo bed. It would like to expand its line of LSVs to include ''small community ambulances, and fire trucks,'' and believes that applying all truck FMVSS's to these proposed NEV trucks,

> is completely arbitrary because the vehicles are not materially different from their LSV passenger vehicle cousins, and there is no evidence that somehow the vehicles are less safe than those passenger vehicle cousins. * * * Requiring these vehicles to meet the Federal standards for side impact, front impact and air bags would require a vehicle design that would be too heavy for its intended LSV uses.

As a result of the petitions received by both GEM and Solectria, the agency has decided to reconsider the LSV definition. We tentatively agree with the petitioners that the current exclusion of trucks from the LSV definition is too broad and does not fully reflect current interpretations. Therefore, in this notice, we are proposing to drop the exclusion of trucks from the definition, and to limit the LSV class in a more complete way.

II. Proposed Change to Definition of Low-Speed Vehicle

The agency is proposing to amend the definition of low-speed vehicle, in response to the two petitions discussed above. If made final, the amended definition of LSV would eliminate an overly broad restriction on LSVs with cargo carrying capacity and establish a more complete definition.

The current definition of LSV is:

> *Low-speed vehicle* means a 4-wheeled motor vehicle, other than a truck, whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface. (49 CFR 517.3(b))

The agency is proposing the following definition:

> Low-speed vehicle means
> (a) a 4-wheeled motor vehicle,
> (b) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface,
> (c) whose rated cargo load is at least 36 kilograms (80 pounds), and
> (d) whose GVWR is less than 1,134 kilograms (2,500 pounds).

The amended definition would eliminate the exclusion of ''trucks'' from the LSV classification and address the petitioners' claim that no logical basis exists to differentiate between passenger and cargo-carrying low-speed vehicles. At the same time, the proposed definition would be more complete and would better communicate the concept that NHTSA has always expressed: LSVs are a class of vehicles for which the FMVSS for cars, trucks, and multipurpose passenger vehicles are inappropriate because of the small size of the vehicles in this class.

Our Rationale for Proposing that LSVs Have a Maximum GVWR of 2500 Pounds and a Minimum Rated Cargo Load of 80 Pounds

The NPRM that proposed to establish the LSV class, initiated ''rulemaking based upon oral presentations at the agency's public meetings and written comments received on the appropriate

[3] ''Use of Low-speed Vehicle on Public Roads'; Insurance Institute for Highway Safety; July 19, 2002.

classification and safety regulations for golf cars and other small, light-weight vehicles that are capable of being driven on the public roads.'' (62 FR 1077, January 8, 1997) In every discussion of LSVs by the agency—from the public meetings preceding the 1997 NPRM through the 2002 NPRM on LSV conspicuity (67 FR 46149, July 12, 2002) [4]—the agency's main reason for excluding these vehicles from compliance with other FMVSS was the idea that such compliance was inappropriate for a class of ''small, lightweight vehicles.'' On June 28, 2000, NHTSA replied to a request for legal interpretation regarding the definition of LSV from Thomas Dahl of Lampasas, Texas. Mr. Dahl asked, ''whether speed governing devices are allowed by the NHTSA to meet the interpretation of low-speed vehicle.'' In its response, the agency stated, in part:

> The preambles of the rulemaking notices under which the definition and Federal Motor Vehicle Safety Standard No. 500, *Low-Speed Vehicles* were adopted, clearly indicate that the purpose of the rulemaking was to accommodate a new category of small motor vehicle which was making its appearance in retirement communities. * * * Because of their small size and light weight, these vehicles could not meet Federal motor vehicle safety standards appropriate for larger and heavier vehicles, such as requirements to be met in 30 mph barrier crashes. The common feature of this emerging class of motor vehicle appeared to be a maximum speed capability of not more than 25 miles per hour as designed and manufactured, and we decided upon that as the principal feature of the definition.

These vehicles needed to be excluded from the FMVSS because of their small size. This decision was appropriate because of the vehicles' low operating speed and restricted areas of use.

It has become apparent from the Solectria and GEM petitions, and letters like Mr. Dahl's, that there is a need to limit the LSV class to small vehicles, to prevent attempts to circumvent the FMVSS for cars, trucks and multipurpose passenger vehicles by applying the LSV classification to vehicle types that are able to meet the standards, and to make the definition more complete. The exclusion of trucks from the definition of LSV does not accomplish this goal. As such, we are proposing to limit the definition of LSV to small vehicles objectively through the use of a limitation on the Gross Vehicle Weight Rating (GVWR) combined with a requirement for a minimum rated cargo load (RCL).

We have tentatively identified vehicles with a GVWR of less than 2,500 pounds as constituting a class of motor vehicles so small that vehicles in this class are generally unable to meet all of the FMVSS required for passenger cars, multipurpose vehicles, and trucks. When trucks were originally excluded from the definition of LSV, the agency was considering heavy, slow moving vehicles (*e.g.*, street cleaners) that, because of their heavier weight, were able to meet all of the FMVSS applicable to trucks. Under the proposed definition, these heavier, but slower moving trucks would still be excluded from the definition of LSV and thus would still be required to meet all of the FMVSSs applicable to trucks.

The tentative GVWR limit is a result of examining the GVWRs of existing NEVs, GVWR ranges submitted by companies registering with NHTSA as intending to manufacture LSVs, and, as a comparison group, small passenger cars, multipurpose passenger vehicles, and trucks that are certified to all applicable FMVSS. We also note that the Society of Automotive Engineers Surface Vehicle Standard J2358, Low Speed Vehicles, includes in its scope:

> any powered vehicle with a minimum of 4-wheels, a maximum level ground speed of more than 32 km/h (20 mph) but less than 40 km/h (25 mph), a maximum rated capacity of 500 kg (1100 lb), and a maximum gross vehicle weight of 1135 kg (2500 lb), that is intended for transporting not more than four (4) persons and operating on designated roadways where permitted by law.

The U.S. Department of Energy conducted a Field Operations Program, ''NEVAmerica''. We examined the vehicle specifications of the vehicles involved in that program. Five examples are: the Columbia ParCar four-passenger, Ford Th!nk four-passenger, GEM E825 long bed utility, GEM E825 short bed utility, Frazer-Nash 4XLSV NEV. Specifications for these vehicles are given in the table below.

Vehicle	Configuration	GVWR [5] in pounds
GEM E825 Short Bed Utility	2-passenger seating, 4-foot aluminum cargo bed	1,790 [6]
GEM E825 Long Bed Utility	2-passenger seating, 6-foot aluminum cargo bed	2,300
Ford Th!nk Neighbor [7]	4-passenger seating,	2,300
Columbia ParCar	4-passenger seating,	2,460
Frazer-Nash 4XLSV NEV	2-passenger seating, pick-up truck-like bed	3,304

[5] As listed in the NEV America results.
[6] GEM sales literature lists this vechilce as 1,850 pounds.
[7] Ford no longer produced the Th!nk vehicle.

Thirty-nine manufacturers have registered with NHTSA as intending to manufacture LSVs. Of these, six manufacturers have listed the GVWR range of their vehicles as including vehicles over 3,500 pounds, five more list the GVWR range of their vehicles as including vehicles over 2,500 pounds, and three manufacturers do not list a GVWR range. We do not know how many of these 39 manufacturers are currently manufacturing and selling vehicles certified as LSVs or the GVWR of any vehicles certified as LSVs.

For comparison purposes, we sought out passenger cars, multipurpose passenger vehicles, and trucks that are certified as fully compliant with all applicable FMVSS. Example vehicles and their GVWR are shown below (model year 2003).

Vehicle	Type	GVWR in pounds
Honda Insight	Passenger car	2,212
Toyota Echo	Passenger car	3,010
Hyundai Accent	Passenger car	3,310
Chevrolet Tracker	SUV	3,483
Honda Civic	Passenger car	3,485
Toyota Prius	Passenger car	3,615
Ford Focus	Passenger car	3,620

Vehicle	Type	GVWR in pounds
Toyota RAV4	SUV	3,841
Jeep Wrangler	SUV	4,450
Ford Ranger	Extended cab pick-up	4,800

It is obvious from this table that there are vehicles currently available, certified to the FMVSS, with a GVWR less than the GVWR of some NEVs. At this time, we believe that there can be no logical justification for allowing wholesale exclusion from the FMVSS of vehicles that are heavier than some fully-certified vehicles, other than providing some weight allowance for an electric propulsion system (which is generally heavier than a small internal-combustion engine). We believe that many LSVs are electric. We are especially hesitant to allow heavier vehicles to be certified as LSVs when there are currently no performance requirements for service brakes and tires appropriate for the weight of the vehicle. We are proposing to set the GVWR ceiling for the LSV class at 2,500 pounds to allow for the generally heavier electric propulsion systems and need for storage batteries. We are currently working on a rulemaking to establish performance standards for LSVs and the issue of the appropriate GVWR for LSVs could be revisited when such requirements are identified. We seek comment from vehicle manufacturers and users on the issue of the appropriate GVWR limit for LSVs.

We are tentatively proposing an additional requirement of a minimum RCL of 80 pounds. Eighty pounds is the approximate weight of two full golf bags. GVWR must be greater than the sum of the unloaded vehicle weight, RCL, and 150 pounds times the number of designated seating positions (DSPs). (49 CFR 567.4(g)(3).) Given the lack of a tire performance standard applicable to this vehicle type, risk of tire failure due to vehicle overloading is increased. Combining a minimum RCL with a maximum GVWR ensures some load carrying capacity in addition to the regulatory requirement of 150 pounds per DSP. Given that these vehicles typically have only two DSPs, they are more likely than an ordinary passenger vehicle to driven fully loaded. We seek comment on our rationale for imposing a minimum RCL, and what that minimum should be.

In summary, the proposed change to the definition of LSV would make the definition more complete and less open to the necessity of interpretation, clearer as to the type of vehicle NHTSA intended to be excluded from the FMVSS for cars, trucks and multipurpose passenger vehicles under the LSV definition, and allow the manufacturers of LSVs more flexibility in the design of their products without sacrificing the safety of the vehicles' users. Further, the crash avoidance and crash protection requirements for an LSV are appropriate for that vehicle's size regardless of whether the vehicle is designed to transport passengers or cargo.

III. Proposed Effective Date

This proposal would remove the provision that precludes the manufacture of trucks as LSVs, and add the restriction that LSVs must have a GVWR less than 2,500 pounds and RCL of at least 80 pounds. The agency has limited knowledge as to the number of manufacturers producing or intending to produce motor vehicles certified as LSVs under the existing definition of that term. Further, the agency has limited knowledge as to the exact specifications of the LSVs currently manufactured and is not aware of any LSV currently manufactured that would no longer be classified as an LSV under the proposed definition. However, based on the information the agency does have, we do not anticipate that any LSV currently produced would need to be redesigned to meet the proposed definition.

Therefore, NHTSA is proposing that an effective date 45 days after the publication of a final rule. The 45 day effective date would allow LSV manufacturers the flexibility to proceed with the introduction of new vehicles as quickly as possible. The agency is requesting comment on the appropriateness of the proposed lead time.

IV. Comments

Questions for Comment

In addition to comments on the proposed rule, the agency is seeking comments on the following specific issues.

1. Are there reasons we should allow some heavier vehicles to be certified as LSVs? If so, would GVWR be sufficient to identify those vehicles or should other criteria be used in conjunction with GVWR?
2. Is restricting the GVWR the most appropriate method of restricting the size of LSVs?
3. Is our belief that many LSVs are electric correct and is the proposed weight allowance for the electric propulsion system appropriate?
4. We request comment on the exact specifications of LSVs that manufacturers are currently producing or planning to produce to aid us in determining if a longer lead time should be provided. With respect to manufacturers contemplating the production of LSVs above the proposed limit, to what extent have investments been made to bring these vehicles to market?
5. We request information on the GVWR, RCL, and power plant specifications of LSVs currently being manufactured.

When commenting on these issues, commenters should remember that vehicles designed primarily for use off the public roads, regardless of weight or speed, are not subject to the FMVSS. Therefore, certification as an LSV is not necessary for vehicles which operate only on private roads and grounds, such as at airports, some academic and business campuses, and industrial plants and grounds.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21.) We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**.

You may also submit your comments to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to

obtain instructions for filing the document electronically.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT**. In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

1. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
2. On that page, click on ''search.''
3. On the next page (*http://dms.dot.gov/search/*), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were ''NHTSA–1998–1234,'' you would type ''1234.'' After typing the docket number, click on ''search.''
4. On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments. Although the comments are imaged documents, instead of word processing documents, the ''pdf'' versions of the documents are word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

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*.

V. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' Based on the limited information currently available to the agency, as discussed under Section III, Proposed Effective Date, the agency tentatively concludes that the proposed amendments would not have more than a minimal impact on LSV manufacturers and users. The agency is not aware of any LSV currently produced that would no longer be classified as an LSV under the proposed definition or that would need to be redesigned because of that proposal.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this notice under the Regulatory Flexibility Act. Based on the limited information currently available to the agency, as discussed under Section III, Proposed Effective Date, I certify that the proposed amendment would not have a significant economic impact on LSV manufacturers. The proposed definition would permit more flexibility in the design of LSVs and allow manufacturers to broaden the LSV market. The agency cannot forecast the extent to which manufacturers would take advantage of that opportunity. Therefore, a Preliminary Regulatory Flexibility Analysis has not been performed. The agency is requesting comments on this certification.

Paperwork Reduction Act

NHTSA has analyzed this proposed rule under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and determined that it would not impose any new information collection requirements as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

The National Environmental Policy Act

NHTSA has also analyzed this proposed rule under the National Environmental Policy Act and determined that it would have no significant impact on the human environment. LSV usage is very small in comparison to that of motor vehicles as a whole; therefore, any change to the LSV segment would not have a significant environmental effect.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This proposal would not result in annual expenditures exceeding the $100 million threshold.

Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires us to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of ''regulatory policies that have federalism implications.'' The Executive Order defines this phrase to include regulations ''that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order

13132 and has determined that it will not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. This rule regulates the manufacturers of motor vehicles and motor vehicle equipment and will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

Executive Order 12778 (Civil Justice Reform)

This proposed rule has no retroactive effect. NHTSA is not aware of any state law that would be preempted by this proposed rule. This proposed rule would not repeal any existing Federal law or regulation. If this proposal were to become a final rule, it would modify existing law only to the extent that it would change the definition of a low-speed vehicle. This proposed rule would not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make this rulemaking easier to understand?

If you have any responses to these questions, please include them in your comments on this NPRM.

Data Quality Guidelines

After reviewing the provisions of proposed rule, pursuant to OMB's Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies (''Guidelines'') issued by the Office of Management and Budget (OMB) (67 FR 8452, Feb. 22, 2002) and published in final form by the Department of Transportation on October 1, 2002 (67 FR 61719), NHTSA has determined that nothing in this rulemaking action would result in ''information dissemination'' to the public, as that term is defined in the Guidelines.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "'economically significant'" as defined under Executive Order 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us. As noted earlier, this rule is not economically significant, nor does it concern a safety risk with a disproportionate effect on children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that available and potentially applicable voluntary consensus standard, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards. This rule does not propose any standards, consensus-based or otherwise.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Low-speed vehicles.

For reasons set forth in the preamble, NHTSA proposes to amend 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 30111, 30166 and 30177; delegation of authority at 49 CFR 1.50.

Subpart A—General

2. Section 571.3(b) would be amended by revising the term ''low-speed vehicle'' to read as follows:

* * * * *

§ 571.3 Definitions.

* * * * *

(b) *Other definitions* * * *

* * * * *

Low-speed vehicle (LSV) means,

(a) a 4-wheeled motor vehicle,

(b) whose speed attainable in 1.6 km (1 mile) is more than 32 kilometers per hour (20 miles per hour) and not more than 40 kilometers per hour (25 miles per hour) on a paved level surface,

(c) whose rated cargo load is at least 36 kilograms (80 pounds), and

(d) whose GVWR is less than 1,134 kilograms (2,500 pounds).

* * * * *

Dated: December 3, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–30379 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–59–P

Notices

Federal Register

Vol. 68, No. 235

Monday, December 8, 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

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today denied a petition for trade adjustment assistance (TAA) that was filed on October 28, 2003, by fresh garlic producers in California.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that domestic producer prices did not decline by more than 20 percent during October 2002 through September 2003 when compared with the previous 5-year average, a condition required for certifying a petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: *trade.adjustment@fas.usda.gov*.

Dated: November 26, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–30324 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to Prepare a Final Environmental Impact Statement for the Authorization of Livestock Grazing on the Sacramento Grazing Allotment.

SUMMARY: In a previous **Federal Register** announcement (July 5, 2002, Vol 67, No. 129, page 44805) the Forest service provided notice it would prepare a final environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment by October 2000. The project area encompasses approximately 115,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing allotment comprises approximately 25% of the ranger district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock. This notice is to advise interested parties that a final environmental impact statement (FEIS) will be available for public review in January 2004.

Responsible Official: The District Ranger will decide whether or not to authorize domestic livestock grazing on the Sacramento Allotment which will include appropriate forest plan standards and guidelines in part 3 of the existing grazing permit. If grazing is authorized, the District Ranger will decide on the permitted number of animals and season of use, range facilities to be constructed, allowable utilization standards, required monitoring, and mitigation measures (best management practices, BMPs).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Rick Newmon or Mark Cadwallader at (505 682–2551).

Dated: November 7, 2003.

Jose M. Martinez,

Forest Supervisor, Lincoln National Forest.

[FR Doc. 03–30347 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Glenn County School Project/Possible Action (7) Bear Wallow Trail, (8) Grindstone Chaparral Burn/ Possible Action, (9) General Discussion, (10) Next Agenda.

DATES: The meeting will be held on December 15, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by December 11, 2003 will have the opportunity to address the committee at those sessions.

Dated: December 2, 2003.

James F. Giachino,

Designated Federal Official.

[FR Doc. 03–30340 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA 668–03–1040–DP–083A]

Monument Advisory Committee Meeting Schedule

AGENCY: Bureau of Land Management, Interior; United States Forest Service, Agriculture.

ACTION: Cancellation of the December 2003 meeting and notice of meetings for 2004.

SUMMARY: The Bureau of Land Management (BLM) and United States Forest Service (USFS) announce the cancellation of the December 6th, 2003 meeting for the Advisory Committee to the Santa Rosa and San Jacinto Mountains National Monument (hereinafter referred to as the National Monument). At the October 4th, 2003 the Advisory Committee to the National Monument voted unanimously to cancel the December 6th, 2003 meeting.

The Bureau of Land Management (BLM) and United States Forest Service (USFS) also announce the schedule of meetings for 2004 for the Advisory Committee to the National Monument. The meetings will be held on the following dates:

- Saturday, February 7th, 2004.
- Saturday, June 5th, 2004.
- Saturday, October 2nd, 2004.

Meetings will be held at the Palm Desert City Hall Council Chambers, located at 73–510 Fred Waring Drive, Palm Desert, California, 92260, from 9 a.m. until 4 p.m. or until the agenda items are completed. There will be an hour dedicated to public input from 11 a.m.–12 p.m. A sign up sheet will be located at the meeting room on the day of the meeting. Speakers wishing to comment publicly should sign the public comment sign-in sheet provided at the location of the meetings. All committee meetings, including field examinations, will be open to the general public, including representatives of the news media. Any organization, association, or individual may file a statement with or appear before the committee and its subcommittees regarding topics on a meeting agenda—except that the chairperson or the designated federal official may require written comments to the Advisory Committee. The meetings will have agendas developed and available to the public prior to the meeting date. The agendas for each meeting will be located on the Bureau of Land Management web page for the National Monument (*http://www.ca.blm.gov/palmsprings/*). The 2004 meetings will focus on the implementation of the National Monument Management Plan and other actions affecting the National Monument.

The Monument Advisory Committee (MAC) is a committee of citizens appointed to provide advice to the BLM and USFS with respect to preparation and implementation of the management plan for the National Monument as required in the Santa Rosa and San Jacinto Mountains National Monument Act of 2000 (16 U.S.C. 431nt). The act authorized establishment of the MAC with representative members from State and local jurisdictions, the Agua Caliente Band of Cahuilla Indians, a natural science expert, local conservation organization, local developer or building organization, the Winter Park Authority and a representative from the Pinyon Community Council.

The meetings will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretations or other reasonable accommodations should notify the contact person listed below in advance of the meeting. Persons wishing to make statements will need to sign up at the meeting location.

DATES: February 7, 2004; June 5, 2004; and October 2, 2004. All meetings will take place from 9 a.m. to 4 p.m. with a morning public comment period from 11 a.m. to 12 p.m. Meetings may end prior to 4 p.m. if all agenda items are completed.

ADDRESSES: The meeting will be held in the Council Chambers of the Palm Desert City Hall, 73–510 Fred Waring Drive, Palm Desert, California, 92260.

FOR FURTHER INFORMATION CONTACT: Written comments should be sent to Miss Danella George, Santa Rosa San Jacinto Mountains National Monument Manager, Bureau of Land Management, P.O. Box 581260, North Palm Springs, CA 92258; or by fax at (760) 251–4899 or by e-mail at *dgeorge@ca.blm.gov*. Information can be found on our Web page: *http://www.ca.blm.gov/palmsprings/*. Documents pertinent to this notice, including comments with the names and addresses of respondents, will be available for public review at the Palm Springs-South Coast Field Office located at 690 W. Garnet Avenue, North Palm Springs, California, during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: The Santa Rosa and San Jacinto Mountains National Monument was established by act of Congress and signed into law on October 24, 2000. The National Monument was established in order to preserve the nationally significant biological, cultural, recreational, geological, educational and scientific values found in the Santa Rosa and San Jacinto Mountains. This legislation established the first monument to be jointly managed by the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS). The Santa Rosa and San Jacinto Mountains National Monument Act of 2000 affects only Federal lands and Federal interests located within the established boundaries.

The 272,000 acre Monument encompasses 86,400 acres of Bureau of Land Management lands, 64,400 acres of Forest Service lands, 23,000 acres of Agua Caliente Band of Cahuilla Indians lands, 8,500 acres of California Department of Parks and Recreation lands, 35,800 acres of other State of California agencies lands, and 53,900 acres of private land. The BLM and the Forest Service jointly manage Federal lands in the National Monument in coordination with the Agua Caliente Band of Cahuilla Indians, other federal agencies, state agencies and local governments.

On October 24, 2003 the Proposed Management Plan and Final Environmental Impact Statement for the National Monument was released to the public. The Record of Decision for the Final Environmental Impact Statement is expected to be signed in January 2004.

Dated: November 26, 2003.

Danella George,

National Monument Manager.

Melissa Barstow,

Community Planner, Santa Rosa and San Jacinto Mountains National Monument.

[FR Doc. 03–30319 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces our intention to request a three year extension and revision of a currently approved information collection in support of the reporting and recordkeeping requirements under the Packers and Stockyards Act. This approval is required under the Paperwork Reduction Act.

DATES: We will consider comments that we receive by February 6, 2004.

ADDRESSES: Send comments via electronic mail to *comments.gipsa@usda.gov.* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Title: Packers and Stockyards Programs Reporting and Recordkeeping Requirements.

OMB Number: 0580–0015.

Expiration Date of Approval: September 30, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The P&S Act and the regulations under the P&S Act authorize the collection of information for the purpose of enforcing the P&S Act and regulations and to conduct studies as requested by Congress. The information is needed for GIPSA to carry out its responsibilities under the P&S Act. The information is necessary to monitor and examine financial, competitive, and trade practices in the livestock, meat packing, and poultry industries. The purpose of this notice is to solicit comments from the public concerning our information collection.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 8.5 hours per response.

Respondents (Affected Public): Livestock auction markets, livestock dealers, packer buyers, meat packers, and live poultry dealers.

Estimated Number of Respondents: 10,950.

Estimated Number of Responses per Respondent: 3.3.

Estimated Total Annual Burden on Respondents: 304,106 hours.

Copies of this information collection can be obtained from Tess Butler; see **ADDRESSES** section for contact information.

As required by the Paperwork Reduction Act (44 U.S.C. 3506(c)(2)(A)) and its implementing regulations (5 CFR 1320.8(d)(1)(i)), we specifically request comments on:

(a) 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;

(b) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden on 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.

All responses to this notice will be summarized and included in the request for the Office of Management and Budget approval. All comments will also become a matter of public record.

Authority: 44 U.S.C. 3506 and 5 CFR 1320.8.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–30327 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by February 6, 2004.

FOR FURTHER INFORMATION CONTACT: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, 1400 Independence Ave., SW., STOP 1522, Room 5170 South Building, Washington, DC 20250–1522. Telephone: (202) 720–8818. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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. Comments may be sent to: Richard C. Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, STOP 1522, Room 5170 South Building, 1400 Independence Ave., SW., Washington, DC 20250–1522. Fax: (202) 720–4120.

Title: Broadband Grant Program.

OMB Control Number: 0572–0127.

Type of Request: Extension of a currently approved information collection.

Abstract: The provision of broadband transmission service is vital to the economic development, education, health, and safety of rural Americans. To further this objective, RUS provides financial assistance in the form of grant to eligible entities that propose, on a ''community-oriented connectivity'' basis, to provide broadband transmission service that fosters

economic growth and delivers enhanced educational, health care, and public safety services to extremely rural, lower income communities. RUS gives priority to rural areas that it believes have the greatest need for broadband transmission services. Grant authority is utilized to deploy broadband infrastructure to extremely rural, lower income communities on a ''community-oriented connectivity'' basis. The ''community-oriented connectivity'' concept integrates the deployment of broadband infrastructure with the practical, everyday uses and applications of the facilities. This broadband access is intended to promote economic development and provide enhanced educational and health care opportunities. RUS provides financial assistance to eligible entities that are proposing to deploy broadband transmission service in rural communities where such service does not currently exist and who will connect the critical community facilities including the local schools, libraries, hospitals, police, fire and rescue services and who will operate a community center that provides free and open access to residents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 154.87 hours per response.

Respondents: Public bodies, commercial companies, cooperatives, nonprofits, Indian tribes, and limited dividend or mutual associations and must be incorporated or a limited liability company.

Estimated Number of Respondents: 300.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 48,010.

Copies of this information collection can be obtained from MaryPat Daskal, Program Development and Regulatory Analysis, at (202) 720–7853, Fax: (202) 720–4120.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 26, 2003.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–30032 Filed 12–5–03; 8:45 am]

BILLING CODE 3410–15–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, December 12, 2003, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street, NW., 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of November 14, 2003 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Report: Minneapolis-St. Paul News Coverage of Minority Communities (Minnesota)
VI. Future Agenda Items

10 a.m. Briefing on Discerning Potential Patterns of Employment Discrimination: An Examination and Analysis of Federal Equal Employment Opportunity Data

FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–30416 Filed 12–3–03; 4:17 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: License Exception TMP: Special Requirements.

Agency Form Number: None.

OMB Approval Number: 0694–0029.

Type of Request: Submission for OMB review; comment request.

Burden: 1 hour.

Average Time Per Response: 20 minutes per response.

Number of Respondents: 3 respondents.

Needs and Uses: If commodities shipped under License Exception TMP are for news-gathering purposes, the exporter must send BIS a copy of the notification. Also, a TMP exporter must send BIS an explanatory letter if commodities shipped must be detained abroad beyond the 12 month limit. The information is used to determine whether or not an extension should be granted. This collection of information is necessary to identify original export licenses of respondents who request duplicate export licenses for lost or destroyed licenses.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: December 2, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30321 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)).

Bureau: International Trade Administration, Import Administration.

Title: Petition Format for Requesting Relief Under U.S. Countervailing Duty Law.

Agency Form Number: ITA–366P.

OMB Number: 0625–0148.

Type of Request: OMB review; comment request.

Burden: 200 hours.

Number of Respondents: 5.

Average Hours Per Response: 40.

Needs and Uses: The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. antidumping and countervailing duty laws. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA–366P—Format for Petition Requesting Relief Under the U.S. Countervailing Duty Law—is designed for U.S. companies or industries that are unfamiliar with the countervailing duty law and the petition process. The Form is designed for

potential petitioners that believe that an industry in the United States is being injured because a foreign competitor is being subsidized unfairly. Since a variety of detailed information is required under the law before initiation of a countervailing duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

Affected Public: Businesses or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230, or e-mail *dhynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent to David Rostker, OMB Desk Officer, Room 10202, New Executive Office building, Washington, DC 20503 within 30 days of the publication of this notice in the **Federal Register**.

Dated: December 2, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30322 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Census Bureau

Generic Clearance for Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) Update Activities

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before February 6, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Bob Tomassoni, Bureau of the Census, SFC2, Room 1308A, Washington, DC 20233. Phone Number 301–763–2036 (or via the Internet at *Robert.G.Tomassoni@Census.Gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau presently operates a generic clearance covering activities involving respondent burden associated with updating our Master Address File (MAF) and Topologically Integrated Geographic Encoding and Referencing (TIGER) system. (The MAF is the Census Bureau's address database and TIGER is the geographic database.) We now propose to extend that generic clearance to cover update activities we will undertake during the next three fiscal years.

Under the terms of the generic clearance, we plan to submit a request for OMB approval that will describe all planned activities for the entire period; we will not submit a clearance package for each updating activity. We will send a letter to OMB at least two weeks before the planned start of each activity that gives more exact details, examples of forms, and final estimates of respondent burden. We also will file a year-end summary with OMB after the close of each fiscal year giving results of each activity conducted. This generic clearance enables OMB to review our overall strategy for MAF and TIGER updating in advance, instead of reviewing each activity in isolation shortly before the planned start. The Census Bureau used the MAF for mailing and delivering questionnaires to households during Census 2000. The MAF is also used as a sampling frame for our demographic current surveys. In the past, the Census Bureau built a new address list for each decennial census. The MAF we built for Census 2000 is meant to be kept current, thereby, eliminating the need to build a completely new address list for future censuses and surveys. The TIGER is a geographic system that maps the entire country in Census Blocks with applicable address range or living quarter location information. Linking MAF and TIGER allows us to assign each address to the appropriate Census Block, produce maps as needed and publish results at the appropriate level of geographic detail. The following are descriptions of each activity we plan to conduct under the clearance for the next three fiscal years.

1. Record Linkage Follow-Up (Address Duplication Check) Evaluation

In an effort to compile the most accurate Master Address File (MAF), the Census Bureau is planning the Record Linkage Follow-Up Address Duplication Check Operation to evaluate three different unduplication methods, one duplicate address linking software currently used by our Geography Division (GEO) and possibly two probabilistic matching software programs used by our Planning, Research, and Evaluation Division (PRED).

This operation will address the Census Coverage Improvement objective, which attempts to minimize coverage errors and to gain insight into the causes of housing unit duplication through externally focused, probes and edits and examination of internal processing approaches.

The Record Linkage Follow-Up Address Duplication Check will be conducted in the field to confirm probable housing unit duplicates identified by the unduplication criteria established for the probabilistic record matching and linking software, and not already reconciled from other 2004 Census Test field activities. This 2004 Census Test operation addresses the following question: ''Can we reduce duplication at the time of the initial Master Address File (MAF) extract and during address list updating from Address Canvassing and from Update/Leave by using improved address record linkage methods?''

The major objective of the Record Linkage Follow-Up Address Duplication Check operation is to determine the accuracy and future use of address unduplication prior to census operations. Verifiers will perform an Address Duplication Check on housing unit duplicates identified by probabilistic linkage.

The 2004 Census Test Record Linkage Follow-Up Address Duplication Check operation will be conducted in the NW Queens, NY test site and in Colquitt, Tift, and Thomas counties in Georgia and will be managed out of Local Census Offices. The operation will take place between August 16, 2004 and September 17, 2004 and will consist of a maximum workload of 10,800 addresses.

The universe of linked addresses will come from output generated by the Auto Match and Big Match software and from GEO providing a file that includes the results of their duplicate confidence

indicator run on the MAF for the 2004 Test Sites.

The workload of linked addresses, called clusters, in the Record Linkage Follow-Up Address Duplicate Check operation will be a merged sample of the output from the three duplicate linking programs mentioned above.

A sample of clusters will be included in the Address Duplicate Check. Large clusters, clusters with different Zip Codes, and clusters where two or more addresses are exactly the same, will be included in the Headquarters (HQ) fieldwork. The Headquarters (HQ) fieldwork will consist of no more than 6 people from Census HQ, traveling to the 2004 Census Test sites to review and fieldwork 300 clusters.

Verifiers will locate each address in the cluster on the ground and enter codes based on observation first. Then they will attempt to make contact with the respondent or qualified proxy to confirm the addresses existence for each address shown on the cluster-listing page. Verifiers will enter action codes based on respondent information. The verifiers will try to locate the other addresses shown in the cluster, to verify existence or nonexistence in an effort to confirm duplication of addresses within the cluster. Verifiers will not edit, add, or delete any addresses.

The estimated time per response is 2 minutes. The most burdensome case scenario will be 10,800 addresses in no more than 5,300 address clusters. All of the fieldwork is expected to take place in FY 2004.

2. Address Canvassing

An Address Canvassing operation will take place as part of the 2006 Census Test. The operation will take place during the spring of 2005. The operation will be a standard address canvassing operation where census ''listers'' will canvass specified blocks and conduct brief interviews to verify or update address information against address information on the Census Bureau's address lists and maps. Lister's will enter action codes for every address based on what they found out during the visit. Lister's will also visit addresses not listed on our address lists and add them. They will record address information and action codes on address listing pages.

Sites for the 2006 Census Test will be selected in 2004. Prior to the selection, there is no available information regarding estimated number of living quarters or respondent burden for the Address Canvassing operation.

3. TIGER Enhancement Database (TED)

The TIGER Enhancement Database (TED) is an inventory of state, local, tribal and commercial geographic data critical to the modernization of the Census Bureau's MAF/TIGER database. More specifically, the TED is an interactive Oracle database containing metadata about the geographic data necessary for coordinate correction and feature update in TIGER. Such metadata include, but are not limited to: Contact information, data accuracy, currency, format, and medium.

TED is designed to be maintained and updated indefinitely to support MAF/TIGER Enhancements Program efforts throughout the decade. Metadata for population of the database will be collected on an ongoing basis from state/local/tribal governments, as well as, industry organizations and clearinghouses, and commercial suppliers.

Determining which governments and commercial sources exist and gathering metadata about what they contain, will require contact with individuals and business entities. Once the inventory of available resources has been completed for all 3,232 counties, the Census Bureau and its contractor will begin to acquire the source materials described in the inventory. These source materials may include satellite imagery, aerial photography, Global Positioning System (GPS) files, Geographic Information System (GIS) files of transportation, hydrography, and other feature layers, address lists, and other graphic and tabular data that will provide updates to the MAF/TIGER database.

In addition to the above, there may be other operations and/or evaluations that could be added in the next three years to help the Census Bureau prepare for Census 2010 and evaluate the quality of work done during various census tests. Any other operations and/or evaluations would be similar to those above and would fall under the clearance as MAF/TIGER updating activities.

II. Method of Collection

The primary method of data collection for most operations/evaluations will be personal interview by Census Listers, Verifiers or Enumerators using the operation/evaluation's listing form. In some cases, the interview could be by telephone callback if no one was home on the initial visit. For TED, the primary method of method of data collection will be telephone contact. See part I for details.

III. Data

OMB Number: 0607–0809.

Form Number: The form numbers for activities have not yet been assigned.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: Varies by operation, see chart below for available estimates.

Estimated Time Per Response: Varies by operation, see chart below for available estimates.

Estimated Total Annual Burden Hours: FY04 360.

Estimated Total Annual Cost: The only cost to respondents is that of their time to respond.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141 and 193.

Activity	FY 2004 respondents	Average hours per response	Responses per respondent	FY 2004 burden hours
Record Linkage Follow-Up Evaluation	10,800	.033	1	360
Totals	10,800			360

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of this information collection; they also will become a matter of public record.

Dated: December 2, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–30323 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–809]

Notice of Preliminary Results of Antidumping Duty Administrative Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Sales at Less Than Fair Value.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from the Republic of Korea with respect to Husteel Corporation, Ltd.; Hyundai HYSCO; and SeAH Steel Corporation Ltd. This review covers entries of circular welded non-alloy steel pipe into the United States during the period November 1, 2001, through October 31, 2002.

We preliminarily find that, during the period of review, sales of certain circular non-alloy steel pipe from Korea were made below normal value. If the preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs and Border Protection (''CBP'') to assess antidumping duties. We invite interested parties to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni, Scott Holland or Andrew McAllister, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194, (202) 482–1279 or (202) 482–1174, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 1992, the Department of Commerce (''the Department'') published an antidumping duty order on circular welded non-alloy steel pipe (''pipe'') from Korea. (*See* 57 FR 49453). On November 1, 2002, the Department of Commerce (''the Department'') published a notice in the **Federal Register** of the opportunity for interested parties to request an administrative review of the antidumping duty order on pipe from Korea. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspend Investigation*, 67 FR 66612 (November 1, 2002). In November 2002, the Department received timely requests for review from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, ''petitioners'') and from Husteel Co. Ltd. (''Husteel''), a Korean exporter/producer of the subject merchandise.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of this antidumping duty administrative review on December 26, 2002, with respect to Husteel, Hyundai HYSCO (''HYSCO''), and SeAH Steel Corporation, Ltd. (''SeAH'') (collectively, the ''respondents''). *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 67 FR 78772 (December 26, 2002). The period of review (''POR'') is November 1, 2001 through October 31, 2002.

On January 6, 2003, the Department issued antidumping duty questionnaires to the respondents. We notified the respondents that they must respond to sections A, B, C and D of the antidumping duty questionnaire.

On January 21, 2003, Husteel and SeAH requested that they be allowed to report their respective cost data on a fiscal-year basis rather than reporting costs for the POR. On January 30, 2003, we requested that the respondents demonstrate that the use of fiscal-year cost reporting would not be distortive. We received information from the respondents on the difference between fiscal-year and POR-based cost reporting on February 11, 2003. On February 24, 2003, we granted the requests and allowed Husteel and SeAH to report their costs for the 2002 fiscal year rather than the POR.

On January 27, 2003, the petitioners requested that the Department conduct verifications of the respondents' questionnaire responses. We received questionnaire responses from all of the respondents in February and March 2003. We issued supplemental questionnaires covering sections A through D to the respondents in May and June 2003, and received responses in June and July 2003. The petitioners submitted comments on the responses in March and July 2003. We received rebuttal comments from HYSCO on July 28, 2003.

On June 6, 2003, we published an extension of the time limit for the completion of the preliminary results of this review to no later than November 30, 2003, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (''the Act''). *See Certain Circular Welded Non-Alloy Steel Pipe From Korea: Notice of Extension of Time Limit for 2001–2002 Administrative Review*, 68 FR 33911 (June 6, 2003). The Department verified the sales and cost responses for each of the respondents during September through November 2003.

On November 10, 2003 the petitioners argued certain information submitted by HYSCO at the CEP sales verification constituted new information and should be rejected by the Department.

Scope of the Order

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the Department's *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the*

Republic of Korea, Mexico, and Venezuela, 61 FR 11608 (March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A-53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines is outside of the scope of the antidumping duty order.

Imports of these products are currently classifiable under the following *Harmonized Tariff Schedule of the United States* (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and CBP purposes, our written description of the scope of this proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, during September through November 2003, we verified the information provided by the respondents in Korea and at the U.S. sales facilities using standard verification procedures, including on-site inspection of the manufacturers' facilities, examination of relevant sales, cost and financial records, and selection of original documentation containing relevant information. The Department reported its findings from the SeAH sales and cost verifications conducted in Korea on November 25, 2003. *See* Memorandum to the File, ''Verification of the Sales and Cost Response of SeAH Steel Corporation Ltd.,'' dated November 25, 2003 (''*SeAH Sales and Cost Verification Report*''), which is on file in the CRU. The SeAH CEP verification report and the verification reports for Husteel and HYSCO will be released at a later date.

Fair Value Comparisons

To determine whether sales of circular welded non-alloy steel pipe to the United States were made at less than normal value (''NV''), we compared export price (''EP'') or constructed export price (''CEP'') to NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with 19 CFR 351.414(c)(2), we compared individual EPs and CEPs to weighted-average NVs, which were calculated in accordance with section 777A(d)(2) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market during the POR that fit the description in the ''Scope of the Order'' section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the home market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we considered the following physical characteristics of the products in order of importance: grade, nominal pipe size, wall thickness, surface finish and end finish.

Export Price and Constructed Export Price

We calculated EP in accordance with section 772(a) of the Act for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States and the constructed export price methodology was not otherwise indicated. Husteel and HYSCO made EP sales during the POR. We based EP on either FOB or CNF (duty-paid) prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting the reported gross unit price, where applicable, for billing adjustments. We made deductions from the starting price for movement expenses in accordance with section 772(c)(2)(A) of the Act. These deductions included, where appropriate, domestic inland freight, brokerage and handling, international freight, marine insurance, U.S. customs duties, U.S. inland freight, and other U.S. transportation expenses.

In accordance with section 772(b) of the Act, we calculated CEP for those sales to the first unaffiliated purchaser that took place after importation into the United States. We based CEP on packed CIF and CNF duty-paid prices to unaffiliated purchasers in the United States. We identified the correct starting price by adjusting the reported gross unit price, where applicable, for billing adjustments and early payment discounts. We made deductions from the starting price for movement expenses, including domestic inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance, U.S. customs duties, and other transportation expenses, where appropriate, in accordance with section 772(c)(2)(A) of the Act. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct and indirect selling expenses, commissions and warranty expenses. We made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We increased EP and CEP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. There are two systems in place in Korea through which Korean companies can claim duty drawback: the individual-rate system or the fixed-rate system (*i.e.*, the simplified fixed drawback system). In prior investigations and administrative reviews, the Department has examined the individual-rate system and found that the government controls in place enable the Department to examine the criteria under this system for receiving a duty drawback adjustment (*i.e.*, that 1) the rebates received were directly linked to import duties paid on inputs used in the manufacture of the subject merchandise, and 2) there were sufficient imports to account for the rebates received). *See Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review: Circular Welded Non-Alloy Steel Pipe From the Republic of Korea*, 62 FR 55574, 55577 (October 27, 1997) and *Certain Polyester Staple Fiber from Korea: Final Results of Antidumping Duty Administrative Review*, 68 FR 59366 (October 15, 2003). Husteel, HYSCO, and SeAH each provided documentation demonstrating that it received duty drawback under the individual-rate system. We examined this documentation and confirmed that each of the companies met the Department's two-prong test for receiving a duty drawback adjustment. Accordingly, we are allowing the full duty drawback adjustment on all of Husteel's, HYSCO's, and SeAH's U.S. sales.

Consistent with the preceding review, we have used the purchase order date as the date of sale for most U.S. transactions. While each company has a slightly different U.S. sales process, consistent throughout the responses is the notion that price and quantity are established, then the factory produces the subject merchandise, and finally, after a significant period of time, the product is shipped and an invoice

issued. Based on this understanding of the respondents' U.S. sales process, for the respondents' CEP non-consignment sales, we have used as date of sale the purchase order date, which reasonably approximates the time at which the material terms of sale are set. For CEP consignment sales and for EP sales, the invoice date has been used as the date of sale.

We have considered the petitioners' argument that certain information submitted by HYSCO at the CEP sales verification constituted new information and should be rejected by the Department. We find that the revised sales data submitted by HYSCO at verification constitutes minor corrections to existing sales information already on the record in this proceeding and does not constitute new information. Accordingly, we have used the revised data bases in the calculation of our preliminary results.

To calculate the EP and CEP, we relied upon the data submitted by the respondents, except where noted below:

SeAH

We made certain minor adjustments to SeAH's submitted sales information based on information found at verification. See SeAH Verification Report and Memorandum from Team to the File, ''Preliminary Results Calculation Memorandum for SeAH Steel Corporation Ltd.,'' dated November 26, 2003 (''SeAH Calculation Memorandum'').

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Act (''section 201 duties''). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from export price and constructed export price, on September 9, 2003, the Department published a request for public comments on this issue. *See Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties*, 68 FR 53104 (September 9, 2003). The Department is currently considering these comments. Since the Department has not yet made a determination on this issue, for purposes of these preliminary results, no adjustment has been made.

Normal Value

A. Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable for all producers.

HYSCO and SeAH reported sales in the home market of ''overrun'' merchandise (*i.e.*, sales of a greater quantity of pipe than the customer ordered due to overproduction). HYSCO claimed that we should disregard ''overrun'' sales in the home market as outside the ordinary course of trade.

Section 773(a)(1)(B) of the Act provides that normal value shall be based on the price at which the foreign like product is sold in usual commercial quantities and in the ordinary course of trade. Ordinary course of trade is defined in section 771(15) of the Act. We analyzed the following criteria to determine whether ''overrun'' sales differ from other sales of commercial pipe: (1) ratio of overrun sales to total home market sales; (2) number of overrun customers compared to total number of home market customers; (3) average price of an overrun sale compared to average price of a commercial sale; (4) profitability of overrun sales compared to profitability of commercial sales; and (5) average quantity of an overrun sale compared to the average quantity of a commercial sale. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results and Rescission in Part of Antidumping Administrative Review*, 65 FR 76218, 76221 (December 6, 2000). Based on our analysis of these criteria and on an analysis of the terms of sale, we found overrun sales made by SeAH and HYSCO to be outside the ordinary course of trade. This analysis is consistent with our treatment of such sales in prior reviews of this proceeding. See Memoranda from Team to the File, ''Preliminary Results Calculation Memorandum for Hyundai HYSCO,'' dated November 26, 2003 and *SeAH Calculation Memorandum*.

B. Arm's Length Test

HYSCO and SeAH made sales in the home market to affiliated and unaffiliated customers. Home market sales made to affiliated customers were either for consumption or further processing into non-subject merchandise. To test whether the sales to affiliates were made at arm's length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification Concerning Affiliated Party Sales in the Comparison Market*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales below the cost of production (''COP'') in the last completed review for Husteel, HYSCO, and SeAH (*see Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Administrative Review*, 66 FR 18747 (April 11, 2001)), we had reasonable grounds to believe or suspect that sales of the foreign product under consideration for the determination of NV in this review for all respondents may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act. Therefore, pursuant to section 773(b)(1) of the Act, we requested that the respondents respond to section D, the cost of production/constructed value section of the questionnaire.

We conducted the COP analysis described below.

1. Calculation of COP

Before making any comparisons to NV, we conducted a COP analysis, pursuant to section 773(b) of the Act, to determine whether the respondents' comparison market sales were made below the COP. We calculated the COP based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses and packing, in accordance with section 773(b)(3) of the Act.

We allowed SeAH and Husteel to report their costs on a fiscal-year basis because their fiscal years were closely aligned with the POR (November-October POR vs. January-December fiscal year), the differences in costs were minimal, and there was no other indication that the use of fiscal-year data would be distortive. *See* February 12, 2003 letter from Judith Wey Rudman to Donald Cameron regarding the cost reporting period.

We relied on the respondents' information as submitted, except for one

minor adjustment to SeAH's production quantities for certain products. *See SeAH Calculation Memorandum*.

2. Test of Comparison Market Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product during the POR, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. The prices were exclusive of any applicable movement charges, billing adjustments, discounts, commissions, warranties and indirect selling expenses. In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities and (2) at prices which did not permit the recovery of costs within a reasonable period of time.

3. Results of COP Test

Pursuant to section 773(b)(1)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the 12-month period were at prices less than the COP, we determined such sales to have been made in ''substantial quantities'' within an extended period of time in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determined that such below-cost sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that for each of the respondents, for certain specific products, more than 20 percent of the home market sales within an extended period of time were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-factory, FOB, or delivered prices to affiliated or unaffiliated customers in the home market. We identified the starting price and made adjustments for early payment and other discounts, where appropriate. In accordance with section 773(a)(6)(B)(ii) of the Act, we made deductions for inland freight and warehousing. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses.

When comparing U.S. sales with comparison market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing for the foreign like product and subject merchandise, using POR-average costs.

We also made adjustments, where applicable, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on home market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). Specifically, where commissions are incurred in one market, but not in the other, we make an allowance for the indirect selling expenses in the other market up to the amount of the commissions.

For HYSCO we also adjusted the reported credit expenses for certain home market sales. *See* Memorandum from Team to the File, ''Preliminary Results Calculation Memorandum for Hyundai HYSCO'' dated November 26, 2003 (''*HYSCO Calculation Memorandum*'').

E. Level of Trade (LOT)

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (''LOT'') as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the ''chain of distribution''),[1] including selling functions,[2] class of customer (''customer category''), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[3],) we consider the starting prices before any adjustments. For CEP sales, we consider only the selling expenses reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if an NV LOT is more remote from the factory than the CEP LOT and we are unable to make a level of trade adjustment, the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by the respondents for each channel of distribution. Company-specific LOT findings are summarized below:

1. SeAH

SeAH reported two channels of distribution in the home market: (1) sales made by SeAH (channel 1); and (2)

[1] The marketing process in the United States and home market begins with the producer and extends to the sale to the final user or customer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered each respondent's narrative response to properly determine where in the chain of distribution the sale occurs.

[2] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of these preliminary results, we have organized the common selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[3] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

sales made by SeAH's affiliates, HSC and SSP (channel 2). Both of these channels serviced all customer types (*i.e.*, affiliated and unaffiliated service centers and end users). We examined these channels and found that they were similar with respect to sales process, freight services, and warehouse/inventory maintenance, advertising activities, technical service and warranty service, and, therefore, constituted one level of trade.

In the U.S. market, SeAH made CEP sales through two channels of distribution; (1) back-to-back transactions (channel 1); and (2) consignment sales (channel 2). The CEP selling activities differ from the home market selling activities only with respect to warranty services. Therefore, we find that the CEP level of trade is similar to the home market level of trade and a level of trade adjustment is not necessary. *See* section 773(a)(7)(A) of the Act.

2. Husteel

Husteel reported that it sells to distributors and end users in the home market, and to U.S. distributors and to an unaffiliated trading company for sale to the United States. Husteel reported a single level of trade in the home market and has not requested a LOT adjustment. We examined the information reported by Husteel and found that home market sales to both customer categories were identical with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that Husteel had only one LOT for its home market sales.

Husteel states that it is not claiming a LOT adjustment because it has no home market sales that are at the same LOT as that of its CEP sales, and therefore, it cannot quantify an LOT adjustment. Husteel claims that a CEP offset is warranted. For its CEP sales, Husteel reported a single level of trade and channel of distribution. The CEP selling activities differ from the home market selling activities only with respect to freight, delivery, and warranty service. Therefore, we find that the CEP LOT is similar to the home market LOT and a level-of-trade adjustment or CEP offset is not necessary. *See* section 773(a)(7)(A) of the Act.

3. HYSCO

In the home market, Hysco made sales to three customer categories: end-users; distributors; and government agencies. Sales to these customer categories were made through a single channel of distribution (*i.e.*, sales from the manufacturer directly to the customer). The selling functions to each of the three customer categories were similar with respect to sales process, freight services, warehouse/inventory maintenance, advertising activities, technical service, and warranty service. Accordingly, we preliminarily find that HYSCO had one LOT for its home market sales.

Hysco made both EP and CEP sales to the United States during the POR. Both the EP and CEP sales were made through the same channel of distribution (*i.e.*, sales from the manufacturer directly to the customer). The EP and CEP selling activities do not differ from the home market selling activities. Therefore, we find that the U.S. level of trade is similar to the home market level of trade and a level of trade adjustment is not necessary. *See* section 773(a)(7)(A) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our review, we preliminarily find that the following percentage weighted-average margins exist for the period November 1, 2001, through October 31, 2002:

Manufacturer/Exporter	Margin
HYSCO	0.94%
Husteel	1.77%
SeAH	0.66%

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue appraisement instructions directly to CBP to assess antidumping duties on appropriate entries. To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(1), for each respondent we calculate importer (or customer)-specific ad valorem rates by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, we calculate a per unit assessment rate by aggregating the dumping margins calculated for all U.S. sales to that importer (or customer) and dividing this amount by the total quantity sold to that importer (or customer).

All other entries of the subject merchandise during the POR will be liquidated at the antidumping duty rate in place at the time of entry.

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review.

Cash Deposit Rates

The following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of pipe from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be the rates listed above (except no cash deposit will be required if a company's weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate shall be 4.80 percent, the ''all others'' rate established in the LTFV investigation. *See Notice of Antidumping Orders: Certain Circular Welded Non-Alloy Steel Pipe from Brazil, the Republic of Korea (Korea), Mexico, and Venezuela, and Amendment to Final Determination of Sales at Less Than Fair Value: Certain Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 49453 (November 2, 1992).

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. A hearing, if requested, will

be held 37 days after the publication of this notice, or the first business day thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, within 120 days of publication of the preliminary results.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(I)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30382 Filed 12–5–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot-Rolled Carbon Steel Flat Products From Thailand: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Michael Ferrier at (202) 482–1394 or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW., Washington, DC 20230.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Thailand (''hot-rolled steel'') manufactured/exported by Sahaviriya Steel Industries Public Company Limited (''SSI''). The period of review (''POR'') covers the period May 3, 2001, through October 31, 2002. We have preliminarily determined that SSI did not make sales of the subject merchandise at less than normal value (''NV'') (*i.e.*, they made sales at zero or *de minimis* dumping margins). If these preliminary results are adopted in the final results of this administrative review, we will instruct the U.S. Customs and Border Protection (''CBP'') to liquidate appropriate entries without regard to antidumping duties. We invite interested parties to comment on these preliminary results. We request parties who submit argument in these proceedings to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on hot-rolled steel (*see Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products From Thailand,* 66 FR 59562) (''*HRC Order*''). On November 1, 2002, the Department published a notice of opportunity to request an administrative review for this order covering the period May 3, 2001, through October 31, 2002 (*see Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 66612). On November 27, 2002, SSI requested a review in accordance with 19 CFR 351.213(b)(2) of the Department's regulations, and the petitioners requested reviews of SSI, Nakornthai Strip Mill Public Co., Ltd. (''Nakornthai''), and Siam Strip Mill Public Co., Ltd. (''Siam Strip'') under 19 CFR 351.213(b)(1) of the Department's regulations. The petitioners are Nucor Corporation, National Steel Corporation, and United States Steel Corporation. On November 29, 2002, Siam Strip submitted a letter to the Department stating that they did not sell, ship, or export subject merchandise to the United States during the POR. The Department initiated these reviews on December 26, 2002 (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 78772).

On January 6, 2003, the Department issued the antidumping duty questionnaire to SSI, Nakornthai, and Siam Strip. On January 10, 2003, petitioners filed a letter requesting that the Department verify the questionnaire responses filed by SSI, Nakornthai, and Siam Strip. On February 19, 2003, SSI filed its section A response. On February 26, 2003, SSI filed its sections B and C responses and on March 5, 2003, SSI filed its section D response. Petitioners filed comments on SSI's section A through D responses on the following dates: March 6, 2003, for section A; March 12, 2003, for sections B and C; and March 20, 2003 for section D. On March 20, 2003, and May 12, 2003, SSI filed comments in response to petitioners' comments. SSI filed its supplemental responses on the following dates: April 15, 2003, for supplemental section A, April 22, 2003, for supplemental section D, and April 15, 2003, for supplemental sections B and C. Petitioners filed additional comments on SSI's supplemental sections A through C responses on April 24, 2003, and May 7, 2003. On May 7, 2003, SSI submitted minor corrections to the data provided in its questionnaire responses. Petitioners filed cost verification comments on May 12, 2003, and May 14, 2003, and sales verification comments on June 10, 2003. SSI filed its third supplemental response with the Department on May 22, 2003. On July 7, 2003, the Department extended the deadline for the preliminary results of this administrative review to no later than December 1, 2003 (*see Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products from Thailand,* 68 FR 40243). On October 6, 2003, SSI submitted additional minor corrections to the data provided in its questionnaire responses. As requested, on October 14, 2003, SSI submitted a revised version of its COP/CV database and a revised sales data base on November 18, 2003.

Partial Rescission

On January 22, 2002, Nakornthai submitted a statement that it had no sales to the United States during the POR. On January 24, 2002, Siam Strip submitted a similar statement. The Department conducted a query of CBP data on entries of hot-rolled steel from Thailand made during the POR, and confirmed that these companies made no entries during this period. Therefore, we preliminarily determine to rescind these reviews with respect to Nakornthai and Siam Strip in accordance with section 351.213 (d)(3) of the Department's regulations.

Scope of the Review

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 (HTSUS), 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.*, American Society for Testing and Materials (ASTM) specifications A543, A387, A514, A517, A506).
- Society of Automotive Engineers (SAE)/American Iron & Steel Institute (AISI) grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) 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 HTSUS.

The merchandise subject to this review is classified in the HTSUS 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 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 HTSUS subheadings are provided for convenience and CBP purposes, the written description of the merchandise under review is dispositive.

Period of Review

The POR is May 3, 2001, through October 31, 2002.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''the Act''), we verified cost of production from May 26, 2003, through May 30, 2003, and sales information from October 27, 2003, through November 1, 2003, using standard verification procedures, including an examination of relevant sales, cost, financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Department's Central Records Unit located in Room B–099 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Affiliated Party Issue

On March 12, 2003, and May 6, 2003, the petitioner submitted comments alleging that SSI and one of its U.S. customers, a trading company, were affiliated under section 771(33) of the Act. Because of this alleged affiliation, the petitioner claims that the prices from this alleged affiliated customer to the first unaffiliated customers in the U.S. should be used.

SSI and company A (the identity of this other company is business proprietary and can not be disclosed in this public notice) are owners in a number of other ventures (*e.g.*, Thai Cold Rolled Steel and Thai Coated Rolled Steel) and, therefore, the petitioner claims that SSI and company A are affiliated. Company A also is one of two companies that jointly control the U.S. customer. Petitioner claims that because: (1) SSI is affiliated with company A via their involvement in other ventures, and (2) company A is in a position to control the U.S. customer, the Department should find that SSI and the U.S. customer are affiliated and that their relationship has the potential to impact the product under investigation.

The petitioner also emphasizes that the characteristics of SSI's and company A's relationship indicate that there is affiliation based on, for example, the long term capital investment of both

companies in the other ventures and inter-company business relationships (*e.g.*, SSI sells subject merchandise to Thai Cold Rolled and company A acts as SSI's selling arm for some of its non-subject merchandise).

SSI claims that it is not affiliated with company A pursuant to Section 771(33)(F) nor the U.S. customer, a trading company, and thus it did not supplement its U.S. sales data with the sales made by the U.S. trading company to the next unaffiliated customer. SSI claims that it did not commonly control Thai Cold Rolled Steel with company A nor was it required to sell subject merchandise to Thai Cold Rolled Steel and that Thai Cold Rolled Steel has other suppliers. Additionally, SSI points out that it does not have ownership in company A nor in the U.S. customer, and that there are no common family members, officers or director, partner or employer/employee relationships between SSI and company A or the U.S. customer.

In this case, the Department preliminarily does not find that SSI and the U.S. customer were affiliated, because the nature of the relationship between SSI and company A, one of the two owners of the U.S. customer, with respect to non-subject merchandise did not have the potential to impact decisions concerning the production, pricing or cost of the subject merchandise.

Fair Value Comparisons

To determine whether sales of subject merchandise were made in the United States at less than fair value, we compared the export price (EP) or constructed export price (CEP) to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated EPs and compared these prices to weighted-average normal values or CVs, as appropriate.

Export Price

In accordance with section 772 of the Act, we calculated either an EP or a CEP, depending on the nature of each sale. Section 772(a) of the Act defines EP as the price at which the subject merchandise is first sold by the foreign exporter or producer before the date of importation to an unaffiliated purchaser in the United States, or to an unaffiliated purchaser for exportation to the United States. We have preliminarily determined that all of SSI's U.S. sales during the POR were EP sales.

We calculated EP based on prices charged to the first unaffiliated U.S. customer, which was a trading company in this case. We used the final contract date as the date of sale as determined by the Department in the original investigation. We based EP on the packed CFR prices to the first unaffiliated purchasers outside Thailand. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act, including: foreign inland freight and foreign brokerage and handling.

Duty Drawback

Section 772(c)(1)(B) of the Act provides that EP shall be increased by ''the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States.'' The Department determines that an adjustment to U.S. price for claimed duty drawback is appropriate when a company can demonstrate that (1) there is a sufficient link between the import duty and the rebate, and (2) there are sufficient imports of the imported material to account for the duty drawback received for the export of the manufactured product (the ''two pronged test''). *See Rajinder Pipes Ltd.* v. *United States,* 70 F. Supp. 2d 1350, 1358 (CIT 1999). *See also Certain Welded Carbon Standard Steel Pipes and Tubes from India: Final Results of New Shippers Antidumping Duty Administrative Review, 62 FR 47632 (September 10, 1997) and Federal Mogul Corp.* v. *United States,* 862 F. Supp. 384, 409 (CIT 1994).

During the POR, SSI received duty drawback for its U.S. sales and for certain sales in the home market that were exported from Thailand as non-subject merchandise by unaffiliated further manufacturers and produced from SSI hot-rolled coil. Under the Thai Board of Investment (''BOI'') duty drawback scheme, SSI applies to the BOI for a duty exemption for the imported slab with the BOI maintaining a running tally of SSI's requests for slab exemptions. When SSI intends to export, it again applies to the BOI requesting a duty exemption for the exported material. During verification, the Department found that SSI maintains its duty exemption records on a FIFO (first in first out) basis. SSI noted that it applies for the BOI import surcharge exemption when the company expects export sales. Additionally, we noted that when SSI submits its application for duty drawback, SSI is not required by the Thai government to link the specific imported slab to the specific exported hot-rolled coil. The Department concludes that for SSI's U.S. sales, the company uses a methodology consistent with Department practice for applying its duty drawback received upon export of subject merchandise to the United States. *See Far East Mach. II,* 12 CIT at 975, 699 F.Supp. at 312; *see also Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Good from Korea,* 60 FR 33561 (June 28, 1995). SSI meets the second criterion of the two-pronged test for its U.S. sales, as all of SSI's hot-rolled steel is made from imported slab. With respect to the duty drawback SSI received from certain home market sales that were ultimately exported, SSI received duty drawback from the BOI when the exporting company applied for the duty drawback. SSI stated that only one of its home market customers applied to the BOI for the import duty exemption. For this company, SSI applied the amount of drawback it received from the BOI over all of SSI's home market sales to this company. SSI stated that it is unable to determine which sales of hot-rolled coil it made to this further processor were destined for the export market versus the home market. Verification confirms SSI's assertion about the inability to directly link SSI's hot-rolled coil to the further manufactured product, but the Department believes that SSI's domestic customer has an adequate link to the BOI drawbacks for the following reasons. First, SSI stated that this customer applies for duty drawback in the same manner as SSI. Second, SSI's accounting records demonstrate that the company records in its accounting system these duty drawbacks in a similar manner as its U.S. market drawbacks. Thus, the Department finds that there is a sufficient link for SSI's local export sales. Since SSI received this duty drawback from its slab imports, the second criterion of the two pronged test for these local export sales is the same as SSI's direct U.S. sales: all of SSI's hot-rolled steel is made from imported slab. For these preliminary results, the Department is adding the duty drawback as reported by SSI to normal value.

Normal Value

After testing home market viability and whether home market sales were at below-cost prices, the Department calculated NV as noted in the ''Price-to-Price Comparisons'' and ''Price-to-CV Comparison'' sections of this notice.

A. Home Market Viability

In determining that there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, the Department determined that the home market was viable for SSI. Therefore, the Department has based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

On February 14, 2003, petitioners alleged that a particular market situation existed in Thailand during the POR that does not permit a proper comparison with the export price or constructed export price and, therefore, normal value should be calculated based on prices to a third country. On March 4, 2003, SSI responded to petitioners February 14, 2003, letter urging the Department to reject petitioners' claim of a particular market situation in Thailand during the POR. On March 17, 2003, petitioners responded to SSI's March 4, 2003, response. On March 20, 2003, the Department issued a supplemental questionnaire to SSI regarding the alleged particular market situation. SSI filed its supplemental response on March 28, 2003. On April 24, 2003, petitioners filed additional comments and requested that the Department obtain third country sales information from SSI for calculating normal value. On June 10, 2003, the Department issued a second supplemental questionnaire to SSI regarding the particular market situation. SSI filed its response on June 20, 2003. The Department issued a decision memorandum to interested parties stating that a particular market situation did not exist during the POR in Thailand (*see Memorandum For Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, From Richard O. Weible, Director, Office 8,* August 22, 2003). The Department concluded that there was insufficient information to suggest that a particular market situation exists, whereby prices for the domestic like product are not competitively set. We have preliminary determined that there is not a particular market situation in Thailand that would prevent a proper comparison with the export price or constructed export price. Therefore, the Department did not request SSI to report sales to its largest third country market.

B. Arm's Length Sales

SSI reported that during the POR, it made sales in the home market to affiliated and unaffiliated end users and distributors/retailers. SSI reported the downstream sales of its affiliated reseller of the foreign like product and SSI's sales to its affiliated customers who consumed the hot-rolled steel in the production of non-subject merchandise. If any sales to affiliated customers in the home market were not made at arm's length prices, we excluded those sales from our analysis because we considered them to be outside the ordinary course of trade. To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers, net of all billing adjustments, early payment discounts, movement charges, direct selling expenses, and home market packing. Where prices to the affiliated party fell, on average, between 98 percent and 102 percent, inclusive, of sale prices of the same or comparable merchandise sold by that exporter or producer to all unaffiliated customers, we determined that sales made to the related party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). We performed the arm's length test on the sales to SSI's affiliated customers who consumed the hot-rolled steel. We excluded sales to those customers who failed the arm's length test. In our home market NV calculation, we have included SSI's reported downstream sales.

C. Cost of Production Analysis

The Department initiated a sales below cost investigation to determine in fact whether the respondent made home market sales during the POR at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. Based on the fact that the Department had disregarded sales in the less than fair value investigation because they were made below the COP, the Department has reasonable grounds, in accordance with section 773(b)(2)(A)(ii) of the Act, to believe or suspect that respondent made home market sales in this review at prices below the cost of producing the merchandise.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of SSI's cost of materials and fabrication for the foreign like product, plus an amount for home market SG&A, interest expenses, and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment.

We used the information from SSI's section D questionnaire and supplemental questionnaire responses to calculate COP, except in the following adjustment. First, we revised the company's reported general and administrative (''G&A'') expenses to exclude foreign exchange gains and losses. Second, we revised the company's reported financial expenses to include the total net consolidated foreign exchange gain. In addition, we revised the company's reported financial expenses to exclude gains from investments in affiliated parties. For further discussion of these adjustments, *see Memorandum to Neal Halper, from Mark Todd, regarding Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results*, dated December 1, 2003.

We compared the weighted-average COP to home market sales prices of the foreign like product, as required under section 773(b) of the Tariff Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (i) in substantial quantities over an extended period of time, and (ii) at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared COP to home market prices, less any applicable movement charges, billing adjustments, taxes, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of SSI's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act, within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, pursuant to section 773(b)(2)(D) of the Act, we also determined that such sales were not made at prices which would

permit recovery of all costs within a reasonable period of time. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product and relied on sales of similar merchandise to match.

The results of our cost test for SSI indicated that for certain comparison market models, more than 20 percent of the sales of the model were at prices below COP and were at prices which would not permit the recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining sales as the basis for determining NV.

Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated constructed value (''CV'') based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by SSI in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data SSI supplied in its section D questionnaire and supplemental questionnaire responses with the exception of the adjustments to COP noted above.

Price-to-Price Comparisons

We compared SSI's U.S. sales with contemporaneous sales of the foreign like product in the comparison market. We considered identical hot-rolled products based on the following model-match characteristics: whether or not painted, quality, carbon content, yield strength, thickness, width, coil versus cut-to-length, temper rolled, pickled, edge trim, and patterns in relief. We used a 20 percent DIFMER cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and comparison market variable costs of manufacturing divided by the total cost of manufacturing of the U.S. product. In accordance with the Department's practice, where all contemporaneous matches to a U.S. sale observation resulted in DIFMER adjustments exceeding 20 percent of the COM of the U.S. product, we based NV on CV.

For those product comparisons for which there were sales at prices at or above the COP, we based NV on the home market prices to home market customers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. In accordance with section 773(a)(6)(A) and (B), we deducted home market packing costs and added U.S. packing costs. In addition, we made adjustments for differences in circumstance of sale, as appropriate.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a contemporaneous comparison market match for the U.S. sale. We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, interest expense and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses, interest and profit on the amounts SSI incurred and realized in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Thailand. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made COS adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 of the Department's regulations.

Currency Conversion

We made currency conversions into U.S. dollars, where appropriate, in accordance with Section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction or constructed export price (CEP) transaction. The LOT in the comparison market is the LOT of the starting-price sales in the comparison market or, when NV is based on CV, the LOT of the sales from which we derive SG&A expenses and profit. With respect to U.S. price for EP transactions, the LOT is also that of the starting-price sale, which is usually from the exporter to the importer. For CEP, the LOT is that of the constructed sale from the exporter to the importer.

To determine whether comparison market sales are at a different LOT from U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, the Department makes a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, the Department adjusts NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

SSI claimed one LOT in the U.S. market and two LOTs in the home market: LOT 1 includes sales through unaffiliated trading companies and direct sales to end-users and LOT 2 includes sales through affiliated trading companies and to service centers. SSI claimed that all U.S. sales are at the same LOT as LOT 1 in the home market. SSI reported four channels of distribution for home market sales made through LOT 1 and LOT 2. The first channel of distribution was sales made through unaffiliated trading companies with two customer categories (*i.e.*, unaffiliated end-users and service centers). The second channel of distribution was sales made through affiliated trading companies with two customer categories (*i.e.*, unaffiliated end-users and service centers). The third channel of distribution was direct sales with two customer categories (*i.e.*, affiliated and unaffiliated end-users and service centers). The fourth channel of distribution was direct sales with one customer category (*i.e.*, affiliated end-users or resellers). In analyzing SSI's selling activities for its home market and U.S. market, we determined that essentially the same services were provided for both markets. Due to the proprietary nature of the levels of these selling activities, for further analysis, *see Memorandum To The File, From Michael Ferrier, regarding Administrative Review of the Antidumping Duty Order on Certain Hot-Rolled Carbon Steel Flat Products from Thailand; Preliminary Results Analysis for SSI*, December 1, 2003. Therefore, based upon this information, we have preliminarily determined that the LOT for all EP sales is the same as the LOT for all sales in the home

market. Accordingly, because we find the U.S. sales and home market sales to be at the same LOT, no LOT adjustment under section 773(a)(7)(A) of the Act is warranted for SSI.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period May 5, 2001, through October 31, 2002, to be as follows:

Manufacturer/Exporter	Margin (percent)
Sahaviriya Steel Industries Public Company Limited	0.00

The cash deposit rates for Siam Strip and Nakornthai will continue to be the cash deposit rate established in the original investigation. *See HRC Order*.

Article VI.5 of the General Agreement on Tariffs and Trade (GATT 1994) prohibits assessing dumping duties on the portion of the margin attributable to an export subsidy. In this case, the product under investigation is subject to a countervailing duty investigation. *See Notice of Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Carbon Steel Flat Products from Thailand*, 66 FR 50410 (October 3, 2001).

Therefore, for all entries of hot-rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after the date on which the order in the companion countervailing duty investigation is published in the **Federal Register**, we will request for duty deposit purposes that the CBP deduct the portion of the margin attributable to export subsidies as determined in the countervailing duty investigation. Since SSI received a zero margin for this administrative review, no adjustment for export subsidies is necessary.

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) of the Department's regulations. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d) of the Department's regulations. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. The Department will issue the final results of this administrative review, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Upon completion of the administrative review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) of the Department's regulations, we have calculated assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total quantity of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of merchandise of that manufacturer/exporter made during the POR. To determine whether the duty assessment rate was *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2) of the Department's regulations, we calculated ad valorem ratios based on the EPs. We will instruct CBP to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent), pursuant to 19 CFR 351.106(c)(2) of the Department's regulations. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review.

Furthermore, the following deposit requirement will be effective upon completion of the final results of this administrative review for all shipments of hot-rolled steel from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106 of the Department's regulations, the cash deposit will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or any previous reviews, the cash deposit rate will be 3.86 percent, the ''all others'' rate established in the LTFV investigation (*see HRC Order*).

This deposit requirement, when imposed at the final results, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during 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 double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30388 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–807]

Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from Nucor Corporation and Bethlehem Steel Corporation, National Steel Corporation,

and United States Steel Corporation (collectively, petitioners), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products (hot-rolled steel) from the Netherlands (A–421–807). This administrative review covers imports of subject merchandise from Corus Staal BV (Corus Staal). The period of review is May 3, 2001 through October 31, 2002.

We preliminarily determine that sales of hot-rolled steel from the Netherlands in the United States have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs and Border Protection (Customs) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and NV. Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2657 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2001, the Department published the antidumping duty order on certain hot-rolled carbon steel flat products from the Netherlands. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 66 FR 59565 (November 29, 2001). On November 1, 2002, the Department published the opportunity to request administrative review of, *inter alia,* certain hot-rolled carbon steel flat products from the Netherlands for the period May 3, 2001 through October 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 67 FR 66612 (November 1, 2002).

In accordance with 19 CFR 351.213(b)(1), on November 26 and 27, 2002,[1] petitioners requested that we conduct an administrative review of sales of the subject merchandise made by Corus Staal. On December 26, 2002, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review covering the period May 3, 2001 through October 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 67 FR 78772 (December 26, 2002).

On January 9, 2003, the Department issued its antidumping duty questionnaire to Corus Staal. Corus Staal submitted its response to section A of the questionnaire on January 30, 2003, and its response to sections B, C, D, and E of the questionnaire on March 4, 2003. On March 10, 2003, the Department issued a supplemental questionnaire for section A, to which Corus Staal responded on March 28, 2003. On March 31, 2003, the Department issued a supplemental questionnaire for sections D and E of the questionnaire; Corus Staal submitted its response on April 21, 2003. On April 23, 2003, the Department issued a supplemental questionnaire for sections B and C of the questionnaire. Corus Staal filed its response to the supplemental questionnaire for sections B and C on May 19, 2003. We verified Corus Staal's submitted data as discussed below in the ''Verification'' section of this notice. Finally, on October 3, 2003, we issued a supplemental questionnaire requesting Corus Staal to report entered value data. Corus Staal responded to this request on October 17, 2003.

Because it was not practicable to complete this review within the normal time frame, on June 19, 2003, we published in the **Federal Register** our notice of extension of time limit for this review. *See Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands; Antidumping Duty Administrative Review; Extension of Time Limit,* June 19, 2003 (68 FR 36769). This extension established the deadline for these preliminary results as December 1, 2003.

Period of Review

The POR is May 3, 2001, through October 31, 2002.

Scope of the Review

For purposes of this order, 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 order 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 silicon and aluminum.

Steel products to be included in the scope of this order, 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 order unless otherwise excluded. The following products, by way of example, are outside or specifically excluded from the scope of this order:

[1] Nucor filed its request for administrative review on November 26, 2002, while Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation filed their request for review on November 27, 2002.

• 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 order 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 order, 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 purposes, the written description of the scope of this order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified the cost and sales information provided by Corus Staal using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the cost and sales verification reports, which are on file in the Central Records Unit of the Department. The Department verified Corus Staal's cost responses from May 12, 2003, through May 16, 2003, and sales responses from June 16, 2003, through June 20, 2003. The Department also verified the value-added information reported by Corus Staal for Thomas Steel Strip Corporation (Thomas Steel) from August 21, 2003, through August 22, 2003. The results of these verifications are found in the cost verification report dated October 2, 2003, the Corus Staal sales verification report dated September 25, 2003, and the Thomas Steel value-added verification report dated October 1, 2003, on file in the Central Records Unit of the Department in room B–099 of the main Commerce building.

Affiliated-Party Sales Issues

During the POR, Corus Staal sold the foreign like product to several affiliated resellers in the home market. These include Namascor BV (Namascor), a service center wholly-owned by Corus Staal, and Laura Metaal BV (Laura), a manufacturer and service center in which Corus Staal's parent company, Corus Nederland BV, has a shareholder interest. For purposes of our analysis, we used Namascor's and Laura's sales to unaffiliated customers, and, where Laura consumed the subject merchandise purchased from Corus Staal in its manufacturing operations, we used Corus Staal's sales to Laura. In addition, Corus Staal sold the foreign like product to Feijen Service Center, a business unit of Corus Service Center Maastricht (Feijen), and to Corus Vlietjonge BV (Vlietjonge),[2] also a service center. Both Feijen and Vlietjonge are affiliated with Corus Staal through the former British Steel companies, whose parent, British Steel plc, merged with Koninklijke Hoogovens NV (now Corus Nederland BV) in October 1999 to form the Corus Group plc. In its January 30, 2003, response to the Department's January 9, 2003, questionnaire and in a letter dated April 9, 2003, Corus Staal requested an exemption from reporting downstream sales by Feijen and Vlietjonge because of the nature and quantity of the products sold. On April 16, 2003, the Department excused Corus Staal from reporting downstream sales by Feijen and Vlietjonge; therefore, we have used Corus Staal's sales to Feijen and Vlietjonge to perform our analysis.

In the U.S. market, Corus Staal sold subject merchandise to Thomas Steel, a further manufacturer of battery-quality hot band steel. Thomas Steel is wholly-owned by Corus USA Inc., which in turn is wholly-owned by Corus Staal's parent company, Corus Nederland BV. Claiming the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported, Corus Staal utilized the ''simplified reporting'' option for the merchandise further processed by Thomas Steel. Pursuant to section 772(e) of the Tariff Act, when the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we will determine the constructed export price for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the constructed export price. *See, e.g., Preliminary Results and Rescission in Part of Antidumping Duty Administrative Review: Gray Portland Cement and Clinker From Mexico,* 67 FR 57379, 57381 (September 10, 2002) (unchanged for final results, 68 FR 1816 (January 14, 2003)). Consistent with the Department's regulations, we have determined for these preliminary results that the estimated value added in the United States by Thomas Steel accounted for at least 65 percent of the price charged to the first unaffiliated customer for the merchandise as sold in the United States, and therefore, the value added is likely to exceed substantially the value of the subject merchandise. We have also preliminarily determined there is a sufficient quantity of sales remaining to provide a reasonable basis for comparison and that we have no reason to believe another methodology would be appropriate. *See* the memorandum from Robert James and Richard Weible to Barbara E. Tillman, ''Simplified

[2] Namascor also resold some of the foreign like product to Vlietjonge.

Reporting' and Value Added in the United States by Thomas Steel,'' dated July 3, 2003. See also the Thomas Steel value-added verification report at pages 1 to 13, which supports Corus Staal's claim that the value-added in the United States by Thomas Steel exceeded substantially the value of the subject merchandise as imported.

Fair Value Comparisons

To determine whether sales of hot-rolled steel from the Netherlands to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''Export Price and Constructed Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared the EPs and CEPs of individual U.S. transactions to monthly weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent, covered by the descriptions in the ''Scope of the Review'' section of this notice, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of hot-rolled steel from the Netherlands.

We have relied on the following eleven criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether painted or not, quality, carbon content level, yield strength, thickness, width, whether coil or cut-to-length sheet, whether temper rolled or not, whether pickled or not, whether mill or trimmed edge, and whether the steel is rolled with or without patterns in relief.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's January 9, 2003, questionnaire.

Export Price and Constructed Export Price

Section 772(a) of the Tariff Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).'' Section 772(b) of the Tariff Act defines CEP as the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d).''

In the instant review Corus Staal sold subject merchandise through two affiliated steel service centers which further manufacture flat-rolled steel products: Rafferty-Brown Steel Co., Inc. of Connecticut and Rafferty-Brown Steel Co. of North Carolina (collectively, Rafferty Brown). Corus Staal reported each of these transactions as CEP transactions, and the remainder of its U.S. sales of subject merchandise as EP transactions. However, after reviewing the evidence on the record of this review, we have preliminarily determined that certain of Corus Staal's reported EP transactions are classified properly as CEP sales because these sales occurred in the United States. Such a determination is consistent with section 772(b) of the Tariff Act and the U.S. Court of Appeals for the Federal Circuit's (Federal Circuit's) decision in *AK Steel Corp. et. al.* v. *United States,* 226 F.3d 1361, 1374 (Fed. Cir. 2000) (*AK Steel*). In *AK Steel*, the Federal Circuit examined the definitions of EP and CEP, noting ''the plain meaning of the language enacted by Congress in 1994 focuses on where the sale takes place and whether the foreign producer or exporter and the U.S. importer are affiliated, making these two factors dispositive of the choice between the two classifications.'' *AK Steel* at 1369. It also stated that ''the critical differences between EP and CEP sales are whether the sale or transaction takes place inside or outside the United States and whether it is made by an affiliate,'' and noted the phrase ''outside the United States'' had been added to the 1994 statutory definition of EP (called ''purchase price'' in the pre-1994 statute). *AK Steel* at 1368–70. Referring to the CEP definition, the *AK Steel* Court then defined the term ''seller'' as ''one who contracts to sell'' and the term ''sold'' as ''the transfer of ownership or title.'' *AK Steel* at 1371. Thus, the classification of a sale as either EP or CEP depends upon where the contract for sale was concluded (*i.e.*, in or outside the United States) and whether the foreign producer or exporter is affiliated with the U.S. importer.

During the POR Corus Staal executed all agreements with U.S. customers and amendments related to those agreements in the Netherlands. *See* Corus Staal's May 19, 2003, supplemental questionnaire response (May 19, 2003, SQR) at 2. Corus Staal also served as the importer of record for subject merchandise entered during the POR. *See* Corus Staal's January 30, 2003, questionnaire response (January 30, 2003, QR) at A–15, footnote 10. However, prior to the start of the POR, agreements and amendments were signed by Corus America, Inc. (CAI). May 19, 2003, SQR at 2. CAI is the entity through whom Corus Steel USA Inc. (CSUSA), a subsidiary of Corus Staal's parent company, Corus Nederland BV, has a contract to provide administrative and some selling functions on Corus Staal's behalf.[3] See the January 30, 2003, QR at A–18 and the March 28, 2003 supplemental questionnaire response (March 28, 2003, SQR) at A–6. In these instances when CAI signed the agreements and amendments, CAI would draft the document and forward it to Corus Staal in the Netherlands for approval. After approving the draft document by dating and signing it, Corus Staal would send the document back to CAI, who would then sign and issue the final version to the customer. *See* Sales Verification Report at 4–5. Thus, some sales made during the second quarter of 2001 (*i.e.*, from May 3 to June 30, 2001) were made subject to agreements and/or amendments signed by CAI in the United States. May 19, 2003, SQR at 2. Because the contracts for sales made during May and June 2001 were concluded in the United States, we find these sales to be CEP transactions within the meaning of section 772(b) of the Tariff Act.

With respect to the remainder of Corus Staal's reported EP sales (*i.e.*, those sales to unaffiliated U.S. customers made between July 1, 2001, and October 30, 2002), we have continued to classify them as EP transactions because the contracts governing these sales were signed by Corus Staal in the Netherlands and Corus Staal served as the importer of record.

For those sales which we are classifying as EP transactions, we calculated the price of Corus Staal's EP sales in accordance with section 772(a) of the Tariff Act. We based EP on the packed, delivered, duty paid prices for export to end users and service centers in the U.S. market. We adjusted gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts, where applicable. We also made deductions for movement expenses in

[3] CSUSA receives an income from Corus Staal for these services, which are provided by employees of CAI; CAI, in turn, bills CSUSA on a monthly basis. *See* the March 28, 2003, SQR at A–5 and A–6.

accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses.

For those transactions categorized as CEP sales, we calculated price in conformity with section 772(b) of the Tariff Act. We based CEP on the packed, delivered or delivered, duty paid prices to unaffiliated purchasers in the United States. Where applicable, we made adjustments to gross unit price for billing errors, freight revenue, certain minor processing expenses, and early payment discounts. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, international freight, U.S. customs duties, U.S. inland freight, and U.S. warehousing expenses. In accordance with section 772(d)(1) of the Tariff Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (imputed credit, warranty expenses, and travel expenses incurred by Corus Staal's U.S. sales team), inventory carrying costs, and indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Tariff Act. Finally, with respect to subject merchandise to which value was added in the United States by Rafferty Brown prior to sale to unaffiliated customers, we deducted the cost of further manufacture in accordance with section 772(d)(2) of the Tariff Act.

Section 201 Duties

The Department notes that merchandise subject to this review is subject to duties imposed under section 201 of the Trade Act of 1974, as amended (section 201 duties). Because the Department has not previously addressed the appropriateness of deducting section 201 duties from EP and CEP, on September 9, 2003, the Department published a request for public comments on this issue (68 FR 53104). Comments were received by October 9, 2003, and rebuttal comments were received by November 7, 2003. Since the Department has not made a determination on this issue at this time, for purposes of these preliminary results, no adjustment has been made to EP and CEP.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting price of the comparison sales in the home market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general, and administrative (SG&A) expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (*i.e.*, the CEP offset provision).

In implementing these principles in the instant review, we obtained information from Corus Staal about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Corus Staal and the level to which each selling activity was performed for each channel of distribution. In identifying LOTs for U.S. CEP sales we considered the selling functions reflected in the starting price after any adjustments under section 772(d) of the Tariff Act.

In the home market, Corus Staal reported two channels of distribution (sales by Corus Staal and sales through its affiliated service centers Namascor and Laura) and three customer categories (end users, steel service centers, and trading companies). *See, e.g.*, Corus Staal's January 30, 2003, QR at A–14. For both channels of distribution in the home market, Corus Staal performed similar selling functions, including strategic and economic planning, advertising, freight and delivery arrangements, technical/warranty services, and sales logistics support. The remaining selling activities performed did not differ significantly by channel of distribution, with the exception of market research and research and development activities, which were performed only by Corus Staal. *See* Corus Staal's January 30, 2003, QR at Exhibit A–8 and pages A–20 through A–34. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each channel are sufficiently similar, we have determined that one LOT exists for Corus Staal's home market sales. In addition, we note that while Corus Staal initially claimed there were differences in LOT between home market direct sales and sales through home market affiliated service centers and, therefore, it was entitled to a LOT adjustment for U.S. sales compared to sales made by home market affiliated service centers, it later withdrew its claim. See Corus Staal's January 30, 2003, QR at A–17 and its May 19, 2003 SQR at 16.

In the U.S. market, Corus Staal reported two channels of distribution for its sales of subject merchandise during the POR: EP sales made directly to unaffiliated U.S. customers and CEP sales made through its affiliated service centers, RBC and RBN. For sales classified as EP, Corus Staal reported two customer categories, end users and steel service centers. *See, e.g.*, Corus Staal's January 30, 2003, QR at A–15 and A–16. However, as explained in the ''Export Price and Constructed Export Price'' section of this notice, we have preliminary determined that certain of Corus Staal's reported EP transactions (*i.e.*, sales from May 3, 2001, to June 30, 2001) are classified properly as CEP sales.

With regard to CEP sales made through RBC and RBN, Corus Staal claimed that a CEP offset is appropriate because RBC's and RBN's sales are made at a point in the distribution process that is less advanced than Corus Staal's home market sales. *See* Corus Staal's January 30, 2003, QR at A–17. As noted above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Tariff Act. In analyzing respondent's request for a CEP offset, we reviewed information provided in section A of Corus Staal's response regarding selling activities performed and services offered in the U.S. and foreign markets. We found there to be few differences in the selling functions performed by Corus Staal on its sales to affiliated service centers in the United States and those

performed on its sales to home market customers. For example, Corus Staal provided similar freight and delivery services, technical/warranty assistance, and sales logistics support on its sales to home market customers and on its sales to RBC and RBN. See, *e.g.*, Corus Staal's January 30, 2003, QR at pages A–20 through A–46. Therefore, the Department has preliminarily determined the record does not support Corus Staal's claim that home market sales are at a different, more advanced LOT than its CEP sales to RBC and RBN. Accordingly, no CEP offset adjustment to NV is warranted for Corus Staal's reported CEP sales.

As to Corus Staal's sales to unaffiliated customers in the United States which we have reclassified as CEP transactions, we considered whether a LOT adjustment may be appropriate. As noted above, we have preliminary determined that one LOT exists in the home market, and therefore, there is no basis upon which to determine whether there is a pattern of consistent price differences between LOTs. Thus, we examined whether Corus Staal's home market sales were at a different, more advanced LOT than its sales to U.S. unaffiliated customers to determine whether a CEP offset was necessary. Comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal on its sales to unaffiliated customers in the United States and those performed for sales in the home market. For example, on sales to both home market customers and to unaffiliated U.S. customers, Corus Staal provided similar strategic and economic planning, freight and delivery services, technical/warranty assistance, research and development, and sales logistics support. *See, e.g.*, Corus Staal's January 30, 2003, QR at pages A–20 through A–46. As a result, we preliminarily find that there is not a significant difference in selling functions performed in the U.S. and foreign markets on these sales. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT; accordingly, no CEP offset adjustment is warranted.

Finally, for those sales which we are continuing to classify as EP, we considered whether a LOT adjustment is warranted. Again, comparing the selling activities performed and services offered by Corus Staal on its sales to unaffiliated customers in the United States to those activities performed on its home market sales, we found there to be few differences in the selling functions performed by Corus Staal. Thus, we find that Corus Staal's home market sales and sales to unaffiliated customers in the United States were made at the same LOT, and therefore, no LOT adjustment is necessary.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See, e.g.*, Corus Staal's January 30, 2003, QR at Attachment A–2.

B. Affiliated Party Transactions and Arm's-Length Test

Corus Staal reported that it made sales in the home market to affiliated resellers and end-users. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. See 19 CFR 351.102(b). Prior to performing the arm's-length test, we aggregated multiple customer codes reported for individual affiliates in order to treat them as single entities. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69194 (November 15, 2002) (*Modification to Affiliated Party Sales*). To test whether the sales to affiliates were made at arm's length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling expenses, discounts and rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification to Affiliated Party Sales* at 69187–88. In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the investigation of hot-rolled steel from the Netherlands (*see Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands,* 66 FR 50408 (October 3, 2001), as amended, *Notice of Amended Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands,* 66 FR 55637 (November 2, 2001)), we have reasonable grounds to believe or suspect that Corus Staal made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Corus Staal.

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average COP for each model based on the sum of Corus Staal's material and fabrication costs for the foreign like product, plus amounts for SG&A and packing costs. The Department relied on the COP data reported by Corus Staal, except as noted below:

—For merchandise produced at the direct sheet plant (DSP), Corus Staal claimed a start-up adjustment for the entire POR. Having determined that the startup period ended on November 30, 2001, we decreased Corus Staal's claimed startup adjustment accordingly. In addition, for DSP products, we amortized the capital cost (the startup adjustment allowed) of the DSP line over a ten-year period and included 11 months of amortization cost in the total cost of manufacture (TCOM).

—We adjusted Corus Staal's reported standard cost because respondent overstated the amount of general and administrative (G&A) expenses that should have been removed from the standard cost.

—We revised the G&A ratio to exclude the G&A expenses accounted for in the standard cost and to include two adjustments identified on the first day of the cost verification.

—We adjusted Corus Staal's TCOM to reflect the unexplained difference found in its cost reconciliation at the cost verification.

For further detail regarding these adjustments, *see* the Department's ''Cost of Production and Constructed Value

Calculation Adjustments for the Preliminary Results'' (COP Analysis Memorandum), dated December 1, 2003.

Corus Staal reported separate COPs to distinguish between identical CONNUMs produced in both its conventional hot-rolling mill and direct sheet plant. For purposes of our analysis, however, we are not distinguishing between products produced at the two facilities, because the type of facility used to produce the subject merchandise is not one of the criteria used to match U.S. sales of subject merchandise to sales of the foreign like product. For a list of the product characteristics considered in our analysis, see the section ''Product Comparisons'' above. Thus, we weight-averaged the COPs reported for identical products produced in both the conventional hot-rolling mill and direct sheet plant.[4] We then compared the weighted-average COP figures to the home market sales prices of the foreign like product as required under section 773(b) of the Tariff Act, to determine whether these sales had been made at prices below COP. On a product-specific basis, we compared the COP to home market prices net of billing adjustments, freight revenue, certain minor processing expenses, discounts and rebates, and any applicable movement charges.

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act: whether, within an extended period of time, such sales were made in substantial quantities; and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

Our cost test for Corus Staal revealed that for home market sales of certain models, less than 20 percent of the sales of those models were at prices below the COP. We therefore retained all such sales in our analysis and used them as the basis for determining NV. Our cost test also indicated that for certain models, more than 20 percent of the home market sales of those models were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of the Corus Staal's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV and weight-averaged the CVs reported for identical products produced in both the conventional hot-rolling mill and direct sheet plant as described above in the ''Cost of Production Analysis'' section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length. We adjusted gross unit price for billing adjustments, discounts, rebates, freight revenue, and certain minor processing expenses, where appropriate. We made deductions, where appropriate, for foreign inland freight and warehousing, pursuant to section 773(a)(6)(B) of the Tariff Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise (*i.e.*, difmer) pursuant to section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses (offset by interest revenue), warranty expenses, and credit insurance. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Tariff Act.

F. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period May 3, 2001, through October 31, 2002, to be as follows:

Manufacturer/exporter	Margin (percent)
Corus Staal BV (Corus Staal) ..	5.34

The Department will disclose calculations performed in connection with these preliminary results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. An interested party may request a hearing within 30 days of publication. *See* CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of

[4] We also eliminated the distinction between conventional hot-rolled mill and direct sheet plant products in Corus Staal's home market and U.S. sales databases.

publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). The Department will issue the final results of these preliminary results, including the results of our analysis of the issues raised in any such written comments or at a hearing, within 120 days of publication of these preliminary results.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. As a result of the Court of International Trade's decision in *Corus Staal BV et al* v. *United States,* Consol. Court No. 02–00003, Slip Op. 03–127 (CIT September 29, 2003), we will not assess duties on merchandise that entered between October 30, 2001 and November 28, 2001, inclusive. For more information, *see Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands: Notice of Final Court Decision and Suspension of Liquidation,* 68 FR 60912 (October 24, 2003). Thus, in accordance with 19 CFR 351.212(b)(1), we will calculate an importer-specific *ad valorem* assessment rate for merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties less the total customs value of the sales of merchandise that entered between October 30, 2001, and November 28, 2001, inclusive. This rate will be assessed uniformly on all entries of that particular importer made during the periods May 3, 2001, through October 29, 2001, and November 29, 2001, through October 31, 2002. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of the administrative review (except that no deposit will be required if the rate is zero or *de minimis*, *i.e.*, less than 0.5 percent); (2) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (3) if neither the exporter nor the manufacturer is a firm covered in this review, any previous reviews, or the LTFV investigation, the cash deposit rate will be 2.59 percent, the ''all others'' rate established in the LTFV investigation. *See Antidumping Duty Order: Certain Hot-Rolled Carbon Steel Flat Products from the Netherlands,* 67 FR 59565 (November 29, 2001).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 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 double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30391 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-549–820]

Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value and negative final determination of critical circumstances.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Carol Henninger or Constance Handley, at (202) 482–3003 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that prestressed concrete steel wire strand (PC strand) from Thailand is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice. In addition, we determine that critical circumstances do not exist with respect to PC strand produced and exported by the respondent in this investigation as well as all other producers/exporters.

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Thailand*, 68 FR 42373 (July 17, 2003) (Preliminary Determination). Since the publication of the preliminary determination, the following events have occurred:

On July 25, 2003, the Department of Commerce (the Department) received a request from the respondent in this investigation, Siam Industrial Wire Co., Ltd. and Cementhai SCT USA (collectively, SIW), proposing a suspension agreement in accordance with the Department's regulations at 19 CFR 351.208. On several occasions, the Department discussed the proposed suspension agreement with counsel to SIW, who subsequently concluded that a suspension agreement would not be pursued. *See Memorandum from Gary Taverman, Director, Office 5, to the File, Re: PC Strand from Thailand - Proposed Suspension Agreement* (November 24, 2003).

In September 2003, the Department verified the questionnaire responses submitted by SIW. The sales and cost verification reports were issued in October 2003. On October 23, 2003, we received case briefs from the petitioners[1] and SIW. On October 28, 2003, we received a rebuttal brief from SIW. A public hearing was held on November 3, 2003.

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in

[1] The petitioners in this investigation are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation (POI) is January 1, 2002, through December 31, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, January 2003) involving imports from a market economy, and is in accordance with the Department's regulations. *See* 19 CFR 351.204(b)(1).

Critical Circumstances

Section 735(a)(3) of the Act provides that the Department will determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than fair value and that there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In the preliminary determination of this investigation, the Department found that critical circumstances did not exist because there was no reasonable basis to impute knowledge of dumping with respect to imports of PC strand from Thailand, nor was there a history of dumping of PC strand from Thailand. *See Preliminary Determination* at 42377; *see also, Antidumping Duty Investigation of Prestressed Concrete Steel Wire Strand from Thailand Preliminary Negative Determination of Critical Circumstances Memorandum from Salim Bhabhrawala and Carol Henninger to Gary Taverman*, July 10, 2003, on file in the CRU. The Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for constructed export price (CEP) sales sufficient to impute knowledge of dumping. *See e.g., Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From the People's Republic of China*, 62 FR 31972, 31978 (June 11, 1997). Because the final dumping margin for the respondent is less than 15 percent, we continue to find there is no reasonable basis to impute knowledge of dumping with respect to these imports from Thailand. As noted in the preliminary determination, it is the Department's practice to conduct its critical circumstances analysis of companies in the ''All Others'' category based on the experience of the investigated company. Because there is no history of dumping of PC strand from Thailand and the final dumping margin for SIW is less than 15 percent, we are determining that critical circumstances do not exist for SIW, as well as all other producers/exporters covered by the ''All Others'' rate. Accordingly, we find that critical circumstances do not exist for imports of PC strand from Thailand.

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by SIW. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this proceeding are listed in the appendix to this notice and addressed in the Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, RE: Issues and Decision Memorandum for the Final Determination of the Investigation of Prestressed Concrete Steel Wire Strand from Thailand (Decision Memorandum), dated December 1, 2003, and are hereby adopted by this notice. The Decision Memorandum is on file in room B-099 of the main Department building. In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import__admin/records/frn. The paper and electronic versions of the Decision Memorandum are identical in content.

Changes Since The Preliminary Determination

Based on our findings at verification, and analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margins in this proceeding. These adjustments are discussed in the Decision Memorandum for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S. Customs and Border Patrol (CBP) to continue to suspend liquidation of all entries of PC strand exported from Thailand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for Thailand:

Manufacturer/exporter	Margin (percent)
Siam Industrial Wire Co., Ltd.	12.99
All Others	12.99

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Canada are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested.

Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

Issues Covered in Decision Memorandum

Comment 1: Allocation of Conversion Costs
Comment 2: Treatment of SIW's Home Market Back-to-Back Sales
Comment 3: Whether to Allow a Constructed Export Price Offset
Comment 4: Corrections to SIW's U.S. sales
Comment 5: Corrections to SIW's Home Market Sales
Comment 6: Corrections to Errors Contained in the Preliminary Margin Calculation Program

[FR Doc. 03–30383 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–831]

Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Prestressed Concrete Steel Wire Strand from Mexico

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final determination of sales at less than fair value and negative final determination of critical circumstances.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: James Kemp or Daniel O'Brien at (202) 482–5346 or (202) 482–1376, respectively; AD/CVD Enforcement Group II Office 5, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Final Determination

We determine that prestressed concrete steel wire strand (PC strand) from Mexico is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice. In addition, we determine that critical circumstances do not exist with respect to PC strand produced and exported by either Cablesa S.A. de C.V. (Cablesa) or Aceros Camesa S.A. de C.V. (Camesa) as well as all other producers/exporters.

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances in Part: Prestressed Concrete Steel Wire Strand from Mexico*, 68 FR 42373, 42378 (July 17, 2003) (*Preliminary Determination*). Since the publication of the preliminary determination, the following events have occurred:

In August and September 2003, the Department of Commerce (the Department) verified the questionnaire responses submitted by Camesa and Cablesa. The sales and cost verification reports were issued in October 2003. On October 22, 2003, we received case briefs from the petitioners[1] and Cablesa. On October 28, 2003, we received rebuttal briefs from the petitioners, Camesa, and Cablesa. As the only request for a public hearing was made by the petitioners, and that request was subsequently withdrawn, a public hearing was not held.

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

[1] The petitioners in this investigation are American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp.

Period of Investigation

The period of investigation (POI) is January 1, 2002, through December 31, 2002. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, January 2003) and is in accordance with our regulations. *See* 19 CFR 351.204(b)(1).

Class or Kind

In the preliminary determination, we found that uncovered and covered PC strand constituted the same class or kind of merchandise. Since the preliminary determination, no parties commented on this finding. Therefore, for the final determination, we continue to find that uncovered and covered PC strand constitute the same class or kind of merchandise for the reasons outlined in the *Memorandum from James Kemp and Salim Bhabhrawala, to Holly Kuga, Acting Deputy Assistant Secretary, Regarding Consideration of Scope Exclusion Request and Class or Kind* (July 10, 2003) and the *Preliminary Determination*.

Facts Available

In the preliminary determination, we based the dumping margin for Cablesa on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted for Cablesa because the Department found that the cost information on the record for Cablesa was so incomplete that it could not serve as a reliable basis for reaching a determination. *See Preliminary Determination*.

Since the preliminary determination, Cablesa has responded to two supplemental questionnaires regarding its cost response. However, Cablesa's cost response could not be verified. Therefore, we have determined that the cost information on the record for Cablesa is unreliable and that Cablesa has failed to cooperate by not acting to the best of its ability. As a result, the use of adverse facts available is warranted with respect to Cablesa. *See Memorandum from Holly A. Kuga, Acting Deputy Assistant Secretary, to James J. Jochum, Assistant Secretary for Import Administration, RE: Issues and Decision Memorandum for the Final Determination of the Investigation of Prestressed Concrete Steel Wire Strand from Mexico (Decision Memorandum)*, dated December 1, 2003, at Comment 6 for a discussion of the deficiencies of Cablesa's cost response and the Department's use of adverse facts available.

Our rejection of Cablesa's cost information renders impossible any

price-to-price or price-to-constructed value comparisons. This is consistent with Department practice. *See, e.g.*, *Notice of Final Determination of Sales at Less than Fair Value: Grain-Oriented Electrical Steel from Italy*, 59 FR 33952 (July 1, 1994), *Notice of Final Determination of Sales at Less than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Venezuela*, 67 FR 62119 (October 3, 2002), and *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cut-to-Length Carbon Steel Plate from Mexico*, 64 FR 76, 77–78 (January 4, 1999).

Accordingly, we have assigned to Cablesa the highest margin stated in the notice of initiation for Mexico. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memoranda regarding corroboration of data contained in the petition for assigning facts available rates, dated July 10, 2003.

Critical Circumstances

For the final determination, based on company-specific shipment data submitted to the Department, we have found that critical circumstances do not exist for either Camesa or Cablesa because there were no massive imports with respect to either respondent. We have also found that critical circumstances do not exist for any companies in the ''All Others'' category. *See Memorandum from Daniel O'Brien, International Trade Compliance Analyst, to Gary Taverman, Director, Office 5, Re: Final Negative Determination of Critical Circumstances and Decision Memorandum* at Comment 8. *See, also, Memorandum from Daniel O'Brien and Jim Kemp, International Trade Compliance Analysts, to Gary Taverman, Director, Office 5, Re: Verification of the Sales Response of Cablesa S.A. de C.V. in the Investigation of Prestressed Concrete Steel Wire Strand from Mexico* dated October 7, 2003, at 22–23.

Verification

As provided in section 782(i) of the Act, we conducted verification of the cost and sales information submitted by Camesa and Cablesa. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by parties to this proceeding are listed in the appendix to this notice and addressed in the Decision Memorandum hereby adopted by this notice. The *Decision Memorandum* is on file in room B-099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the World Wide Web at www.ita.doc.gov/import__admin/records/frn. The paper and electronic versions of the *Decision Memorandum* are identical in content.

Changes Since The Preliminary Determination

Based on our findings at verification and our analysis of comments received, we have made adjustments to the preliminary determination calculation methodologies in calculating the final dumping margin for Camesa. These adjustments are discussed in the *Decision Memorandum* for this investigation.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing Customs and Border Patrol (CBP) to continue to suspend liquidation of all entries of PC strand exported from Mexico, that are entered, or withdrawn from warehouse, for consumption on or after the date of the preliminary determination. CBP shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice. Because the Department now determines that critical circumstances do not exist for either respondent, the retroactive suspension of liquidation ordered at the preliminary determination is terminated. CBP shall return all bonds and/or cash deposits posted for entries of PC strand produced and exported by Cablesa during the critical circumstances period (*i.e.* April 18, 2003, to July 17, 2003).

We determine that the following weighted-average dumping margins exist for Mexico:

Manufacturer/exporter	Margin (percent)
Camesa	62.78
Cablesa	77.20
All Others	62.78

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Mexico are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of material injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

Issues Covered in Decision Memorandum

I. ISSUES SPECIFIC TO ACEROS CAMESA

Comment 1: Unverified Movement Expenses
Comment 2: Indirect Selling Expenses
Comment 3: Understatement of Cost of Manufacturing
Comment 4: General and Administrative Expense
Comment 5: Finance Expense

II. ISSUES SPECIFIC TO CABLESA

Comment 6: Reliability of Cost Information
Comment 7: Adjustments to Cost Information
Comment 8: Critical Circumstances new file

[FR Doc. 03–30384 Filed 12–5–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–828]

Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

SUMMARY: We determine that prestressed concrete steel wire strand (PC strand) from India is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: Tisha Loeper-Viti or Martin Claessens at (202) 482–7425 and (202) 482–5451, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from India*, 68 FR 42389 (July 17, 2003) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred:

On July 31, 2003, Tata Iron and Steel Co. Ltd. (TISCO), the sole respondent in this investigation, requested that the Department of Commerce (the Department) postpone its final determination and fully extend the provisional measures by 60 days. On August 18, 2003, the Department published in the **Federal Register** the postponement of the final determination for PC strand from India. *See Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Prestressed Concrete Steel Wire Strand From Brazil, India, and the Republic of Korea*, 68 FR 49436 (August 18, 2003).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through December 31, 2002.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondent, TISCO, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because TISCO failed to provide the detailed cost information requested by the Department. *See Preliminary Determination*, 68 FR at 42390. The failure of the respondent to supply the requested information significantly impedes this proceeding because the Department cannot accurately determine a margin for this party. Furthermore, the respondent did not give an explanation for its failure to supply such information, nor propose alternatives. Therefore, we found that TISCO failed to cooperate by not acting to the best of its ability. We assigned TISCO the highest margin stated in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memorandum regarding Corroboration of Data Contained in the Petition for Assigning Facts Available Rates, dated July 10, 2003. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*. *See Preliminary Determination*, 68 FR at 42390–91. Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available.

No interested parties have commented since the publication of the preliminary determination on the use of adverse facts available in this investigation, or on the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for TISCO. The ''All Others'' rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PC strand exported from India that are entered, or withdrawn from warehouse, for consumption on or after the date of the *Preliminary Determination*. The CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below.

It is generally the Department's practice to decrease the required antidumping duty cash deposit rate by any export subsidies found in a companion countervailing duty investigation based on the presumption that if a respondent benefitted from an export subsidy program, such a subsidy contributed to the lower-priced sales of subject merchandise. This is done to avoid double-application of duties to counteract the same situation. However, in this investigation, TISCO has not cooperated with the Department and has not acted to the best of its ability in providing the Department with necessary information. This has prevented the Department from making its normal determination of whether the subsidies in question may have affected the calculation of the dumping margin. As indicated above, TISCO's margin is based on total adverse facts available, taken from the petition. Insofar as the dumping margin for TISCO is not a calculated margin, there is no way to determine the portion of the dumping margin which is attributable to export subsidies. For that reason, unlike in the preliminary determination, we have not subtracted the amount of any export subsidy from that margin. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Tata Iron and Steel Co. Ltd. (TISCO)	102.07
All Others	83.65

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from India are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30385 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580–852]

Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

SUMMARY: We determine that prestressed concrete steel wire strand (PC strand) from the Republic of Korea (Korea) is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the *Continuation of Suspension of Investigation* section of this notice.

FOR FURTHER INFORMATION CONTACT: Marin Weaver or Christopher Welty at (202) 482–2336 and (202) 482–0186, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from the Republic of Korea*, 68 FR 42393 (July 17, 2003) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred:

On August 4, 2003, Kiswire Ltd. (Kiswire) and Dong-Il Steel Manufacturing Co., Ltd. (Dong-Il), two Korean producers/exporters selected as mandatory respondents, requested that the Department of Commerce (the Department) postpone its final determination and fully extend the provisional measures by 60 days. On August 18, 2003, the Department published in the **Federal Register** the postponement of the final determination for PC strand from Korea. *See Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Prestressed Concrete Steel Wire Strand From Brazil, India, and the Republic of Korea*, 68 FR 49436 (August 18, 2003).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through December 31, 2002.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondents, Kiswire and Dong-Il, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because both of the respondents failed to respond to any part of the antidumping duty questionnaires issued to them by the Department. *See Preliminary Determination*, 68 FR at 42393. The failure of these respondents to supply the requested information significantly impedes this proceeding because the Department cannot accurately determine a margin for these parties. Furthermore, these respondents did not give an explanation for their failure to supply such information, nor propose alternatives. Therefore, we found that Kiswire and Dong-Il failed to cooperate by not acting to the best of their ability. We assigned Kiswire and Dong-Il the highest margin stated in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memorandum regarding Corroboration of Data Contained in the Petition for Assigning Facts Available Rates, dated July 10, 2003. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*. *See Preliminary Determination*, 68 FR at 42394–95. Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available.

No interested parties have commented since the publication of the preliminary determination on the use of adverse facts available in this investigation, or on the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for Kiswire, and Dong-Il. The ''All Others'' rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PC strand exported from Korea that are entered, or withdrawn from warehouse, for consumption on or after the date of the *Preliminary Determination*. The CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Kiswire Ltd.	54.19
Dong-Il Steel Manufacturing Co. Ltd.	54.19
All Others	35.64

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Korea are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30386 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–837]

Notice of Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 8, 2003.

SUMMARY: We determine that prestressed concrete steel wire strand (PC strand) from Brazil is being sold, or is likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are shown in the Continuation of Suspension of Investigation section of this notice.

FOR FURTHER INFORMATION CONTACT: David Layton or Monica Gallardo at (202) 482–0371 and (202) 482–3147, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Case History

The preliminary determination in this investigation was published on July 17, 2003. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Wire Strand from Brazil*, 68 FR 42386 (July 17, 2003) (*Preliminary Determination*). Since the publication of the *Preliminary Determination*, the following events have occurred:

On August 6, 2003, Belgo Bekaert Arames S.A. (BBA), the sole Brazilian producer and mandatory respondent, requested that the Department of Commerce (the Department) postpone its final determination and fully extend the provisional measures by 60 days. On August 18, 2003, the Department published in the **Federal Register** the postponement of the final determination for PC strand from Brazil. *See Notice of Postponement of Final Antidumping Duty Determinations and Extension of Provisional Measures: Prestressed Concrete Steel Wire Strand From Brazil, India, and the Republic of Korea*, 68 FR 49436 (August 18, 2003).

Scope of Investigation

For purposes of this investigation, PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation is January 1, 2002, through December 31, 2002.

Facts Available

In the preliminary determination, we based the dumping margin for the mandatory respondent, BBA, on adverse facts available pursuant to sections 776(a) and 776(b) of the Act. The use of adverse facts available was warranted in this investigation because BBA failed to respond to any part of the antidumping duty questionnaire issued to it by the Department. *See Preliminary Determination*, 68 FR at 42386. The failure of the respondent to supply the requested information significantly impedes this proceeding because the Department cannot accurately determine a margin for this party. Furthermore, the respondent did not give an explanation for its failure to supply such information, nor propose alternatives. Therefore, we found that BBA, failed to cooperate by not acting to the best of its ability. We assigned BBA the highest margin stated in the notice of initiation. *See Notice of Initiation of Antidumping Duty Investigations: Prestressed Concrete Steel Wire Strand From Brazil, India, the Republic of Korea, Mexico, and Thailand*, 68 FR 9050 (February 27, 2003). We corroborated this margin in the preliminary determination and we continue to find this margin corroborated, pursuant to section 776(c) of the Act. *See* Memorandum regarding Corroboration of Data Contained in the Petition for Assigning Facts Available

Rates, dated July 10, 2003. A complete explanation of both the selection and application of facts available can be found in the *Preliminary Determination*. *See Preliminary Determination*, 68 FR at 42387–88. Nothing has changed since the preliminary determination was issued that would affect the Department's selection and application of facts available.

No interested parties have commented since the publication of the preliminary determination on the use of adverse facts available in this investigation, or on the choice of the facts available margin. Accordingly, for the final determination, we are continuing to use the highest margin stated in the notice of initiation for BBA. The ''All Others'' rate remains unchanged as well.

Analysis of Comments Received

We received no comments from interested parties in response to our preliminary determination in this investigation. We did not hold a hearing because none was requested.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of PC strand exported from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of the *Preliminary Determination*. The CBP shall continue to require a cash deposit or the posting of a bond based on the estimated dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following dumping margins exist:

Manufacturer/exporter	Margin (percent)
Belgo Bekaert Arames S.A.	118.75
All Others.	118.75

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. The ITC will determine, within 45 days, whether imports of subject merchandise from Brazil are causing material injury, or threaten material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, this proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This notice also serves as a reminder to parties subject to APO of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–30387 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–831]

Certain Stainless Steel Sheet and Strip in Coils From Taiwan: Extension of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for the final results of the review of stainless steel sheet and strip in coils (''SSSS'') from Taiwan. This review covers the period July 1, 2001 through June 30, 2002.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4243.

Background

On August 27, 2002, the Department published a notice of initiation of a review of SSSS from Taiwan covering the period July 1, 2001 through June 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part,* 67 FR 55000 (August 27, 2002). On August 6, 2003, the Department published the preliminary results of the review. *See Stainless Steel Sheet and Strip in Coils From Taiwan: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review,* 68 FR 46582 (August 6, 2003), (''*Preliminary Results*''). In the *Preliminary Results,* the Department stated that it would make its final determination for the antidumping duty administrative review no later than 120 days after the date of publication of the *Preliminary Results,* or not later than December 4, 2003.

Extension of Time Limit for Preliminary Results

Section 751(a)(3)(A) of the Act states that if it is not practicable to complete the review within the time specified, the administering authority may extend the 120-day period, following the date of publication of the preliminary results, to issue its final results by an additional 60 days. Completion of the final results within the 120-day period is not practicable for the following reasons: (1) This review requires the Department to analyze YUSCO's complex affiliation and corporate relationships; (2) This review involves certain complex issues which were raised by petitioners after the verification and after the preliminary results of review; and (3) The review involves a large number of transactions and complex adjustments.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time period for issuing the final results of review by 43 days until January 16, 2004.

This notice is published in accordance with section 751(a)(3)(A) and 777(i) of the Act.

Dated: December 2, 2003.

Barbara E. Tillman,

Acting Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 03–30390 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–829]

Final Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final affirmative countervailing duty investigation.

SUMMARY: On July 8, 2003, the Department of Commerce (the Department) published in the **Federal Register** its preliminary affirmative determination in the countervailing duty investigation of prestressed concrete steel wire strand (PC strand or subject merchandise) from India for the period April 1, 2001, through March 31, 2002.

The program rates determined in this final determination do not differ from those determined in the preliminary determination. The final net rate for all Indian producers/exporters of subject merchandise is listed below in the ''Suspension of Liquidation'' section of this notice.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2209 or Alicia Kinsey at (202) 482–4793, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The petition in this investigation was filed by American Spring Wire Corp., Insteel Wire Products Company, and Sumiden Wire Products Corp. (collectively, the petitioners). On July 8, 2003, the Department published the preliminary determination. *See Notice of Preliminary Affirmative Countervailing Duty Determination: Prestressed Concrete Steel Wire Strand from India,* 68 FR 40629 (July 8, 2003) (*Preliminary Determination*), which is on file in room B–099 in the Central Records Unit of the main Commerce building (CRU).

In accordance with section 705(a)(1) of the Tariff Act of 1930, as amended (the Act), we aligned this final determination with the final determination in the antidumping duty investigation of PC strand from India. *See Preliminary Determination,* 68 FR 40629, 40631. We invited interested parties to comment on the Department's findings in the *Preliminary Determination.* On August 27, 2003, we received comments from petitioners supporting the Department's preliminary analysis. We received no other comments. This investigation covers all producers/exporters of subject merchandise in India for the period April 1, 2001, through March 31, 2002.

Scope of the Investigation

The merchandise subject to this investigation is prestressed concrete steel wire (PC strand), which is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pre-tensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand.

The merchandise under this investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Analysis of Comments Received

The Department's positions on the subsidy programs addressed in this case are discussed the ''Issues and Decision Memorandum'' (Decision Memorandum) from Holly A. Kuga, Acting Deputy Assistant Secretary, AD/CVD Enforcement II, to James J. Jochum, Assistant Secretary for Import Administration, dated December 1, 2003, which is hereby adopted by this notice. This public memorandum, which is on file in the CRU, also contains the recommended adverse facts available program rates and the adverse facts available total net subsidy rate. A complete version of the Decision Memorandum can be accessed on the World Wide Web at *http://www.ia.ita.doc.gov,* under the heading ''**Federal Register** Notices.'' The paper copy on file in the CRU and the electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 703(b) of the Act, we have calculated the following countervailing duty rate for all Indian producers/exporters of subject merchandise:

Producer/exporter	Net subsidy rate
All producers/exporters.	62.92% *ad valorem*

In accordance with our preliminary affirmative determination, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of prestressed concrete steel wire strand from India, which were entered or withdrawn from warehouse, for consumption on or after July 8, 2003, the date of the publication of our preliminary determination in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the CBP to discontinue the suspension of liquidation for merchandise entered on or after November 5, 2003, but to continue the suspension of liquidation of entries made between July 8, 2003, and November 4, 2003.

If the International Trade Commission (ITC) issues a final affirmative injury determination, we will issue a countervailing duty order, reinstate suspension of liquidation under section 706(a) of the Act for all entries, and require a cash deposit of estimated countervailing duties for such entries of merchandise in the amount indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided that the ITC confirms that it will not disclose such information, either publicly or under an administrative protective order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: December 1, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix I—Issues and Decision Memorandum

Summary

Methodology and Background Information

I. Use of Facts Available
II. Programs Determined to Confer Subsidies
A. Government of India Programs
1. Pre-shipment and Post-shipment Export Financing
2. Duty Entitlement Passbook Scheme (DEPS)
3. Export Promotion Capital Goods Scheme (EPCGS)
4. Loans From the Steel Development Fund (SDF)
5. Exemption of Export Credit From Interest Taxes
6. Advance Licenses
7. Income Tax Exemption Scheme (Section 80 HHC)
8. Loan Guarantees From the GOI
B. State of Maharashtra (SOM) Programs
1. Sales Tax Incentives
2. Capital Incentive Scheme
3. Electricity Duty Exemption Scheme
4. Octroi Refund Scheme
5. Exemption of Sales and Purchase Taxes for Certain Investments Related to Automobiles or Automobile Components
C. Program in the State of Bihar
1. Sales Tax Incentives
D. Programs in the State of Jharkhand
1. Sales Tax Incentives
2. Captive Electricity Generative Plant Subsidy
3. Interest Subsidy
4. Stamp Duty and Registration
5. Pollution Control Equipment Subsidy
6. Mega Units
7. Captive Electricity Tax Exemptions
E. Program in the State of Gujarat
1. Sales Tax Incentives
III. Total Ad Valorem Rate
IV. Recommendation

[FR Doc. 03–30389 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review.

SUMMARY: On November 24, 2003, the Canadian Wheat Board filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final results of the Injury determination made by the United States International Trade Commission, respecting Hard Red Spring Wheat from Canada. This determination was published in the **Federal Register**, (68 FR 60707) on October 23, 2003. The NAFTA Secretariat has assigned Case Number USA–CDA–2003–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement (''Agreement'') establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* (''Rules''). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on November 24, 2003, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is December 24, 2003);

(b) a Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is January 8, 2004); and

(c) the panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: December 1, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–30362 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112503B]

Draft Strategic Plan for Fisheries Research (2004)

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

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of and seeks public comment on the draft NMFS Strategic Plan for Fisheries Research (2004). The Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) requires the Secretary of Commerce to develop, triennially, a strategic plan for fisheries research for the subsequent years. Any written comments on the draft plan will be considered by NMFS in the development of the final NMFS Strategic Plan for Fisheries Research (2004).

DATES: Comments on the draft NMFS Strategic Plan for Fisheries Research (2004) will be accepted on or before January 7, 2004.

ADDRESSES: Comments on and requests for copies of the draft NMFS Strategic Plan for Fisheries Research (2004) should be directed to Mark Chandler, Research, Analysis, and Coordination Division, Office of Science and Technology, NMFS, NOAA, 1315 East-West Highway, Silver Spring, MD 20910. PHONE: (301) 713–2363. FAX: (301) 713–1875.

Electronic Access: The draft NMFS Strategic Plan for Fisheries Research (2004) may be reviewed in its entirety

on the World Wide Web at http://www.st.nmfs.gov/st2/index.html

FOR FURTHER INFORMATION CONTACT: Mark Chandler at 301–713–2363 ext. 152, e-mail: Mark.Chandler@noaa.gov

SUPPLEMENTARY INFORMATION: Section 404 of the MSFCMA requires the Secretary of Commerce to publish in the **Federal Register** a strategic plan for fisheries research for the 5 years immediately following it's publication. The MSFCMA requires that the plan address four major areas of research: (1) Research to support fishery conservation and management; (2) conservation engineering research; (3) research on the fisheries; and (4) information management research. The MSFCMA specifies that the plan shall contain a limited number of priority objectives for each of these research areas; indicate goals and timetables; provide a role for commercial fishermen in such research; provide for collection and dissemination of complete and accurate information concerning fishing activities; and be developed in cooperation with the Councils and affected states.

This draft plan is based upon and entirely consistent with the overarching NOAA Fisheries Strategic Plan (NFSP) recently released in July 2003. The objectives under each goal in the draft NMFS Strategic Plan for Fisheries Research (2004) correspond to strategies in the NFSP.

The scope of the NMFS Strategic Plan for Fisheries Research (2004) is solely fisheries research to support the MSFCMA. It does not include the regulatory and enforcement components of the NMFS mission. NMFS currently conducts a comprehensive program of fisheries research and involves industry and others interested in fisheries in planning and implementing its objectives.

NMFS intends that the final version of the NMFS Strategic Plan for Fisheries Research (2004) will take advantage of information and recommendations from all interested parties. Therefore, comments and suggestions on this draft NMFS Strategic Plan for Fisheries Research are hereby solicited from the public, other concerned government agencies, the scientific community, industry, and any other person.

Dated: November 25, 2003.

Dr. William Fox, Jr.,

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 03–30381 Filed 12–5–03; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95)(44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed renewal of its AmeriCorps*NCCC Team Leader Application, OMB Control Number 3045–0005. This application is used to collect information that will be used by AmeriCorps*NCCC staff in the evaluation and selection of Team Leaders.

Copies of the information collection requests can be obtained by contacting the office listed in the address section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by February 6, 2004.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, AmeriCorps*National Civilian Community Corps; Attention Mr. John Hourihan, Program Officer; Room 9412–D, 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 565–2791, Attention Mr. John Hourihan, Program Officer.

(4) Electronically through the Corporation's e-mail address system: *JHourihan@cns.gov.*

FOR FURTHER INFORMATION CONTACT: John Hourihan, (202) 606–5000, ext. 189, or by e-mail at *JHourihan@cns.gov.*

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submissions of responses).

Background

The Team Leader Application is completed by applicants who wish to serve as Team Leaders at AmeriCorps*NCCC regional campuses.

Current Action

The Corporation seeks to renew and revise the current application. When revised, the application will include additional information concerning loan deferrment, campus schedules, and the number of Team Leaders required. The application will otherwise be used in the same manner as the existing application. The Corporation also seeks to continue using the current application until the revised application is approved by OMB. The current application is due to expire on October 31, 2004.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*NCCC Team Leader Application.

OMB Number: 3045–0005.

Agency Number: None.

Affected Public: Citizens of diverse ages and backgrounds who are committed to national service.

Total Respondents: 500.

Frequency: Bi-Annually.

Average Time Per Response: Two hours.

Estimated Total Burden Hours: 2,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 1, 2003.

Merlene Mazyck,

*Acting Director, AmeriCorps*National Civilian Community Corps.*

[FR Doc. 03–30320 Filed 12–5–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the Office of the Secretary of the Army

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: December 1, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army, Office of the Secretary of the Army, are:

1. Mr. William A. Armbruster, Deputy Assistant Secretary of the Army for Privatization and Partnership, Office of the Assistant Secretary of the Army (OASA) (Installations and Environment).
2. Mr. Frederick R. Budd, Director, Single Agency Manager for Pentagon Information Technology Services, Office of the Secretary.
3. Mr. William H. Campbell, Director of Operations and Support, OASA (Financial Management and Comptroller).
4. Dr. Craig E. College, Deputy Assistant Secretary of the Army (Infrastructure Analysis), OASA (Installations and Environment).
5. Mr. James C. Cooke, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.
6. Mr. Thomas Druzgal, Deputy Auditor General, Army Audit Agency.
7. Mr. George S. Dunlop, Deputy Assistant Secretary of the Army (Legislation), OASA (Civil Works).
8. Mr. Raymond J. Fatz, Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, OASA (Installations and Environment).
9. Mr. Patrick J. Fitzgerald, Director, Audit Policy Plans and Resources, Army Audit Agency.
10. Mr. Ernest J. Gregory, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller).
11. Ms. Judith A. Guenther, Director of Investments, OASA (Financial Management and Comptroller).
12. MG Lynn Hartsell, Director, Army Budget, OASA (Financial Management and Comptroller).
13. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.
14. Dr. Daphne K. Kamely, Special Assistant to the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, OASA (Installations and Environment).
15. Mr. Stephen E. Keefer, Director, Logistical and Financial Audits, Army Audit Agency.
16. Mr. Thomas E. Kelly, III, Special Assistant to the Secretary of the Army for Science and Technology, Office of the Secretary.
17. Mr. Wesley C. Miller, Director of Management and Control, OASA (Financial Management and Comptroller).
18. Ms. Joyce E. Morrow, Director, Acquisition and Force Management, Army Audit Agency.
19. BG Roger A. Nadeau, Program Executive Officer, Combat Support/Combat Service Support.
20. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition), Office of the General Counsel.
21. Ms. Tracey L. Pinson, Director of Small and Disadvantaged Business Utilization, Office of the Secretary.
22. Mr. Geoffrey G. Prosch, Principal Deputy Assistant Secretary of the Army (Installation and Environment).
23. Mr. Mat Reres, Deputy General Counsel (Ethics and Fiscal), Office of the General Counsel.
24. Ms. Sandra R. Riley, Deputy Administrative Assistant to Secretary of the Army, Office of the Secretary.
25. Mr. Richard G. Sayre, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.
26. Mr. Karl F. Schneider, Deputy Assistant Secretary of the Army (Army Review Boards Agency), Office of the Director.
27. Mr. Matthew L. Scully, Director of Business Resources, OASA (Financial Management and Comptroller).
28. Mr. C. Russell Shearer, Special Assistant to the Assistant Secretary of the Army (Installations and Environment).
29. LTG Jerry L. Sinn, Military Deputy for Budget, OASA (Financial Management and Comptroller).
30. Mr. Douglas Sizelove, Assistant Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary.
31. Mr. James J. Smyth, Deputy Assistant Secretary of the Army (Project Planning and Review), OASA (Civil Works).
32. Mr. Earl H. Stockdale, Jr., Deputy General Counsel (Civil Works and Environment), Office of the General Counsel.
33. Mr. Thomas W. Taylor, Senior Deputy General Counsel, Office of the General Counsel.
34. Ms. Claudia L. Tornblom, Deputy Assistant Secretary of the Army (Management and Budget), OASA (Civil Works).
35. Ms. Carla a. Von Bernewitz, Director, Business Transformation Task Force, Office of the Under Secretary.
36. MG David F. Wherely, Jr., Director, District of Columbia National Guard.
37. Mr. Joseph W. Whitaker, Jr., Office, Deputy Assistant Secretary of the Army (Installations & Housing).
38. Mr. Avon N. Williams, Principal Deputy General Counsel, Office of the General Counsel.
39. Mr. Robert J. Winchester, Assistant for Intelligence Liaison, Office, Chief of Legislative Liaison.
40. Mr. Gary L. Winkler, Director for Enterprise Management, Office of the Chief Information Officer/G–6.
41. Mr. Robert W. Young, Deputy for Coast Analysis, OASA (Financial Management and Comptroller).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–30365 Filed 12–5–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership for the U.S. Army Corps of Engineers

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

EFFECTIVE DATE: December 3, 2003.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. MG Robert Griffin (Chair), Deputy Chief of Engineers and Deputy Commanding General.

2. Dr. James Houston, Director, Engineer Research and Development Center.

3. BG Robert Crear, Commander, Southwestern Division.

4. Mr. Thomas F. Caver, Deputy Director, Directorate of Civil Works.

5. Ms. Patricia Rivers, Chief Environmental Division, Directorate of Military Programs.

6. Mr. Stephen Coakley, Director of Resource Management.

7. Mr. Steven Stockton, Civil Works and Management Director, South Pacific Division.

8. Mr. Frank Oliva, Civil Works and Technical Director, Pacific Ocean Division.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–30366 Filed 12–5–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Friday, December 12, 2003, from 8:30 a.m. to 11:15 a.m. The closed Executive Session will be on Friday, December 12, 2003, from 11:15 a.m. to 12 p.m.

ADDRESSES: The meeting will be held at the U.S. Naval Academy, Annapolis, Maryland in the Bo Coppedge dining room of Alumni Hall.

FOR FURTHER INFORMATION CONTACT: Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: December 3, 2003.

J.T. Baltimore,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 03–30424 Filed 12–5–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 7, 2004.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Melanie Kadlic, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503, or should be electronically mailed to the Internet address *Melanie_Kadlic@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.,* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: December 2, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Application for Strengthening Historically Black Colleges and Universities Program and Historically Black Graduate Institutions.

Frequency: Phase I Annually; Phase II every 5 years.

Affected Public: Not-for-profit institutions; State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 117

Burden Hours: 889

Abstract: The information is required of institutions of higher education designated as Historically Black Colleges and Universities and Qualified Graduate Programs, Title III, Part B of the Higher Education Act of 1965, as amended. This information will be used for the evaluation process to determine whether proposed activities are consistent with the legislation and to determine dollar share of congressional appropriation.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2339. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651, or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–30331 Filed 12–5–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–24–001]

Algonquin Gas Transmission Company; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in appendix A of the filing, to be effective on October 10, 2003.

Algonquin states that it is making this filing pursuant to an order issued by the Commission in the above referenced docket on November 7, 2003, 105 FERC § 61,180. The November 7, 2003 Order accepted the tariff sheets listed in the Appendix to that order subject to Algonquin submitting within 20 days, tariff sheets reflecting revised rates for service pursuant to Rate Schedules AFT–1(X–38) and AFT–CL(X–37), as well as new interruptible rates, rate schedules and a pro forma service agreement for service to the Manchester Street and Brayton Point facilities on an interruptible basis. Algonquin contends that the November 26 filing includes revised rates for AFT–1(X–38) and AFT–CL(X–37) service, and new Rate Schedule AIT–2 rates, as well as corresponding statements, schedules, and work papers that support theses rates.

Algonquin states that pursuant to the Commission's Notice of Extension of Time, issued November 21, 2003, in the above referenced docket, it will file the required Statement P testimony to supplement the data filed in this application on or before December 12, 2003. The comment period for this case filed on November 26, 2003 expires December 8, 2003 (*See* 18 CFR 154.210). However, since Algonquin was granted an extension of time to complete its application, filing the required Statement P testimony on or before December 12, interveners will then have seven days from the Statement P filing, until December 19, 2003, in which to supplement their interventions based upon the Statement P testimony which completes Algonquin's application.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 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 ''e-library''. 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. E3–00466 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–77–000]

Alliance Pipeline L.P.; Notice of Proposed Change in FERC Gas Tariff

December 2, 2003.

Take notice that on November 26, 2003, Alliance Pipeline L.P. (Alliance) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2004:

First Revised Sheet No. 300
First Revised Sheet No. 301

Alliance states that it is submitting the referenced revised tariff sheets to revise the pro forma Form of Firm Transportation Agreement set forth in its FERC Gas Tariff to insert certain blanks to better permit comparison with its negotiated rate agreements and to ensure that there is no material deviation between its negotiated rate agreements and the pro forma Firm Transportation Agreement.

Alliance states that copies of its filing have been mailed to all customers, state commissions, and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00473 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–75–000]

CenterPoint Energy Gas Transmission Company; Notice of Credit Report

December 2, 2003.

Take notice that on November 25, 2003, CenterPoint Energy Gas Transmission Company (CEGT) tendered for filing its first annual report of penalty revenue credits, covering such activity during the twelve month reporting period ended July 31, 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 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: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00471 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–71–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 25, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on appendix A to the filing, bearing a proposed effective date of January 1, 2004.

CIG states that these tariff sheets enhance the service provided under CIG's Rate Schedule NNT–1 by providing for hourly delivery transfers, revising the hourly overrun calculation process, increasing supply eligibility for short notice diversions, and expanding the types of delivery points eligible for flexible services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00467 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–72–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 25, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 300 bearing a proposed effective date of January 1, 2004.

CIG states the tendered tariff sheet provides for the posting of storage inventory levels on its electronic bulletin board.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary''. Enter the docket number excluding the

last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00468 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–74–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Filing

December 2, 2003.

Take notice that on November 25, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Thirtieth Revised Sheet No. 11A, to become effective January 1, 2004.

CIG states the tariff sheet is being filed to revise the Fuel Reimbursement Percentages applicable to Lost, Unaccounted-For and Other Fuel Gas. CIG further states that the tendered tariff sheet is proposed to become effective January 1, 2004.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00470 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–73–000]

El Paso Natural Gas Company; Notice of Proposed Changesin FERC Gas Tariff

December 2, 2003.

Take notice that on November 25, 2003, El Paso Natural Gas Company (El Paso) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective January 1, 2004:

Second Revised Volume No. 1–A

Twenty-Eighth Revised Sheet No. 20
Fifth Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22
Twenty-Seventh Revised Sheet No. 23
Thirty-Fifth Revised Sheet No. 24
Twenty-Eighth Revised Sheet No. 26
Twenty-Eighth Revised Sheet No. 27
Second Revised Sheet No. 113D
Seventh Revised Sheet No. 117
Ninth Revised Sheet No. 118
Second Revised Sheet No. 118A

Third Revised Volume No. 2

Fifty-Fourth Revised Sheet No. 1–D.2
Forty-Eighth Revised Sheet No. 1–D.3

El Paso states that the above tariff sheets are being filed to adjust its Base Rates and Effective Unit Rates for inflation in accordance with its tariff, and to update the Partial Demand Charge Credit.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00469 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–80–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 26, 2003, El Paso Natural Gas Company (EPNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1A, the following tariff sheets bearing a proposed effective date of January 1, 2004.

Tenth Revised Sheet No. 256
Tenth Revised Sheet No. 257
First Revised Sheet No. 257A

EPNG states the tendered tariff sheets update the identification of low and high load factor shippers for assessing Gas Research Institute surcharges.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00476 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–82–000]

Gas Transmission Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

December 2, 2003.

Take notice that on November 26, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, First Revised Sheet No. 225, with an effective date of December 26, 2003.

GTN states that this sheet is being filed to amend GTN's list of acceptable discount transactions to allow for the use of basis differentials in the pricing of discounted rate transactions.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00478 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–84–000]

Gas Transmission Northwest Corporation; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Gas Transmission Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–A, First Revised Sheet No. 6, with an effective date of January 1, 2004.

GTN states that the purpose of this filing is to comply with Paragraph 37 of the General Terms and Conditions of its Tariff, ''Adjustment Mechanism for Fuel, Line Loss, and Other Unaccounted For Gas Percentages.''

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00480 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–017]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rates

December 2, 2003.

Take notice that on November 25, 2003, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8N, reflecting an effective date of November 1, 2003. Gulfstream states that it also filed a Service Agreement and Negotiated Rate Letter Agreement.

Gulfstream states that this filing is being made to implement a negotiated rate transaction under Rate Schedule FTS pursuant to section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original SheetNo. 8N identifies and describes the negotiated rate agreement, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract term, and the contract quantity. Gulfstream also states that Sheet 8N includes footnotes where necessary to provide further details on the agreement listed thereon.

Gulfstream states that it has identified this transaction as non-conforming, but Gulfstream submits that it does not pose a risk for undue discrimination.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00465 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–78–000]

Overthrust Pipeline Company; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Overthrust Pipeline Company (Overthrust) tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1–A , the following tariff sheets, to be effective January 1, 2004:

Sixth Revised Sheet No. 60
Sixth Revised Sheet No. 61
Third Revised Sheet No. 61A
Second Revised Sheet No. 62
Second Revised Sheet No. 63
Third Revised Sheet No. 64
Third Revised Sheet No. 65

Overthrust states it is proposing to update the Measurement section of its tariff to comport with current industry measurement standards and practices.

Overthrust 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. 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. E3–00474 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04-79-000]

Southern Natural Gas Company; Notice of Tariff Filing

December 2, 2003.

Take notice that on November 26, 2003, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets, to become effective January 1, 2004:

Sixtieth Revised Sheet No. 14
Eighty-first Revised Sheet No. 15
Sixtieth Revised Sheet No. 16
Eighty-first Revised Sheet No. 17
Forty-fourth Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00475 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–76–000]

Southern Star Central Gas Pipeline, Inc; Notice of Filing of Cash-Out-Report

December 2, 2003.

Take notice that on November 25, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star) tendered for filing its report of net cash out activity.

Southern Star states that pursuant to the cash-out mechanism contained in Section 9.9(a)(iv) of Southern Star's tariff, Shippers are given the option of resolving their imbalances by the end of the calendar month following the month in which the imbalance occurred by cashing out such imbalances at 100% of the spot market price applicable to Southern Star as published in the first issue of Inside FERC's Gas Market Report for the month in which the imbalance occurred.

Southern Star states that a copy of its filing was served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with 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: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00472 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–83–000]

Tennessee Gas Pipeline Company; Notice of Filing and Request for Waiver

December 2, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing a current accounting of Tennessee's take-or-pay transition costs and a request for waiver of the requirement that Tennessee restate its take-or-pay transition surcharges.

Tennessee states that this filing of the current accounting is in compliance with Article XXV of the General Terms and Conditions of its FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee further states that the request for waiver is based on the fact that Tennessee has not incurred any recoverable take-or-pay costs since its last filing on May 30, 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 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: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00479 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–81–000]

Tennessee Gas Pipeline Company; Notice of Cashout Report

December 2, 2003.

Take notice that on November 26, 2003, Tennessee Gas Pipeline Company (Tennessee), tendered for filing its Cashout Report for the September 2002 through August 2003 Period.

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 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.

Comment Date: December 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00477 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–29–000, et al.]

Bayou Cove Peaking Power LLC, et al.; Electric Rate and Corporate Filings

December 1, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Bayou Cove Peaking Power LLC and Entergy Gulf States, Inc.

[Docket No. EC04–29–000]

Take notice that on November 24, 2003, Bayou Cove Peaking Power LLC (Bayou Cove) and Entergy Gulf States, Inc. (Entergy Gulf States) (collectively, Applicants), tendered for filing with the Commission, pursuant to Section 203 of the Federal Power Act and Part 33 of the Commission's regulations, an application to transfer a substation from Bayou Cove to Entergy Gulf States pursuant to a previously-approved Interconnection and Operating Agreement.

Comment Date: December 15, 2003.

2. New York Independent System Operator, Inc.

[Docket No. ER01–3001–007]

Take notice that on November 24, 2003, the New York Independent System Operator, Inc. (NYISO) submitted further information regarding the relationship of demand response programs and the price of wholesale electricity in New York in compliance with the Commission's October 24, 2003 Order in Docket No. ER01–3001–006. The NYISO states it has served a copy of this filing upon all parties that have executed service agreements under the NYISO's Open Access Transmission Tariff and Market Administration and Control Area Services Tariff.

Comment Date: December 11, 2003.

3. Midwest Independent Transmission System Operator, Inc.

[Docket No. EC04–29–000]

Take notice that on November 24, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) corrected its November 21, 2003 compliance filing concerning Schedule 10–FERC (FERC Annual Charges Recovery) of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1.

The Midwest ISO has requested the original effective date of September 1, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that 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 and in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading ''Filing to FERC'' for other interested parties in this matter. The Midwest ISO states that it will provide hard copies to any interested parties upon request.

Comment Date: December 11, 2003.

4. Sempra Energy Trading Corp.

[Docket Nos. ER03–1413–001]

Take notice that on November 24, 2003, Sempra Energy Trading Corp. (SET) submitted for filing a revised rate schedule, modifying the rate schedule submitted on September 26, 2003 in the above-referenced docket.

Comment Date: December 11, 2003.

5. Watt Works LLC

[Docket No. ER04–98–001]

Take notice that on November 14, 2003, Watt Works LLC filed an amendment to its October 29, 2003 Notice of Cancellation. Watt Works LLC is requesting an effective date of October 22, 2003.

Comment Date: December 5, 2003.

6. PJM Interconnection, L.L.C.

[Docket No. ER04–173–000]

Take notice that on November 24, 2003, PJM Interconnection, L.L.C. (PJM), amended its November 6, 2003 filing in this docket to add two sheets to the Sixth Revised Volume No. 1 of the PJM Tariff that were included in the Fifth Revised Volume No. 1 of the PJM Tariff but inadvertently omitted from the Sixth Revised Volume No. 1 version of the PJM Tariff when it was initially filed on March 20, 2003 in Docket No. RT01–2–006.

PJM requests waiver of the Commission's notice regulations to permit an effective date of March 20, 2003, the initial effective date of the Sixth Revised Volume No. 1 version of the PJM Tariff.

PJM states that copies of this filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding, all PJM members, and each state electric utility regulatory commission in the PJM region.

Comment Date: December 11, 2003.

7. Southern California Edison Company

[Docket No. ER04–216–000]

Take notice that on November 24, 2003, Southern California Edison Company (SCE) tendered for filing revised rate sheets (Revised Sheets) to the Interconnection Facilities Agreement (Interconnection Agreement) and the Service Agreement for Wholesale Distribution Service (Service Agreement) between the City of Colton (Colton)and SCE. SCE states that the Revised Sheets reflect the parties(agreement to extend the term of service in the Service Agreement to twenty-five (25) years from the commencement date of Distribution Service under the Service Agreement, and to delete all references to the cost responsibility of the circuit breakers by Colton in the Interconnection Agreement.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: December 11, 2003.

8. NorthWestern Energy

[Docket No. ER04–217–000]

Take notice that on November 24, 2003, NorthWestern Energy (NWE) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, as a change in rate schedule, Supplements to Rate Schedule FERC No. 175, the General Transfer Agreement between NWE and the Bonneville Power Administration (Bonneville).

NWE states that a copy of the filing was served upon Bonneville.

Comment Date: December 11, 2003.

9. Griffin Energy Marketing, LLC

[Docket No. ER04–218–000]

Take notice that on November 24, 2003, Griffin Energy Marketing, LLC (Griffin Energy) tendered for filing a Notice of Cancellation of its market-based rate tariff, with a requested effective date of November 20, 2003.

Comment Date: December 11, 2003.

10. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER04–221–000]

Take notice that on November 24, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered for filing Amendments to First Revised Service Agreement Nos. 1 through 6 to its FERC Electric Tariff, Volume No. 1. The amendment provides for a rate rebate for the calendar year 2003 to each of Deseret's six Member Cooperatives. Deseret requests an effective date of December 1, 2003.

Deseret states that copies of this filing were served upon Deseret's six Member Cooperatives.

Comment Date: December 11, 2003.

11. CPV Milford, LLC

[Docket No. ER04–222–000]

Take notice that on November 24, 2003, CPV Milford, LLC tendered for filing an application for authorization to sell energy, capacity, and ancillary services and to provide asset management services at market-based rates pursuant to Section 205 of the Federal Power Act.

Comment Date: December 11, 2003.

12. PJM Interconnection, L.L.C.

[Docket No. RT01–2–012]

Take notice that on November 24, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to portions of Schedule 6 of the PJM Operating Agreement, PJM's Regional Transmission Expansion Planning Protocol. PJM states that the proposed amendments are submitted to comply with the Commission's Order in this proceeding dated October 24, 2003.

PJM states that copies of this filing have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Comment Date: December 11, 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. E3–00483 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–124–001, et al.]

Southwestern Power Administration, et al.; Electric Rate and Corporate Filings

November 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Southwestern Power Administration v. Entergy Arkansas, Inc., Entergy Services, Inc.

[Docket Nos. EL03–124–001 and ER03–843–001]

Take notice that on November 14, 2003, Entergy Services, Inc. (Entergy), as agent for Entergy Arkansas, Inc. (EAI) filed a settlement between EAI and Southwestern Power Administration (Southwestern) which resolves their disputes with respect to Contract DE–PM75–94SW00246–M002.

Comment Date: December 5, 2003.

2. Cogeneration National Corporation

[Docket No. EG04–18–000]

On November 21, 2003, Cogeneration National Corporation (GNC) filed with the Commission pursuant to part 365 of the Commission's regulations an application for a determination of exempt wholesale generator (EWG) status as of the date of the Application. CNG states that it is a corporation duly organized under the laws of California. CNG further states that it is an indirect owner of a partial interest in a 44–MW coal-fueled cogeneration eligible facility located in Stockton, California.

Comment Date: December 12, 2003.

3. CNC/SEGS, Inc.

[Docket No. EG04–19–000]

On November 21, 2003, CNC/SEGS, Inc. (CNC/SEGS) filed with the Commission pursuant to Part 365 of the Commission's regulations an application for a determination of exempt wholesale generator (EWG) status as of the date of the Application. CNC/SEGS states that it is a corporation duly organized under the laws of California. CNC/SEGS further states that it is an indirect owner of a partial interest in a solar-powered small power production facility located near Kramer Junction, California.

Comment Date: December 12, 2003.

4. Southern Company Services, Inc.

[Docket No. ER02–851–013]

Take notice that on November 21, 2003, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies), submitted a compliance filing related to the Commission's March 27, 2002 order, 98 FERC ¶ 61,328 (2002), its October 3, 2003 order, 105 FERC ¶ 61,019 (2003), and the Settlement filed on June 18, 2003.

Comment Date: December 12, 2003.

5. The United Illuminating Company

[Docket No. ER03–31–003]

Take notice that on November 21, 2003, The United Illuminating Company (UI) submitted for fling with the Federal Energy Regulatory Commission (Commission) a revised Interconnection Agreement between UI and Cross-Sound Cable Company, L.L.C., pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended. UI states that the filing is submitted in compliance with the Commission's October 22, 2003 Order on Rehearing and Compliance Filing, 105 FERC ¶ 61,092 (2003).

Comment Date: December 12, 2003.

6. California Independent System Operator Corporation

[Docket No. ER03–1046–002]

Take notice that on November 21, 2003, the California Independent System Operator Corporation (ISO) submitted a compliance filing in response to the Commission's order issued October 22, 2003 concerning Amendment No. 54 to the ISO Tariff, 105 FERC ¶ 61,091 (2003).

The ISO states that the compliance filing has been served on all parties to this proceeding.

Comment Date: December 12, 2003.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1277–001]

Take notice that on November 21, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing revisions to Schedule 10–FERC of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's October 28, 2003 Order issued in Docket No. ER03–1277–000, 105 FERC ¶ 61,144 (2003). The Midwest ISO an effective date of September 1, 2003.

The Midwest ISO states that 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 ISO 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: December 12, 2003.

8. NEGT Energy Trading—Power, L.P.

[Docket No. ER04–69–001]

Take notice that on November 21, 2003, NEGT Energy Trading—Power, L.P. amended its October 23, 2003 filing in Docket No. ER04–69–000 to correct the effective date of its Fourth Revised FERC Electric Rate Schedule No. 1. The proposed effective date is October 24, 2003.

Comment Date: December 12, 2003.

9. University Park Energy, LLC

[Docket No. ER04–212–000]

Take notice that on November 21, 2003, University Park Energy, LLC (University Park) tendered for filing, pursuant to Section 205 of the Federal Power Act, as FERC Electric Tariff, Original Volume No. 2 a Black Start Service Agreement by and between University Park and Commonwealth Edison Company (ComEd) pursuant to which University Park will provide Black Start service to ComEd from its

300 MW natural gas-fired generating facility located in University Park, Illinois.

University Park states that a copy of this filing was mailed to ComEd and the Illinois Commerce Commission.

Comment Date: December 12, 2003.

10. AK Electric Supply LLC

[Docket No. ER04–213–000]

Take notice that on November 21, 2003, AK Electric Supply LLC (AK) petitioned the Commission for acceptance of WCW Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

AK states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. AL further states that it is not in the business of generating or transmitting electric power.

Comment Date: December 12, 2003.

11. WCW International, Inc.

[Docket No. ER04–214–000]

Take notice that on November 21, 2003, WCW International, Inc. (WCW) petitioned the Commission for acceptance of WCW Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

WCW states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. WCW further states that it is not in the business of generating or transmitting electric power.

Comment Date: December 12, 2003.

12. Pacific Gas and Electric Company

[Docket No. ER04–215–000]

Take notice that on November 21, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing the Small Facilities Authorization Letter No. 6, submitted pursuant to the Procedures for Implementation (Procedures) ofSection 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). PG&E states that this is PG&E's fifth quarterly filing submitted pursuant to section 4 of the Procedures, which provides for the quarterly filing of Facilities Authorization Letters. PG&E has requested certain waivers.

PG&E states that copies of this filing have been served upon the City, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: December 12, 2003.

13. NEO California Power LLC

[Docket No. ER04–220–000]

Take notice that on November 21, 2003, NEO California Power LLC (NEO California) tendered for filing Schedule A (Contract Service Limits for the 2004 Contract Year), associated with a Must-Run Service Agreement (RMR Agreement) between NEO California and the California Independent System Operator Corporation.

Comment Date: December 12, 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. E3–00482 Filed 12–05–03; 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

December 2, 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.:* 1971–079.

c. *Date Filed:* July 21, 2003.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Hells Canyon Hydropower Project.

f. *Location:* On the Snake River in Washington and Adams, Counties, Idaho; and Wallowa and Baker Counties, Oregon. About 5,270 acres of federal lands administered by the Forest Service and the Bureau of Land Management (Payette and Wallowa-Whitman National Forests and Hells Canyon National Recreational Area) are included within the project boundary.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert W. Stahman, Vice President, Secretary, and General Counsel, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707.

i. *FERC Contact:* Alan Mitchnick, (202) 502–6074, *alan.mitchnick@ferc.gov*; Emily Carter, (202) 502–6512, *emily.carter@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 existing Hells Canyon Project consists of three developments: Brownlee Development consists of a 395-foot-high earth and rockfill dam, a 14,621-acre impoundment, and a powerhouse with five generating units producing 585.4 megawatts (MW); Oxbow Development consists of a 209-

foot-high earth and rockfill dam, a 1,150-acre impoundment, and a powerhouse with four generating units producing 460 MW; and Hells Canyon Development consists of a 320-foot-high concrete gravity dam, a 2,412-acre impoundment, and a powerhouse with three generating units producing 391.5 MW. Idaho Power also operates four fish hatcheries and four adult fish traps. Idaho Power proposes to exclude 11 of 12 existing transmission lines from the project.

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.

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.

o. With this notice, we are initiating consultation with the Oregon 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00462 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–7387–019]

Erie Boulevard Hydropower, L.P.; Notice of Settlement Agreement and Soliciting Comments

December 2, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* P–7387–019.

c. *Date filed:* October 20, 2003.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Piercefield Hydroelectric Project.

f. *Location:* On the Raquette River, in St. Lawrence and Franklin Counties, New York. The project does not occupy federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Jerry L. Sabattis, P.E., Licensing Coordinator, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2787 and Mr. Samuel S. Hirschey, P.E., Manager, Licensing, Compliance, and Project Properties, 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2790.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.gov* (202) 502–8675 or Kim Carter, *kim.carter@ferc.gov* (202) 502–6486.

j. *Deadline for filing comments:* The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the 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 interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments 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. Erie Boulevard Hydropower, L.P. (Erie Boulevard) filed the Piercefield Project Settlement Agreement on behalf of itself and the Adirondack Council, Adirondack Mountain Club, Adirondack Park Agency, American Rivers, American Whitewater, New York Rivers United, New York State Conservation Council, New York State Department of Environmental Conservation, St. Lawrence County, Town of Altamont, Town of Piercefield, U.S. Fish and Wildlife Service, and the National Park Service. The Settlement Agreement is intended to resolve, among the signatories, all issues related to Erie Boulevard's pending Application for New License for the Piercefield Hydroelectric Project, including daily and seasonal impoundment fluctuations, fish movement and protection, baseflow, and recreation. Erie Boulevard requests that the Commission accept and incorporate, into any new license issued for the project, the protection, mitigation, and enhancement measures stated in Section 3.0 of the Settlement Agreement.

l. A copy of the settlement agreement 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 at1–866–208–3676, 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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00463 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Ferc Staff Participation at Oms Board Meeting, Miso Advisory Committee Meetings, and Miso Board of Director Meetings

December 2, 2003.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will attend the December 11, 2003 Organization of MISO States, Inc. (OMS) Board meeting, calendar year 2004 monthly Midwest Independent Transmission System Operator, Inc. (MISO) Advisory Committee meetings and calendar year 2004 monthly MISO Board of Director meetings. The staff's attendance is part of the Commission's ongoing outreach efforts.

The OMS Board meeting will be held on December 11, 2003—from 10:30 am to 3:00 pm. It will be held at the Lakeside Corporate Center (directly across from MISO's headquarters), 630 West Carmel Drive, Carmel IN 46032

The MISO Advisory Committee meetings for 2004 will be held on January 14, February 18, March 17, April 14, May 19, June 16, July 14, August 18, September 15, October 20, November 17, and December 8, 2004—beginning at 10 am. The Advisory Committee meetings for 2004 will be held at the Lakeside Corporate Center (directly across from MISO's headquarters), 630 West Carmel Drive, Carmel IN 46032.

The MISO Board of Director meetings will be held on January 15, February 19, March 18, April 15, May 20, June 17, July 15, August 19, September 16, October 21, November 18, and December 9, 2004—beginning at 8:30 am. The Board of Director meetings for 2004 will be held at MISO's headquarters, 701 City Center Drive, Carmel, IN 46032.

These meetings are open to the public. The meetings may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; in Docket No. EL02–65–000, *et al.,* Alliance Companies, *et al.*; in Docket No. RT01–87–000, *et al.*, Midwest Independent Transmission System Operator, Inc.; in Docket No. ER03–323, *et al.*, Midwest Independent Transmission System Operator, Inc., and in Docket No. ER03–1118, Midwest Independent Transmission System Operator, Inc.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00481 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–88–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

December 2, 2003.

Take notice that on November 28, 2003, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Twenty Second Revised Sheet No. 8, with a proposed effective date of January 1, 2004.

National states that the proposed tariff sheet reflects an adjustment to recover through National's EFT rate the costs associated with the Transportation and Storage Cost Adjustment (TSCA) provision set forth in section 23 of the General Terms and Conditions of National's FERC Gas Tariff.

National further states that copies of this compliance filing were served upon the Company's jurisdictional customers and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00461 Filed 12–5–03; 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

December 1, 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.

Docket No.	Date filed	Presenter or requester
Prohibited		
1. Docket No. EC03–131–000	11–21–03	Steven E. Moore.
2. Docket No. EC03–131–000	11–25–03	Donald M. Smith.
3. Docket No. ER02–2189–001	11–25–03	Bill Adams.
4. Project No. 2342–000	11–26–03	Jaz Gikling.
Exempt		
1. Project Nos. 11659–002	11–26–03	Richard Levitt.

Magalie R. Salas,

Secretary.

[FR Doc. E3–00464 Filed 12–5–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket ID Number OECA–2003–0153; FRL–7593–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; NESHAP for the Manufacture of Amino/Phenolic Resins, EPA ICR Number 1869.03, OMB Control Number 2060–0434

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following existing, approved, continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for the purpose of renewing the ICR. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of **SUPPLEMENTARY INFORMATION**.

DATES: Comments must be submitted on or before February 6, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier service. Follow the detailed instructions as provided under **SUPPLEMENTARY INFORMATION**, Section I.B.

FOR FURTHER INFORMATION CONTACT: The contact individuals for each ICR are listed under **SUPPLEMENTARY INFORMATION**, Section II. A.

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. *Docket.* EPA has established an official public docket for this ICR NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR part 63, Subpart OOO), Docket ID Number OECA–2003–0153. The official public docket for this ICR consists of the documents specifically referenced in the ICR, any public comments received, and other information related to each ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket for each ICR is the collection of materials that is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1514.

2. *Electronic Access.* You may access this document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. After entering the system, select ''search,'' then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Section I.A.1. EPA intends to work towards providing

electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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

For additional information about EPA's electronic public docket, visit EPA Dockets online or *see* 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier service. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider late comments in formulating a final decision. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Section I.C. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources,'' ''Dockets,'' and ''EPA Dockets.'' After entering the system, select ''search,'' and then key in Docket ID Number. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *docket.oeca@epa.gov.* Provide the Docket ID Number when submitting your comments. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section I.A.1. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to the EPA Docket Center using the address provided in Section I.A.1; Attention: Docket ID Number OECA–2003–0153.

3. *By Hand Delivery or Courier Service.* Deliver your comments to the address provided in Section I.A.1; Attention: Docket ID Number OECA–2003–0153. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Section I.A.1.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to the contact individuals listed in Section II.C.; Attention: Docket ID Number OECA–2003–0153. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI, and then identify within the disk or CD ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under the section titled **FOR FURTHER INFORMATION CONTACT**.

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

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

(1) Explain your views as clearly as possible.

(2) Describe any assumptions that you used.

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

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

(5) Provide specific examples to illustrate your concerns.

(6) Offer alternatives.

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

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

E. In What Information Is EPA Particularly Interested?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(1) Evaluate whether the proposed collections of information are 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 estimates of the burdens of the proposed collections of information.

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

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

II. ICR To Be Renewed

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's standards are displayed in 40 CFR Part 9.

These information collection requirements are mandatory. Furthermore, the records required by the National Emission Standards for Hazardous Air Pollutants (NESHAP) must be retained by the owner or operator for at least five years. In general, the required information consists of emissions data and other information deemed not to be private.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved ICR listed in this notice. Where applicable, the Agency identified specific tasks and made assumptions, while being consistent with the concept of the Paperwork Reduction Act.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed, continuing ICR to the Office of Management and Budget (OMB): NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO); Docket ID Number OECA–2003–0153; EPA Preliminary ICR Number 1869.03, OMB Control Number 2060–0434; expiration date February 29, 2004.

A. Contact Individual

NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR Part 63, Subpart OOO); Leonard Lazarus in the Office of Compliance at (202) 564–6369, facsimile number (202) 564–0050, or via e-mail at *lazarus.leonard@epamail.epa.gov;* EPA ICR Number 1869.03; OMB Control Number 2060–0434; expiration date February 29, 2004.

B. Information for ICR

Title: NESHAP for the Manufacture of Amino/Phenolic Resins (40 CFR part 63, Subpart OOO); EPA ICR Number 1869.03; OMB Control Number 2060–0434; expiration date February 29, 2004.

Affected Entities: Respondents are owners and operators of new and existing facilities that engage in the manufacture of amino/phenolic resins and emit hazardous air pollutants.

Abstract: The respondents are subject to the recordkeeping and reporting requirements at 40 CFR part 63, Subpart A—General Provisions, that apply to all NESHAP sources. These requirements include recordkeeping and reporting for startup, shutdown and malfunctions, and semiannual reporting. Exceptions to the General Provisions for this source category are delineated in the standard. The standard includes other requirements such as precompliance reports, notifications of compliance status, other designated reports and information regarding alternative monitoring parameters. Respondents complying with the equipment leak requirements, must follow the recordkeeping and reporting requirements at 40 CFR part 63, Subpart H.

Burden Statement: In the previously approved ICR, the estimated number of respondents for this information collection was 40 with 80 responses per year. The annual industry recordkeeping and reporting burden for this collection of information was 32,252 hours. On the average each respondent reported twice per year and 403 hours were spent preparing each response. There were no operation and maintenance costs associated with continuous emission monitoring (CEM) equipment in the previous ICR. However, there were $80,000 in costs associated with the startup/shutdown of CEM equipment.

Dated: November 20, 2003.

Michael Stahl,

Director, Office of Compliance.

[FR Doc. 03–30044 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7595–9]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement, to address a petition for writ of mandamus filed by Environmental Defense in the U.S. Court of Appeals for the District of Columbia Circuit: *In re Environmental Defense,* No. 03–1220 (D.C. Cir.). On or about July 31, 2003, Petitioner filed a petition asking the Court to issue a writ of mandamus directing EPA to complete remand proceedings ordered by the Court in *Environmental Defense Fund* v. *EPA,* 898 F.2d 183 (D.C. Cir 1990), and to promulgate regulations, consistent with the Clean Air Act, 42 U.S.C. 7476, for the prevention of significant deterioration of air quality by oxides of nitrogen. Under the terms of the

proposed settlement agreement, EPA would publish a proposed rulemaking by September 30, 2004 and a final rulemaking by September 30, 2005 setting forth its actions to comply with the remand order.

DATES: Written comments on the proposed settlement agreement must be received by January 7, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0006, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov;* mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: M. Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460. telephone: (202) 564–5571.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement

Pursuant to section 166 of the Clean Air Act, EPA promulgated regulations on October 17, 1998 to prevent significant deterioration of air quality due to emissions of nitrogen oxides. 53 FR 40656. These regulations were challenged, and on March 13, 1990, the United States Court of Appeals for the District of Columbia Circuit (''D.C. Circuit'') remanded the regulations to EPA. *Environmental Defense Fund* v. *EPA,* 898 F.2d 183 (D.C. Cir. 1990). At that time, the court declined to establish a deadline for EPA to act on this remand. *Id.*

The settlement agreement provides, among other things, that: (1) By September 30, 2004, EPA shall sign for publication in the **Federal Register** a notice of proposed rulemaking setting forth its proposed action to fully comply with the Court's remand order in *Environmental Defense Fund* v. *EPA,* including any proposed regulations necessary to comply with that remand order; (2) By September 30, 2005, EPA shall sign for publication in the **Federal Register** a notice of final rulemaking setting forth its final action to fully comply with the Court's remand order in *Environmental Defense Fund* v. *EPA,* including any final regulations necessary to comply with that remand order ; and (3) EPA shall file quarterly status reports on the Agency's progress.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement agreement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How Can I Get A Copy Of the Settlement Agreement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0006 which contains a copy of the settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

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

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and To Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

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

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going

through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 2, 2003.

Lisa K. Friedman,

Associate General Counsel, Air and Radiation Law Office, Office of General Counsel.

[FR Doc. 03–30373 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7596–3]

Subject to Availability of Funding Solicitation Notice; Environmental Information Exchange Network Grant Program; Fiscal Year 2004

SUMMARY: The United States Environmental Protection Agency (EPA) announces that the Environmental Information Exchange Network Grant Program is now soliciting pre-proposals for the Program. The Exchange Network is an Internet and standards-based information systems network among EPA and its partners in States, Tribes, and Territories. It is designed to help integrate information, provide secure real-time access to environmental information, and support the electronic storage and collection of high-quality data and information. The Exchange Network provides a more efficient way of exchanging environmental information at all levels of government and with the public; it revolutionizes the way in which information is sent to and received by EPA and its State, Tribal, and Territorial partners. For examples of projects that EPA has funded in the past, please see the State and Tribal summaries of proposals that are available on the Exchange Network Grant Program Web site at *http://www.epa.gov/Networkg.*

DATES: Pre-proposals must be received electronically at *neengprg@epamail.epa.gov* no later than February 3, 2004.

FOR FURTHER INFORMATION: Contact Rebecca Moser, Office of Information Collection, Office of Environmental Information, U.S. EPA, 1200 Pennsylvania Ave., NW, Mail Code 2823–T, Washington, DC 20460; phone, (202) 566–1679; email, *neengprg@epamail.epa.gov.* For additional information about the Exchange Network Grant Program, please visit the Web site at *http://www.epa.gov/Networkg.* An Information Session for potential applicants has been scheduled for Monday, December 15, 2003, from 2:00 to 4:00 p.m. Eastern Standard Time. If you are interested in participating in this teleconference, please contact Rebecca Moser at the number listed above.

Dated: December 2, 2003.

Mark A. Luttner,

Director, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency.

FY 2004 Environmental Information Exchange Network Grant Program

Contents

Section I: Eligibility Information
Section II: Funding Opportunity Description
Section III: Award Information
Section IV: Application and Submission Information
Section V: Application Review Information
Section VI: Assistance Agreement Categories and Evaluation Criteria
Section VI(A): Evaluation Criteria for Tribes
Section VI(B): Evaluation Criteria for States/Territories
Section VII: Award Administration Information
Section VIII: EPA Systems Information
Section IX: Agency Contacts

Section I. Eligibility Information

Eligible applicants include States, the District of Columbia, American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, the U.S. Virgin Islands (subsequently referred to collectively as States) and Federally Recognized Indian Tribes (subsequently referred to as Tribes) and agencies or departments within the States or Tribes.

Applicants must indicate an intent and commitment to participate in the Exchange Network. Exchange Network participation involves the use of Web services to move data and information, the use of eXtensible Markup Language (XML) schema to format data, and the use of data standards within these schema to improve data clarity. Applicants should use data standards that have been approved by the Environmental Data Standards Council (EDSC) and XML schema that have been approved by the Technical Resource Group (TRG, a workgroup established by the Network Steering Board (NSB)), where such standards or schema are available. If the appropriate data standards or XML schema are not available, applicants should indicate how they will use existing guidelines to establish common terms, definitions, and XML schema for exchanging their data.

For a list of EDSC-approved data standards, please refer to the EDSC Web site, *http://www.epa.gov/edsc.* Information on EPA's implementation of EDSC-approved data standards is available on the Environmental Data Registry Web site, *http://www.epa.gov/edr.* For guidance on the development of XML schema and the TRG approval process, please refer to the Network Steering Board's (NSB's) Exchange Network Web site *http://www.Exchangenetwork.net.*

Agencies or departments within a State or Tribe should coordinate submissions of pre-proposals through the appropriate State or Tribal environmental agency and indicate that this coordination has taken place in the pre-proposal submitted to EPA. No cost-sharing or matching of funds is required on the part of the applicants.

Section II. Funding Opportunity Description

Congressional action on the President's fiscal year (FY) 2004 budget includes $20 million to support the Exchange Network. Subject to the availability of appropriations for this purpose, EPA is soliciting pre-proposals that will support and accelerate the development of the Exchange Network. Ten percent of the appropriated funds will be set aside for Tribal assistance agreements. The total number and amount of the assistance agreements awarded will depend on the amount of funding for the Exchange Network in the FY 2004 EPA appropriations. The Catalog of Federal Domestic Assistance number is 66.608. Funding beyond FY 2004 will depend on continued appropriations.

Assistance agreements are used by EPA to transfer money, property, services, or anything of value to a recipient to accomplish a public purpose; they may be in the form of a grant or a cooperative agreement. These assistance agreements will be funded in three separate categories: Readiness, Implementation, and Challenge. The funding ranges for these categories will be as follows:

(1) Readiness Category—States up to $150,000 and Tribes up to $75,000;

(2) Implementation Category—States up to $300,000 and Tribes up to $150,000; and

(3) Challenge Category—States up to $750,000 and Tribes up to $300,000.

Section III. Award Information

Subsequent to EPA's receiving FY 2004 appropriations for the Exchange Network, the EPA Administrator may delegate authority to approve pre-proposals for funding to the Assistant Administrator of the Office of Environmental Information (OEI) and delegate authority to award the

assistance agreements to the EPA Regional Administrators. Thus, OEI anticipates that the selection of pre-proposals for funding will be made by the OEI Assistant Administrator, as in previous years, and that the processing, awarding, and management of assistance agreements may be handled by the appropriate EPA Regional Offices.

It is EPA's policy to promote competition in the award of assistance agreements. EPA will strive to ensure that the competitive process is fair and open and that no applicant receives an unfair competitive advantage. Only those eligible applicants whose pre-proposals are selected for funding will need to proceed with developing and submitting the formal assistance agreement application package.

After EPA notifies the applicants whose pre-proposals have been selected for funding, those applicants will have 45 days to complete and submit the formal assistance agreement application package to the appropriate Network Regional Coordinator.

The duration of each project and the final scope of activities to be completed will be determined in pre-award discussions between the applicant and the appropriate EPA Network Regional Coordinator. In anticipation of this process, all applicants should refer to the Web site *http://www.epa.gov/ogd/AppKit* and review the forms and documentation required for submitting final applications.

Applicants whose pre-proposals are selected for funding may request that assistance be provided in the form of a grant or cooperative agreement. Such a request should be based on the desired level of EPA involvement in the project and must be made in writing prior to the award of the assistance agreement.

A *grant* may be the most appropriate legal instrument if the proposed activities are not principally for the direct benefit or use of the Federal Government and no substantial involvement is anticipated between EPA and the recipient during the program period. A *cooperative agreement* may be more appropriate if the proposed activities are not principally for the direct benefit or use of the Federal Government and substantial involvement is anticipated between EPA and the recipient during the program period.

All or part of a grant or cooperative agreement may be provided in the form of *in-kind assistance* (in lieu of funding) if it would be more efficient in terms of cost or time for EPA to purchase services or equipment on a recipient's behalf (*e.g.*, through an EPA-approved contractor). (Policy for Distinguishing between Assistance and Acquisition, EPA Order 5700.1, March 22, 1994.)

A recipient may also choose to receive an Exchange Network assistance agreement as part of a *Performance Partnership Grant (PPG).* PPGs can provide States with greater flexibility during the work plan negotiation process and allow them to organize their work plan components in ways that best suit their specific needs. Where appropriate, the assistance agreement work plan will reflect both EPA and State roles and responsibilities, and a joint performance evaluation process will be negotiated.

For additional information on assistance agreements or for guidance in preparing pre-proposals or final applications, please contact the appropriate Exchange Network Regional Coordinator or Rebecca Moser in EPA's Office of Information Collection (*see* Section IX).

Section IV. Application and Submission Information

Based on an evaluation of pre-proposals, EPA expects to make funding decisions in the Spring of 2004. EPA may ask applicants whose pre-proposals have been selected for funding to modify objectives, work plans, or budgets prior to giving final approval of the award.

Pre-proposals must be submitted electronically in either WordPerfect or Microsoft Word by February 3, 2004, to *neengprg@epa.gov* with an electronic copy to the appropriate Exchange Network Regional Coordinator (*see* Section IX). Each pre-proposal should not exceed 10 single-spaced pages (12 point font).

Pre-proposals should follow the following format:

I. Project Information

State/Tribe/Territory Agency or Department:
Title of Project:
Focus Area (*i.e.,* Readiness, Implementation, or Challenge):
Total Funds Requested from EPA:
Total Project Cost (including State/Tribal cash contributions, if applicable):
Contact Person (name, title, address, phone, fax, and e-mail):

II. Overview

Provide an overview of the project that explains the purpose, goals, and objectives. This section should give reviewers an understanding of the nature and expected outcomes of the project. If applicable, explain how the project will build on previous work supported by the Exchange Network Grant Program.

III. Summary Work Plan

Describe what the project will achieve and who will benefit from the project. Explain each aspect of the project in enough detail to allow reviewers to understand and evaluate it. No specific format is required for this section, but pre-proposals should address the following:

- *Proposed Activities:* List and describe the activities and how they relate to the evaluation criteria described in Section VI of this guidance.
- *Project Milestones:* List the key project milestones, with estimated dates for completion.
- *Performance Measures:* Describe how the success of the project will be measured.
- *Sharing Results:* Indicate a commitment to share results with other Exchange Network partners by working with the NSB to post those results at *http://www.exchangenetwork.net*.

Applicants should be aware that pre-proposals and applications submitted under this or any other EPA assistance agreement program are subject to potential public release under the Freedom of Information Act (FOIA). If an applicant considers any of the information submitted in the pre-proposal or application to be Confidential Business Information (CBI), the applicant must claim that information as CBI when the pre-proposal or application is submitted to EPA [40 CFR 2.203(a)].

Section V. Application Review Information

Pre-proposals will be evaluated separately for each assistance agreement category: Readiness, Implementation, or Challenge. The criteria and scoring system outlined in Section VI will be used to guide the evaluation of each pre-proposal. The scoring system allows each pre-proposal to be given a numeric value based on the criteria. A value of one to a maximum of 90 will be assigned for one or more of the activities listed in the criteria. A value of one to 10 will be assigned for describing the benefits of the project being proposed. The maximum score for any pre-proposal submitted would be 100. Pre-proposals will be initially screened based on this criteria and scoring system.

After the pre-proposals have been initially scored, EPA will form a review panel composed of representatives from EPA Headquarters and Regional Offices. This panel will consider not only the initial scoring, but also the basic

substance and quality of each pre-proposal and the overall mix of projects. The panel may also consider other factors on a case-by-case basis when deciding whether to recommend funding for a specific proposal. The panel will review each pre-proposal and provide its funding recommendations to the OEI Assistant Administrator for a final decision.

Any mandatory requirements set forth in this document may be waived at the discretion of the OEI Assistant Administrator.

Section VI. Assistance Agreement Categories and Evaluation Criteria

OEI will consider funding pre-proposals for the three categories of assistance agreements described below: Readiness, Implementation, and Challenge. The categories have different, but complementary, objectives and evaluation criteria. One cross-cutting criterion for all categories is the description of benefits and advantages of using the Exchange Network to improve existing data exchange practices. This section should not exceed one-half page of the pre-proposal. Each pre-proposal must clearly indicate that the project can be completed in two years or less. The following points are provided to assist, but not limit, applicants in describing the expected benefits of their proposed projects:

- more frequent and/or efficient exchanges;
- better data quality through the use of data standards and validation and error-detection mechanisms;
- greater ability to share and integrate data through the use of data standards, XML schema, and Exchange Network Web services;
- the ability to exchange a variety of data with a number of partners;
- the ability to provide access to new kinds of data using the Exchange Network; and/or
- the ability to use common Exchange Network infrastructure capabilities (*e.g.* XML schema, common security controls, etc.).

Section VI(A). Evaluation Criteria for Tribes

Readiness Category for Tribes

Amount: up to $75,000.

Eligibility: Applicants who have received no more than one Readiness Grant. This category is intended to assist Tribes in building upon their priority information technology investments while constructing initial links to the Exchange Network.

Criteria:

(1) Maximum of 90 points for one or more of the following activities:

(a) Develop the technical infrastructure needed to participate in the Exchange Network (*e.g.*, servers, processors, storage devices/media, telecommunications products/services, computer peripherals). Tribes may wish to use the node client tool that is being made available on the Network Web site.

(b) Develop Web-based services, security enhancements, data quality improvements, locational data improvements [*e.g.*, through global positioning system (GPS) units], or other capabilities that will enhance the Tribe's participation in the Exchange Network.

Make a commitment to share this information with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If a recipient of a previous Exchange Network assistance agreement, outline activities that build on and do not duplicate previously funded activities.

(2) 10 points.

Identify the benefits of the project (see Section VI introduction).

Implementation Category for Tribes

Amount: up to $150,000.

Eligibility: This category is designed to assist Tribes in sharing data and building on their information technology investments, while constructing links to the Exchange Network.

Criteria:

(1) Maximum of 90 points for one or more of the following activities.

All activities listed in the Readiness Category may be considered for funding under this category with the addition of at least one of the following activities:

(a) Share environmental data with other Tribes, States, and/or EPA.

(b) Work with EPA, other Tribes, or States to use Web services they have or plan to provide. Tribes can satisfy the Exchange Network data exchange objectives by using Web service applications, such as those found on the Exchange Network Web site, *http://www.exchangenetwork.net*, under ''Tool Box.''

(c) Implement a project to link and exchange tribal data assets using standards. Projects could include things such as implementing the EDSC-approved Facility Identification data standard (refer to *http://www.epa.gov/edsc*), referencing water monitoring stations to the National Hydrography Dataset (NHD) (*e.g.*, using the Geospatial One-Stop hydrography data standard, which is currently under review), or other data exchange activities involving the use of data standards.

(d) Enhance public access to data about pollution sources, the environmental performance of regulated facilities, or environmental status and trends.

In addition to pursuing one or more of the activities listed above, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points.

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Implementation Category may be collaborative efforts among multiple parties (intertribal, intratribal), but collaboration is not required. If a collaborative project is proposed, the pre-proposal must identify a single lead agency or department that would be responsible for administering the assistance agreement.

Challenge Category for Tribes

Amount: up to $300,000.

Eligibility: Applicants must propose activities that involve collaboration (*e.g.*, intra tribal, intertribal, or State/Tribal) to develop the Exchange Network and demonstrate its value in sharing environmental, natural resources, or human health data and/or related administrative data.

Criteria:

(1) Maximum of 90 points for one or more of the following activities.

(a) Implement any type of data flow using the Exchange Network.

(b) Conduct multi-party planning activities to develop new data flows, explaining how the new data would be used and shared via the Exchange Network. This activity could include developing a collaborative project plan for possible submission to EPA if future funding becomes available.

(c) Use the Exchange Network to integrate and use information for environmental decision-making and public access, including Geospatial data. Projects could include, but are not limited to, activities that would improve the locational data for facilities in EPA's Facility Registry System.

(d) Use the Exchange Network to share data that have not previously been available for environmental and human health protection purposes (*e.g.*,

environmentally related health data, regional environmental data, data needed to fill current data gaps, etc.). EPA has recently entered into a Memorandum of Understanding (MOU) with the Centers for Disease Control and Prevention to collaboratively collect data for the Environmental Public Health Tracking System; applicants may be interested in proposing activities that complement this effort using the Exchange Network.

(e) Enhance the Exchange Network by developing tools/applications that use data made available through Web services.

In addition to pursuing one or more of the activities listed above, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Challenge Category must be collaborative efforts. The pre-proposal must identify a single lead agency or department that will be responsible for administering the assistance agreement, if awarded.

In addition to the criteria outlined above, EPA may elect to fund complementary pre-proposals from different partners that address related work areas (*e.g.*, XML schema development) and it will seek to leverage and coordinate all of the complementary pre-proposals before reaching final funding decisions.

In making award decisions, EPA will examine the past performance of those who have received previous Exchange Network assistance agreements (*e.g.*, timely and complete semi-annual reports, achievement of performance goals/milestones, etc.). If two proposals have been scored equally, the one with the best previous track record may be ranked higher. If an applicant has not received a prior Exchange Network assistance agreement, that applicant will not be penalized.

Section VI(B). Evaluation Criteria for States

Readiness Category for States

Amount: up to $150,000.

Eligibility: Applicants who have received no more than one Readiness Grant.

Criteria:

(1) Maximum of 90 points:

Develop an operational Exchange Network node in a reasonable period of time (*e.g.*, one to two years) depending on the applicant's current capabilities and previously funded work. In addition to developing an Exchange Network node, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: An Exchange Network node is considered to be operational if it performs the following: (1) Executes all Exchange Network Web service functions (*i.e.*, Authenticate, Submit, Get Status, Query, Notify, Solicit, Download, Node Ping, and Get Services), (2) implements the minimum Exchange Network security practices (including the use of the Network Authorization and Authentication Service), and (3) routinely exchanges one or more data flows. When developing Exchange Network nodes, applicants should refer to the Node Test Suite on the Exchange Network Website. All Network Nodes should pass the interoperability tests on this site. This site also contains technical specifications and protocols, as well as the implementation guidance developed by the NSB's Node 1.0 Workgroup. Please refer to *http:///www.exchangenework.net* and click on ''Tool Box.''

Implementation Category for States

Amount: up to $300,000.

Eligibility for States: Applicants, or groups of applicants, that (1) have produced a detailed technical plan to develop an operational node by the end of calendar year 2004, (2) have developed an Exchange Network node and are in the final stages of testing that node, (3) are ready to flow data, or (4) are already flowing data.

Criteria:

(1) Maximum of 90 points. If States believe that they can implement more than two or three data flows during the two-year program period, they should identify those data flows in their pre-proposals.

(a) Implement one or more of the following data flows using the Exchange Network (*see* Section VIII for details).

- Air Quality System (AQS)
- Facility Registry System (FRS)
- National Emissions Inventory (NEI)
- Resource Conservation and Recovery Act Information System (RCRAInfo)
- Safe Drinking Water Information System (SDWIS)
- Toxics Release Inventory System (TRIS)

(b) Implement any other type of data flow (regulatory or voluntary, State-to-EPA, facility-to-State, State-to-State, etc.) using the Exchange Network. In addition to implementing one or more data flows, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points.

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Implementation Category may be collaborative efforts among multiple parties (interstate or intrastate), but collaboration is not required. If a collaborative project is proposed, the pre-proposal must identify a single lead agency or department that would be responsible for administering the assistance agreement.

Challenge Category for States

Amount: up to $750,000 each.

Eligibility: Applicants must propose innovative projects that involve collaboration (*e.g.*, State-EPA, intrastate, or interstate) to develop the Exchange Network and demonstrate its value in sharing environmental, natural resources, or human health data and/or related administrative data.

Criteria:

(1) Maximum of 90 points for one or more of the following activities. If desired, applicants may propose activities from several different categories [(a)—(f) below) and receive partial credit from multiple categories; but they are not required to do so to receive the full 90 points. Applicants who submit well thought-out, innovative, collaborative proposals for multiple data flows [*i.e.*, as in (a) and/or (b) below] or for just one of the other activities listed [*i.e.*, in (c) through (f) below] will receive the same consideration as those who suggest activities from multiple categories.

(a) Implement one or more of the following data flows using the Exchange

Network (*see* Section VIII for details) (45 points each).

- Air Quality System (AQS)
- Facility Registry System (FRS)
- National Emissions Inventory (NEI)
- Resource Conservation and Recovery Act Information System (RCRAInfo)
- Safe Drinking Water Information System (SDWIS)
- Toxics Release Inventory System (TRIS)

(b) Implement any other type of data flow (regulatory or voluntary, State-to-EPA, facility-to-State, State-to-State, etc.) using the Exchange Network. (30 points each)

(c) Conduct multi-party planning activities to develop new data flows, explaining how the new data would be used and shared via the Exchange Network. This activity could include developing a collaborative project plan for possible submission to EPA if future funding becomes available. (up to 90 points)

(d) Use the Exchange Network to integrate and use information for environmental decision-making and public access, including geospatial data. Projects could include, but are not limited to, activities that would improve the locational data for facilities in EPA's Facility Registry System. (up to 90 points)

(e) Use the Exchange Network to share data that have not previously been available for environmental and human health protection purposes (*e.g.*, environmentally related health data, regional environmental data, data needed to fill current data gaps, etc.). EPA has recently entered into a Memorandum of Understanding (MOU) with the Centers for Disease Control and Prevention to collaboratively collect data for the Environmental Public Health Tracking System; applicants may be interested in proposing activities that complement this effort using the Exchange Network. (up to 90 points)

(f) Enhance the utilization of the Exchange Network by developing tools/applications that use data made available through Web services (*e.g.*, watershed analysis tools using EPA and other partner/stakeholder data published through Web services). (up to 90 points)

In addition to implementing one or more data flows, applicants must make a commitment to share information about their projects with other partners via the Exchange Network Web site at *http://www.exchangenetwork.net*. If an applicant has received funding through a previous Exchange Network assistance agreement, the applicant must identify activities that build on, but do not duplicate, previously funded activities.

(2) 10 points.

Identify the benefits of the project (*see* Section VI introduction).

SUPPLEMENTARY INFORMATION: Projects funded under the Challenge Category must be collaborative efforts. The pre-proposal must identify a single lead agency or department that will be responsible for administering the assistance agreement, if awarded.

In addition to the criteria outlined above, EPA may elect to fund complementary pre-proposals from different partners that address related work areas (*e.g.*, XML schema development), and it will seek to leverage and coordinate all of the complementary pre-proposals before reaching final funding decisions.

In making award decisions, EPA will examine the past performance of those who have received previous Exchange Network assistance agreements (*e.g.*, timely and complete semi-annual reports, achievement of performance goals/milestones, etc.). If two proposals have been scored equally, the one with the best previous track record may be ranked higher. If an applicant has not received a prior Exchange Network assistance agreement, that applicant will not be penalized.

Section VII. Award Administration Information

The selection of pre-proposals for funding and the awarding of assistance agreements will be posted on the Exchange Network Grant Program Web site (*http://www.epa.gov/Networkg*). Recipients of assistance agreement awards will be required to submit semi-annual and final progress reports. A reporting form template will be provided to all funded grantees by the appropriate Exchange Network Regional Coordinator. Recipients will also be required to complete annual Financial Status Reports. All reports must be prepared in either Microsoft Word or WordPerfect and submitted electronically to the appropriate Exchange Network Regional Coordinator. If a disagreement arises between an eligible applicant and EPA, EPA will follow dispute resolution procedures, as outlined in 40 CFR part 31, subpart F.

Section VIII. EPA Systems Information

Applicants are urged to consider developing FY 2004 proposals that relate to the following EPA national environmental information systems, particularly if submitting proposals for Implementation or Challenge assistance agreements:

- Air Quality System (AQS)
- Facility Registry System (FRS)
- National Emissions Inventory (NEI)
- Resource Conservation and Recovery Act Information System (RCRAInfo)
- Safe Drinking Water Information System (SDWIS)
- Toxics Release Inventory System (TRIS)

By focusing on this limited number of data flows, EPA and its partners should be able to deliver tangible results by the end of the two-year program period.

EPA urges applicants to consider the data flows listed above, but the Agency will also consider other data flow activities, particularly if such activities can demonstrate the value of the Exchange Network. Provided appropriations for the Exchange Network Grant Program become available in FY 2005, EPA plans to highlight two additional data flows in next year's guidance:

- Integrated Compliance Information System—National Pollutant Discharge Elimination System (ICIS–NPDES)
- Storage and Retrieval for Water Quality Data (STORET)

While ICIS–NPDES and STORET data flow activities may be proposed for the FY 2004 Exchange Network Grant Program, they will receive greater attention in FY 2005.

Each of the national environmental information systems identified above is described briefly below, along with current plans for the data flows and suggested activities for consideration by applicants. The implementation schedules for specific data flows differ, but the activities that EPA offices have suggested generally relate to one or more of the following:

- Improve data collection processes, the quality of data in EPA information systems, and the utility of and access to environmental data by all Exchange Network partners;
- Work with EPA to develop XML schema for particular data flows and conduct related data mapping and documentation activities;
- Develop or adapt Exchange Network nodes or node clients as required to implement particular data flows;
- Submit data through the Exchange Network and EPA's Central Data Exchange (CDX) to EPA's national environmental information systems;
- Enhance data validation mechanisms, increase the frequency of data submissions, or enhance error detection/feedback mechanisms using the Exchange Network;
- Work with EPA to develop and implement Web services to obtain, use,

and integrate data from EPA and partner information systems for multiple purposes;

• Use the Exchange Network to provide access to data that are not currently available for environmental and human health protection purposes; and/or

• Enhance the value of the Exchange Network by developing tools/applications that use data that are made available through Web services.

Please note that not all of the activities listed above may be appropriate for particular data flows at this time. In addition, applicants may propose other types of data flow activities that have not been mentioned here. All proposals—whether they relate to these specific data flows or the suggested activities—will receive careful consideration by EPA.

Air Quality System (AQS)

System Description

AQS is a national database that contains ambient air quality monitoring data collected by State, Tribal, and local governments. This information is used to determine compliance with clean air standards, assess the nature of air pollution problems in North America, and assess the exposure of humans to toxic and other airborne pollutants.

Status and Plans

• *Flat File:* The transfer of AQS flat files via CDX began in July 2003.

• *XML Schema:* The XML schema for AQS will be available by mid-2004 for voluntary use by agencies. Subsequent to schema development, EPA will develop the capability to receive and process AQS XML data.

• *Other Activities:* In late 2004, EPA expects to deploy Web services that support limited real-time stakeholder queries of selected AQS data.

Suggested Activities for Exchange Network Partners

• Conduct pilot projects to test/use the AQS XML input schema, particularly for submitting data to AQS through CDX and for performing local quality assurance checks (*e.g.*, for format, range, and file structure). EPA is particularly interested in the development of XML error/diagnostic message schema that could accompany the XML input transaction schema. EPA is also interested in the development of XML output schema that describe standard reports and workfiles, based on the final AQS XML input schema.

• Work with EPA to develop Web services and applications that use AQS XML schema to enhance the timeliness, frequency, and/or efficiency of air quality data transmissions to EPA (*e.g.*, possibly including real-time data transmissions).

• Develop/test approaches to implement machine-to-machine transfers of queried data using Web services and CDX.

• If maintaining significant air quality data assets that are not currently in AQS, develop approaches for using the Exchange Network to provide partners with secure access to the data.

Facility Registry System (FRS)

System Description

FRS is a national database of facility identification information. It covers all facilities (places, stations, and sites) that are subject to environmental regulations or are of environmental interest, such as Federal facilities, industrial facilities, and facilities on tribal reservations. Key identifying information stored in FRS includes facility names, alternate facility names, geographic locations (*i.e.*, latitude/longitude), mailing addresses, points of contact, permit and system identification numbers, industrial codes, and parent organizational structures. FRS receives data from EPA's national environmental information systems and from the States, and it can receive user input from an Error Correction Web service application found in Envirofacts and the Enforcement and Compliance History Online (ECHO). The FRS database directly supports EPA's Envirofacts Data Warehouse Web site, the ECHO Web site, and the Integrated Compliance Information System (ICIS). It is also used by many EPA applications, such as Window to My Environment and EnviroMapper.

Status and Plans

• FRS data exchanges using the Exchange Network have been in production since October 2003.

• The Facility Identification schema is available on the Exchange Network Registry (*http://www.exchangenetwork.net*), and it conforms with the XML Design Rules and Conventions Version 1.0.

• EPA currently plans to release Web services to publish FRS facility data through CDX in late 2003.

Suggested Activities for Exchange Network Partners

• Begin exchanging State and Tribal facility identification records with FRS via CDX.

• Develop the capability to use the Exchange Network to obtain, use, and integrate facility data from FRS with other State/Tribal/local data.

National Emission Inventory (NEI)

System Description

NEI is a national database of air emissions information which includes input from numerous State and local air agencies, Tribes, industry, and other Federal databases [*e.g.*, EPA's Clean Air Markets Division (CAMD) Emission Tracking System, Maximum Achievable Control Technology (MACT) Program, and the Toxic Release Inventory (TRI)]. The database contains information on stationary and mobile sources that emit criteria air pollutants and precursors, as well as hazardous air pollutants (HAPs). NEI data are used for air dispersion modeling, tracking emission trends, and developing risk assessments, regulations, and regional pollution control strategies.

Status and Plans

• *XML Schema:* In 2004, upgraded schema will be developed for NEI Point Source, Area Non-Road, and On-Road Mobile data.

• Pilot Data Exchanges: EPA will conduct pilot NEI data exchanges with States in 2004.

Suggested Activities for Exchange Network Partners

• Develop approaches/processes to improve the quality of the data in State emissions inventory systems.

• Develop and participate in technical approaches to check the quality of data in State emissions inventory systems and transfer files to ensure that the data are compatible with NEI data content requirements, before the States submit their emissions inventory data to EPA and after the data are submitted to EPA through CDX.

• If maintaining significant emissions data assets that are not currently in NEI, describe the business case(s) and develop approaches for using the Exchange Network to provide partners with secure access to the data, including the documentation of data quality checks that have been performed on the data files that are made available.

Resource Conservation and Recovery Act Information System (RCRAInfo)

System Description

RCRAInfo is a national database that contains data reported by States and Regions on facilities that handle hazardous wastes and are regulated under the Resource Conservation and Recovery Act (RCRA) and equivalent State statutes. RCRAInfo includes five major modules:

Handler, Permitting, Corrective Action, Compliance Monitoring and Enforcement, and Waste Activity Report.

Status and Plans

• *Flat File:* In 2004, EPA's CDX will support Web-based flat file transfers for the RCRAInfo Handler, Permitting, Corrective Action, Compliance Monitoring and Enforcement, and Waste Activity Report modules.

• *XML Schemas:* EPA is currently developing the XML schemas for the Handler, Permitting, and Corrective Action modules and expects these schemas to be available in September 2004. The focus of Exchange Network RCRAInfo data flows in 2004 will be on submitting data to EPA.

• *Other Activities:* In 2005, EPA will enhance RCRAInfo to automate out-bound transactions using Web services and allow States to query/retrieve data from RCRAInfo and other State nodes.

Suggested Activities for Exchange Network Partners

• Work with EPA to build Exchange Network nodes to test and implement RCRAInfo data exchanges using XML schemas.

• Work with EPA to refine and test outbound RCRAInfo Web services and build applications to use them. Proposals should identify the target user communities and describe how the development of such Web service applications would provide functionality beyond that provided by RCRAInfo. [RCRAInfo currently provides data entry tools, Headquarters/State/] Regional reports, automated copies of RCRAInfo data for EnviroFacts or the Office of Enforcement and Compliance Assurance (OECA), etc.]

• Establish compatible Web services for hazardous waste information that could be used by authorized EPA/State/Tribal partners. For example, States with significant transfers of wastes to or from other States may wish to establish agreements to gain access to data from other Exchange Network partners.

• Develop automatic periodic updates of State databases from RCRAInfo, utilizing the Exchange Network, CDX scheduling services, and XML schema.

RCRAInfo technical guidance and schedules can be found at *http://cdx.epa.gov/RCRAFT/UserGuide.*

Safe Drinking Water Information System/Federal Version (SDWIS/FED)

System Description

SDWIS/FED is an EPA national database that stores routine information about the Nation's drinking water. SDWIS/FED is designed to replace the Federal Reporting Data System (FRDS), and it stores the information EPA needs to monitor approximately 170,000 public water systems. As required by the Safe Drinking Water Act (SDWA), States oversee public water systems within their jurisdictions to ensure compliance with EPA and State drinking water standards. States periodically report drinking water information to EPA, and this information is stored in SDWIS/FED.

Status and Plans

• *XML Schema:* OW has proposed to develop an XML schema for SDWIS as part of its modernization effort. It plans to conduct a pilot project with States in FY 2004.

• *Modernization Efforts:* OW's Office of Ground Water and Drinking Water (OGWDW) has identified the following milestones for modernizing SDWIS (the milestone numbers correspond to the numbers of suggested State activities outlined below).

1. Maintain most or all historical support functions for both the SDWIS/FED database and SDWIS/STATE software (26 States are currently using SDWIS/STATE and nine additional States are committed and scheduled to use it).

2. Provide drinking water data providers (States and Regions) with access to CDX through a registration process.

3. Conduct a pilot project using XML schema for a State-to-EPA data flow.

4. Conduct a pilot project using FedRep validation software (desktop application). The software incorporates the State-to-Fed XML schema and is intended to move the validation of State data submissions closer to the data providers, thus minimizing reporting delays and errors.

5. Launch the production of the ORACLE replacement database that will allow EPA to receive XML files of drinking water data from States through CDX.

6. Enhance and expand the Drinking Water Data Warehouse. The Drinking Water Data Warehouse extracts data from SDWIS and organizes it into topic-specific Pivot Tables that are available over the Internet for on-line querying by the public. OGWDW is discussing the potential development of new formats for presenting the data.

7. Develop Web-enabled SDWIS/STATE software—the primary State implementation assistance tool.

Suggested Activities for Exchange Network Partners

EPA is interested in enhancing the exchange of drinking water data using the Exchange Network, particularly through node-to-node data exchanges and activities that improve the timeliness and completeness of the data. Suggested State activities include the following (numbers correspond to the modernization milestones outlined above):

1. Help test changes in the SDWIS software that would allow the system to accept XML-formatted data submitted by labs and public water systems.

2. Document efforts to develop/expand State nodes to allow the node-to-node exchange of drinking water data with EPA.

3. a. Document how States are incorporating XML into their local data flows and how these efforts are linked to EPA's development of XML schema for State-to-EPA data flows.

b. Analyze the costs associated with the one-time migration of State drinking water data (for which quarterly reporting is required) from the current DTF format to the new XML format, including the costs associated with data mapping and translator tools.

4. Participate in OW's pilot project to test the FedRep software.

5. a. Use XML to receive drinking water data from labs or public water systems.

b. Use the FedRep validation software (with built-in XML schema) to load the reporting data to State nodes.

c. Exchange data from State nodes with EPA's CDX.

6. There are no specific State activities suggested in relation to EPA's Drinking Water Data Warehouse.

7. a. Develop a Web-enabled version of State drinking water databases (SDWIS/STATE or other).

b. Participate in a pilot project with EPA as OGWDW considers Web-enabling the SDWIS/STATE software.

In addition to the activities suggested above, OGWDW is interested the following potential State activities:

• Develop XML schema for drinking water occurrence data to support the six-year review process.

• Develop XML schema for occurrence data that would tie into the FedRep XML schema for drinking water violation data (currently being piloted by EPA).

Toxic Release Inventory System (TRIS)

System Description

TRIS is populated by TRI-Made Easy (TRI–ME) via CDX. TRI was established under the Emergency Planning and

Community Right-to-Know Act of 1986 (EPCRA) and expanded by the Pollution Prevention Act of 1990. The Toxics Release Inventory (TRI) is a publicly available database that contains information on toxic chemical releases and other waste management activities reported annually by certain covered industry groups, as well as Federal facilities. States collect the same information from the same reporting population for their own records.

Status and Plans

• TRI–ME: EPA finalized the TRI–ME software for Reporting Year (RY) 2002 in March 2003, making the TRI–ME/CDX process completely paperless. Planning for RY 2003 software will begin in the Fall of 2003.

Suggested Activities for Exchange Network Partners

• Work with EPA to develop common reporting formats that would make it easier for regulated facilities to submit TRI data to States and EPA simultaneously.
• Work with EPA to develop tools/applications that use TRI data that will be made available through Web services using the Exchange Network.
• Develop processes that reduce the amount of time EPA and States must spend on reconciling TRI data received from regulated facilities.

Future Data Flow Activities

As indicated in the introduction to this section, ICIS–NPDES and STORET will receive less emphasis under the FY 2004 Exchange Network Grants Program than the information systems listed above (*i.e.*, AQS, FRS, NEI, RCRAInfo, SDWIS, or TRIS). The following information on ICIS–NDES and STORET is provided primarily to assist Exchange Network partners in planning activities in FY 2005 and beyond.

Integrated Compliance Information System—National Pollutant Discharge Elimination System (ICIS–NPDES) System

System Description

ICIS–NPDES is a modernized version of the Permit Compliance System (PCS). It supports traditional wastewater discharge program functions (*e.g.*, permitting, compliance monitoring, and enforcement), as well as new functions for special regulatory programs [*e.g.*, concentrated animal feeding operations (CAFO)]. ICIS–NPDES allows data exchanges using XML, Web services, and Web forms and provides links to other databases (*i.e.*, FRS, TMDL, RAD, SRS).

Status and Plans

• *XML Schema:* The draft ICIS–NPDES schema is available for States to begin initial data mapping of State system data to ICIS–NPDES. The final ICIS–NPDES schema will be available by June 2004, at which time States can begin finalizing their ICIS–NPDES schema mapping. Testing of the submission/acceptance of XML schema by the ICIS–NPDES system can begin in March 2006. By September 2006, OECA expects to complete the implementation of State NPDES XML data flows into ICIS–NPDES and will no longer accept flat file transfers from States into legacy PCS.

Suggested Activities for Exchange Network Partners in FY 2005 and Beyond

The modernization of legacy PCS into ICIS–NPDES will affect three groups of States:

(1) States that currently submit flat files to legacy PCS,

(2) States that are currently using the CDX–PCS Interim Data Exchange Format (IDEF) or have already been in discussions with EPA about doing so, and

(3) States that are currently indirect users of legacy PCS and/or wish to become direct users of ICIS–NPDES.

States that currently submit flat files to legacy PCS and those that are current/scheduled users of CDX–PCS IDEF may wish to consider some of the following activities, which will support the exchange of NPDES XML data with ICIS–NPDES using the Exchange Network:

• Obtain technical training and support for using XML.
• Extract and convert the data from State NPDES systems into the XML format needed to submit data to ICIS–NPDES.
• Modify State systems to accommodate the new/revised data requirements of ICIS–NPDES.
• Modify State data extraction/conversion software to accommodate new/revised ICIS–NPDES submission and transaction types (*e.g.*, for special regulatory programs).
• In coordination with EPA, clean up the State data in legacy PCS as needed to move the data into ICIS–NPDES.
• In coordination with EPA, synchronize and then migrate the data in legacy PCS to ICIS–NPDES.
• Develop XML export capabilities to generate XML data documents using ICIS–NPDES schema.
• Implement node-to-node communications with CDX.

States that wish to become direct, on-line, users of ICIS–NPDES—rather than submitting data in the XML format through the Exchange Network—may be eligible for funding under a separate grant which OECA plans to offer in FY 2004. Please contact David Piantanida at (202) 564–8318 for further information and assistance about relevant OECA grants.

Storage and Retrieval System (STORET)

System Description

STORET is EPA's main repository of water quality and biological monitoring data. It contains data obtained from a variety of organizations across the United States ranging from small volunteer watershed groups to State and Federal environmental agencies. Currently, data are entered into a locally operated copy of STORET through the use of a series of desktop validation software applications provided by EPA. These data are centralized at EPA and made available to the public through an Internet accessible data warehouse. This architecture ensures that data owners maintain complete control over data content, while at the same time, promoting shared access to these data through the EPA data warehouse.

Status and Plans

(1) *XML Schema:* XML tags which support the Office of Water's Water Quality Data Elements (WQDE) have been published for review. A joint project with the EPA Beaches Program has produced an XML schema which supports a limited subset of Beach Monitoring data and allows data transfer from participating States to EPA. OW plans to develop full STORET XML v2.0 schema(s) by February 2005 which will build off the existing WQDE XML tags and schema from the Beaches project.

• *Future Development:* A task is currently underway to provide specifications for support software (transaction based load modules) necessary to enable STORET to fully participate in the Exchange Network. These software specifications are expected by mid-2004, and will become the foundation for software modules necessary to achieve this goal. States can begin mapping data in State systems to the STORET schema(s) in March 2005. Testing of submission/acceptance of XML schema(s) by the STORET database will take place in October through December 2005. By February 2006, OW plans to complete the implementation of XML data flows into STORET through CDX. STORET will continue to fully support and operate the existing process for moving data from remote copies of STORET to the central STORET Warehouse. STORET

will also build Web Services from the STORET Warehouse to support queries of STORET data for stakeholder use.

Suggested Activities for Exchange Network Partners in FY 2005 and Beyond

- Work with EPA's Office of Water to develop the STORET XML schema in a phased, modular approach.
- If wishing to participate in STORET through CDX, adopt all applicable data standards (*i.e.*, standardized XML tags, chemical nomenclature, taxonomic nomenclature, date formatting, latitude and longitude location and associated method standards).
- Actively participate in the various working groups which are developing these standards.
- Become familiar with the requirements of STORET with regard to the documentation of the monitoring process as well as the documentation of environmental results.
- Begin mapping State data to the STORET v2.0 schema(s) in March 2005.
- Develop applications that use STORET Web Services for stakeholder analyses.
- Begin linking station locations consistent with the National Hydrography Dataset and the Geospatial One-Stop Hydrography Standard.

Section IX. Agency Contacts

EPA Headquarters: Rebecca Moser, Office of Information Collection, Office of Environmental Information, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 2823–T, Washington, DC 20460, (202) 566–1679, *neengprg@epamail.epa.gov*.

EPA Region I: Mike MacDougall, U.S. EPA Region I, 1 Congress Street, Suite 1100 (MIR), Boston, MA 02114, (617) 918–1941, *macdougall.mike@epa.gov*. Ken Blumberg, U.S. EPA Region I, 1 Congress Street, Suite 1100 (MIR), Boston, MA 02114, (617) 918–1084.

EPA Region II: Robert ''Bob'' Simpson, U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–3335, *simpson.robert@epa.gov*.

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EPA Region VIII: Josie Lopez, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, *lopez.josie@epa.gov*.

EPA Region IX: Patricia Eklund, U.S. EPA Region IX, 75 Hawthorne Street-Mail Stop SPE–1, San Francisco, CA 94105, (415) 972–3738, *eklund.patrica@epa.gov*.

EPA Region X: Burney Hill, U.S. EPA Region X, 1200 6th Avenue (EMI–095), Seattle, WA 98101, (206) 553–1761, *hill.burney@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Rebecca Moser, Office of Information Collection, U.S. EPA, 1200 Pennsylvania Ave., NW, Washington, DC 20460; phone, (202) 566–1679; e-mail, *neengprg@epamail.epa.gov*.

An Information Session for potential applicants has been scheduled for Monday, December 15, 2003, from 2 to 4 p.m. Eastern Standard Time. If you are interested in participating in this teleconference, please contact Rebecca Moser.

Posting of Document: This document will be posted on the EPA's OEI Web site at *http://www.epa.gov/Networkg/guidance*.

[FR Doc. 03–30374 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0036; FRL–7595–8]

Amendment to System of Records Notice

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with the Privacy Act of 1974, as amended, the Environmental Protection Agency (EPA) publishes this amendment to EPA's notice of a system of records entitled ''Central Data Exchange-Customer Registration Subsystem (CDX-CRS)'', published on March 18, 2002 (67 FR 12010–12013). The original System of Records Notice has been amended to: update the ''Location'' section to reflect the recent relocation of the CDX-CRS to a new facility; clarify the ''Categories of Records in the System'' section to describe information collected to support electronic signature functionality on some EPA forms; provide the public with a new System of Record number that will be associated with this system for the remainder of its operational life; provide a new EPA point of contact; and clarify the ''purpose'' section to ensure the public recognizes that the use of the CDX-CRS is optional and only necessary for those individuals who want to file information electronically with EPA. As described in the original notice, this system will contain information on individuals who have registered and established accounts to access CDX, EPA's electronic compliance filing and environmental data exchange system. Individuals with CDX accounts may engage in electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA), and as required under appropriate environmental statutes. Information maintained by the CDX-CRS includes the individual's name and related identifiers, work contact information, supervisor's name and contact information, and information about the EPA program under which the individual plans to report electronically. The information will be used to protect and manage access to the individual's account on CDX.

DATES: This system of records will continue operations.

ADDRESSES: Questions regarding this notice should be referred to the Environmental Protection Agency, Office of Environmental Information, Collection Services Division, MS–2823T, 1200 Pennsylvania Avenue, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Matthew Leopard at *Leopard.Matthew@epa.gov,* or 202–566–1698. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. General Information

EPA has established an official public docket for this action under Docket ID No. OEI–2003–0036. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday,

excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

Dated: November 25, 2003.

Kimberly T. Nelson,

Assistant Administrator and Chief Information Officer.

EPA–52

SYSTEM NAME:

EPA Central Data Exchange—Customer Registration Subsystem (CDX–CRS)

SYSTEM LOCATION:

The system will be operated and maintained by EPA or organizations under contract with the EPA (henceforth referred to as ''EPA'') at their place of business. The operational CDX CRS, which performs the routine functions of registering CDX users, is maintained at U.S. EPA National Computer Center, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. A testing facility which includes a test version of the CDX–CRS which is used to validate any changes to the CDX–CRS system before they become operational, is maintained at Computer Sciences Corporation, 8400 Corporate Drive, New Carrollton, MD 20785.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on all individuals that have either attempted to register or have registered to obtain an account to use CDX for electronically exchanging data with EPA. Registered users of EPA's CDX–CRS may include representatives of industry, government or laboratories exchanging information with EPA through CDX.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records including individual's name, self-assigned user name and security question, work title, work address and related work contact information (*e.g.*, phone and fax numbers, E-mail address), supervisor's name and related contact information, and information related to the EPA reporting program the individual is planning to electronically file or report under (*e.g.*, EPA program ID # and EPA program role), and the method of reporting (web browser, file exchange). In cases where individuals are asked to electronically ''sign'' certain EPA forms, CDX may request additional information items from an individual such as date of birth, mother's maiden name, high school graduation date, and similar personal identifiers. The individual registering for CDX will generate a self-assigned password that will be stored on the CDX–CRS, but it will only be accessible to the registering individual. The system will also store other system-generated data such as the registration date and time, digital certificate identifier, and other identifiers for internal tracking. Upon assignment of the password and ID code, the user may subsequently access the CDX system by entering these data and CDX will use this information to authenticate the individual's access to CDX.

AUTHORITY FOR MAINTENANCE OF SYSTEM:

In accordance with the Government Paperwork Elimination Act (44 U.S.C. 3504), EPA's electronic compliance filing and environmental data exchange system will enable the ''acquisition and use of information technology, including alternative information technologies that provide for electronic submission, maintenance, or disclosure of information as a substitute for paper and for the use and acceptance of electronic signatures.'' Section 3504(a)(1)(B)(vi) of Title 44, United States Code.

PURPOSE(S):

Central Data Exchange is EPA's portal for electronically exchanging environmental data with our external customers. Individual external users with CDX accounts may choose to engage in secure, electronic filing of environmental documents as permitted under the Government Paperwork Elimination Act (GPEA), and as required under appropriate environmental statutes. CDX–CRS was developed to protect the EPA and CDX system users from individuals seeking to gain unauthorized access to user accounts on CDX. While compliance reporting to EPA may be a mandatory requirement, the use of CDX to file information electronically to EPA is optional. At any time during the CDX registration process the individual may opt out of registering with CDX to file information electronically, and may revert back to existing paper or diskette filings with EPA.

The information contained in records maintained in the CDX–CRS system is used for the purposes of verifying the identity of the individual, informing users of the conditions and terms of using CDX, allowing individual users to establish an account on CDX, providing individual users access to their CDX account for electronically filing compliance data or exchanging other forms of environmental data, allowing individual users to customize, update or terminate their account with CDX, renewing or revoking an individual user's account on CDX, supporting the CDX help desk functions, investigating possible fraud and verifying compliance with program regulations, and initiating legal action against an individual involved in program fraud, abuse, or noncompliance. The information is also used to provide authenticated, protected access to the CDX system, thereby protecting CDX and CDX users from potential harm caused by individuals with malicious intentions gaining unauthorized access to the system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

CDX–CRS records will be used to facilitate registering CDX system users, issuing a username and password, and subsequently, verifying an individual's identity as he/she seeks to gain routine access to his/her account. In some cases, the user verification process will require EPA to contact the employer, based on the registration information provided by the user. The system has secondary uses that include: using the established username to facilitate tracking service calls or e-mails from the user in the event that there is a change in registration status or a problem the user has with CDX; offering the user new CDX service options, and facilitating the retrieval of user actions (e.g., historical submissions and help tickets); and events while on the CDX system. The records may also be subsequently used for auditing or other internal purposes of the EPA, including but not limited to: instances where enforcement of the conditions of using CDX are necessary; investigation of possible fraud involving a registered user; litigation purposes related to information reported to the agency; contacting the individual in the event of a system modification; a change to CDX; or modification, revocation or termination of user's access privileges to CDX.

EPA may disclose information contained in a record in this system of records under the routine uses listed in

this notice without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected. These disclosures may be made on a case-by-case basis or under a computer matching agreement if the Agency has complied with the computer matching requirements of the Act.

The general routine uses for EPA's CDX are listed as follows: A,B,C,E,F,G,H,I, and K apply. A detailed description of these routine uses can be found in the **Federal Register** Notice (at 66 FR 49947 (2001)) and also on the National Archives and Records Administration website, Privacy Act Issuances—1999 Compilation at: *http://www.access.gpo.gov/su_docs/aces/PrivacyAct.shtml* In addition, the following routine uses may also apply:

Program Disclosures: The Agency may disclose information from this system to Federal, State, or local agencies, private parties such as relatives, present and former employers and business and personal associates, and hearing officials for the following purposes:

(a) To verify the identity of the individual;

(b) To enforce the conditions or terms of Agency program regulations;

(c) To investigate possible fraud and verify compliance with Agency program regulations;

(d) To prepare for litigation or to litigate collection service and audit;

(e) To initiate a limitation, suspension and termination (LS&T), debarment, or suspension action;

(f) To investigate complaints, update files, and correct errors.

Litigation and Alternative Dispute Resolution (ADR) Disclosures:

(a) In the event that one of the parties listed below is involved in litigation or ADR, or has an interest in litigation ADR, the Agency may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Environmental Protection Agency, or any component of the Agency; or

(ii) Any Agency employee in his or her official capacity; or

(iii) Any Agency employee in his or her individual capacity if the Department of Justice (DOJ) has agreed to provide or arrange for representation for the employee;

(iv) Any Agency employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Agency determines that the litigation is likely to affect the Agency or any of its components.

(b) Disclosure to the DOJ. If the Agency determines that disclosure of certain records to the DOJ is relevant and necessary to litigation or ADR, the Agency may disclose those records as a routine use to the DOJ.

(c) Administrative Disclosures. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

(d) Parties, counsels, representatives and witnesses. If the Agency determines that disclosure of certain records to a party, counsel, representative or witness in an administrative proceeding is relevant and necessary to the litigation, the Agency may disclose those records as a routine use to the party, counsel, representative or witness.

Research Disclosure: The Agency may disclose records to a researcher if an appropriate official of the Agency determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of this system of records. The researcher shall be required to maintain Privacy Act safeguards with respect to the disclosed records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The CDX is a system for which the Agency is in the process of establishing a records schedule. The CDX will be taking e-transactions and preserving them in accordance with applicable EPA and other Federal policy and regulations. The CDX currently stores records on magnetic and/or digital formats. All record storage procedures are in accordance with current applicable regulations.

RETRIEVABILITY:

Records are retrievable by the CDX user name, program ID number, or all or part of the individual's name.

SAFEGUARDS:

EPA has minimized the risk of unauthorized access to the system by establishing a secure environment for exchanging electronic information. Physical access to the data system housed within the facility is controlled by a computerized badge reading system, and the entire complex is patrolled by security during non-business hours. The computer system offers a high degree of resistance to tampering and circumvention. Multiple levels of security are maintained with the computer system control program. This system limits data access to EPA and contract staff on a need to know basis, and controls individuals ability to access and alter records with the system. All users of the system of records are given a unique user identification (ID) with personal identifiers. All interactions between the system and the authorized individual users are recorded.

RETENTION AND DISPOSAL:

The EPA will retain and dispose of these records in accordance with National Archives and Records Administration General Records Schedule 20, Item 1.c. This schedule provides disposal authorization for electronic files and hard copy printouts created to monitor system usage, including but not limited to log-in files, audit trail files, system usage files, and cost-back files used to access charges for system use. Records will be deleted or destroyed when the Agency determines they are no longer needed for administrative, legal, audit, or other program purposes.

SYSTEM MANAGERS AND ADDRESS:

USEPA, Office of Environmental Information, (MS2823), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Attn: Chief, Central Receiving Branch.

NOTIFICATION PROCEDURE:

Requests to determine whether this system of records contains a record pertaining to the requesting individual should be sent to the USEPA, Office of Environmental Information, (MS2823T), 1200 Pennsylvania Ave. NW., Washington, D.C. 20460, Attn: Chief, Central Receiving Branch. To send a fax request: 202–566–1684. To determine whether a record exists regarding you in the system of records, provide the system manager with your name and username. Requests must meet the requirements of the regulations at 40 CFR part 16.

RECORD ACCESS PROCEDURES:

A request for record access shall follow the directions described under Notification Procedure and will be addressed to the system manager at the address listed above.

CONTESTING RECORDS PROCEDURES:

If you wish to contest a record in the system of records, contact the system manager with the information described under Notification Procedure, identify the specific items you are contesting, and provide a written justification for each item.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals who have had or seek to have their identity authenticated except that a password and a username are explicitly self-assigned by the user registering to gain access to CDX.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–30371 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0034; FRL–7595–7]

Establishment of a New System of Records Notice for the Integrated Grants Management System

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Grants and Debarment is giving notice that it proposes to establish a new system of records, Integrated Grants Management System, Fellowship Module. This system of records is an automated information and award process used to review applications, determine eligibility and produce Fellowship award documents.

DATES: The proposed notice will be effective without further notice on January 20, 2004.

ADDRESSES: Questions regarding this notice should be referred to Kathie Herrin, Office of Grants and Debarment, Ronald Reagan Building, 1200 Pennsylvania Ave NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Kathie Herrin, on (202) 564–5346.

SUPPLEMENTARY INFORMATION:

I. General Information

The EPA Integrated Grants Management System (IGMS)—Fellowship Module system of records does not duplicate any existing Fellowship system of records. Details regarding the new system of records are contained in this Federal Register Notice. The new system is an automated information and award process used to review applications, determine eligibility and produce Fellowship award documents. The system does not change how the privacy of individuals is affected because release of Privacy Act protected information is handled in the same manner regardless of whether the information is contained in an electronic or hard copy form. Access to the system is restricted to authorized users and will be maintained in a secure, password protected computer system, in secure areas and buildings with physical access controls and environmental controls. The system is maintained by the Office of Grants and Debarment under the Office of Administration and Resources Management.

EPA has established an official public docket for this action under Docket ID No. OEI–2003–0034. The official public docket is the collection of materials that is available for public viewing at the OEI Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

Dated: October 31, 2003.

Kimberly T. Nelson,

Assistant Administrator, and Chief Information Officer.

EPA–53

SYSTEM NAME:

Integrated Grants Management System (IGMS)—Fellowship Module.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Grants and Debarment, Environmental Protection Agency, Ronald Reagan Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (principle investigators and fellows) who request or have previously requested support from the EPA Fellowship programs, either individually or through an academic institution.

CATEGORIES OF RECORDS IN THE SYSTEM:

Fellow information includes name, social security number, address, name and address of sponsor school, and name of school advisor. Fellowship project information includes award date, duration, statutory and regulatory authorities, CFDA, and fiscal data. EPA contact information includes fellowship specialist and project officer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Grant and Cooperative Agreement Act, 31 U.S.C. 6301 *et seq.*; Clean Air Act, 42 U.S.C. 1857 *et seq.*; Federal Water Pollution Control Act, 33 U.S.C. 1254 *et seq.*; Public Health Service Act, 42 U.S.C. 241 *et seq.*; Solid Waste Disposal Act, 42 U.S.C. 6901 *et seq.*; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300j–1; Toxic Substances Control Act, 15 U.S.C. 2609, Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9660.

PURPOSE(S):

To assist EPA in conducting and documenting the receipt and review of applications and award of fellowship grants in response to solicitations issued by EPA program offices.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, and K apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic databases and hard copy files.

RETRIEVABILITY:

Electronic files may be retrieved by all data elements in the database.

SAFEGUARDS:

Electronic records are maintained in a secure, password protected electronic system. Paper records are maintained in locked file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Paper copies of awarded proposals are transferred to the Federal Records Center one year after closeout where they are retained for an additional six years in accordance with EPA records schedule 003 as approved by the National Archives and Records Administration. Electronic data will be retained and disposed of in accordance with EPA records schedule 009 pending approval by the National Archives and Records Administration.

SYSTEM MANAGER(S) ADDRESS AND TELEPHONE NUMBER:

Kathie Herrin, Office of Grants and Debarment, Environmental Protection Agency, Ronald Reagan Building, 1200 Pennsylvania Avenue NW, Washington, DC 20460; (202) 564–5346.

NOTIFICATION PROCEDURE:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the System Manager. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD ACCESS PROCEDURES:

Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORDS PROCEDURES:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

Academic institutions, principal investigators, applicants, and EPA and other Federal agency personnel.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–30372 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7594–6]

Notice of Proposed Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq., as Amended (CERCLA), Riverfront Superfund Site Operable Unit No. 1, New Haven, MO, EPA Docket No. CERCLA–07–2004–0004

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed Prospective Purchaser Agreement and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to enter into an Agreement and Covenant Not to Sue (Prospective Purchaser Agreement) pertaining to the Riverfront Superfund Site, Operable Unit No. 1 (OU1) located in the City of New Haven, Franklin County, Missouri. In addition to the EPA, the parties to this Prospective Purchaser Agreement will be the United States Department of Justice, the Missouri Department of Natural Resources, the Missouri Attorney General's Office, and the Industrial Development Authority of the City of New Haven, Missouri, a Missouri industrial development corporation and the prospective purchaser.

This Prospective Purchaser Agreement is subject to a 15 day public comment period, after which the United States, the EPA, and/or the State of Missouri may modify or withdraw their consent to the Prospective Purchaser Agreement if comments received disclose facts or considerations which indicate that this Prospective Purchaser Agreement is inappropriate, improper or inadequate.

DATES: Comments must be submitted on or before December 23, 2003.

ADDRESSES: Comments should be directed to David Hoefer, Attorney, United States Environmental Protection Agency, Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2798, and should reference the Riverfront Superfund Site, Operable Unit No.1, New Haven, Missouri, Prospective Purchaser Agreement, Docket No. CERCLA–07–2004–0004.

A copy of the Prospective Purchaser Agreement may be obtained by contacting Mr. Hoefer at the above address, by phone at (913) 551–7503, or by e-mail at *hoefer.david@epa.gov.*

SUPPLEMENTARY INFORMATION: New Haven, Missouri is a city with a population of approximately 1,700 located along the southern bank of the Missouri River in Franklin County, Missouri, approximately 40 miles west of St. Louis, Missouri. In 1986, the hazardous substance tetrachloroethene (''PCE''), was detected in two public-supply groundwater wells in the northern part of New Haven. Following this discovery, two new public-supply wells were installed in the southern part of the city, and several investigations into the source of the contamination were conducted by the Missouri Department of Natural Resources and EPA. The Riverfront Superfund Site is comprised of six operable units. The subject of this Prospective Purchaser Agreement is Operable Unit No. 1 (OU1). OU1 is located in the area of the northeast corner of Front Street and Cottonwood Street, just east of downtown New Haven. Located on OU1 is a 15,000 square foot, one story, concrete block and metal building. The highest PCE concentrations for OU1 have been detected in the soils beneath Front Street along the south side of this building. A plume of groundwater contaminated with PCE and its degradation products trichloroethene, cis–1,2-dichloroethene, and vinyl chloride emanates from this area of soil contamination and extends northward in the alluvium to the Missouri River where it discharges. This plume is not contributing to the PCE contamination that affected the city's closed water supply wells. On September 30, 2003, EPA issued a Record of Decision (ROD) for OU1. The ROD provides for the implementation of a remedial action to address contamination at OU1. The selected remedial action includes the use of an in-well stripper unit to treat contaminated soils and the head of the groundwater plume, as well as groundwater monitoring and institutional controls.

The Prospective Purchaser Agreement would resolve certain claims that the United States and the State of Missouri may have against the Industrial Development Authority of the City of New Haven, Missouri, the prospective purchaser of OU1, pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with respect to the existing contamination. In addition, the Industrial Development Authority of the City of New Haven, Missouri will receive protection from contribution actions or claims as provided by section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for matters addressed in the Prospective Purchaser Agreement.

Pursuant to the Prospective Purchaser Agreement the Industrial Development Authority of the City of New Haven,

Missouri has agreed to commit OU1 in perpetuity for civic, park, and/or parking purposes. It will also impose certain use restrictions on OU1 through the grant of a restrictive covenant and easement to the State of Missouri; provide access to OU1 to the United States and the State for response action implementation, maintenance, and monitoring; provide notice of contamination to any successors in interest; exercise due care with regard to contamination at OU1; and cooperate with the United States and the State in its investigation and response to the release or threat of release of hazardous substances at OU1.

If the Industrial Development Authority of the City of New Haven, Missouri fails to comply with the Prospective Purchaser Agreement, it shall be liable for litigation and other enforcement costs incurred by the United States to enforce the Prospective Purchaser Agreement or otherwise obtain compliance.

Dated: November 25, 2003.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 03–30171 Filed 12–5–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATES: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 11, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—November 13, 2003 (open and closed).

B. Reports

- Corporate/Non-corporate Report;
- FCS Building Association Quarterly Report;
- Compliance with Regulations B, M, and Z.

C. New Business—Other

- Final Approval of the FCA 2004–2009 Strategic Plan.

Closed Session*

Reports

- OSMO Quarterly Report;
- Update on the GAO Report Response.

Session closed-exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

Dated: December 4, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–30438 Filed 12–4–03; 11:22 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 26, 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, Pub. L. 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: Persons wishing to comment on this information collection should submit comments February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, 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 collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0955.

Title: 2 GHz Mobile Satellite Service Reports.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 9.

Estimated Time Per Response: 3 hours.

Frequency of Response: On occasion reporting requirement and recordkeeping requirement.

Total Annual Burden: 27 hours.

Annual Cost Burden: $14,000.

Needs and Uses: The 2 GHz mobile satellite service rules, 47 CFR Part 25, require disclosure in the form of a narrative statement, through amendments to applications or letters of intent, or orbital debris mitigation design and operational strategies and a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of spacecraft. This requirement will permit the Commission and the public to comment on each system's design. Two GHz mobile satellite systems receiving expansion spectrum as part of the rural and unserved areas spectrum incentive must provide a report on the actual number of subscriber minutes originating or terminating in unserved areas as a percentage of the actual U.S. system use. This rule will permit the Commission to verify that service is being provided in rural and unserved areas. In addition, system proponents will have to complete critical design review (CDR) within two years of

authorization. CDR is a new milestone for satellite services and will permit the Commission to more closely monitor system construction. Without such information, the Commission could not determine whether satellite licensees are operating in conformance with the Commission's rules.

OMB Control No.: 3060–0969.

Title: Availability of INTELSAT Space Segment Capacity to Users and Providers Seeking to Access INTELSAT Directly.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 2 hours.

Frequency of Response: One time filing requirement.

Total Annual Burden: 20 hours.

Annual Cost Burden: $3,000.

Needs and Uses: The Commission is seeking extension (no change) to this information collection. On 9/19/00, the Commission released a Report and Order in IB Docket No. 00–91, FCC 00–340, pursuant to the recently enacted Open-Market Reorganization for the Betterment of International Telecommunications Act (ORBIT Act). Section 641(b) of the Communications Satellite Act of 1962, as amended by the ORBIT Act, requires the FCC to determine whether ''sufficient opportunity'' exists for users and service providers to ''to access INTELSAT space segment capacity directly from INTELSAT to meet their service and capacity requirements.'' The Report and Order concluded that users and service providers currently do not have sufficient opportunity for direct access to INTELSAT. The Report and Order also concluded that the FCC should adopt a ''commercial solution''. This requires the parties—Comsat (which controls the most U.S. accessible capacity) and other direct access users, to attempt to negotiate mutually agreeable arrangements and to file reports with the Commission on or before March 13, 2001 on the progress of their negotiations.

OMB Control No.: 3060–0357.

Title: Section 63.701, Requests for Designation as a Recognized Private Operating Agency (RPOA).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 3.5 hours.

Frequency of Response: One time filing requirement.

Total Annual Burden: 35 hours.

Annual Cost Burden: $11,900 (rounded to $12,000).

Needs and Uses: The Commission requests this information in order to make recommendations to the U.S. Department of State for granting recognized private operating agency (RPOA) status to requesting entities. The Commission does not require entities to request RPOA status. Rather, this is a voluntary application process for use by companies that believe that obtaining RPOA status will be beneficial in persuading foreign governments to allow them to conduct business abroad. RPOA status also permits companies to join the International Telecommunications Union's (ITU's) Telecommunications Sector, which is the standards-setting body of the ITU.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30304 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

November 28, 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 (PRA) of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction (PRA) comments should be submitted on or before February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0700.

Title: Open Video Systems Provisions.

Form Number: FCC 1275.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; and State, local or tribal government.

Number of Respondents: 708.

Estimated Time per Response: 0.25 to 20 hours.

Total Annual Burden: 3,910 hours.

Total Annual Costs: None.

Needs and Uses: Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an ''Open Video System'' (''OVS''). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30306 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 26, 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 (PRA) of 1995, Pub. L. 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 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 February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to Judith-*B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at Judith-*B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0686.

Title: Streamlining the Internet Section 214 Authorization Process and Tariff Requirements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,650.

Estimated Time Per Response: .50—3,208 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 73,896 hours.

Total Annual Cost: $12,467,000.

Needs and Uses: On 9/12/00, the Commission adopted an Order on Reconsideration in IB Docket No. 97–142, Rules and Policies on Foreign Participation in the U.S. Telecommunications Market, which addressed petitions seeking reconsideration of the Report and Order in this proceeding in which the Commission modified its rules and policies regarding foreign participation in the U.S. telecommunications market. The Order on Reconsideration, drafted in response to the Telecommunications Act of 1996, mandates the FCC to undertake, in every even-numbered year beginning in 1998, a review of all regulations issued under the Communications Act and to eliminate unnecessary government regulation of the telecommunications industry. The information collections pertaining to Part 63 are necessary largely to determine the qualifications of applicants to provide common carrier international telecommunications service, including applicants that are affiliated with foreign carriers, and to determine whether and under what conditions the authorizations are in the public interest, convenience and necessity. The information collections pertaining to Part 1 of the rules are necessary to determine whether the FCC should grant a license for proposed submarine cables landing in the United States.

OMB Control No.: 3060–0855.

Title: Telecommunications Reporting Worksheet, CC Docket No. 96–45.

Form Nos.: FCC Forms 499, 499–A and 499–Q.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 5,500 respondents; 15,500 responses.

Estimated Time Per Response: 13 hours.

Frequency of Response: On occasion, quarterly, annual and one-time reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 201,500 hours.

Total Annual Cost: N/A.

Needs and Uses: This year the Commission modified the way in which it calculates universal service contributions. The Commission will be incorporating changes to the Telecommunications Worksheet, FCC Form 499–A, to reflect the revised methodology and resulting changes in the true-up process. We are anticipating a moderate increase to the total annual burden as a result of revising FCC Form 499–A.

OMB Control No.: 3060–0684.

Title: Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 2,000.

Estimated Time Per Response: .875—40 hours.

Frequency of Response: On occasion, semi-annual and annual reporting requirements, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 32,200 hours.

Total Annual Cost: $862,000.

Needs and Uses: The information collections in this proceeding are necessary to effectuate the relocation of fixed microwave incumbents from the 2 GHz band to clear spectrum for the development of Personal Communications Services (PCS). In addition, the collections are necessary to effectuate the Commission's plan for PCS relocators and subsequent PCS licensees to share the costs of relocating existing 2 GHz microwave facilities, thus providing for a fair and efficient relocation process. The information is used by respondents to negotiate relocation costs and submit relocation information to the clearinghouse; and two clearinghouses to determine the reimbursement obligations owed by later-entrant PCS entities. This information collection makes the following additions to the currently approved collection: (1) Reflects an additional burden of independent third party appraisal of the relocation costs for self-relocating incumbents; and (2) reflects a new estimate of the burden on industry to set up and maintain the clearinghouses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30307 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

November 28, 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 (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before February 6, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1032.

Title: Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronics Equipment, CS Docket No. 97–80 and PP Docket No. 00–67.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 563.

Estimated Time Per Response: 30 seconds to 40 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 72,402 hours.

Total Annual Costs: None.

Needs and Uses: In its earlier Further Notice of Proposed Rulemaking (''FNPRM''), *Commercial Availability of Navigation Devices and Compatibility Between Cable Systems and Consumer Electronic Equipment,* CS Docket No. 97–80 and PP Docket No. 00–67, the FCC sought comment on a *Memorandum of Understanding Among Cable MSOs and Consumer Electronics Manufacturers* (''MOU'') filed on December 19, 2002, by members of the Consumer Electronics Association (''CEA'') and the National Cable and Telecommunications Association (''NCTA''). The MOU was a result of inter-industry discussions seeking to establish a so-called ''cable plug and play'' standard that will ensure the compatibility of cable television systems with DTV receivers and related consumer electronics equipment. The standard will allow consumers to directly attach their DTV receivers to cable systems and receive cable television services without the need for an external navigation device. The compromise reached in the MOU, as detailed in the FNPRM, required the consumer electronics and cable television industries to commit to certain voluntary acts and sought the adoption of various Commission rules. In a *Second Report and Order and Second Further Notice of Proposed Rulemaking,* the Commission adopted final rules that set technical and other criteria that manufacturers would have to meet in order to label or market unidirectional digital cable televisions and other unidirectional digital cable products as ''digital cable ready.'' This regime includes testing and self-certification standards, certification recordkeeping requirements, and consumer information disclosures in appropriate post-sale materials that describe the functionality of these devices and the need to obtain a security module from their cable operator. To the extent manufacturers have complaints regarding the certification process, they may file formal complaints with the Commission. In addition, should manufacturers have complaints regarding administration of the DFAST license which governs the scrambling technology needed to build unidirectional digital cable products, they may also file complaints with the FCC. The Order also prohibits MVPDs from encoding content to activate selectable output controls on unidirectional digital cable products, or the down-resolution of unencrypted broadcast television programming. MVPDs are also limited in the levels of copy protection that could be applied to various categories of programming. As a part of these encoding rules is a petition process for new services within existing business models, a PR Newswire Notice relating to initial classification of new business models, and a complaints process for disputes regarding new business models.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30311 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

November 26, 2003.

SUMMARY: The Federal Communications Commissions, 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, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before January 7, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or

via the Internet to *Leslie.Smith@fcc.gov;* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0945.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; Individuals or households; Not-for-profit institutions; and State, local, or tribal governments.

Number of Respondents: 200.

Estimated Time per Response: 1 to 2 hours.

Frequency of Response: Annual and on occasion reporting requirements.

Total Annual Burden: 275 hours.

Total Annual Costs: $5,000.

Needs and Uses: 47 CFR 79.2 states that any broadcast station or multiple video programming distributor (MVPD) that provides local emergency information as part of a regularly schedules newscast or as part of a newscast that interrupts regularly scheduled programming must make the critical details of the information accessible to persons with visual disabilities in the affected local area. Any broadcast station or MVPD that provides emergency information through a crawl or scroll must also accompany that information with an aural tone to alert persons with disabilities that the station or MVPD is providing this information. In addition, 47 CFR 79(c) contains a complaint procedure'a complaint alleging a violation of this section may be transmitted to the FCC. The FCC then will notify the video programming distributor of the complaint, giving the distributor 30 days to reply to the complaint.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30312 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

November 26, 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 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 comments should be submitted on or before January 7, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562, or via Internet at *Kim_A._Johnson@omb.eop.gov;* and Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at 202–418–0217 or via Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by December 19, 2003.

OMB Control Number: 3060–XXXX.

Title: New Allocation for Amateur Radio Service, ET Docket No. 02–230.

Type of Review: New collection.

Form Number: N/A.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents: 5,000.

Estimated Time Per Response: 2–3 mins. (0.03 hrs.).

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 150 hours.

Total Annual Cost: None.

Needs and Uses: On April 29, 2003, the Office of Engineering and Technology adopted a Report and Order in *Amendment of Parts 2 and 97 of the Commission's Rules to Create a Low Frequency Allocation for the Amateur Radio Service,* in ET Docket No. 02–98, FCC 03–105. An amateur operator holding a General, Advanced or Amateur Extra Class license may only operate on the channels 5332 kHz, 5348 kHz, 5368 kHz, 5373 kHz, and 5404 kHz. Under the following limitations: (1) a maximum effective radiated power (e.r.p.) of 50 W; and (2) single sideband suppressed carrier modulation (emission designator 2K8J3E), upper sideband voice transmissions only. For the purpose of computing e.r.p. the transmitter PEP will be multiplied with the antenna gain relative to a dipole or the equivalent calculation in decibels. Licensees using other antennas must maintain in their station records either manufacturer data on the antenna gain or calculations of the antenna gain.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–30313 Filed 12–5–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

The Community Services Block Grant Training and Technical Assistance Program

Announcement Type: Initial.

Funding Opportunity Number: HHS–ACF–04–OCS 001.

CFDA Number: 93.570.

Funding Opportunity Description: The Office of Community Services announces that competing applications will be accepted for a new cooperative agreement for the collection, analysis, dissemination and use of data and other information about Community Services Block Grant (CSBG) activities and

effective approaches for ameliorating poverty.

Funding Instrument Type: Cooperative Agreement.

Category of Funding Activity: ISS Income Security and Social Services.

Anticipated Total Program Funding: $500,000.

Anticipated Number of Awards: One.

Ceiling on amount of individual awards: $500,000.

Project Periods for Award: This announcement is soliciting applications for project periods of up to five years. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be for five years. Applications for continuation grants funded under these awards beyond the one-year budget period but within the five year project period will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the government.

Electronic Link to Full Announcement: http://www.acf.hhs.gov/programs/ocs.

Eligibility

Eligible applicants are Community Services Block Grant Eligible Entities, statewide or local organizations or associations including faith-based organizations, for-profit organizations and non-profit organizations with demonstrated expertise in data collection on a nationwide basis and knowledge of and experience with the Community Services Network.

Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Additional Information on Eligibility: On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Cost Sharing or Matching: No.

Explanation of Application Due Dates: The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on January 7, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Mail Stop: Aerospace Building Washington, DC 20447–0002 Attention: Daphne Weeden. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Daphne Weeden''. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

I. Funding Opportunity Description

Sections 674(b)(2) and 678A(a)(1)(A) of the Community Services Block Grant (CSBG) Act of 1981, (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, Training and Education Services (COATES) Act of 1998 (Pub. L. 105–285), authorizes the Secretary of Health and Human Services to use a percentage of appropriated funds for training, technical assistance, planning, evaluation, performance measurement, monitoring, to assist States in carrying out corrective actions and to correct programmatic deficiencies of eligible entities, and for reporting and data collection activities related to programs or projects carried out under the CSBG Act. The Secretary may administer these activities through grants, contracts or cooperative agreements with appropriate entities.

Definitions of Terms

The following definitions apply:

Community Action Agency (CAA)—refers to local-level organizations that are Community Services Block Grant (CSBG) Eligible Entities. They provide a number of types of assistance with the goals of reducing poverty and enabling low-income families to become economically self-sufficient.

Community Services Network—refers to the various organizations involved in planning and implementing programs funded through the CSBG or providing training, technical assistance or support to them. The network includes local CAAs and other eligible entities; State CSBG offices and their national association; CAA State, regional and national associations; and related organizations that collaborate and participate with CAAs and other eligible entities in their efforts on behalf of low-income people.

Cooperative Agreement—an award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project. Substantial involvement may include collaboration or participation by OCS staff in activities specified in the award and, as appropriate, decision-making at specified milestones related to performance. The involvement may range from joint conduct of a project to OCS approval prior to the recipient's undertaking the next phase in a project.

Nationwide—refers to the scope of the technical assistance, training, data collection, or other capacity-building projects to be undertaken with grant funds. Nationwide projects must provide for the implementation of technical assistance, training or data collection for all or a significant number of States, and the CAAs and other local service providers who administer CSBG funds.

Non-profit Organization—refers to an organization, including faith-based and community-based, which meets the requirement for proof of non-profit status in the ''Additional Information on Eligibility'' section of this announcement and has demonstrated experience in providing training to individuals and organizations on methods of effectively addressing the needs of low-income families and communities.

Outcome Measures—are indicators that focus on the direct results one wants to have on customers and on communities.

Performance Measurement—is a tool used to assess how a program is accomplishing its mission through the delivery of products, services and activities.

Results-Oriented Management and Accountability (ROMA) System—ROMA is a system, which provides a framework for focusing on results for local agencies funded by the CSBG Program. It involves setting goals and strategies and developing plans and techniques that focus on a result-oriented performance based model for management.

State—means all of the 50 States and the District of Columbia. Except where specifically noted, for purposes of this program announcement, it also includes Territories as defined below.

Technical assistance—is an activity, generally utilizing the services of an expert (often a peer), aimed at enhancing capacity, improving programs and systems, or solving specific problems. Such services may be provided proactively to improve systems or as an intervention to solve specific problems.

Territories—refers to the Commonwealth of Puerto Rico and American Samoa for the purpose of this announcement.

Training—is an educational activity or event that is designed to impart knowledge, understanding or increase the development of skills. Such training activities may be in the form of assembled events such as workshops, seminars, conferences or programs of self-instructional activities.

Priority Area

Collection, Analysis, Dissemination and Use of Data and Other Information about Community Services Block Grant Activities and Effective Approaches for Ameliorating Poverty.

Program Purpose, Scope and Focus

The purpose of this new grant is to improve the collection, analysis and dissemination of quantitative data and other information about: (1) CSBG activities specifically; and (2) successful approaches for ameliorating the effects of poverty generally.

The grant will support four important component activities. The first is to revise and enhance the existing CSBG data collection instrument and to develop and administer an improved strategy for collecting, analyzing and disseminating information about quantitative, statistical and results-oriented data nationwide using a process of continuous collaboration with States and CAAs. The strategy must include relevant technical assistance and training on data issues for States and CAAs.

The second component is to assist in the development and implementation of procedures for establishing performance targets for anti-poverty programs at the State and local level. The information should be comprehensive enough and disseminated in such formats as to enable States and local service providers to improve their planning, management and delivery of services. The information should also be appropriate to assure that the public has a clear understanding of the CSBG program and other anti-poverty programs and their outcomes. Of particular importance is the continued knowledge building and development of the concepts and technologies for results-oriented management in order to meet the requirements of the CSBG Act and the Government Performance and Results Act of 1993.

The third component is to assist in expanding the use of computer-based technologies by CAAs and other Community Services Network partners. This will include providing training and technical assistance and other technical expertise directed at two objectives: (1) Increasing the entire Community Services Network's ability to participate fully on the information highway; and (2) Enhancing the network's ability to use and disseminate data, research and information regarding poverty issues, particularly activities and outcomes produced by CAAs and the entire Community Services Network.

A fourth component will be to provide training and technical assistance to CAAs and other Community Services Network partners concerning a new system-wide integrated program management system. The project supported with this grant will be expected to coordinate and collaborate with the organizations that are planning and designing the system to make it more likely that the CAAs and Community Services Network partners will use the system for authorized CSBG purposes.

II. Award Information

Funding Instrument Type: Cooperative Agreement.

Anticipated total Priority Area Funding: $500,000.

Anticipated Number of Awards: One.

Ceiling on amount of individual Awards: $500,000.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Floor of Individual Award Amounts: $500,000.

Average projected Award Amount: $500,000.

III. Eligibility Information

Eligibility

Eligible applicants are Community Services Block Grant Eligible Entities, statewide or local organizations or associations including faith-based organizations, for-profit organizations and non-profit organizations with

demonstrated expertise in data collection on a nationwide basis and knowledge of and experience with the Community Services Network.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Additional Information on Eligibility

On June 27, 2003, the Office of Management and Budget published in the Federal Register a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal *(www.Grants.gov).* A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

1. Cost Sharing or Matching

None.

VI. Application and Submission Information

1. Address To Request Application Package

Margaret Washnitzer, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, SW., Suite 500 West, Washington, DC 20447, Email: *mwashnitzer@acf.hhs.gov*, Telephone: (202) 401–9333.

2. Content and Form of Application Submission

1. Application Content

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

Each application must include the following components:

1. Table of Contents.

2. Abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population and the major elements of the work plan.

3. Completed Standard Form 424—that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.

4. Standard Form 424A—Budget Information-Non-Construction Programs.

5. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A.

6. Project Narrative—A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.

2. Application Format

Each application should include one signed original application and two additional copies of the same application.

Submit application materials on white 8½x11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

3. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives and Business Plan must not exceed 65 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

4. Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application.

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke.

What to submit	Required content	Required form or format	When to submit
Table of Contents	As described above	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Abstract of Proposed Project	Brief abstract that identifies the type of project, the target population and the major elements of the proposed project.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.

What to submit	Required content	Required form or format	When to submit
Completed Standard From 424	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Completed Standard Form 424A	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Narrative Budget Justification	As described above ''Application Format'' section.	Consistent with guidance in of this announcement.	By application due date.
Project Narrative	A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.	Consistent with guidance in ''Application Format'' section of this announcement.	By application due date.
Certification regarding lobbying	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding drug-free workplace.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Certification regarding environmental tobacco smoke.	As described above and per required form.	May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

Submission Date and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on January 7, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Mail Stop: Aerospace Building Washington, DC 20447–0002 Attention: Daphne Weeden. Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, Division of Discretionary Grants, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, SW., Washington, DC 20024, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Daphne Weeden''. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

ACF will not send acknowledgements of receipt of application materials.

Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to

clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Mail Stop 6C–462, Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

Funding Restrictions

Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

Number of Projects in Application

Each application may include only one proposed project.

Other Submission Requirements

Electronic Copy Address Submission

ACF will not accept electronic applications for this grant.

V. Application Review Information

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical innovations, reductions in cost or time or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in, for example such terms as the ''number of people served.'' When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification

Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

1. Evaluation Criteria

Evaluation Criterion I: Approach (Maximum: 35 Points)

Factors:

(1) The work program is results-oriented, approximately related to the legislative mandate and specifically related to the priority area under which funds are being requested. Applicant addresses the following: specific outcomes to be achieved; performance targets that the project is committed to achieving, including a discussion of and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support, the level of support from the applicant organization; past performance in similar work; and specific resources contributed to the project that are critical to success.

(2) The applicant defines the comprehensive nature of the project and methods that will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the description of the particular priority area.

Evaluation Criterion II: Objectives and Need for Assistance (Maximum: 20 Points)

Factors:

(1) The applicant documents that the proposed project addresses vital needs related to the program purposes and provides statistics and other data and information in support of its contention.

(2) The application provides current supporting documentation or other testimonies regarding needs from State CSBG Directors, CAAs and local service providers and/or State and Regional organizations of CAAs and other local service providers.

Evaluation Criterion III: Organizational Profiles (Maximum: 25 Points)

Factors:

(1) The applicant demonstrates that it has experience and a successful record of accomplishment relevant to the specific activities it proposes to accomplish.

(2) If the applicant proposes to provide training and technical assistance, it details its abilities to provide those services on a nationwide basis. If applicable, information provided by the applicant also addresses related achievements and competence of each cooperating or sponsoring organization.

(3) The applicant fully describes, for example in a resume, the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project.

(4) The applicant describes how it will involve partners in the Community Services Network in its activities. Where appropriate, applicant describes how it will interface with other related organizations.

(5) If subcontracts are proposed, the applicant documents the willingness and capacity of the subcontracting organization(s) to participate as described.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 15 Points)

Factors:

(1) The applicant describes how the project will assure long-term program and management improvements for State CSBG offices, CAA State and/or regional associations, CAAs and/or other local providers of CSBG services and activities.

(2) The applicant indicates the types and amounts of public and/or private resources it will mobilize, how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

(3) If the applicant proposes a project with a training and technical assistance focus, the applicant indicates the number of organizations and/or staff that will benefit from those services.

(4) If the applicant proposes a project with data collection focus, applicant describes the mechanism it will use to collect data, how it can assure collections from a significant number of States, and the number of States willing to submit data to the applicant.

(5) If the applicant proposes to develop a symposium series or other policy-related project(s), the applicant identifies the number and types of beneficiaries.

(6) The applicant describes methods of securing participant feedback and evaluations of activities.

Criterion V: Budget and Budget Justification (Maximum: 5 points)

Factors:

(1) The resources requested are reasonable and adequate to accomplish the project

(2) Total costs are reasonable and consistent with anticipated results.

2. Review and Selection Process

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

(a) The application must contain a signed Standard Form 424 Application for Federal Assistance ''SF–424'', a Standard Form 424–A Budget Information ''SF–424A'' and signed Standard Form 424B Assurance—Non-Construction Programs ''SF–424B'' completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an

official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets requirements set for in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the ''Additional Information on Eligibility'' section of this announcement.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

VI. Award Administration Information

1. Award Notices: 90 days after the due date of applications. Following approval of the application selected for funding, ACF will mail a written notice of project approval and authority to draw down project funds. The official award document is the Financial Assistance Award that specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided and the terms and conditions of the award.

ACF will notify unsuccessful applicants after the award is issued to the successful applicant.

2. Administrative and National Policy Requirements: 45 CFR part 74.

3. Special Terms and Conditions of Awards: None.

4. Reporting Requirements.

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Special Reporting Requirements: None.

VII. Agency Contacts

Program Office Contact: Margaret Washnitzer, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500 West,Aerospace Building, Washington, DC 20447–0002,Email: *mwashnitzer@acf.hhs.gov,*Telephone: (202) 401–9333.

Grants Management Office Contact: Daphne Weeden, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447–0002, Email: *dweeden@acf.hhs.gov,* Telephone: (202) 401–2344.

VIII. Other Information

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Under the Paperwork Reduction Act of 1995, Pub. L. 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval of any reporting and record keeping requirements in regulations including program announcements. This program announcement does not contain information collection requirements beyond those approved for ACF grant applications under the Program Narrative Statement by OMB (Approval Numbers: 0348–0043, 0348–0044, 034800040, 0348–0046, 0925–0418 and 0970–0139).

Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB control # 0970–0139 which expires 12/31/03.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: November 24, 2003.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 03–30392 Filed 12–5–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0525]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Analysis and Critical Control Point; Procedures for the Safe and Sanitary Processing and Importing of Juice

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, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on recordkeeping requirements for applying hazard analysis and critical control point (HAACP) procedures for safe and sanitary processing for processors of fruit and vegetable juice.

DATES: Submit written or electronic comments on the collection of information by February 6, 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: Peggy Robbins, Office of Management

Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

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, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection 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.

Hazard Analysis and Critical Control Point (HAACP); Procedures for the Safe and Sanitary Processing and Importing of Juice (OMB Control Number 0910–0466)—Extension

These regulations mandate the application of HACCP procedures to fruit and vegetable juice processing. HACCP is a preventative system of hazard control that can be used by all food processors to ensure the safety of their products to consumers. A HACCP system of preventive controls is the most effective and efficient way to ensure that these food products are safe. FDA's mandate to ensure the safety of the nation's food supply is derived principally from the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 *et seq.*). Under the act, FDA has authority to ensure that all foods in interstate commerce, or that have been shipped in interstate commerce, are not contaminated or otherwise adulterated, are produced and held under sanitary conditions, and are not misbranded or deceptively packaged; under 21 U.S.C. 371, the act authorizes the agency to issue regulations for its efficient enforcement. The agency also has authority under the Public Health Service Act (42 U.S.C. 264) to issue and enforce regulations to prevent the introduction, transmission, or spread of communicable diseases from one State to another other State. Information development and recordkeeping are essential parts of any HACCP system. The information collection requirements are narrowly tailored to focus on the development of appropriate controls and document those aspects of processing that are critical to food safety. Through these regulations, FDA is implementing its authority under section 402(a)(4) of the act (21 U.S.C. 342(a)(4)).

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Record-keeping	Total Annual Records	Hours per Record	Total Hours
120.6(c) and 120.12(a)(1) and (b)	1,875	365	684,375	0.1	68,438
120.7, 120.10(a), and 120.12(a)(2), (b), and (c)	2,300	1.1	2,530	20	50,600
120.8(b)(7) and 120.12(a)(4)(i) and (b)	1,450	14,600	21,170,000	0.01	211,700
120.10(c) and 120.12(a)(4)(ii) and (b)	1,840	12	22,080	0.1	2,208
120.11(a)(1)(iv), 120.11(a)(2), and 120.12(a)(5)	1,840	52	95,680	0.1	9,568
120.11(b) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.11(c) and 120.12(a)(5) and (b)	1,840	1	1,840	4	7,360
120.14(a)(2), (c), and (d)	308	1	308	4	1,232
Total					358,466

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Table 1 provides a breakdown of the total estimated annual recordkeeping burden. The estimates in this table have been reviewed by the agency's HACCP experts, who have practical experience in observing various processing operations and related recordkeeping activities.

The burden estimates in table 1 are based on an estimate of the total number of juice manufacturing plants (i.e., 2,300) affected by the regulations. Included in this total are 850 plants currently identified in FDA's official establishment inventory plus 1,220 very small apple juice manufacturers and 230 very small orange juice manufacturers. The total burden hours are derived by estimating the number of plants affected by each portion of this final rule and multiplying the corresponding number by the number of records required annually and the hours needed to complete the record. These numbers

were obtained from the agency's final regulatory impact analysis prepared for these regulations.

Moreover, these estimates assume that every processor will prepare sanitary standard operating procedures and a HACCP plan and maintain the associated monitoring records and that every importer will require product safety specifications. In fact, there are likely to be some small number of juice processors that, based upon their hazard analysis, determine that they are not required to have a HACCP plan under these regulations.

Dated: December 1, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30302 Filed 12–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0529]

Amending the MedWatch Forms to Collect Postmarketing Adverse Event Data Relating to Race and Ethnicity

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is requesting comment on the advantages and disadvantages of systematically collecting race and ethnicity data in postmarketing adverse event reports. FDA is also seeking feedback on whether FDA's MedWatch forms (Forms 3500 and 3500A) should be amended to collect the race and ethnicity data. If the MedWatch forms are amended to collect race and ethnicity data, FDA would like comment on how the forms should be amended and the financial impact of amending the forms on both voluntary and mandatory reporters. FDA is also asking for comment on the implications that collecting such race and ethnicity data would have for international reporting of postmarketing adverse events.

DATES: Submit written or electronic comments on this document by February 6, 2004.

ADDRESSES: Submit written comments on identified questions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. The MedWatch forms are available on the Internet at *http://www.fda.gov/MedWatch*.

FOR FURTHER INFORMATION CONTACT: Brenda Evelyn, Office of Special Health Issues (HF–12), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460, *bevelyn@oc.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA Regulations

FDA regulations require sponsors to present an analysis of data according to demographic subgroups (age, gender, race), as well as an analysis of modifications of dose or dosage intervals for specific subgroups (21 CFR 314.50(d)(5)(vi)(*a*)) in certain marketing applications.

B. MedWatch Forms

Medwatch Forms FDA 3500 and 3500A are used by voluntary and mandatory reporters, respectively, to collect information on adverse events, product quality problems, and medication errors that occur during marketed use of FDA-regulated products. The MedWatch forms collect demographic and other information about patients in the patient information section (box A), which includes specific data fields for age (box A.2), sex (box A.3), and weight (box A.4). The forms do not, however, include a unique field to capture data on race and ethnicity. Race and ethnicity data can be collected in box B.7 of the MedWatch forms, however, other information is collected in box B.7, including information on preexisting medical conditions (e.g., allergies, pregnancy, smoking and alcohol use, hepatic/renal dysfunction). In addition, the information captured in this section is in a narrative format and cannot be searched efficiently to extract race and ethnicity data. Thus, current placement of race and ethnicity data in box B.7 of the MedWatch forms limits the ability of FDA to analyze postmarketing adverse event data by race and ethnicity.

C. Office of Management and Budget (OMB) Recommendations and FDA Draft Guidance

In 1997, OMB issued recommendations for the collection and use of race and ethnicity data by Federal agencies (Statistical Policy Directive No. 15, Race and Ethnic Standards for Federal Statistics and Administrative Reporting, 1997). In the **Federal Register** of January 30, 2003, FDA made available for comment a draft guidance for industry entitled ''Collection of Race and Ethnicity Data in Clinical Trials'' (68 FR 4788). In the draft guidance, FDA recommends the use of standardized OMB race and ethnicity categories for data collection in clinical trials. The agency's recommendations are intended to ensure consistency in the analyses of demographic subsets across studies and to help evaluate potential differences in the safety and efficacy of pharmaceutical products among population subgroups.

With respect to collection of the data, in the draft guidance, the agency provided the following recommendations:

1. A two-question format should be used for requesting race and ethnicity information, with the ethnicity question preceding the question about race.

2. Study participants should self-report race and ethnicity information whenever feasible, and individuals should be permitted to designate a multiracial identity. When the collection of self-reported designations is infeasible (e.g., because of the subject's inability to respond), we recommend the information be requested from a first-degree relative or other knowledgeable source.

3. For ethnicity, the following minimum choices should be offered:

- Hispanic or Latino
- Not Hispanic or Latino

4. When race and ethnicity information is collected separately, the following minimum choices should be offered for race:

- American Indian or Alaska Native
- Asian
- Black or African American
- Native Hawaiian or Other Pacific Islander
- White

5. In certain situations, as directed in OMB Directive 15, more detailed race and ethnicity information may be desired (e.g., White can reflect origins in Europe, the Middle East, or North Africa; Asian can reflect origins from areas ranging from India to Japan). If more detailed characterizations of race or ethnicity are collected to enhance data consistency, these characterizations should be traceable to the five minimum designations for race and two designations for ethnicity listed under numbers 3 and 4 in section I.C of this document.

D. ICH Guidance

In 1998, as part of an international effort among Japan, the European Union, and the United States to harmonize technical requirements for pharmaceutical drug development and regulation (ICH (International Conference on Harmonisation)), FDA published a guidance entitled ''E5

Ethnic Factors in the Acceptability of Foreign Clinical Data'' (63 FR 31790, June 10, 1998). The E5 guidance provides recommendations to permit the clinical data collected in one region to be used in the registration or approval of a drug or biological product in another region, while allowing for the influence of ethnic factors. The E5 guidance defines ethnic factors that could affect drug response in terms of both intrinsic and extrinsic issues. Because there is the potential for differences in the safety and efficacy of pharmaceutical products among population subgroups, the E5 guidance provides a general framework for how to evaluate medicines with regard to ethnic factors.

II. Scope of Discussion

In view of the background information presented in section I of this document, FDA is requesting comment on the advantages and disadvantages of collecting race and ethnicity data in postmarketing adverse event reports. FDA is also seeking feedback on whether the MedWatch forms should be amended to collect this data based on the standardized categories described in section I.B of this document. Specific comments are being sought on the following questions:

1. Should the MedWatch forms (Forms FDA 3500A and 3500) be amended with a special field or fields to capture adverse event data on race and ethnicity?

2. Should MedWatch race and ethnicity data distinguish between self-reported and observer-reported designations? If so, how should the designations be captured?

3. Would collection of race and ethnicity data on the MedWatch forms have an impact on the ICH E2B guidance relating to the electronic submission of adverse event reports (''E2B Data Elements for Transmission of Individual Case Safety Reports'' (63 FR 2396 at 2397, January 15, 1998))?

4. What is the financial impact associated with adding a special field or fields to the MedWatch forms to collect data on race and ethnicity?

III. Comments

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

Dated: November 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–30300 Filed 12–5–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed grant information collection activity or to obtain a copy of the data collection plan and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of grantee functions including whether the information will 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.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Title I Minority AIDS Initiative (MAI) Annual Plan and Title I MAI Annual Report: New

The CARE Act (codified under Title XXVI of the Public Health Service Act) was first enacted by Congress in 1990, and reauthorized in 1996 and 2000. It addresses the unmet health needs of persons living with HIV by funding primary health care and support services that enhance access to and retention in care. The CARE Act funded services reach over 500,000 individuals; after Medicaid and Medicare, it is the largest single source of Federal funding for HIV/AIDS care for low-income, uninsured, and underinsured Americans. Title I under the CARE Act provides emergency assistance to eligible metropolitan areas (EMAs) the most severely affected by the HIV epidemic, for the purpose of providing a continuum of high quality, community-based care for low-income individuals and families with HIV disease.

In response to a Presidential declaration in 1998 that HIV was a severe and ongoing health crisis among minority communities, the Congress directed a portion of fiscal year (FY) 1999 CARE Act funds to a new Minority AIDS Initiative (MAI) to address the disproportionate impact of HIV on African-American and Hispanic communities. Since then, the focus has been broadened to include all racial and ethnic minority communities. HRSA disburses the Title I component of MAI funds among the 51 EMAs based on a congressionally mandated formula.

The Congress has directed that Title I MAI funds be used through established local planning council processes to improve HIV-related health outcomes for communities of color and reduce existing health disparities. Improved health outcomes include reducing HIV transmission, morbidity and opportunistic disease, and improving life expectancy.

The Title I MAI Annual Plan (Plan) and Title I MAI Annual Report (Report) are designed to collect information from grantees on MAI-funded services, the number and demographics of clients served, and client-level outcomes. This information is needed to monitor and assess: (a) Increases and changes in the type and amount of HIV/AIDS health care and related services being provided to each disproportionately impacted community of color; (b) increases in the number of persons receiving HIV/AIDS services within each racial and ethnic community; and (c) the impact of the Title I MAI funded services in terms of client-level and service-level health outcomes. This information also will be used to plan new technical assistance and capacity development activities, and inform the HIV/AIDS Bureau/HRSA policies and program management.

The Plan and Report will be transmitted by mail and electronically to all Title I grantees and made available through the HRSA web site. Two alternatives will be provided to grantees for submitting Plans and Reports electronically: a designated mailbox for e-mailed electronic reports and a web-based reporting option. The Plan and

Report forms will be linked to reduce the reporting burden, and are designed to include check box responses, fields for reporting budget, expenditure and client data, and open-ended text boxes for describing client or service-level outcomes. The forms will automatically generate totals and percentages and include other automated fields to minimize the time required to complete the Plan and Report, and include built-in checks to minimize possible reporting errors.

The forms will require grantees to collect client, services, and outcomes information from MAI-funded service providers (sub-grantees), which grantees have already been collecting from MAI-funded providers since FY 2000. It will take grantees no longer than 15 minutes to complete a single form (response) for each MAI-funded service provided to each minority racial or ethnic minority community.

In FY 2002, grantees would have completed an average of nine forms/responses to prepare their Title I Annual MAI Plans and eight forms/responses to prepare their Title I Annual MAI Reports. For FY 2003, the average number declined to eight and seven forms/responses respectively. Thirty-eight of the 51 grantees (75%) would have completed 10 or fewer Plans and 10 or fewer Reports during both fiscal years.

Therefore the approximate response burden for Title I grantees in completing *both* the Annual MAI Plan and the Annual MAI Report is estimated as:

Estimated number of grantee respondents	Estiamted responses per grantee	Total number of responses	Hours per response	Estimated total hour burden
51	15	765	.25	191.25

Send comments to Susan G. Queen, PhD, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: November 28, 2003.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 03–30303 Filed 12–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Computational Models of Saccades.

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 20817, (Telephone Conference Call).

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247, *steinmem@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 Sleep.

Date: December 4, 2003.

Time: 12 p.m. to 1 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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255, *kenshalod@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PTHA 04 S: Vascular Calcification.

Date: December 5, 2003.

Time: 1:30 p.m. to 2:30 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.

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, Functional Proteomic Analysis of Cardiac Mitochondria.

Date: December 5, 2003.

Time: 1:30 p.m. to 2:30 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: 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.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Neuroendocrine Control.

Date: December 9, 2003.

Time: 12 p.m. to 1 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: Daniel R. Kenshalo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, (301) 435–1255, *kenshalod@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel ZRG1 CNNT 05M: Member Conflict: Brain Disorders and Clinical Neurociences IRG.

Date: December 10, 2003.

Time: 12 p.m. to 1 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: William C. Benzing, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5190, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Comparative Genomics.

Date: December 19, 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: Camilla E. Day, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892, (301) 435–1037, *dayc@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, Metabolism Special Emphasis Panel.

Date: December 19, 2003.

Time: 3:15 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: Ann A. Jerkins, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7892, Bethesda, MD 20892, (301) 435–4514.

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, Youth Trajectories.

Date: December 22, 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: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892, (301) 451–8008, *younghyd@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.

(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: December 2, 2003.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committtee Policy.

[FR Doc. 03–30330 Filed 12–5–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–100]

Notice of Submission of Proposed Information Collection to OMB: Prepayment of Direct Loans on Section 202 and 202/8 Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval to continue to collect the information from owners of multifamily housing projects who wish to prepay a mortgage financed under Sec. 202. The information is used to determine the viability of the prepayment request.

DATES: *Comments Due Date:* January 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and OMB approval number (2502-pending) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: 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;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins 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: Prepayment of Direct Loans on Section 202 and 202/8 Projects.

OMB Approval Number: 2502-pending.

Form Numbers: HUD–5084.

Description of the Need for the Information and its Proposed Use:

This is a request for approval to continue to collect the information from owners of multifamily housing projects who wish to prepay a mortgage financed under Sec. 202. The information is used to determine the viability of the prepayment request.

Respondents: Business or other for-profit, Not-for-profit institutions.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	150	150		2		300

Total Estimated Burden Hours: 300

Status: Existing collection in use without an OMB control number.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: December 1, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–30315 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–23]

Announcement of Funding Award for Fiscal Year 2003 to the Housing Assistance Council

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of an award for Fiscal Year 2003 to the Housing Assistance Council.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street SW., Washington, DC 20410–6000, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or (202) 708–1455. (Telephone numbers other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Resolution of 2003 (Pub. L. 108–7) earmarked $3,278,550 for a grant to the Housing Assistance Council. HUD's Office of Policy Development and Research administers this grant.

The Catalog of Federal Domestic Assistance for these grants is 14.225

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning this award, as follows:

Housing Assistance Council, Moises Loza, Executive Director, 1025 Vermont Avenue, NW., Suite 606, Washington, DC 20005, Grant #H–21354CA, ''Rural Housing Research and Technical Assistance'' Amount $3,278,550, Date Awarded 10/01/02.

Dated: November 6, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 03–30318 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–22]

Announcement of Funding Awards for Fiscal Year 2003, Research and Technology Unsolicited Proposals

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 2003 unsolicited research. The purpose of this document is to announce the names and addresses of the organizations that have been awarded cooperative agreements based on their submission and HUD's acceptance of unsolicited proposals for research funding.

FOR FURTHER INFORMATION CONTACT: Patrick J. Tewey, Director, Budget, Contracts and Program Control Division, Office of Policy Development and Research, Room 8230, 451 7th Street, SW., Washington, DC 20410–6000, telephone (202) 708–1796, extension 4098. To provide service for persons who are hearing-or-speech-impaired, this number may be reached via TTY by dialing the Federal Information Relay Service on 1–800–877–TTY, 1–800–877–8339, or 202–708–1455. (Telephone number, other than ''800'' TTY numbers are not toll free.)

SUPPLEMENTARY INFORMATION: The Consolidated Appropriations Resolution of 2003 (Pub. L. 108–7) provided $46,694,500 in Research and Technology funds for contracts, grants and necessary expenses of programs and studies relating to housing and urban problems. Included in this amount are $39,243,250 for core Research and Technology and $7,451,250 in funding for the Partnership for Advancing Technology in Housing (PATH) program. The majority of HUD's Research and Technology funding is awarded through competitive solicitations. The unsolicited proposal is another method used by HUD to fund research and development. An unsolicited proposal is submitted to support an idea, method or approach by individuals and organizations solely on the submitter's initiative. Funding of unsolicited proposals is considered a noncompetitive action. An unsolicited proposal demonstrates a unique and innovative concept or a unique capability of the submitter, offers a concept or service not otherwise available to the Government and does not resemble the substance of a pending competitive action. All unsolicited proposals and the resulting award of cooperative agreements include substantial cost sharing on the part of the submitter/awardee.

The Catalog of Federal Domestic Assistance for this program is 14.506.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing details concerning the recipients of funding awards, as follows:

List of FY2003 Awardees for Cooperatives Agreements

Council of Professional Associations on Federal Statistics (COPAFS), Edward Sparr, Executive Director, 1249 Duke Street, Alexandria, VA 22314, Grant Number: H–21400SG, Project Title: ''Seminar on Redefining Metro/Non-Metro'', Total Amount $10,000, Date Awarded: 9/23/03

MDRC, Jesus M. Amadeo, Senior Vice President, 16 East 34th Street, New York, NY 10016, Grant Number H–21042CA, Project Title: ''Jobs-Plus Community Revitalization Initiative for Public Housing Families'', Total Amount $1,100,000, Date Awarded: 5/31/03

NAHB Research Center, Michael Luzier, President, 400 Prince Georges Boulevard, Upper Marlboro, MD 20774, Grant Number: H–21396CA, Project Title: ''Tool Base Services 2003, The Portal to Technical Information for the Home Building Industry'', Total Amount $905,000, Date Awarded 5/29/03

National Building Museum, G. Martin Moeller, Senior Vice President for Special Projects, 401 F Street, NW., Washington, DC 20001, Grant Number: H–21399CA, Project Title: ''National Building Museum Affordable Housing Design Program'', Total Amount: $238,700, Date Awarded: 9/23/03

New Mexico State University, Daniel J. Dwyer, Vice Provost for Research, Las Cruces, New Mexico 88003, Grant Number: H–21397CA, Project Title: ''Colonias Economic Development Policy'', Total Amount: $179,000, Date Awarded: 5/12/03

Touchstone Research Laboratory, Ltd. William Casto, Chief Financial Officer, The Millennium Centre, Triadelphia, WV 26059, Grant Number: H–21363CA, Project Title: ''Housing Applications for New Carbon Foam Technology Materials'', Total Amount: $187,763, Date Awarded: 11/14/02

University of Colorado, Dorothy Yates, Director, Sponsored Programs, Institute of Public Policy, Graduate School of Public Affairs, 1445 Market Street, Denver, CO 80202, Grant Number: H–21401CA, Project Title: ''Employer-Assisted Employee Housing Pilot Program Study in Nicaragua'', Total Amount: $20,000, Date Awarded: 7/25/03

University of Maryland at College Park, Monique Anderson, Contract Manager, Office of Research Administration and Advancement, 3112 Lee Building, College Park, MD 20742, Grant H–21403CA, Project Title: ''Zoning as a Barrier to Affordable Housing'', Total Amount $300,000, Date Awarded: 9/30/03

Urban Land Institute, Cheryl Cummins, Chief Operating Officer, 1025 Thomas Jefferson Street, NW., Washington, DC 20007, Grant Number: H–21404CA, Project Title: ''Research on Barriers to Land Acquisition and Infill Development'', Total Amount: $151,052, Date Awarded: 9/30/03

Dated: November 6, 2003.

Darlene F. Williams,

General Deputy Assistant Secretary, Office of Policy Development and Research.

[FR Doc. 03–30317 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–28]

Privacy Act of 1974; Notice of a Computer Matching Program

AGENCY: Office of the Chief Information Officer, (HUD).

ACTION: Notice of a Computer Matching Program—between HUD and the Department of Justice (DOJ).

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988, as amended, (Pub. L. 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818; June 19, 1989), and OMB Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB) Congress and the Public,'' HUD is issuing a public notice of its intent to conduct a recurring computer matching program with DOJ to utilize a computer information system of HUD, the Credit Alert Interactive Voice Response System (CAIVRS), with DOJ's debtor files. The CAIVRS data base now includes delinquent debt information from the Departments of Agriculture, Education, Veteran Affairs and the Small Business Administration. This match will allow prescreening of applicants for debts owed or loans guaranteed by the Federal government to ascertain if the applicant is delinquent in paying a debt owed to or insured by the Federal government. Before granting a loan, a lending agency and/or an authorized lending institution will be able to interrogate the CAIVRS debtor file, which contains the Social Security Numbers (SSNs) of HUD's delinquent debtors and defaulter and debtor files of the DOJ and verify that the loan applicant is not in default on a Federal judgment or delinquent on direct or guaranteed loans of participating Federal programs. As a result of the information produced by this match, the authorized users may not deny, terminate, or make a final decision on any loan assistance to an applicant or take other adverse action against such applicant, until an officer or employee of such agency has independently verified such information.

DATES: *Effective Date:* Computer matching is expected to begin on January 7, 2004 unless comments are received which will result in a contrary determination, or 40 days from the date a computer matching agreement is signed, whichever is later.

Comment Due Date: January 7, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: From Recipient Agency Contact: Jeanette Smith, Departmental Privacy Act Officer, Department of Housing and Urban Development, 451 7th St. SW., Room P8001, Washington, DC 20410–3000, telephone number (202) 708–2374. (This is not a toll-free number.) A telecommunication device for hearing and speech-impaired individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

From Source Agency Contact: Diane E. Watson, Debt Collection Management, Nationwide Central Intake Facility (NCIF), Department of Justice, 1110 Boni Font Street, Suite 220, Silver Spring, Maryland, 20910–3358, telephone number (301) 585–2391. (This is not a toll-free number.)

Reporting of a Matching Program: In accordance with Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, as amended, and Office of Management and Budget Bulletin 89–22, ''Instructions on Reporting Computer Matching Programs to the Office of Management and Budget (OMB), Congress and the Public;'' copies of this notice and report are being provided to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB.

Authority: The matching program will be conducted under the authority of 28 U.S.C. 2301(e) (3611 of the Federal Debt Collection Procedures Act of 1990, Pub. L. 101–647), and OMB Circulars A–129 (Managing Federal Credit Programs) and A–70 (Policies and Guidelines for Federal Credit Programs). One of the purposes of all Executive departments and agencies—including HUD—is to implement efficient management practices for federal credit programs. OMB Circulars A–129 and A–70 were issued under the authority of the Budget and Accounting Act of 1921, as amended; the Budget and Accounting Act of 1950, as amended; the Debt Collection Act of 1982, as amended; and, the Deficit Reduction Act of 1984, as amended.

Objecives to be met by the matching program: By identifying those individuals or corporations against whom the DOJ has filed a judgment, the federal government can expand the prescreening search of their loan applicants to further avoid lending to applicants who are credit risks.

Records to be Matched: HUD will utilize its system of records entitled HUD/DEPT–2, Accounting Records. The debtor files for HUD programs involved are included in this system of records. HUD's debtor files contain information on borrowers and co-borrowers who are currently in default (at least 90 days delinquent on their loans); or who have any outstanding claims paid during the last three years on Title II insured or

guaranteed home mortgage loans; or individuals who have defaulted on Section 312 rehabilitation loans; or individuals who have had a claim paid in the last three years on a Title I loan. For the CAIVRS match, HUD/DEPT–2, system of records, receives its program inputs from HUD/DEPT–28, Property Improvement and Manufactured (Mobile) Home Loans—Default; HUD/DEPT–32, Delinquent/Default/Assigned Temporary Mortgage Assistance Payments (TMAP) Program; and HUD/CPD–1, Rehabilitation Loans-Delinquent/Default. The DOJ will provide HUD with its debtor files contained in its system of records entitled, Debt Collection Management System, JUSTICE/JMD–006. HUD is maintaining DOJ's records only as a ministerial action on behalf of DOJ, not as part of HUD's HUD/DEPT–2 system of records. DOJ's data contain information on individuals or corporations who have defaulted on federal judgments. The DOJ will retain ownership and responsibility for their system of records that they place with HUD. HUD serves only as a record location and routine use recipient for DOJ's data.

Notice Procedures: HUD will notify individuals at the time of application (ensuring that routine use appears on the application form) for guaranteed or direct loans that their records will be matched to determine whether they are delinquent or in default on a federal debt. HUD and DOJ will also publish notices concerning routine use disclosures in the **Federal Register** to inform individuals that a computer match may be performed to determine a loan applicant's credit status with the federal government.

Categories of Records/Individuals Involved: The debtor records include these data elements from HUD's systems of records, HUD/Dept-2: SSN, claim number, program code, and indication of indebtedness. Categories of records include: Records of claims and defaults, repayment agreements, credit reports, financial statements, and records of foreclosures, and federal judgment liens. Categories of individuals include former mortgagors and purchasers of HUD-owned properties, manufactured (mobile) home and home improvement loan debtors who are delinquent or in default on their loans, and rehabilitation loan debtors who are delinquent or in default on their loans, and individuals or corporations against whom judgments have been filed by DOJ.

Period of the Match: Matching will begin at least 40 days from the date copies of the signed (by both Data Integrity Boards) computer matching agreements are sent to both Houses of Congress or at least 30 days from the date this Notice is published in the **Federal Register**, whichever is later, providing no comments are received which would result in a contrary determination. The matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other in writing to terminate or modify the agreement.

Dated: November 26, 2003.

Gloria R. Parker,

Chief Technology Officer.

[FR Doc. 03–30316 Filed 12–5–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs is publishing the current list of Designated Tribal Agents for service of notice, including the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication.

The regulations implementing the Indian Child Welfare Act (ICWA) provide that Indian tribes may designate an agent other than the tribal chairman for service of notice proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

FOR FURTHER INFORMATION CONTACT: Chet Eagleman, Indian Child Welfare Specialist, Bureau of Indian Affairs, Division of Social Services, 1951 Constitution Avenue, NW., MS–320–SIB, Washington, DC 20240–0001; Telephone: (202) 513–7622.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: November 21, 2003.

Aurene M. Martin,

Principal Deputy Assistant Secretary—Indian Affairs.

Indian Child Welfare Designated Agents

Alaska Region

Niles Cesar, Regional Director, Alaska Regional Office, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520. Telephone: (800) 645–8397; Fax: (907) 586–7252.

Gloria Kate Gorman, MSW, Social Services Director, P.O. Box 25520, 709 W. 9th, 3rd Floor, Federal Building, Juneau, AK 99802–5520. Telephone: (800) 645–8397 Ext. 2; Fax: (907) 586–7057. E-mail: *gloriagorman@bia.gov.*

A

Native Village of Afognak, Leona Haakanson-Crow, P.O. Box 968, Kodiak, AK 99615. Telephone: (907) 486–6357; Fax: (907) 486–6529.

Agdaagux Tribe of King Cove, Della Trumble, Tribal Administrator, P.O. Box 249, King Cove, AK 99612. Telephone: (907) 497–2648; Fax: (907) 497–2803.

Native Village of Akhiok, Kathleen McInally, MSSW, Kodiak Area Native Association, 3449 E. Rezanof Drive, Kodiak, AK 99615. Telephone: (907) 486–9800; Fax: (907) 486–9886. E-mail: *Kathleen.mcinally@kanaweb.org.*

Native Community of Akiachak, Willie Ekamrak, P.O. Box 51070, Akiachak, AK 99551–0070. Telephone: (907) 825–4626; Fax: (907) 825–4029.

Akiak Native Community, Debra M. Jackson or Ivan M. Ivan, P.O. Box 52127, Akiak, AK 99552. Telephone: (907) 765–7118; Fax: (907) 765–7120. E-mail: *akiak1@aol.com.*

Native Village of Akutan, Alice Tcheripanoff, Administrator, P.O. Box 89, Akutan, AK 99553; Telephone: (907) 698–2300; Fax (907) 698–2301. E-mail: *atcheripanoff@yahoo;* and

Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Ave., Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Native Village of Alakanuk, Agnes Phillip, P.O. Box 149, Alakanuk, AK 99554–0103. Telephone: (907) 238–3705; Fax: (907) 238–3429; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Alatna Village, Harding Sam, Chief or Sharon Scott, Tribal Administrator, P.O. Box 70, Allakaket, AK 99720. Telephone: (907) 968–2304; Fax: (907) 968–2305; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Aleknagik, Gusty Chythlook, Tribal President, P.O. Box 115, Aleknagik, AK 99555. Telephone: (907) 842–2080; Fax: (907) 842–2081; and

Lou Johnson, Social Services Director, Bristol Bay Native Association, P.O. Box 310, Dillingham, AK 99576. Telephone: (907)

842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Algaaciq (St. Mary's), Esther Tyson; P.O. Box 48, St. Mary's, AK 99658–0048. Telephone: (907) 438–2335; Fax: (907) 438–2227; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Allakaket Village, Valerie Bergman, TFYS, P.O. Box 50, Allakaket, AK 99720. Telephone: (907) 968–2303; Fax: (907) 968–2233. E-mail: *Valerie_bergman@hotmail.com;* and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Ambler, Mary R. Ramoth, ICWA Coordinator, Box 47, Ambler, AK 99786–0047. Telephone: (907) 445–2189; Fax: (907) 445–2181.

Village of Anaktuvuk Pass, Sharon Thompson, Arctic Slope Native Association, Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

Yupiit of Andreafski, Elizabeth M. Joe, P.O. Box 88, St. Mary's, AK 99658–0088. Telephone: (907) 438–2572; Fax: (907) 438–2512. E-mail: *emjoe1942@yahoo.com.*

Angoon Community Association, Marlene Zuboff, Executive Director, P.O. Box 190, Angoon, AK 99820. Telephone: (907) 788–3411; Fax: (907) 788–3412. E-mail: *angoon_tribal_govt@yahoo.com.*

Native Village of Aniak, Billy Jean Stewart, ICWA Worker or Ruth Birky, President, Box 349, Aniak, AK 99557. Telephone: (907) 675–4349; Fax: (907) 675–4513.

Native Village of Anvik, Carl Jerue, Jr., Chief or Albert Walker, TFYS, P.O. Box 10, Anvik, AK 99558. Telephone: (907) 663–6322/6378; Fax: (907) 663–6357; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Arctic Village (See: Native Village of Venetie Tribal Government).

Asa'Carsarmiut Tribe (formerly Mt.Village), JoAnn Barclay or Darlene Peterson, P.O. Box 32107, Mountain Village, AK 99632–107. Telephone: (907) 591–2428; Fax: (907) 591–2934.

Native Village of Atka, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Association, 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700; Fax: (907) 279–4351. E-mail: *graces@apiai.com.*

Atmautluak Traditional Council, Louisa G. Pavilla, P.O. Box 6568, Atmautluak, AK 99559; Telephone: (907) 553–5510; Fax: (907) 553–5612.

Native Village of Atqasuk Village, Sharon Thompson, Arctic Slope Native Association, Ltd., Social Services, 1919 Lathrop Street, Fairbanks, AK 99701. Telephone: (907) 456–1438; Fax: (907) 456–3941.

B

Native Village of Barrow, ICWA Program, P.O. Box 1130, Barrow, AK 99723. Telephone: (907) 852–8910/4411; Fax: (907) 852–8844.

Native Village of Beaver Village, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 452–3953.

Native Village of Belkosfski, Grace Smith, Tribal Representative, Aleutian/Pribilof Islands Assoc., 201 E. 3rd Avenue, Anchorage, AK 99501. Telephone: (907) 276–2700 or 222–4237; Fax: (907) 279–4351.

Bethel Village (See: Orutsararmuit)

Village of Bill Moore's Slough, Nancy C. Andrews, P.O. Box 20288, Kotlik, AK 99620. Telephone: (907) 899–4236/4232; Fax: (907) 899–4461.

Village of Birch Creek, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Brevig Mission, Linda M. Tocktoo, Tribal Family Coordinator, P.O. Box 85039, Brevig Mission, AK 99785. Telephone: (907) 642–3012; Fax: (907) 642–3042. E-mail: *linda@kawerak.org.*

Native Village of Buckland, Glenna Parrish, ICWA Coordinator, P.O. Box 67, Buckland, AK 99727–0067. Telephone: (907) 494–2169; Fax: (907) 494–2217.

C

Native Village of Cantwell, Carol Clark, ICWA Representative, Copper River Native Association, Drawer ''H'', Copper Center, AK 99573. Telephone: (907) 822–5241 Ext. 243; Fax: (907) 822–8804.

Central Council Tlingit and Haida Indian Tribes of Alaska, Indian Child Welfare Coordinator, Tribal Family & Youth Services Department, 320 W. Willoughby Avenue, Suite 300, Juneau, AK 99801. Telephone: (907) 463–7169; Fax: (907) 463–7343. E-mail: *lflorendo@ccthita.org.*

Chalkyitsik Village Council, Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Cheesh-na Tribal Council (AKA Chistochina), Lotha Wolf, P.O. Box 241, Gakona, AK 99586–0241. Telephone: (907) 452–8251; Fax: (907) 822–5179.

Chefornak Traditional Council, Edward Kinegak, P.O. Box 110, Chefornak, AK 99561–0110. Telephone: (907) 867–8808; Fax: (907) 867–8711; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Native Village of Chenega, Michael Vigil, P.O. Box 8079, Chenega Bay, AK 99574. Telephone: (907) 573–5386; Fax: (907) 573–5386. E-mail: *chenegaira@starband.net;* and

Paula Pinder, Chugachmiut, Inc., 4201 Tudor Centre Drive, Suite 210, Anchorage, AK 99508. Telephone: (907) 562–4155; Fax: (907) 563–2891.

Native Village of Chevak (AKA Qissunamiut Tribe), Esther Friday, ICWA Worker, P.O. Box 140, Chevak, AK 99563–0140. Telephone: (907) 858–7918; Fax: (907) 858–7812.

Native Village of Chickaloon, Penny Westing, P.O. Box 1105, Chickaloon, AK 99674–1105. Telephone: (907) 745–0707; Fax: (907) 745–0708. E-mail: *penny@chickaloon.org.*

Native Village of Chignik, Tribal President or Marlene Stepanoff, P.O. Box 11, Chignik, AK 99564. Telephone: (907) 749–2445; Fax: (907) 749–2423. E-mail: *cbaytc@aol.com;* and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Chignik Lagoon, Tribal President or Cara Shangin, P.O. Box 57, Chignik Lagoon, AK 99565. Telephone: (907) 840–2281; Fax: (907) 840–2217; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Chignik Lake Village, Tribal President or Crystal Kalmakoff, P.O. Box 33, Chignik Lake, AK 99548. Telephone: (907) 845–2212; Fax: (907) 845–2217; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Chilkat Indian Village (Klukwan), Denise Kahklen, Tribal Services Specialist, P.O. Box 210, Haines, AK 99827–0210. Telephone: (907) 767–5505; Fax: (907) 767–5408. E-mail: *dekahklen@wytbear.com.*

Chilkoot Indian Association (Haines), Stella Howard, Family Caseworker, CCTHITA Tribal Family & Youth Services, P.O. Box 624, Haines AK 99827. Telephone: (907) 776–2810; Fax: (907) 776–2845. E-mail: *showard@ccthita.org.*

Chinik Eskimo Community (Golovin), Sherri Lewis-Amaktoolik, Tribal Family Coordinator, P.O. Box 62019, Golovin, AK 99762. Telephone: (907) 779–2214/2238; Fax: (907) 779–2829. E-mail: *glv.tfc@kawerak.org.*

Native Village of Chitina, Gyna Gordon, Social Services Specialist, P.O. Box 31, Chitina, AK 99566. Telephone: (907) 823–2283; Fax: (907) 823–2233. E-mail: *chitina@aitc.org.*

Native Village of Chuathbaluk, Tracy Simeon, ICWA Coordinator, P.O. Box CHU, Chuathbaluk, AK 99557. Telephone: (907) 467–4323; Fax: (907) 467–4113.

Native Village of Chuloonawick, Bambi Akers, Tribal Administrator, Box 245, Emmonak, AK 99581. Telephone: (907) 949–1345; Fax: (907) 949–1346. E-mail: *coffice@unicom-alaska.com.*

Circle Native Community, Jeanette Nollner, ICWA Worker, P.O. Box 89, Circle, AK 99773. Telephone: (907) 773–2822; Fax: (907) 773–2823; and

Legal Department, Tanana Chiefs Conference, Inc., 122 First Avenue, Suite 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Village of Clarks Point, Betty Gardiner-Wassily, P.O. Box 9, Clarks Point, AK 99569. Telephone: (907) 236–1427; Fax: (907) 236–1428; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

Native Village of Council, Tribal Coordinator, P.O. Box 2050, Nome, AK 99762. Telephone: (907) 443–7649; Fax: (907) 443–5965.

Craig Community Association, Timothy R. Booth, Family Caseworker, CCTHITA Tribal Family Youth Services, P.O. Box 828, Craig AK 99921. Telephone: (907) 826–3948; Fax: (907) 826–5526. E-mail: *tbooth@ccthita.org.*

Village of Crooked Creek, Alex W. Felker, P.O. Box 69, Crooked Creek, AK 99575. Telephone: (907) 432–2261; Fax: (907) 432–2201; and

Association of Village Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Curyung Tribal Council (formerly, Native Village of Dillingham), Tribal President or Chris Itumulria, Tribal Children Service Worker, P.O. Box 216, Dillingham, AK 99576. Telephone: (907) 842–4508; Fax: (907) 842–2510; and

Lou Johnson, Bristol Bay Native Association, Social Services, P.O. Box 310, Dillingham, AK 99576. Telephone: (907) 842–4139; Fax: (907) 842–4106. E-mail: *lucillej@bbna.com.*

D

Native Village of Deering, Roberta Moto, Administrator or Brenda Karmun, ICWA Coordinator, P.O. Box 89, Deering, AK 99736–0089. Telephone: (907) 363–2138; Fax: (907) 363–2195. E-mail: *rrmoto@maniilaq.org* or *bkarmun@maniilaq.org.*

Dillingham (See: Curyung)

Native Village of Diomede, Becky Kunayak, P.O. Box 7079, Diomede, AK 99762. Telephone: (907) 686–2202; Fax: (907) 686–2255.

Village of Dot Lake, William Miller, P.O. Box 2279, Dot Lake, AK 99737–2275. Telephone: (907) 882–2695; Fax: (907) 882–5558; and

Legal Department, Tanana Chiefs Conference, Inc., 122 1st Ave., Ste. 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Douglas Indian Association, Carla A. Casulucan, Human Services Coordinator, P.O. Box 240541, Douglas, AK 99824. Telephone: (907) 364–2916; Fax: (907) 364–2917. E-mail: *ccasulucan-dia@gci.net.*

E

Native Village of Eagle, Joann Beck, Chief, Tribal Administrator, P.O. Box 19, Eagle, AK 99738. Telephone: (907) 547–2281; Fax: (907) 547–2318; and

Legal Department, Tanana Chiefs Conference, Inc., 122 1st Ave., Ste. 600, Fairbanks, AK 99701. Telephone: (907) 452–8251; Fax: (907) 459–3953.

Native Village of Eek, Maryann Hawk, P.O. Box 89, Eek, AK 99578–0063. Telephone: (907) 536–5316; Fax: (907) 536–5711; and

Association of Village Council Presidents, ICWA Counsel, P.O. Box 219, Bethel, AK 99559. Telephone: (907) 543–7367; Fax: (907) 543–7319.

Egegik Village, Tribal President or Marcia Abalama, TCSW, P.O. Box 29, Egegik, AK 99579. Telephone: (907) 233–2211; Fax: (907) 233–2312. E-mail: *mabalama@hotmail.com;* and

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Quinhagak (See: Kwinhagak)

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Russian Mission (See: Iqurmuit)

S

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Mississippi Band of Choctaw Indians, Children Services Director, P.O. Box 6050—Choctaw Branch, Choctaw, MS 39350. Telephone: (601) 650–1741; Fax: (601) 656–8817.

Mohegan Indian Tribe, Tribal Attorney, 5 Crow Hill Road, Uncasville, CT 06382. Telephone: (860) 862–6201; Fax (860) 862–6122.

Narragansett Indian Tribe, Director, Child and Family Services, 4533 S. County Trail, Charlestown, RI 02813. Telephone: (401) 364–1265 ext. 17, Fax: (401) 364–6427.

O

Oneida Indian Nation, Member Benefit Dept., P.O. Box 1, Vernon, NY 13476. Telephone: (315) 829–8335; Fax: (315) 829–8392.

Onondaga Nation of New York, Council of Chiefs, P.O. Box 85, Nedrow, NY 13120. Telephone: (315) 469–1875; Fax: (315) 492–4822.

P

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Penobscot Indian Nation of Maine, Human Service Director, 6 River Road, Indian Island, ME 04468. Telephone: (207) 827–7776, Ext. 7492; Fax: (207) 827–2937.

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S

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T

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Tunica-Biloxi Indian Tribe of Louisiana, Social Service Director, P.O. Box 1589, Marksville, LA 71351. Telephone: (318) 253–5100; Fax: (318) 253–9791.

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W

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L

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F

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F

Fallon Business Council, Chairperson, 8955 Mission Road, Fallon, NV 89406. Telephone: (775) 423–6075.

Fort McDermitt Tribal Council, Chairman, P.O. Box 457, McDermitt, NV 89421. Telephone: (775) 532–8259.

Fort McDowell Yavapai Tribe, Attention: CPS/ICWA Coordinator, Family and Community Services, P.O. Box 17779, Fountain Hills, AZ 85269. Telephone: (480) 837–5076.

Fort Mojave Indian Tribe, Attention: Social Services Director, 500 Merriman Avenue, Needles, CA 92363. Telephone: (760) 629–3745.

G

Gila River Pima-Maricopa Indian Community, Attention: Drake Lewis, Tribal Social Service Director, P.O. Box 97, Sacaton, AZ 85247. Telephone: (520) 562–3711 Ext 233.

Goshute Business Council (Nevada and Utah), Chairman, P.O. Box 6104, Ibapah, UT 84034; Telephone: (435) 234–1138.

H

Havasupai Tribe, Attention: Phyllis Jones, ICWA Coordinator, P.O. Box 10, Supai, AZ 86435. Telephone: (928) 448–2731, (928) 448–2143.

Hopi Tribe of Arizona, Attention: Linda Bronson, Hopi Guidance Center Social Services Supervisor, P.O. Box 68 Second Mesa, AZ 86043. Telephone: (928) 737–2667.

Hualapai Tribe, Attention: Emma Clark, ICWA Coordinator, P.O. Box 397, Peach Springs, AZ 86434–0397. Telephone: (928) 769–2207, Fax: (928) 763–2494.

K

Kaibab Band of Paiute Indians, Joyce Potter, Director, Social Services Program, HC65 Box 2, Fredonia, AZ 86022. Telephone: (928) 643–6010.

L

Las Vegas Paiute Tribe, Tim Strong, Director, Health and Human Services, #6 Paiute Drive, Las Vegas, NV 89106. Telephone: (702) 382–0784.

Lovelock Tribal Council, Attention: Ms. Runelda Lambert, Indian Child Welfare

Coordinator, P.O. Box 878, Lovelock, NV 89419. Telephone: (775) 273–7861.

M

Moapa Band of the Paiute Indians, Moapa Business Council, Chairman, P.O. Box 340, Moapa, NV 89025–0340. Telephone: (702) 865–2787.

P

Paiute Indian Tribe of Utah, Attention: ICWA Worker, 440 North Paiute Drive, Cedar City, UT 84720. Telephone: (435) 586–1112.

Pascua Yaqui Tribe of Arizona, Chairman, 7474 S. Camino De Oeste, Tucson, AZ 85746. Telephone: (520) 883–5000.

Pyramid Lake Paiute Tribal Council, Bonnie Akaka-Smith, Chairperson, P.O. Box 256, Nixon, NV 89424. Telephone: (775) 574–1000.

Q

Quechan Tribal Council, President, P.O. Box 1899, Yuma, AZ 85366–1899. Telephone: (760) 572–0213.

R

Reno-Sparks Indian Colony, Attention: Director of Social Services, 98 Colony Road, Reno, NV 89502. Telephone: (775) 329–5071.

S

Salt River Pima-Maricopa Indian Community, Staff Attorney's Office or Social Services Division, Child Protective Services, 10005 East Osborn Road, Scottsdale, AZ 85256. Telephone: (480) 850–8470.

San Carlos Apache Tribe, Terry Ross, Director of Tribal Social Services, P.O. Box 0, San Carlos, AZ 85550. Telephone; (928) 475–2313/2314; Fax: (928) 475–2342.

San Juan Southern Paiute Tribe, Administration Office, P.O. Box 1989, Tuba City, AZ 86045. Telephone: (928) 283–4587, Fax: (928) 283–5761.

Shoshone-Paiute Tribes of the Duck Valley Reservation (Nevada), Chairman, P.O. Box 219, Owyhee, NV 89832. Telephone; (208) 759–3100.

Skull Valley Band of Goshute Indians, Attention: ICWA Program Office, Metropolitan Plaza, Suite 110, 2480 S. Main Street, South Salt Lake City, UT 84115. Telephone: (801) 474–0535.

South Fork Band Council, Chairman, HC 30, P.O. Box B–13—Lee, Spring Creek, NV 89815. Telephone: (775) 744–4273.

Summit Lake Paiute Tribe, Chairperson, 655 Anderson Street, Winnemucca, NV 89445. Telephone: (775) 623–5151.

T

Te-Moak Tribe of Western Shoshone Indians, Chairman, 525 Sunset Street, Elko, NV 89801. Telephone: (775) 738–9251.

Tohono O'odham Nation, Attorney General, P.O. Box 1202, Sells, AZ 85634. Telephone: (520) 383–3410.

Tonto Apache Tribe, Attention: Jerry Gramm, Social Services Director, Tonto Reservation #10, Payson, AZ 85541. Telephone: (928) 474–5000, Fax: (928) 474–9125.

U

Ute Indian Tribe of the Uintah & Ouray Reservation (Utah), Attention: ICWA Worker, P.O. Box 190, Fort Duchesne, UT 84026. Telephone: (475) 722–3689.

W

Walker River Paiute Tribe, Chairman, P.O. Box 220, Schurz, NV 89427. Telephone: (775) 773–2306.

Washoe Tribe of Nevada and California (Carson Colony, Dresslerville, Woodfords, Stewart, and Washoe Community Councils), Chairman, 919 Hwy. 395 South, Gardnerville, NV 89410. Telephone; (775) 883–1446.

Wells Indian Colony Band Council, Chairman, P.O. Box 809, Wells, NV 89835. Telephone; (775) 752–3045.

White Mountain Apache Tribe, Cynthia Ethelbah, Child Welfare Administrator, Department of Social Services, P.O. Box 1870, Whiteriver, AZ 85941. Telephone: (928) 338–4164, Fax: (928) 338–1469.

Winnemucca Tribe, Chairman, P.O. Box 1370, Winnemucca, NV 89446.

Y

Yavapai-Apache Tribe, Attention: Danny Brunner, 2400 West Datsi Rd., Camp Verde, AZ 86322–8412. Telephone: (928) 567–9439 Ext. 36, Fax: (928) 567–6487.

Yavapai Prescott Indian Tribe, Attention: Alex Spence, ICWA, 530 East Merritt Avenue, Prescott, AZ 86301. Telephone: (928) 777–0532, Fax: (928) 445–7945.

Yerington Paiute Tribe, Chairman, P.O. Box 171 Campbell Lane, Yerington, NV 89447. Telephone: (775) 463–3301.

Yomba Tribe, Chairman, HC61, Box 6275, Austin, NV 89310. Telephone: (775) 964–2463.

[FR Doc. 03–30245 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0115, 1029–0116 and 1029–0117

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection requests for 30 CFR part 773 (Requirements for permits and permit processing), part 774 (Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights), and part 778 (Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information) have been forwarded to the Office of Management and Budget (OMB) for review and reauthorization. The information collection packages were previously approved and assigned clearance numbers 1029—0115 for 30 CFR part 773, 1029–0116 for 30 CFR part 774, and 1029–0117 for 30 CFR part 778. This notice describes the nature of the information collection activities and the expected burdens.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 7, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection requests, explanatory information and related forms, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)) OSM has submitted requests to OMB to renew its approval for the collections of information for 30 CFR part 773 (Requirements for permits and permit processing), part 774 (Revision; Renewal; and Transfer, Assignment, or Sale of Permit Rights), and part 778 (Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information). OSM is requesting a 3-year term of approval for these information collection activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are listed in 30 CFR 773.3, which is 1029–0115; in 30 CFR 774.9, which is 1029–0116; and in 30 CFR 778.8, which is 1029–0117.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 1, 2003 (68 FR 45275). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Requirements for Permits and Permit Processing, 30 CFR part 773.

OMB Control Number: 1029–0115.

Summary: The collection activities for this part ensure that the public has the opportunity to review permit applications prior to their approval, and that applicants for permanent program permits or their associates who are in violation of the Surface Mining Control

and Reclamation Act do not receive surface coal mining permits pending resolution of their violations.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for surface coal mining and reclamation permits and State governments and Indian tribes.

Total Annual Responses: 324.

Total Annual Burden Hours: 11,058.

Total Non-wage Costs: $12,040.

Title: Revisions; Renewals; and Transfer, Assignment, or Sale of Permit Rights—30 CFR part 774.

OMB Control Number: 1029–0116.

Summary: Sections 506 and 511 of Pub. L. 95–87 provide that persons seeking permit revisions, renewals, transfer, assignment, or sale of their permit rights for coal mining activities submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant meets the requirements for the action anticipated.

Bureau Form Number: None.

Frequency of Collection: On occasion.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 6,498.

Total Annual Burden Hours: 49,164.

Title: Permit Applications—Minimum Requirements for Legal, Financial, Compliance, and Related Information—30 CFR part 778.

OMB Control Number: 1029–0117.

Summary: Section 507(b) of Pub. L. 95–87 provides that persons conducting coal mining activities submit to the regulatory authority all relevant information regarding ownership and control of the property affected, their compliance status and history. This information is used to insure all legal, financial and compliance requirements are satisfied prior to issuance or denial of a permit.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Surface coal mining permit applicants and State regulatory authorities.

Total Annual Responses: 301.

Total Annual Burden Hours: 6,436.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control number in all correspondence, 1029–-0115 for part 773, 1029–0116 for part 774, and 1029–0117 for part 778.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov*. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210—SIB, Washington, DC 20240, or electronically to *jtreleasa@osmre.gov*.

Dated: October 2, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 03–30345 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0051 and 1029–0120

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for two forms: technical training program nominations for non-Federal personnel form (OSM 105), and for 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures.The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by January 7, 2003, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to *jtreleas@osmre.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). OSM has submitted requests to OMB to approve the collection of information for: (1) 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures (OMB control number 1029–0051); and (2) OSM Technical Training Program's Nominations for Non-Federal Personnel Form (OSM 105) (OMB control number 1029–0120). OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these collections of information are found in 840.10 for the inspection and enforcement procedures, and are located on the Training form OSM 105.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on August 27, 2003 (68 FR 51592). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activities:

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, monthly, quarterly, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 86,599.

Total Annual Burden Hours: 503,549.

Total Non-wage Costs: $1,000.

Title: Technical Training Program's Nomination for Non-Federal Personnel Form.

OMB Control Number: 1029–0120.

Summary: The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSM's technical training mission, and to estimate costs to the training program.

Bureau Form Numbers: OSM 105.

Frequency of Collection: Once.

Description of Respondents: State and Tribal regulatory and reclamation employees and industry personnel.

Total Annual Responses: 900.

Total Annual Burden Hours: 105 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to the appropriate OMB control numbers in all correspondence.

ADDRESSES: Submit comments to the Office of Information and Regulatory Affairs; Office of Managmenet and Budget, Attention: Department of Interior Desk Officer, by telefax at (202) 395–6566 or via e-mail to *OIRA_Docket@omb.eop.gov.* Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW., Room 210–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.*

Dated: November 4, 2003.

Sarah E. Donnelly,

Acting Chief, Division of Regulatory Support.

[FR Doc. 03–30346 Filed 12–5–03; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed collection: Office of Federal Contract Compliance Programs Recordkeeping and Reporting Requirements, Construction. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 6, 2004.

ADDRESSES: Ms. Hazel M. Bell, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0418, fax (202) 693–1451, *E-mail bell.hazel@dol.gov.* Please use only one method of transmission for comments (mail, fax, or E-mail).

SUPPLEMENTARY INFORMATION:

I. Background: The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of three equal opportunity programs, which prohibit employment discrimination and require affirmative action by Federal contractors and subcontractors. The Acts administered by the OFCCP are Executive Order 11246, as amended Section 503 of the Rehabilitation Act, as amended, and the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 U.S.C. 4212. The OFCCP has promulgated regulations implementing these programs, which are found at Title 41 of the Code of Federal Regulations, Chapter 60. For purposes of this clearance request, the programs have been divided functionally into two categories, construction and supply service. This information collection request covers the recordkeeping and reporting requirements for the functional aspects of the program involving construction. A separate information collection request covers the recordkeeping and reporting requirements for functional aspects of the program involving supply and service, and is approved under OMB 1215–0072. This information collection is currently approved for use through December 31, 2003.

II. Review Focus: The Department of Labor 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 submissions of responses.

III. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to enforce the affirmative action and anti-discrimination provisions of the three Acts, which it administers. OFCCP is conducting an internal assessment of the burden hours reported in this information collection request. OFCCP intends to publish the internal study for public comment in seeking a three-year approval on this information collection request. OFCCP is currently seeking a six-month authorization, which will provide sufficient time to complete the internal study.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: OFCCP Recordkeeping and Reporting Requirements, Construction.

OMB Number: 1215–0163.

Agency Number:

Affected Public: Business or other for-profit, not-for-profit institutions.

Total Respondents: 100,000.

Total Annual responses: 100,000.

Average Time per Response, Recordkeeping: 48 hours.

Records Maintenance: 8 to 24 hours.

Affirmative Action Plan, Initial Development: 18 hours.

Affirmative Action Plan, Annual Update: 7.5 hours.

Affirmative Action Plan, Maintenance: 7.5 hours.

Compliance Reviews: 1–2 hours.

Total Burden Hours, Recordkeeping and Reporting: 4,841,468.

Frequency: Annually.

Total Burden Cost (capital/startup): $8,217.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 2, 2003.

Bruce Bohanon,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 03–30367 Filed 12–5–03; 8:45 am]

BILLING CODE 4510–CM–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL4–93]

Underwriters Laboratories Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision to approve an expansion of its recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL) to include an additional 19 test standards.

DATES: This recognition becomes effective on December 8, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while UL remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet or Roy Resnick, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of additional test standards. OSHA's current scope of recognition for UL may be found in the following informational Web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products ''properly certified'' by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

UL submitted an application, dated November 18, 2002 (see Exhibit 30), to expand its recognition to use 41 additional test standards. The NRTL Program staff determined that 10 of the 41 test standards cannot be included in the expansion because they are not ''appropriate test standards,'' within the meaning of 29 CFR 1910.7(c), while an additional twelve are already included in UL's scope. The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA approves 19 test standards for the expansion, which are listed below.

In connection with UL's expansion request, OSHA did not perform an on-site review (evaluation) of UL. However, an OSHA NRTL Program assessor reviewed information pertinent to this request and recommended that UL be granted the expansion (see Exhibit 31).

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on October 14, 2003 (68 FR 59209). The notice requested submission of any public comments by October 29, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for UL's recognition covered another expansion of recognition, which became effective on March 25, 2003 (68 FR 14432).

You may obtain or review copies of all public documents pertaining to the UL application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, D.C. 20210. You should refer to Docket No. NRTL4–93, the permanent record of public information on UL's recognition.

The current addresses of the UL facilities already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062;

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747;

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050;

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709;

Underwriters Laboratories Inc., 2600 N. W. Lake Road, Camas, Washington 98607;

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong;

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District, Taipei City, Taiwan;

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark;

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR, United Kingdom;

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy Testing facility: Z.I. Predda Niedda St. 18, I–07100, Sassari, Italy;

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9;

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan;

UL Korea, Ltd., #805, Manhattan Building 36–2, Yeoui-dong, Yeoungdeungpo-gu, Seoul 150–010, Korea;

UL International Germany GmbH, Frankfurter Strasse 229, D–63263 Neu-Isenburg, Germany;

UL International (Netherlands) B.V., Landjuweel 52, NL–3905 PH Veenendaal, Netherlands.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the recommendation,

OSHA finds that Underwriters Laboratories Inc. has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include an additional 19 test standards. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of UL.

Expansion for Additional Standards

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 19 test standards, and OSHA has determined the standards are appropriate within the meaning of 29 CFR 1910.7(c).

UL 441 Standard for Gas Vents
UL 508A Industrial Control Panels
UL 515 Electrical Resistance Heat Tracing for Commercial and Industrial Applications
UL 568 Nonmetallic Cable Tray Systems
UL 943B Appliance Leakage-Current Interrupters
UL 1004A Fire Pump Motors
UL 1285 Pipe and Couplings, Polyvinyl Chloride (PVC) for Underground Fire Service
UL 1713 Pressure Pipe and Coupling, Glass Fiber-Reinforced, for Underground Fire Service
UL 2129 Standard for Safety for Halocarbon Clean Agent Fire Extinguishers
UL 2305 Exhibition Display Units, Fabrication and Installation
UL 2351 Spray Nozzles for Fire-Protection Service
UL 2388 Flexible Lighting Products
UL 3111–2–31 Hand-Held Probe Assemblies for Electrical Measurement and Test
UL 60335–2–8 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Electric Shavers, Hair Clippers, and Similar Appliances
UL 61010A–2–010 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment for the Heating of Materials
UL 61010A–2–041 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves Using Steam for the Treatment of Medical Materials for Laboratory Processes
UL 61010A–2–042 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves and Sterilizers Using Toxic Gas for the Treatment of Medical Materials, and for Laboratory Processes
UL 61010A–2–051 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Equipment Mixing and Stirring
UL 61010A–2–061 Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Laboratory Atomic Spectrometers with Thermal Atomization and Ionization

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, any NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Many of the UL test standards listed above also are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience, we use the designation of the standards developing organization for the standard as opposed to the ANSI designation. Under our procedures, any NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard. You may contact ANSI to find out whether or not a test standard is currently ANSI-approved.

Conditions

Underwriters Laboratories Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the UL facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

UL will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 24th day of November, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–30368 Filed 12–5–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before January 22, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by

FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov.* Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: 301–837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of the Army, Agency-wide (N1-AU–03–19, 7 items, 4 temporary items). Counterdrug support program records accumulated in offices responsible for providing input to the program. Included are such records as input to Governors' state plans, copies of approved plans, correspondence, and records relating to personnel matters. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files relating to counterdrug planning and operations accumulated in the offices having primary responsibility for administering the counterdrug support program.

2. Department of Health and Human Services, National Institutes of Health (N1–443–03–1, 4 items, 4 temporary items). Paper and electronic records relating to funded and unfunded grant awards, including applications, review actions, notices, reports, financial records, closeout documents, and data used for tracking purposes. Also included are electronic copies of records created using electronic mail and word processing. Paper versions of these records were previously approved for disposal.

3. Department of Justice, Professional Responsibility Advisory Office (N1–60–04–1, 3 items, 3 temporary items). Case files relating to requests from attorneys for advice regarding matters of professional responsibility. Included are such records as attorney notes, inquiry summary sheets, assignment sheets, and research notes. Also included are electronic copies of records created using electronic mail and word processing.

4. Department of Justice, Executive Office for U.S. Trustees (N1–60–04–2, 3 items, 3 temporary items). Oversight files used to monitor and evaluate the performance of local U.S. Trustees. Included are such records as performance reviews, budgets, and monthly reports. Also included are electronic copies of records created using electronic mail and word processing.

5. Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives (N1–436–03–2, 6 items, 6 temporary items). Inputs, outputs, system documentation, and master files associated with the Consolidated Gang Database System, an electronic system which is used to track gang members, gang-related vehicles and weapons, and gang activity. Also included are electronic copies of documents created using electronic mail and word processing.

6. Department of Labor, Bureau of Labor Statistics (N1–257–04–1, 10 items, 10 temporary items). Records relating to surveys, including such files as textual and electronic questionnaires, electronic spreadsheets and databases containing survey results, and administrative records. Also included are electronic copies of records created using electronic mail and word processing.

7. Department of the Treasury, U.S. Mint (N1–104–03–13, 4 items, 4 temporary items). Inputs, outputs, master files, and system documentation associated with the Marketing and Customer Information Clearinghouse, an electronic system which contains transactional data on Mint customers for marketing purposes.

8. Department of the Treasury, U.S. Mint (N1–104–03–07, 4 items, 4 temporary items). Inputs, outputs, master files, and system documentation associated with the Unemployment Compensation Processing System, an electronic system which is used to process unemployment compensation claims. Also included are electronic copies of records created using electronic mail and word processing.

9. Environmental Protection Agency, Office of Environmental Information (N1–412–03–16, 3 items, 3 temporary items). Software programs, master files, and system documentation associated with the Facility Registry System, an electronic system which contains a list of identification numbers that have been assigned to Federal and non-Federal facilities subject to environmental regulations or of environmental interest, along with addresses and names of these facilities.

10. Federal Election Commission, Office of Alternative Dispute Resolution (N1–339–03–2, 4 items, 3 temporary items). Copies of records relating to negotiated and mediated settlements, including electronic copies of records created using electronic mail and word processing. Recordkeeping copies of these files are proposed for permanent retention.

11. National Aeronautics and Space Administration, Columbia Accident Investigation Board (N1–255–04–1, 16 items, 7 temporary items). Paper copies of meeting minutes, presentations, and public mail that have been scanned,

financial records, working files and notes relating to the preparation of the Board's final report and its related appendixes, and records relating to the Board's Web site, including web content records. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are such records as electronic recordkeeping copies of approximately 80,000 documents that were gathered during the accident investigation, a database containing minutes of Board meetings, audiovisual and paper records that document the Board's Congressional and public liaison activities, privileged witness testimonies, and the Board's final report and related appendixes. Also proposed for permanent retention are electronic mail messages that were received by the Board from the public as well as scanned images of public comments that were submitted in paper form.

12. National Archives and Records Administration, Agency-wide (N1–64–04–2, 7 items, 6 temporary items). Special project records relating to the Electronic Records Management Initiative. Included are records relating to developing guidance and procedures for agencies to use in electronic records management, project management files, and administrative records. Also included are electronic copies of records created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of files accumulated by the agency as Government-wide managing partner in efforts to provide tools needed by Federal agencies to manage their electronic records.

Dated: November 28, 2003.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 03–30342 Filed 12–5–03; 8:45 am]

BILLING CODE 7515–01–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 sixth public hearing on December 8, 2003, in Washington, DC. Witnesses will speak about issues related to domestic intelligence collection, protecting privacy while preventing terrorism, and the use of immigration laws to combat terrorism. Representatives of the media should register in advance of the hearing by visiting the Commission's Web site at *http://www.9-11commission.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: December 8, 2003, 9 a.m. to 4 p.m. Press availability to follow.

LOCATION: Russell Senate Office Building, Room 253, Washington, DC, 20510.

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: *http://www.9-11 commission.gov.*

Dated: December 2, 2003.

Philip Zelikow,

Executive Director.

[FR Doc. 03–30332 Filed 12–5–03; 8:45 am]

BILLING CODE 4800–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–369 and 50–370]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (NRC, the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its February 27, 2003, application for proposed amendment to Facility Operating License No. NPF–9 and NPF–17 for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendment would have revised the Technical Specifications to allow the use of four mixed oxide (MOX) fuel lead test (LTA) assemblies at either of the Catawba Nuclear Station, Units 1 and 2, (Catawba) or the McGuire Nuclear Station, Units 1 and 2.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 25, 2003 (68 FR 44107). However, by letter dated September 23, 2003, the licensee amended the application to apply only to the use of MOX LTAs at the Catawba units and not to the McGuire units. The NRC staff is treating this as a withdrawal of application for amendment dated February 27, 2003, for McGuire.

For further details with respect to this action, see the application for amendment dated February 27, 2003, and the licensee's letter dated September 23, 2003, which is being treated as a withdrawal of application for amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by email to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 2nd day of December 2003.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30359 Filed 12–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Entergy Nuclear Operations, Inc., Indian Point Nuclear Generating Unit No. 3; Exemption

1.0 Background

Entergy Nuclear Operations, Inc. (Entergy, the licensee) is the holder of Facility Operating License No. DPR–64 which authorizes operation of the Indian Point Nuclear Generating Unit No. 3 (IP3). The license provides, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a pressurized-water reactor located in Westchester County in the State of New York.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR), part 50, requires that reactor coolant system (RCS)

pressure-temperature (P–T) limits be established for reactor pressure vessels (RPVs) during normal operating and hydrostatic or leak rate testing conditions. Specifically, Appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on both the pressure-temperature limits and the minimum permissible temperature must be met for all conditions.'' Furthermore, Appendix G to 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code). Appendix G to 10 CFR part 50 also specifies that the Editions and Addenda of the ASME Code which are incorporated by reference in 10 CFR 50.55a apply to the requirements in Appendix G to 10 CFR part 50. In the 2003 Edition of 10 CFR, the NRC endorsed Editions and Addenda of the ASME Code through the 1998 Edition and 2000 Addenda. However, Entergy has currently incorporated the 1989 Edition of the ASME Code into the IP3 licensing basis for defining the ASME Code requirements which apply to the facility's ASME Code, Section XI program. Hence, with respect to the statements from Appendix G to 10 CFR part 50 referenced above, it is the 1989 Edition of Appendix G to Section XI of the ASME Code which continues to apply to IP3. Finally, 10 CFR 50.60(b) states that, ''[p]roposed alternatives to the described requirements in [Appendix G] of this part or portions thereof may be used when an exemption is granted by the Commission under [10 CFR 50.12].''

Entergy has requested, in a separate submittal dated May 28, 2003, an amendment to the IP3 Technical Specification (TS) P–T limit curves. In order to address the provisions of this amendment, Entergy has also requested that the staff exempt IP3 from the application of specific requirements of Appendix G to 10 CFR part 50, and substitute the use of ASME Code Case N–640. ASME Code Case N–640 permits the use of an alternate reference fracture toughness curve for RPV materials when determining P–T limits. The proposed exemption request is consistent with, and is needed to support, the proposed IP3 TS amendment that was provided in the separate submittal. The proposed IP3 TS amendment will revise the P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 20 effective full-power years of operation.

Code Case N–640

The requested exemption would allow use of ASME Code Case N–640 in conjunction with Appendix G to Section XI of the ASME Code, 10 CFR 50.60(a), and Appendix G to 10 CFR part 50 to establish P–T limits for the IP3 RPV.

The licensee's proposed TS amendment to revise the P–T limits for IP3 relies, in part, on the requested exemption. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve given in Appendix A to Section XI of the ASME Code, Figure A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve given in Appendix G to Section XI of the ASME Code, Figure G–2210–1, as the basis fracture toughness curve for defining the IP3 P–T limits. All other margins involved with the ASME Code, Section XI, Appendix G process of determining P–T limit curves remain unchanged.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is technically correct. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the K_{IA} fracture toughness curve, as given in Appendix G to Section XI of the ASME Code, was developed from more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. Since that time, however, additional knowledge about RPV materials has been gained, which demonstrates that the lower bound on fracture toughness, provided by the K_{IA} fracture toughness curve, is well beyond the margin of safety required to protect the public health and safety from potential RPV failure.

In addition, P-T limit curves based on the K_{IC} fracture toughness curve will enhance overall plant safety by opening the P-T operating window with the greatest safety benefit in the region of low temperature operations. The operating window through which the operator heats up and cools down the RCS is determined by the difference between the maximum allowable pressure, determined by Appendix G to Section XI of the ASME Code, and the minimum required pressure for the reactor coolant pump (RCP) seals adjusted for instrument uncertainties. A narrow operating window could potentially have an adverse safety impact by increasing the possibility of inadvertent overpressure protection system (OPPS) actuation due to pressure surges associated with normal plant evolutions such as RCS pump starts and swapping operating charging pumps with the RCS in a water-solid condition.

Since application of ASME Code Case N–640 provides appropriate procedures to establish maximum postulated defects and to evaluate those defects in the context of establishing RPV P-T limits, this application of the Code Case maintains an adequate margin of safety for protecting RPV materials from brittle failure. Therefore, the licensee concluded that these considerations were special circumstances pursuant to 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

In summary, the ASME Code, Section XI, Appendix G procedure was conservatively developed based on the level of knowledge existing in 1974 concerning reactor coolant pressure boundary materials and the estimated effects of operation. Since 1974, the level of knowledge about the fracture mechanics behavior of RCS materials has been greatly expanded, especially in regard to the effects of radiation embrittlement and the understanding of fracture toughness properties under static and dynamic loading conditions.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

Special circumstances, pursuant to 10 CFR 50.12(a)(2)(ii), are present because the continued operation of IP3 with the P-T curves developed in accordance with Appendix G to Section XI of the ASME Code, without the relief provided by ASME Code Case N–640, is not necessary to achieve the underlying purpose of Appendix G to 10 CFR part 50. Application of ASME Code Case N–640 in lieu of the requirements of Appendix G to Section XI of the ASME Code provides an acceptable alternative evaluation procedure, which will

continue to meet the underlying purpose of Appendix G to 10 CFR part 50. The underlying purpose of the regulations in Appendix G to 10 CFR part 50 is to provide an acceptable margin of safety against brittle failure of the RCS during any condition of normal operation to which the pressure boundary may be subjected over its service lifetime.

The NRC staff examined the licensee's rationale to support the exemption request, and accepts the licensee's determination that an exemption would be required to approve the use of ASME Code Case N–640. The staff has also concluded that the use of ASME Code Case N–640 would meet the underlying intent of Appendix G to 10 CFR part 50. The NRC staff concluded that the application of the technical provisions of ASME Code Case N–640 provided sufficient margin in the development of RPV P-T limit curves such that the underlying purpose of the regulations contained in Appendix G to 10 CFR part 50 continued to be met. Therefore, the specific conditions required by the regulations; *i.e.*, the use of all provisions in Appendix G to Section XI of the ASME Code, were not necessary. The NRC staff has, therefore, concluded that the exemption requested by Entergy is justified based on the special circumstances of 10 CFR 50.12(a)(2)(ii), ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of Appendix G to 10 CFR part 50 and Appendix G to Section XI of the ASME Code, the staff concluded that the application of ASME Code Case N–640 would provide an adequate margin of safety against brittle failure of the RPV. This is also consistent with the determination that the staff has reached for other licensees under similar conditions based on the same considerations. The staff concludes that the exemption requested by Entergy is appropriate under the special circumstances of 10 CFR 50.12(a)(2)(ii), and the methodology of ASME Code Case N–640 may be used to revise the P-T limits for the IP3 RPV. Pursuant to 10 CFR 50.12(a)(1), the granting of this exemption is authorized by law, will not present undue risk to the public health and safety, and is consistent with the common defense and security. Therefore, the staff considers granting an exemption to 10 CFR 50.60(a) and Appendix G to 10 CFR part 50 to allow use of ASME Code Case N–640 as part of the basis for generating the P-T limit curves for IP3 is appropriate.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants Entergy an exemption from the requirements of 10 CFR 50.60 and Appendix G to 10 CFR part 50, to allow for the application of ASME Code Case N–640 in establishing TS requirements for the RPV P-T limits for IP3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (68 FR 67490).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 2nd day of December, 2003.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh, Director,

Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–30360 Filed 12–5–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26282; 812–12912]

The Vanguard Group, Inc., et al.; Notice of Application

December 2, 2003.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (2) of the Act to the extent necessary to amend a prior order.[1]

Summary of Application: Applicants request an order to amend the Original VIPERs Order. The requested order would permit additional registered investment companies, and their series, to rely on the Original VIPERs Order, and modify certain terms and conditions of the Original VIPERs Order.

Applicants: The Vanguard Group, Inc. (''VGI''), Vanguard Index Funds (''Index Trust''), Vanguard Specialized Funds (''Specialized Trust''), Vanguard World Fund (''World Trust''), and Vanguard Marketing Corporation (''VMC'').

Filing Dates: The application was filed on December 13, 2002, and amended on October 30, 2003. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 29, 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, P.O. Box 2600, Valley Forge, PA 19482.

FOR FURTHER INFORMATION CONTACT: Stacy L. Fuller, Senior Counsel, or Michael W. Mundt, Senior Special Counsel, 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. Index Trust, VGI and VMC (together, ''Original Applicants'') obtained the Original VIPERs Order to permit the nine series of Index Trust (''Original Applicant Funds'') to offer an exchange-traded class of shares (''VIPER Shares''). The Original VIPERs Order granted exemptions under section 6(c) of the Act from sections 2(a)(32), 18(f)(1), 18(i), 22(d) and 24(d) of the Act and rule 22c–1 under the Act and under sections 6(c) and 17(b) of the Act from sections 17(a)(1) and (2) of the Act. The Original Applicants, Specialized Trust, and World Trust (together,

[1] Vanguard Index Funds, *et al.*, Investment Company Act Rel. Nos. 24680 (Oct. 6, 2000) (notice) and 24789 (Dec. 12, 2000) (order) (''Original VIPERs Order'').

''Applicants'') seek to amend the Original VIPERs Order to permit additional entities to rely on the relief and to modify certain terms and conditions of the Original VIPERs Order.

2. Index Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of nine series. Specialized Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of five series. World Trust is a Delaware statutory trust registered under the Act as an open-end management investment company, which currently consists of three series.

3. Applicants seek to permit an additional series of Index Trust,[2] a series of Specialized Trust,[3] certain series of World Trust[4] (together with the Original Applicant Funds, ''Current Funds''), and other registered open-end management investment companies, and their series, that are advised by VGI or an entity controlled by or under common control with VGI (''Future Funds,'' and together with the Current Funds, ''Funds'') to rely on the Original VIPERs Order, as amended by the requested order. All Funds will comply with the terms and conditions of the Original VIPERs Order, as amended by the requested order. Because the amended order would extend relief to Future Funds, Applicants seek to amend condition 1 of the Original VIPERs Order as stated below.

4. Each Fund tracks, or will track, a domestic equity securities index (''Target Index''). The application for the Original VIPERs Order (''Original VIPERs Application'') specified the nine Target Indices tracked by the Original Applicant Funds. Applicants note that the Target Indices for six of the Original Applicant Funds have since been replaced.[5] None of those six Original Applicant Funds currently offers a class of VIPER Shares. Consistent with the relief requested for Future Funds, Applicants seek relief to permit any Fund to change its Target Index in a manner that is consistent with the Fund's policies and complies with the terms and conditions of the Original VIPERs Order, as amended by the requested order, including condition 1 below. Any new Target Index would track the same market or market segment as the Fund's existing Target Index. No entity that creates, compiles, sponsors or maintains a Target Index is, or will be, an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Fund, VGI, VMC, or any promoter or subadviser of the Fund.

5. Conditions 8 and 9 of the Original VIPERs Order require the Original Applicants to include on their website and in the Original Applicant Funds' prospectuses and annual reports, among other things, a comparison of the previous day's net asset value (''NAV'') and closing market price of its VIPER Shares. Applicants state that because the Funds' NAV is calculated at 4 p.m., which is the close of trading on the New York Stock Exchange, and the market for VIPER Shares does not close until 4 p.m., the closing market price of a Fund's VIPER Shares is not measured at the same time as its NAV is calculated. Applicants state that the difference in timing could lead to discrepancies between a Fund's NAV and the closing market price of its VIPER Shares, thereby giving investors an inaccurate picture of the correlation between the two figures. Applicants assert that comparing a Fund's NAV to the midpoint of the bid-asked price of its VIPER Shares at the time NAV is calculated (''Bid-Asked Price'') would be more appropriate. Applicants accordingly seek to amend conditions 8 and 9 as stated below.

6. In the Original VIPERs Application, the Original Applicants represented that VMC would not market a Fund's VIPER Shares and its retail and institutional shares (''Conventional Shares'') in the same advertisement or marketing material. Applicants contend that publishing materials that describe a Fund's VIPER Shares and its Conventional Shares may help investors to determine which class of shares is best for them, so long as the materials clearly outline the differences between the share classes. Accordingly, Applicants propose to modify the representation made in the Original VIPERs Application to permit VMC to market a Fund's VIPER Shares and Conventional Shares in the same advertisement or marketing material with appropriate disclosures explaining the relevant features of each class of shares and highlighting the differences between the classes.

7. Under the Original VIPERs Order, the Original Applicants were granted relief under sections 6(c) and 17(b) from sections 17(a)(1) and (2) to permit persons that are affiliated persons of a Fund, as defined in section 2(a)(3)(A) of the Act, by virtue of owning 5% or more of a Fund's outstanding voting securities (''5% Affiliates''), to purchase and redeem VIPER Shares in large blocks of shares (''Creation Units'') through in-kind transactions. Applicants seek an expansion of that relief to permit persons that are affiliated persons, as defined by section 2(a)(3)(C) of the Act, by virtue of owning more than 25% of a Fund's voting securities (''25% Affiliates''), to purchase and redeem Creation Units in-kind with the Funds. The requested relief would also allow affiliated persons of 5% and 25% Affiliates (that are not otherwise affiliated persons of a Fund) to purchase and redeem Creation Units in-kind with the Funds. Applicants state that securities tendered by investors through in-kind transactions with a Fund will be valued in the same manner as they are valued for purposes of calculating the Fund's NAV.

8. Applicants also propose to modify certain other terms of the Original VIPERs Order that they believe to be non-material. First, Applicants indicate that each of the Funds may offer up to three classes of Conventional Shares even though the Original VIPERs Application stated that the Original Applicant Funds only offered one or two classes of Conventional Shares. Second, whereas the Original VIPERs Application specified that each Original Applicant Fund would use a replication indexing method to track its Target Index, Applicants propose to give the Funds the flexibility to track their Target Indices by using a replication or representative sampling strategy.[6]

[2] The new series of Index Trust will track the MSCI U.S. Prime Market 750 Index.

[3] Only one of the five existing series of Specialized Trust, which tracks the Morgan Stanley REIT Index, may offer a class of VIPER Shares.

[4] Only one of the three existing series of World Trust, which tracks the Calvert Social Index, currently intends to offer a class of VIPER Shares. Applicants state that future series of World Trust that will offer a class of VIPER Shares will track the following Target Indices: MSCI U.S. Investable Market Consumer Discretionary Index; MSCI U.S. Investable Market Consumer Staples Index; MSCI U.S. Investable Market Energy Index; MSCI U.S. Investable Market Financials Index; MSCI U.S. Investable Market Health Care Index; MSCI U.S. Investable Market Industrials Index; MSCI U.S. Investable Market Information Technology Index; MSCI U.S. Investable Market Materials Index; MSCI U.S. Investable Market Telecommunication Services Index; MSCI U.S. Investable Market Utilities Index.

[5] Specifically, Applicants replaced the S&P MidCap 400 Index, Russell 2000 Index, S&P 500/BARRA Value Index, S&P Small Cap 600/BARRA Value Index, S&P 500/BARRA Growth Index and S&P Small Cap 600/BARRA Growth Index with, respectively, the MSCI U.S. Mid Cap 450 Index, MSCI U.S. Small Cap 1750 Index, MSCI U.S. Prime Market Value Index, MSCI U.S. Small Cap Value Index, MSCI U.S. Prime Market Growth Index and MSCI U.S. Small Cap Growth Index.

[6] Applicants state that each Fund will invest at least 90% of its assets in the component securities of its Target Index and have a tracking error with respect to its Target Index of five percentage points or less.

Third, Applicants seek the flexibility to list each Fund's VIPER Shares on any ''national securities exchange,'' as defined in section 2(a)(26) of the Act (''Exchange''), and not exclusively on the American Stock Exchange, as stated in the Original VIPERs Application. Finally, Applicants seek to clarify two statements in the Original VIPERs Application in which the Original Applicants stated that (a) the product description for the Original Applicant Funds' VIPER Shares (''Product Description'') would not contain information that was not also in the Fund's prospectus for VIPER Shares (''VIPER Shares Prospectus'') and (b) the Product Description would include a website address where investors could obtain information on the composition and compilation methodology of the Fund's Target Index. Applicants state that because Form N–1A does not require them to include information about a Target Index's website, the Funds' VIPER Shares Prospectuses do not include such information. Applicants state that such information is, however, included in the Funds' Product Descriptions. Applicants state, as a clarification, that other than information about a Target Index's website, a Fund's Product Description does not contain information that is not also in its VIPER Shares Prospectus.

9. For the reasons set forth above and for the reasons set forth in the Original VIPERs Application, Applicants contend that the standards of sections 6(c) and 17(b) are satisfied.

Applicants' Conditions:

Applicants agree that any order granting the requested relief will be subject to the conditions of the Original VIPERs Order, except that conditions 1, 8 and 9 will be amended as follows:

1. Applicants will not register the VIPER Shares of a Future Fund by means of filing a post-effective amendment to a Future Fund's registration statement or by any other means, unless (a) Applicants have requested and received with respect to such VIPER Shares either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission, or (b) such VIPER Shares will be listed on an Exchange without the need for filing pursuant to rule 19b–4 under the Securities Exchange Act of 1934.

8. Applicants' Web site, which is and will be publicly accessible at no charge, will contain the following information, on a per VIPER Share basis, for each Fund: (a) The prior business day's closing NAV and the Bid-Asked Price, and a calculation of the premium or discount of the Bid-Asked Price in relation to the closing NAV; and (b) data for a period covering at least the four previous calendar quarters (or the life of a Fund, if shorter) indicating how frequently each Fund's VIPER Shares traded at a premium or discount to NAV based on the Bid-Asked Price and closing NAV, and the magnitude of such premiums and discounts. In addition, the Product Description for each Fund will state that Applicants' website has information about the premiums and discounts at which the Fund's VIPER Shares have traded.

9. The VIPER Shares Prospectus and annual report will include, for each Fund: (a) The information listed in condition 8(b), (i) in the case of the VIPER Shares Prospectus, for the most recently completed calendar year (and the most recently completed quarter or quarters, as applicable), and (ii) in the case of the annual report, for no less than the immediately preceding five fiscal years (or the life of the Fund, if shorter); and (b) the cumulative total return and the average annual total return for one, five and ten year periods (or life of the Fund, if shorter) of (i) a VIPER Share based on NAV and the Bid-Asked Price and (ii) the Fund's Target Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–30351 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48863; File No. SR–Amex–2003–65]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the American Stock Exchange LLC and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Relating To Enhanced Corporate Governance Requirements Applicable to Listed Companies

December 1, 2003.

I. Introduction

On June 23, 2003, the American Stock Exchange LLC (''Amex'' 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 sections 101, 110, 120, 121, 401, 402, 610 and 1009 of the Amex Company Guide, and adopt new sections 801 through 808 of the Amex Company Guide to enhance the corporate governance requirements applicable to listed companies. The proposed rule change, among other things, would require each issuer listed on the Amex to comply with the standards for audit committees mandated by section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On September 9, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[5] On October 31, 2003, the Commission published the proposed rule change, as modified by Amendment No. 1, for comment in the **Federal Register**.[6] The Commission received one comment letter on the proposal.[7] On December 1, 2003, the Exchange filed Amendment No. 2 to the proposal.[8] This Order approves the proposed rule change, provides notice of Amendment No. 2, and approves Amendment No. 2 on an accelerated basis.

II. Description of Amended Proposal

The proposed rule change, as amended, consists of comprehensive enhancements to the corporate governance requirements applicable to companies listed on the Amex. Some of these changes respond to Rule 10A–3, which requires each national securities

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 5, 2003 (''Amendment No. 1'').

[6] *See* Securities Exchange Act Release No. 48706 (October 27, 2003), 68 FR 62109 (October 31, 2003) (''Notice'').

[7] Letter from Dorothy M. Donohue, Associate Counsel, Investment Company Institute, to Jonathan G. Katz, Secretary, Commission, dated November 21, 2003 (''ICI Letter''). The ICI Letter supported the Exchange's proposal and, in particular, noted that provisions of the Amex proposal are analogous to rules of the New York Stock Exchange and The Nasdaq Stock Market, which were recently approved by the Commission. *See infra* note and accompanying text.

[8] *See* Letter from Claudia Crowley, Vice President, Listing Qualifications, Amex, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 26, 2003 (''Amendment No. 2''). Amendment No. 2 supersedes and replaces the original proposal and Amendment No. 1 in their entirety. The most significant changes to the proposed rule change that are contained in Amendment No. 2 are summarized in section II. below.

exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. Other proposed changes relate to board of director composition and independence standards, audit committee composition and authority, compensation and nominating committees, and ethics and disclosure obligations, as discussed in detail in the Notice. The Amex's rule amendments will allow some leeway for small business filers. Under the proposed rule change, small business filers will be subject to the new corporate governance requirements, except that they will only be required to have a board of directors comprised of at least 50% independent directors and an audit committee of at least two independent directors.[9] Such issuers will, of course, be required to comply with Rule 10A–3.[10]

In Amendment No. 2, Amex revised various aspects of its proposal, in a manner that conforms many of its provisions with corporate governance rules of other self-regulatory organizations (''SROs''), which were recently approved by the Commission.[11] The specific proposed revisions included in Amendment No. 2 would:

- Substantially conform the compliance dates and transition periods to those mandated for audit committees by Rule 10A–3 under the Act and adopted by other marketplaces;[12]
- Provide phase-in periods with respect to certain requirements for companies that list in conjunction with an initial public offering, are emerging from bankruptcy, cease to be controlled companies, have staggered boards, or are transferring from other markets;
- Expand certain of the relationships that would preclude a finding of independence to apply not only to directors, but also to family members of directors;
- Exclude non-discretionary charitable match programs and loans permitted under Section 13(k) of the Securities Exchange Act from the definition of payments that would preclude a finding of independence;
- Exclude prior employment as an interim Chairman or Chief Executive Officer (''CEO''), as well as compensation received for such former service, from the relationships and payments that would preclude a finding of independence;
- Specify that business payments from or to an organization that a director (or an immediate family member) is a partner in, controlling shareholder of, or executive officer of, that would preclude a finding of independence (whether to or from the listed company) are tested against the consolidated gross revenues of the director's organization;
- Expand the scope of the relationships with the company's outside auditor that preclude a finding of independence;
- Apply a three year ''look-back'' to all relationships that would preclude a finding of director independence, but revise such ''look-back'' periods so that the independence tests applicable to independent directors who are not members of the audit committee, and certain ''look-back'' periods for independent directors who are members of the audit committee, would be only one year for the first year following Commission approval of the enhanced corporate governance requirements;
- Clarify that a director who qualifies as an audit committee financial expert pursuant to Commission rules is presumed to qualify as a financially sophisticated audit committee member under Amex rules, and conform the Amex rules to those adopted by other markets;
- Clarify the application of the corporate governance requirements to investment companies;
- Provide a different measure of independence for investment companies that is consistent with the Investment Company Act of 1940;[13]
- Clarify that audit committees of listed companies must adopt a formal audit committee charter that addresses the audit committee's responsibilities, including those required by Rule 10A–3;
- Require that audit committees of investment companies must establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company;
- Codify that audit committees of listed companies must meet on at least a quarterly basis;
- Clarify that independent nominating and compensation committees may either take action or recommend that the board take action;
- Clarify that the new requirements relating to nominating decisions would not apply in cases where the right to nominate a director legally belongs to a third party, or the company is already subject to a legally binding obligation that requires a director nomination structure inconsistent with the new rule;
- Require a nominating committee charter or board resolution addressing the nominations process;
- Remove a provision that would have permitted one director holding 20% or more of the company's stock who is not independent as a result of being an officer of the company to serve on the nominations committee;
- Add a requirement that listed companies must notify the Exchange of any material non-compliance with the enhanced corporate governance requirements;
- Specify that the CEO of a listed company may not be present during voting or deliberations on his or her compensation, and state that compensation for all other officers must be determined, or recommended to the Board for determination, either by the compensation committee or a majority of the independent directors on the company's board of directors;
- Specify that a listed company's required code of conduct and ethics must be publicly available, and any waivers of the code for directors and executive officers must be disclosed within five days in a Commission Form 8–K; and
- Provide that the compensation committee or a majority of independent directors is not precluded from approving awards either with or without board ratification, as may be required to comply with applicable tax and state corporate laws.

[9] Companies that are not small business filers will be required under the proposed rule change to have a board of directors comprised of a majority of independent directors and an audit committee of at least three independent directors.

[10] In addition, the Amex proposal includes provisions that would prohibit a listed company from appointing or permitting an Exchange employee or Floor Member to serve on its board of directors, place certain restrictions on the division of a listed company's board of directors into classes, and include other small variations from the corporate governance provisions of other SROs.

[11] See Securities Exchange Act Release No. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of File Nos. SR–NYSE–2002–33, SR–NASD–2002–77, SR–NASD–2002–80, SR–NASD–2002–138, SR–NASD–2002–139, and SR–NASD–2002–141) (''NYSE/NASD Corporate Governance Release'').

[12] The deadline for compliance with the audit committee requirements of Rule 10A–3 is the earlier of January 15, 2004, or October 31, 2004, (other than for foreign private issuers and small business issuers). The revisions to Amex rules regarding changes to board and committee composition and structure will become effective by the earlier of the issuer's first annual meeting after March 15, 2004, or October 31, 2004, (other than for foreign private issuers and small business issuers). Foreign private issuers and small business issuers must be in compliance with the Rule 10A–3 audit committee requirements and the new board and committee composition and structure provisions by July 31, 2005.

[13] 15 U.S.C. 80a–1 *et seq.*

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of section 6(b) of the Act.[14] Specifically, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] in that it is designed, among other things, to facilitate transactions in securities; to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and in general to protect investors and the public interest; and does not permit unfair discrimination among issuers.

In the Commission's view, the proposed rule change will foster greater transparency, accountability, and objectivity in the oversight by, and decision-making processes of, the boards and key committees of Amex listed issuers. The proposal also will promote compliance with high standards of conduct by the issuers' directors and management. The Commission notes that the Amex has amended its proposal to harmonize it in many areas with rule changes recently approved by the Commission for the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc.

In addition, in the Commission's view, the proposed rule change is consonant with Rule 10A–3, which requires that the rules of a national securities exchange prohibit the initial or continued listing of any security of an issuer that is not in compliance with the requirements of any portion of paragraph 9(b) or (c) of Rule 10A–3. In this regard, the proposed rule change will promote independent and objective review and oversight of an Amex-listed issuer's financial reporting practices.

The Commission believes that the provisions that the Amex has included to accommodate small business filers by requiring them to have 50%, rather than a majority, of their boards comprised of independent directors, and by requiring them to have two, rather than three, members on their audit committees, are reasonable.

The Commission also believes that the provision added by Amex to prohibit a listed company from appointing or permitting an employee or Floor Member of the Exchange to serve on its board is reasonable and appropriate, as is the provision placing certain limits on the division of a listed company's board of directors into classes.

The Commission notes that other provisions proposed by Amex vary somewhat from corporate governance rules recently approved by the Commission for other SROs. For example, with respect to the proposed three-year ''look back'' periods that would apply to relationships that preclude a finding of director independence, certain ''look-back'' periods would cover only one year for the first year following Commission approval of the requirements, while other ''look-back'' periods would cover three years following Commission approval of the requirements. Amex also would require each company listed on the Exchange to adopt either a formal written charter or board resolution, as applicable, that addresses the nominations process. Amex also has included a provision to explicitly require an audit committee to meet on a quarterly basis. The Commission believes that these provisions are reasonable.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[16] to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that most of the changes proposed in Amendment No. 2 correspond to similar provisions approved by the Commission for other self-regulatory organizations,[17] and raise no new issues. With respect to changes proposed in Amendment No. 2 that are unique with respect to Amex, the Commission believes that these provisions are reasonable and that accelerating their approval will enable Amex to put into place its complete set of corporate governance standards for listed companies in time for the 2004 proxy season for the large majority of its listed companies. In addition, the Amex provisions relating to audit committees respond to the mandate of Rule 10A–3, which requires SROs to have such rules in place by December 1, 2003.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–2003–65 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[18], that Amendment No. 2 be granted accelerated approval and that the proposed rule change (File No. SR–Amex–2003–65), as amended, be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30354 Filed 12–05–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48859; File No. SR–CHX–2003–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Incorporated to Amend Article XX, Rule 37(a)(4) Relating to the Definition of Preopening Order

December 1, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2]

[14] 15 U.S.C. 78(b). In approving the proposed rule change, as amended, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] *See* NYSE/NASD Corporate Governance Release, *supra* n. 11.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on August 1, 2003, the Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange submitted an amendment to the proposed rule change on November 6, 2003.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CHX Article XX, Rule 37(a)(4), which governs execution of preopening orders on the CHX. Specifically, the CHX seeks to modify the definition of ''preopening order'' to provide that preopening orders for Nasdaq/NM securities must be received at or prior to 8:20 a.m. (CT), instead of the 8:25 (CT) deadline currently set forth in the rule.[4] Below is the text of the proposed rule change, as amended. New language is *italicized,* and deletions are bracketed.

* * * * *

Chicago Stock Exchange Rules

ARTICLE XX

Regular Trading Sessions

Guaranteed Execution System and Midwest Automated Execution System

RULE 37.

(a) No change to text.

1–3. No change to text.

4. Preopenings. Preopening orders in Dual Trading System issues must be accepted and filled at the primary market opening trading price. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in NASDAQ/NM securities must be accepted and filled on a single price opening at or better than the NBBO at the first unlocked, uncrossed market. In trading halt situations, orders will be executed based on the Exchange reopening price. For purposes of this rule, (a) pre-opening orders in Dual Trading System Issues are orders that are received before a primary market opens a subject security based on a print or based on a quote and (b) preopening orders in NASDAQ/NM securities are orders received at or prior to 8:*20* [25] a.m. (Central Time) on the date of the opening.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX seeks to amend CHX Article XX, Rule 37(a)(4), which governs execution of preopening orders on the CHX, by modifying the definition of ''preopening order'' to provide that preopening orders for Nasdaq/NM securities must be received at or prior to 8:20 a.m. (CT), instead of the 8:25 (CT) deadline currently set forth in the rule.

Under the current version of the CHX rule, all preopening orders for Nasdaq/NM securities are accepted and filled on a single price opening at or better than the national best bid or offer (''NBBO'') at the first unlocked, uncrossed market. The Exchange represents that the single price opening for preopening orders was enacted voluntarily by the Exchange in early 2001[5] as an execution guarantee similar to the Exchange's provisions relating to price improvement. The Exchange believes that the single price opening, like price improvement, often provides for execution of preopening orders at execution prices more favorable than if the Exchange did not offer a single price opening. The Exchange's 2001 submission established an 8:25 (CT) deadline for preopening orders. Orders received after 8:25 (CT) are treated as standard market orders under the Exchange's general rules governing execution of market orders.

The proposed change to the rule governing the 8:25 (CT) deadline for preopening orders was formulated by the Exchange's OTC Subcommittee, which is composed of CHX specialists who trade Nasdaq/NM securities. The members of the OTC Subcommittee believe that an earlier deadline for preopening orders is a modest yet important modification to their single price execution guarantee for preopening orders.

To place their request in context, the CHX represents that it is virtually the only market center that guarantees a single price opening at or better than the NBBO at the first unlocked, uncrossed market. The Exchange's competitors generally base their execution of preopening orders on the prices and order imbalances within their own systems, rather than the NBBO for Nasdaq/NM securities. Accordingly, the Exchange believes that its OTC specialists bear a significantly higher degree of risk with respect to preopening orders, since they are obligated to execute such orders based on the first unlocked, uncrossed NBBO. In situations where there is a significant imbalance in preopening orders for a particular issue, this execution guarantee can result in significantly adverse swings in a CHX specialist's position. The Exchange believes that an earlier deadline for preopening orders, by operating to reduce the aggregate amount of preopening orders received by a CHX specialist, would better enable the CHX specialist to manage his position and to better fulfill his specialist duties by giving him time to fully evaluate his position and to make a professional price assessment that would inform his executions once trading commences for the day.[6]

An additional reason for an 8:20 (CT) deadline relates to the operation of NASDAQ's SuperMontage® system, in which the CHX participates. The SuperMontage rules establish 8:20:00 (CT) through 8:29:59 (CT) as the time period during which NASDAQ market makers (including electronic communication networks) can route ''trade or move'' messages to SuperMontage participants whose quotes might be inferior in price to a price that another participant seeks to

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 4, 2003, replacing Form 19b–4 in its entirety (''Amendment No. 1''). In Amendment No. 1, the CHX expands upon the purpose of the proposed rule change.

[4] All times referred to in the proposed rule change, as amended, are Central Time (CT).

[5] *See* Securities Exchange Act Release No. 44062 (March 12, 2001), 66 FR 15514 (March 19, 2001).

[6] Significantly, an order received prior to the open which is not a ''preopening'' order (*i.e.*, which is received between the preopening order deadline and the 8:30 (CT) open) must still be executed in accordance with the Exchange's BEST rule (CHX Article XX, Rule 37(a)), which requires execution of market and marketable limit orders at the NBBO, or requires a CHX specialist to act as agent for the order to obtain the best available price in the marketplace, using order routing systems where appropriate. The CHX thus does not anticipate that such orders would be disadvantaged in terms of price once they are executed following the open; the orders simply would not participate in the single price opening.

disseminate. Before a CHX specialist can respond to a ''trade or move'' request in an informed fashion, he must be fully apprised of his updated position, based on the comprehensive data of all preopening orders that he has received. The Exchange believes that an 8:20 (CT) deadline for CHX preopening orders would better enable CHX specialists to comply with SuperMontage rules and procedures governing the vital ''trade or move'' functionality.

Accordingly, the Exchange believes that the modification requested by the OTC Subcommittee is appropriate. Because the Exchange believes that the current single price opening guarantee was enacted voluntarily as a means of attracting customer order flow and is not required under the Act or any other legislative mandate, the Exchange believes that it is appropriate for OTC specialists to modify slightly the parameters under which this guarantee is available.

2. Statutory Basis

The CHX believes the proposal, as amended, is consistent with the requirements of Section 6(b) [7] of the Act in general, and Section 6(b)(5) of the Act [8] in particular, because it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The CHX has requested accelerated approval of the proposed rule change, as amended. While the Commission will not grant accelerated approval at this time, the Commission will consider granting accelerated approval of the proposal, as amended, at the close of an abbreviated comment period of 15 days from the date of publication of the proposal in the **Federal Register**.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change, as amended, 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 CHX. All submissions should refer to File No. SR–CHX–2003–23 and should be submitted by December 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30352 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48860; File No. SR–CHX–2003–19]

Self-Regulatory Organizations; Order Granting Partial Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc. Relating to Governance of Issuers on the CHX

December 1, 2003.

I. Introduction

On July 28, 2003, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange''), filed with the Securities and Exchange Commission (''SEC'' or ''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 certain provisions of its rules relating to the governance of issuers that list securities on the CHX.

The proposed rule change, among other things, would require each issuer listed on the CHX to establish an independent audit committee and to comply with the standards for audit committees mandated by Section 10A(m) of the Act [3] and Rule 10A–3 thereunder.[4] The proposal also would amend the CHX's Tier I and Tier II listing standards to enhance its requirements relating to the roles and responsibilities of independent directors and independent board committees, including audit committees, nominating committees and compensation committees. The proposal further includes amendments to the CHX's maintenance standards to set out a process that would allow an issuer an opportunity to cure a failure to meet the Exchange's maintenance listing standards, including its governance-related standards.

On October 28, 2003, the Commission published the proposed rule change for comment in the **Federal Register**.[5] The Commission received no comments on the proposal. On November 24, 2003, the Exchange filed Amendment No. 1 to the proposal.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* Securities Exchange Act Release No. 48669 (October 21, 2003), 68 FR 61500 (October 28, 2003).

[6] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 21, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange requested that the Commission grant approval at this time to: (a) the sections that relate

Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003. This Order approves the proposed rule change in part as set forth below, so that the CHX can comply with this deadline. This Order also provides notice of Amendment No. 1 and approves Amendment No. 1 on an accelerated basis. The Commission notes that the CHX is considering revisions to the portions of the proposed rule change that pertain to corporate governance standards other than the revisions to comply with Rule 10A–3 requirements, particularly in light of rule changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were recently approved by the Commission.[7] This Order does not relate to those other proposed provisions except to the extent indicated below.

II. Description of the Approved Changes

The Commission is approving in this Order the portions of the proposed rule change that: (a) Implement Rule 10A–3; and (b) amend CHX's maintenance standards as set forth in the rule text that follows.[8] The Commission also is approving an additional provision, included in the text set forth below, relating to complaint procedures of audit committees of investment companies. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.''[9] The additional provision will require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

The following is the proposed rule text that the Commission is approving, as set forth by CHX in Amendment No. 1. Proposed new language is in *italics*; proposed deletions are in brackets.

Chicago Stock Exchange Rules

ARTICLE XXVIII

Listed Securities

* * * * *

* * * * *

Maintenance Standards Applicable to All Tier I Issues

RULE 17A. The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading*, or failure to comply with required corporate governance standards.*

** * * Interpretations and Policies*

If the Exchange identifies a Tier I issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the ''Plan'') to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at

to the Commission's Rule 10A–3 requirements for listed company audit committees; and (b) the sections that set out a process that would provide an issuer with a specific opportunity to cure any failure to meet the Exchange's maintenance standards, including its governance-related standards. In addition, the Exchange proposed in Amendment No. 1 an additional section of rule text in CHX Rule 19(b)(2) to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters. In the amendment, CHX set forth the text of the proposed rule change for which it is seeking approval at this time, which is set forth in Section II. below.

[7] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141) (''NYSE/NASD Corporate Governance Release''). Telephone call between Ellen Neely, Senior Vice President and General Counsel, CHX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 18, 2003.

[8] The text set forth below also includes several minor changes to the text set forth in the Notice to reflect the fact that the Commission is approving portions of the proposed rule amendments.

[9] 17 CFR 240.10A–3(b)(3)(ii).

least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but is not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

Tier I Corporate Governance and Disclosure Standards Corporate Governance

RULE 19. The following Rule 19 applies [only] to Tier I issuers:

(a) Board of Directors.

Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.

(b) Audit Committee.

(1) Audit Committee Composition. Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined in section (a) above. *In addition to these criteria:*

(A) Each member of the audit committee must meet the criteria for independence set forth in SEC Rule 10A–3 (subject to the exemptions provided in that Rule);

(B) Exceptions.

If a member of an audit committee ceases to meet the independence criteria set forth in SEC Rule 10A–3 for reasons outside the person's reasonable control, that person may remain a member of the committee until the earlier of the next annual shareholders' meeting or one year from the occurrence of the event that caused the member to no longer meet the independence criteria. The issuer must promptly notify the Exchange if this circumstance occurs.

(2) Audit Committee Responsibilities and Authority. The audit committee must have, at a minimum, (A) the responsibilities and authority set forth in SEC Rule 10A–3; and (B) the obligation to conduct an appropriate review of all related party transactions on an ongoing basis and to review potential conflict of interest situations where appropriate. Audit committees for investment companies must also establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

(3) Any issuer that is exempt from the provisions of SEC Rule 10A–3 is not required to meet the requirements set out in sections (b)(1)(A) or (b)(2)(A) above and is not required to meet the additional requirements for audit committees for investment companies set out in the last sentence of section (b)(2).

(c) Reserved.

(d) Reserved.

(e) Reserved.

(f) Governance-Related Certifications.

Each issuer's chief executive officer must promptly notify the Exchange after any executive officer of the issuer becomes aware of any material non-compliance by the issuer with applicable standards set out in paragraph (b) of this rule; provided, however, that any issuer that is exempt from the provisions of SEC Rule 10A–3 is not required to meet the requirements of this section (f).

[(a)]*(g) Annual Reports.* No change to text.

[(b)]*(h) Quarterly Reports.* No change to text.

[(c)]*(i) Other Reports.* No change to text.

[(d) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors, as defined below.]

[(e) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

[(f)]*(j) Annual Meeting.* No change to text.

[(g)]*(k) Proxy Solicitations.* No change to text.

[(h) Each issuer shall conduct an appropriate review of all related party transactions on an ongoing basis and shall use the company's audit committee or a comparable body for the review of potential conflict of interest situations where appropriate.]

[(i)]*(l) Stock Certificates.* No change to text.

[(j)]*(m)* No change to text.

[(k)]*(n) Stock Transfer Facilities.* No change to text.

(o) Reserved.

. . . Interpretations and Policies

.01 No change to text.

.02 Reserved.

.03 Reserved.

.04 Reserved.

.05 Transition Periods and Compliance Dates. Sections (a)–(f) will become effective pursuant to the following schedule:

The audit committee requirements mandated by SEC Rule 10A–3 (and the exception set out in section (b)(1)(B) in this rule) will become effective as set out in Rule 10A–3.

* * * * *

Tier II Corporate Governance, Disclosure, and Miscellaneous Requirements

RULE 21. The following Rule 21 applies only to Tier II issuers:

(a) Each issuer shall comply with the governance requirements set out in Rule 19 (a)–(f) of this Article and is subject to Interpretations .02–.05 of that rule.

(b) No change to text.

[(1) Each listed company shall establish and maintain an Audit Committee, a majority of the members of which shall be independent directors.]

[(2) Each listed company shall maintain a minimum of two independent directors on its board of directors. For purposes of this section, ''independent director'' shall mean a person other than an officer or employee of the company or its subsidiaries or any other individual having a relationship which, in the opinion of the board of directors, would interfere with the exercise of independent judgment in carrying out the responsibilities of a director.]

([d]*c) Stock Certificates.* No change to text.

([e]*d) Changes to Listing Standards.* No change to text.

* * * * *

Tier II Maintenance Standards

RULE 22. (a) The Exchange reserves the right to delist the securities of any corporation, subject to Securities and Exchange Commission Rules, which engages in practices not in the public interest or whose assets have been depleted to the extent that the company can no longer operate as a going concern or whose securities have become so closely held that it is no longer feasible to maintain a reasonable market in the issue. Furthermore, the Exchange reserves the right to delist the securities of any corporation which has drastically changed its corporate structure and/or its type of operation. The Exchange may also make an appraisal of, and determine on an individual basis, the suitability for continued listing of an issue in the light of all pertinent facts whenever it deems such action appropriate, even though a security meets enumerated criteria (including, but not limited to, continued listing on the NYSE, Amex or Nasdaq National Market). Many factors may be considered in this connection, including, but not limited to, abnormally low selling price or volume of trading, *or failure to comply with required corporate governance standards.*

(b)–(d)No change to text.

. . . Interpretations and Policies

If the Exchange identifies a Tier II issue as being below the Exchange's maintenance listing requirements, the Exchange will notify the issuer by letter of its determination and the reasons for that determination. In this letter, the Exchange will provide the issuer with an opportunity to provide the Exchange with a plan (the ''Plan'') to cure the deficiency. Within 10 business days of the receipt of the Exchange's letter, the issuer must contact the Exchange to confirm its receipt of the letter and to report to the Exchange whether or not the issuer intends to present a Plan. If the issuer notifies the Exchange that it does not intend to present a Plan, the Exchange will commence proceedings to suspend and/or delist the issue.

The issuer must present any Plan within 45 days after its receipt of the Exchange's letter. The Plan must describe definitive action that the issuer has taken, or is taking, that would bring it into conformity with the Exchange's maintenance listing requirements within 18 months of receipt of the letter, or within any shorter time period required by the Exchange. (The Exchange will not approve any Plan, under which an issuer is curing a deficiency under SEC Rule 10A–3, which extends beyond the earlier of 12 months or the first annual shareholders' meeting (for circumstances beyond the reasonable control of an issuer) and 6 months (for other circumstances)). The Plan also must set quarterly milestones against which the Exchange will evaluate its progress. Exchange staff will evaluate the Plan and determine whether the issuer has made a reasonable demonstration in the Plan of an ability to come into compliance with the Exchange's maintenance listing requirements. The Exchange will notify the issuer of its determination within 45 days after receipt of the Plan. If the Exchange does not accept the Plan, it will commence proceedings to suspend and/or delist the issue.

If the Exchange accepts the Plan, the Exchange will review the issuer on a quarterly basis to determine the issuer's progress under the Plan. If the issuer fails to meet a material provision of the Plan or one or more of its quarterly milestones, the Exchange will review the facts and circumstances and determine whether to initiate proceedings to suspend and/or delist the issue; provided however, that if an issuer fails to meet a material provision of the Plan that relates to compliance with its obligations under SEC Rule 10A–3, the Exchange will immediately commence proceedings to suspend and/or delist the issue. If, for circumstances that do not involve compliance with SEC Rule 10A–3, the Exchange determines that continued listing is warranted, the Exchange will continue to review the issuer's progress under the Plan on at least a quarterly basis. If the issuer achieves compliance with the Exchange's maintenance listing requirements before the Plan expires under its terms, the Exchange may choose to consider the Plan ended as of that earlier date.

If an issuer, within one year after the termination of a Plan, is again determined to have failed to meet the Exchange's maintenance listing requirements, the Exchange will review the facts and circumstances (including whether the issuer has fallen into non-compliance with the same standards at issue in its earlier Plan) and will take appropriate action, which could include, but is not limited to, shortening the time periods associated with the submission of any new Plan or immediately commencing proceedings to suspend and/or delist the issue.

These procedures do not prevent the Exchange from suspending trading in an issue immediately, whenever it finds that it is necessary to do so for the protection of investors.

* * * * *

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change which are amended by Amendment No. 1 and are set forth in Section II. above, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[10] Specifically, the Commission finds that the proposal to require independent audit committees for listed companies is consistent with Section 6(b)(5) of the Act,[11] which requires, among other things, that the CHX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with Section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with Section 19(b)(2) of the Act,[12] to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 1 contains a provision that responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[13] In Amendment No. 1, the Exchange also made several non-substantive changes to the rule text to reflect the fact that the Commission is approving portions of the proposed amendments. The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms the rule text to similar provisions approved by the Commission

[10] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

for other self-regulatory organizations,[14] and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–2003–19 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the portions of the proposed rule change (File No. SR–CHX–2003–19) set forth above relating to compliance with Rule 10A–3 under the Act, maintenance standards, and audit committee responsibilities and authority, be, and hereby are, approved, and that Amendment No. 1 be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30355 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[14] *See* NYSE/NASD Corporate Governance Release, *supra* n. 7.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48857; File No. SR–NYSE–2002–40]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the New York Stock Exchange, Inc. (''NYSE'') To Establish Two New Crossing Sessions in the Exchange's Off-Hours Trading Facility

December 1, 2003.

On August 29, 2002, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission (''SEC'' or ''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 introduce into its rules ''Crossing Session III'' for the execution of guaranteed price coupled orders by member organizations to fill the balance of customer orders at a price that was guaranteed to a customer prior to the close of the Exchange's 9:30 a.m. to 4 p.m. trading session. On August 14, 2003, the NYSE filed Amendment No. 1 to the proposed rule change.[3] On October 8, 2003, the NYSE filed Amendment No. 2 to the proposed rule change.[4] Amendment No. 1 would adopt a new Rule 907 to add a ''Crossing Session IV'' whereby an unfilled balance of an order may be filled at a price such that the entire order is filled at no worse price than the Volume Weighted Average Price (''VWAP'') for the subject security. Proposed Crossing Session III and Crossing Session IV would operate as a one-year pilot. The proposed rule change and Amendment Nos. 1 and 2 thereto were published for notice and comment in the **Federal Register** on October 28, 2003.[5] The Commission received no comments on 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[6] and, in particular, the requirements of Section 6(b)(5) of the Act[7] and the rules and regulations thereunder requiring that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Commission believes that the proposed new crossing sessions may improve the transparency of these types of transactions which are currently often effected in non-U.S. markets without reporting. In approving Crossing Session I and Crossing Session II, the Commission granted exemptive relief from Rule 10a-1 under the Act[8] (short sale rule) for transactions effected therein; this exemptive relief is not being extended to transactions effected in Crossing Session III and Crossing Session IV.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–2002–40), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30356 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Mary Yeager, Assistant Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated August 13, 2003, and enclosure (''Amendment No. 1''). Amendment No. 1 proposes to add ''Crossing Session IV.''

[4] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC, dated October 7, 2003, and enclosure (''Amendment No. 2''). Amendment No. 2 deletes the reference to a volume-weighted average price (''VWAP'') order from paragraph (c) of proposed Rule 907.

[5] Securities Exchange Act Release No. 48659 (October 20, 2003), 68 FR 61532.

[6] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 240.10a-1.

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48861; File No. SR–PCX–2003–35]

Self-Regulatory Organizations; Order Granting Partial Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto by the Pacific Exchange, Inc., To Amend Its Corporate Governance and Disclosure Policies

December 1, 2003.

I. Introduction

On July 14, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary, PCX Equities, Inc. (''PCXE''), 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 its Corporate Governance and Disclosure Policies. The proposed rule change, among other things, would require each issuer listed on the PCX to establish an independent audit committee and to comply with the standards for audit committees mandated by section 10A(m) of the Act[3] and Rule 10A–3 thereunder.[4] The proposed rule change also includes provisions relating to board independence and independent committees, codes of conduct, and other corporate governance issues. On October 14, 2003, the Exchange filed Amendment No. 1 to the proposal.[5] On October 31, 2003, the proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register**.[6] The Commission received no comments on the proposal. On November 18, 2003, the Exchange filed Amendment No. 2 to the proposal.[7]

Rule 10A–3 requires each national securities exchange and national securities association to have rules that comply with its requirements approved by the Commission no later than December 1, 2003.[8] This Order approves the proposed rule change in part as further discussed below, so that the PCX can comply with this deadline. This Order also provides notice of Amendment No. 2 and approves Amendment No. 2 on an accelerated basis. The Commission notes that the PCX is considering revisions to the portions of the proposed rule change that pertain to corporate governance listing standards other than the revisions to comply with Rule 10A–3, particularly in light of rule changes by the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc. that were recently approved by the Commission.[9] This Order does not relate to those other proposed provisions.

II. Description of Approved Changes

The Commission is approving in this Order the following provisions of the proposed rule change, which implement the requirements of Rule 10A–3:

(1) The third proposed additional sentence to PCX Rule 5.3, ''Corporate Governance and Disclosure Policies,'' which, as approved states: ''Issuers of any security that is listed pursuant to the Rules of the Corporation must comply with the provisions of Rule 5.3(k)(5).'';

(2) Proposed PCX Rule 5.3(k)(5)(A) in its entirety, as well as the heading, ''Audit Committee,'' for proposed PCX Rule 5.3(k)(5);

(3) The heading and second sentence of proposed PCX Rule 5.3(n), ''Listed Foreign Private Issuers.'' The rule, as approved, states: ''Listed foreign private issuers must comply with the provisions of Rule 5.3(k)(5)'';

(4) The proposed change to existing PCX Rule 5.5(a), ''Maintenance Requirements and Delisting Procedures,'' which would add language to conform the rule to Rule 10A–3; and

(5) All the proposed changes to existing PCX Rule 5.5(m), ''Delisting Procedures,'' which consist of adding a cross-reference to Rule 5.3 and referring to violations of Rule 5.3(k)(5), in which case the corporation shall initiate delisting procedures.

In addition, the Commission is approving Amendment No. 2 to the proposed rule change on an accelerated basis. In Amendment No. 2, the PCX proposes to expand, with respect to investment companies, the scope of its proposed provision regarding complaint procedures. Rule 10A–3 requires audit committees to establish procedures for ''the confidential, anonymous submission by employees of the listed issuer of concerns regarding questionable accounting or auditing matters.''[10] The amended PCX proposal would require that audit committees of investment companies also establish procedures for the confidential, anonymous submission of such concerns by employees of the investment adviser, administrator, principal underwriter, or any other provider of accounting related services for the investment company, as well as employees of the investment company.

III. Discussion

After careful review, the Commission finds that the provisions of the proposed rule change specified above that implement the requirements of Rule 10A–3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11]

Specifically, the Commission finds that these changes are consistent with section 6(b)(5) of the Act,[12] which requires, among other things, that the PCX's rules be designed to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest. Moreover, the Commission believes that the Exchange's proposal to add the new requirements concerning audit committees is appropriate and consonant with section 10A(m) of the Act and Rule 10A–3 thereunder relating to audit committee standards for listed issuers.

Furthermore, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[13] to approve Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. This expansion of complaint procedures of audit committees at investment companies proposed in Amendment No. 2 responds to a recommendation by the Commission that self-regulatory organizations take into account, in adopting their rules, the fact that most services are rendered to an investment company by employees of third parties, such as the investment adviser, rather than by employees of the investment company.[14] The Commission believes that it is appropriate to accelerate approval of this amendment because it conforms to similar provisions approved by the Commission for other self-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78j–1(m).

[4] 17 CFR 240.10A–3.

[5] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2003 (''Amendment No. 1''). In Amendment No. 1, the Exchange made changes to proposed rule text in PCX Rule 5.3(k)(5)(B)(ii)(a).

[6] *See* Securities Exchange Act Release No. 48700 (October 24, 2003), 68 FR 62146 (October 31, 2003).

[7] *See* letter from Steven B. Matlin, Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated November 17, 2003 (''Amendment No. 2''). In Amendment No. 2, the Exchange proposed an additional section of rule text, PCX Rule 5.3(k)(5)(A)(v), to expand, with respect to investment companies, the scope of the requirement that audit committees establish procedures for the confidential, anonymous submission of concerns regarding questionable accounting or auditing matters.

[8] 17 CFR 240.10A–3.

[9] *See* Securities Exchange Act Release Nos. 48745 (November 4, 2003), 68 FR 64154 (November 12, 2003) (approval of, among other proposals, File Nos. SR–NYSE–2002–33 and SR–NASD–2002–141) (''NYSE/NASD Corporate Governance Release''). Telephone conference call between Steven Matlin, Senior Counsel, PCX and Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, and other Commission staff, on November 17, 2003.

[10] 17 CFR 240.10A–3(b)(3)(ii).

[11] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] *See* Securities Act Release No. 8220, Securities Exchange Act Release No. 47654, and Investment Company Act Release No. 26001 (April 9, 2003), 68 FR 18788 (April 16, 2003) (release adopting Rule 10A–3).

regulatory organizations [15] and raises no new issues.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2003–35 and should be submitted by December 29, 2003.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the portions of the proposed rule change (File No. SR–PCX–2003–35) set forth above relating to compliance with Rule 10A–3 under the Act be, and hereby are, approved, and that Amendment No. 2 relating to complaint procedures of audit committees of investment companies be granted accelerated approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30353 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[15] *See* NYSE/NASD Corporate Governance Release, *supra* n. 9.

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48851; File No. SR–Phlx–2003–77]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Renewal of a Pilot Program To Disengage the Automatic Execution Feature (AUTO–X) of the Exchange's Automated Options Market (AUTOM)

November 26, 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 November 19, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') 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 the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and granting accelerated approval to the proposal for a pilot period of one year.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for a one-year period, its Pilot program concerning AUTO–X, whereby AUTO–X is disengaged for a period of 30 seconds after the number of contracts automatically executed in a given class of options meets the specified disengagement size for the option (the ''Pilot'').[3] The Exchange also proposes to amend Exchange Rule 1080, Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X),[4] to reflect a systems change to the Pilot that was previously filed for immediate effectiveness with the Commission.[5] The text of the proposed rule change is set forth below. Brackets indicate deletions; indicates new text.

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Implementation System (AUTO–X)

Rule 1080. (a)–(b) No change.

(c) (i)–(iii) No change.

(iv) (A)–(H) No change.

(I) when the number of contracts automatically executed within a 15 second period in an option (subject to a Pilot program until November 30, 200[3]*4*) exceeds the specified disengagement size, a 30 second period ensues during which subsequent orders are handled manually. *If the Exchange's disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds. If the specialist revises the quotation in such an option prior to the expiration of such 30-second period, eligible orders in such an option shall again be executed automatically.*

(v) No change.

(d)–(j) No change.

Commentary:

.01–.07 No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the Pilot for a one-year period, and to amend Exchange Rule 1080(c)(iv)(I) to reflect a systems change to the Pilot, as more fully

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Pursuant to a telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division of Market Regulation (''Division''), Commission on November 25, 2003, the sentence was changed to clarify that the Pilot relates to option classes.

[4] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[5] *See* Securities Exchange Act Release No. 48430 (September 3, 2003), 68 FR 53415 (September 10, 2003) (SR–Phlx–2003–52).

described below. The Pilot was originally approved on a six-month basis for a limited number of eligible options[6] and extended for an additional six-month period.[7] Subsequently, the number of options eligible for the Pilot was expanded to include all Phlx-traded options.[8] In December 2001, the Pilot was extended again for an additional six-month period;[9] and extended again in May 2002,[10] November 2002,[11] and May 2003.[12] In September 2003, the Exchange filed a proposed rule change reflecting a system change to the Pilot, which is described more fully below.[13] The instant proposed rule change would codify the functionality of the system change in Exchange Rule 1080(c)(iv)(I), and would extend the Pilot for an additional one-year period.

The Pilot currently includes the following features:

• Once an automatic execution occurs via AUTO–X in an option, the system begins a ''counting'' program, which counts the number of contracts executed automatically for that option up to a certain size,[14] which causes AUTO–X to become disengaged for that option.

• When the number of contracts executed automatically for that option exhausts the specified disengagement size for the specific option within a 15 second time frame, the system ceases to automatically execute for that option, and drops all AUTO–X eligible orders in that option for manual handling by the specialist for a period of 30 seconds in order to enable the specialist to refresh quotes in that option.

• Upon the expiration of 30 seconds, automatic executions resume, the ''counting'' program is set to zero and it begins counting the number of contracts executed automatically within a 15 second time frame again, up to the specified disengagement size.

Again, when the number of contracts automatically executed exhausts the specified disengagement size within a 15 second time frame, the system drops all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of 30 seconds. The system then continues to reset the ''counting'' program and drop to manual, etc.

In April 2003, the Commission approved a proposal by the Exchange to provide automatic executions for eligible inbound orders (for the account(s) of both customers and broker-dealers) at the Exchange's disseminated price, up to the disseminated size, replacing the previous Exchange rule that allowed a pre-set ''AUTO–X guarantee'' size, in which eligible orders would be automatically executed up to that AUTO–X guarantee, regardless of the Exchange's disseminated size.[15] Previously, if the Exchange's disseminated size in a particular series was greater than the AUTO–X guarantee, eligible orders delivered via AUTOM for a size greater than the AUTO–X guarantee would be automatically executed at the AUTO–X guaranteed size, and the remainder of the order would be executed manually by the specialist at the disseminated price, up to the remaining disseminated size, in accordance with the Exchange's rules regarding firm quotations.[16]

Because the Exchange currently guarantees automatic executions for eligible orders up to the Exchange's disseminated size, the Exchange has developed a new system that automatically executes eligible orders up to the disseminated size in a given series regardless of the specified disengagement size. Thus, if the disseminated size exceeds the specified disengagement size for the series, and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, the order will be executed up to the disseminated size, followed by an AUTO–X disengagement period of 30 seconds.[17] If the specialist revises the quote in the series prior to the expiration of 30 seconds, AUTO–X will be automatically re-engaged. The instant proposal would amend Rule 1080(c)(iv)(I) to reflect this enhancement to the system.

The Exchange believes that the system should enable specialists to continue to fulfill their obligations to make fair and orderly markets during periods of peak market activity, while simultaneously enabling them to meet the requirement to provide automatic executions up to the disseminated size, regardless of whether the specified disengagement size is for a number of contracts that is less than the disseminated size.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Section 6(b)(5) of the Act,[19] in particular, in that it that it is designed to perfect the mechanisms of a free and open market and the national market system, protect investors and the public interest and promote just and equitable principles of trade by providing automatic executions for eligible orders up to the Exchange's disseminated size, while continuing to enable Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. 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

[6] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96).

[7] *See* Securities Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[8] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[9] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[10] *See* Securities Exchange Act Release No. 45862 (May 1, 2002), 67 FR 30990 (May 8, 2002) (SR–Phlx–2002–22).

[11] *See* Securities Exchange Act Release No. 46840 (November 15, 2002), 67 FR 70473 (November 22, 2002) (SR–Phlx–2002–59).

[12] *See* Securities Exchange Act Release No. 47955 (May 30, 2003), 68 FR 34458 (June 9, 2003) (SR–Phlx–2003–29).

[13] *See supra* note 5.

[14] Exchange Rule 1080(c)(iv)(I) provides that, when the number of contracts automatically executed within a 15 second period in an option exceeds the ''specified disengagement size,'' a 30 second period ensues during which subsequent orders are handled manually. The specified disengagement size is determined by the specialist and subject to the approval of the Exchange's Options Committee. The specified disengagement size for each option is listed on the Exchange's web site.

[15] *See* Securities Exchange Act Release No. 47646 (April 8, 2003), 68 FR 17976 (April 14, 2003) (SR–Phlx–2003–18).

[16] *See* Exchange Rule 1082.

[17] If either a market order or a limit order is larger than the disseminated size, the remaining unexecuted portion of the order would be manually handled by the specialist in accordance with Exchange Rules. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division, Commission on November 26, 2003.

[18] 15 U.S.C. 78f(b).

[19] 15 U.S.C. 78f(b)(5).

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–77 and should be submitted by December 29, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of 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.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities system, and protect investors and the public interest.[21]

The Commission believes that the extension of the Pilot should assist specialists in maintaining fair and orderly markets during periods of peak market activity. In that regard, the Commission notes that in response to Commission staff concerns the Exchange modified its system to provide that if the disseminated size exceeds the specified disengagement size and an eligible order is delivered for a number of contracts that is greater than the specified disengagement size, such an order will be automatically executed up to the disseminated size. The Commission believes that an extension of the Pilot program for a one-year period should allow the Exchange to continue its efforts to deploy more fully automate its systems.

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that, according to the Phlx, no complaints from customers, floor traders, or member firms have been received during the entire period of the Pilot program.[23] The Commission believes that granting accelerated approval to extend the Pilot program for one additional year will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, [24] that the proposed rule change (SR–Phlx–2003–77) is hereby approved on an accelerated basis, as a one-year Pilot, scheduled to expire on November 30, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–30357 Filed 12–5–03; 8:45 am]

BILLING CODE 8010–01–P

[20] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78s(b)(2).

[23] Pursuant to telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Marc McKayle, Special Counsel, Division, Commission on November 24, 2003.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Alice D. Witt, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, TN 37402–2801; (423) 751–6832. (SC: 000YZ1N) Comments should be sent to the Agency Clearance Officer no later than February 6, 2004.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to extend a currently approved collection of information (OMB control number 3316–0062).

Title of Information Collection: TVA Procurement Documents, including Invitation to Bid, Request for Proposal, Request for Quotation, and other related Procurement or Sales Documents.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, businesses or other for-profit, non-profit institutions, small businesses or organizations.

Small Business or Organizations Affected: Yes.

Federal Budget Functional Category Code: 999.

Estimated Number of Annual Responses: 24,300.

Estimated Total Annual Burden Hours: 49,100.

Estimated Average Burden Hours Per Response: 0.49.

Need For and Use of Information: TVA procures goods and services to fulfill its statutory obligations and sells surplus items to recover a portion of its investment costs. This activity must be conducted in compliance with a variety of applicable laws, regulations, and Executive Orders. Vendors and purchasers who voluntarily seek to contract with TVA are affected.

Jacklyn J. Stephenson,

Manager, Enterprise Operations, Information Services.

[FR Doc. 03–30341 Filed 12–5–03; 8:45 am

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments Concerning Compliance With Telecommunications Trade Agreements

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for public comment and reply comment.

SUMMARY: Pursuant to section 1377 of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 3106) (''section 1377''), the Office of the United States Trade Representative (''USTR'') is reviewing, and requests comments on: the operation and effectiveness of and the implementation of and compliance with the World Trade Organization (''WTO'') Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the telecommunications provisions of the North American Free Trade Agreement (''NAFTA''); Chile and

Singapore Free Trade Agreements; and, other telecommunications trade agreements. The USTR will conclude the review on March 31, 2004.

DATES: Comments are due by noon on January 5, 2004 and reply comments are due by noon on January 23, 2004.

ADDRESSES: Comments must be submitted to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, ATTN: Section 1377 Comments, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kenneth Schagrin, Office of Industry and Telecommunications (202) 395–5663; or Jim Kelleher, Office of the General Counsel (202) 395–3858.

SUPPLEMENTARY INFORMATION: Section 1377 requires the USTR to review annually the operation and effectiveness of all U.S. trade agreements regarding telecommunications products and services of the United States that are in force with respect to the United States. The purpose of the review is to determine whether any act, policy, or practice of a country that has entered into a telecommunications trade agreement with the United States is inconsistent with the terms of such agreement, or otherwise denies to U.S. firms, within the context of the terms of such agreements, mutually advantageous market opportunities. For the current review, the USTR seeks comments on:

(1) Whether any WTO member is acting in a manner that is inconsistent with its commitments under the WTO Basic Telecommunications Agreement or with other WTO obligations, *e.g.*, the WTO General Agreement on Trade in Services (''GATS''), including the Annex on Telecommunications and the Reference Paper on Pro-Competitive Regulatory Principles, that affect market opportunities for U.S. telecommunications products and services;

(2) Whether Canada or Mexico has failed to comply with their telecommunications commitments or obligations under NAFTA;

(3) Whether Chile or Singapore has failed to comply with their telecommunications commitments or obligations under the respective free trade agreements with those countries;

(4) Whether other countries have failed to comply with their commitments under additional telecommunications agreements with the United States, *i.e.*, Mutual Recognition Agreements (MRAs) for Conformity Assessment of Telecommunications Equipment: Mutual Recognition Agreements regarding telecommunications equipment trade with the European Union (1997), APEC countries (1998), and CITEL countries (1999).

(5) Whether there remains outstanding issues from previous Section 1377 reviews on those countries or issues previously cited. Last year's review can be found at *http://www.ustr.gov.*

See 63 FR 1140 (January 8, 1998) for further information concerning the agreements listed below and USTR Press Release 2003–23 available at *http://www.ustr.gov,* for the results of the 2003 section 1377 review concerning these agreements.

Public Comment and Reply Comment: Requirements for Submissions

USTR requests comments on: the operation and effectiveness of—including implementation of and compliance with—the WTO Basic Telecommunications Agreement; other WTO agreements affecting market opportunities for telecommunications products and services of the United States; the NAFTA; the Chile and Singapore Free Trade Agreements; and other telecommunications trade agreements with APEC members, CITEL members, the EU, Japan, Korea, Mexico and Taiwan. All comments must be in English, identify on the first page of the comments the telecommunications trade agreement(s) discussed therein, be addressed to Gloria Blue, Executive Secretary, TPSC, ATTN: Section 1377 Comments, Office of the U.S. Trade Representative, and be submitted in 15 copies by noon on January 5, 2004. Reply Comments will also require 15 copies by noon on January 23, 2004.

In order to ensure the most timely and expeditious receipt and consideration of comments and reply comments, USTR has arranged to accept submissions in electronic format (e-mail). Comments should be submitted electronically to *FR0405@USTR.GOV*. An automatic reply confirming receipt of e-mail submission will be sent. E-mail submissions in Microsoft Word or Corel WordPerfect are preferred. If a word processing application other than those two is used, please include in your submission the specific application used. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC'', and the file name of the public version should begin with the character ''P''. The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or reply comments. Interested persons who make submissions electronically should not provide separate cover letters; rather, information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

We strongly urge people to avail themselves of the electronic filing, if at all possible. If an e-mail submission is impossible, 15 copies may be submitted in accordance with the procedures listed below, and if not filed electronically must be delivered via private commercial courier, and arrangements must be made with Ms. Blue prior to delivery for their receipt. Ms. Blue should be contacted at (202) 395–3475.

All non-confidential comments and reply comments will be placed on the USTR Web site, *http://www.USTR.gov* and in the USTR Reading Room for inspection shortly after the filing deadline, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential information submitted in accordance with 15 CFR 2003.6, must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page on each of 15 copies, and must be accompanied by 15 copies of a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the USTR Public Reading Room. Since comments and reply comments will be posted on USTR's Web site, those persons not availing themselves of electronic filing must submit their 15 copies with a diskette. USTR will post the non-confidential version of the filing, therefore the non-confidential version must be clearly marked on the diskette.

An appointment to review the comments may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday, and is located in Room 3 of 1724 F Street., NW.

Dated: December 3, 2003.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–30375 Filed 12–5–03; 8:45 am]

BILLING CODE 3190–W3–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–16324]

Notice of Request for Clearance of a New Information Collection: Share The Road Safely Campaign Assessment

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FMCSA to request the Office of Management and Budget (OMB) to approve a new information collection related to one of its national motor carrier safety initiatives, titled ''Share The Road Safely (STRS)'' campaign. The STRS campaign is a public information, education and outreach program designed to improve the motoring public's awareness of the operating limitations of large commercial motor vehicles. The program's goal is to lower the number of crashes, injuries, and fatalities by targeting high-risk drivers with this important safety message. It also seeks to increase motorists' awareness of the STRS campaign and its highway safety messages. When appropriate, campaign efforts will combine local law enforcement activities for car-truck proximity violations. The agency plans to collect information from a sample of the Nation's non-commercial licensed drivers to determine the motoring public's recognition and awareness of FMCSA's STRS campaign.

DATES: Comments must be submitted on or before February 6, 2004.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or envelope.

Electronic Access: An electronic copy of this document may be downloaded using the Internet at the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.* For Internet users, all comments received will be available for examination at the universal source location: *http://dms.dot.gov.* Please follow the instructions on-line for additional information and guidance.

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: Mr. Brian Ronk, Program Manager, Share The Road Safely, (202) 366–1072, Safety Action Programs Division, Office of Safety Programs, Federal Motor Carrier Safety Administration, 400 7th Street SW., Suite 8314, Washington, DC 20590. Office hours are from 7 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Share The Road Safely Campaign Assessment.

Background: The purpose of the STRS campaign is to help reduce the number of car-truck crashes, injuries, fatalities, and property loss. The campaign was initiated by the FMCSA in 1994 in response to a congressional mandate set forth in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Public Law 102–240, 105 Stat. 1914 (December 18, 1991), that the FMCSA ''educate the motoring public about how to safely share the road with commercial motor vehicles.'' The principal campaign goal is to increase motorists' awareness of the STRS campaign and its highway safety messages.

The FMCSA will conduct a quantitative analysis of the Share The Road Safely public information, education and outreach campaign and its messages by developing and administering an evaluation study using pre-campaign and post-campaign survey measures. This pre-campaign/post-campaign study will help evaluate the impact the STRS campaign has on increasing motorists' awareness of commercial motor vehicle limitations and unsafe driving practices of the motoring public around large commercial motor vehicles in several ways.

First, the study will be conducted to determine the motoring public's recognition and awareness of the STRS campaign. Second, the study will be used as a starting point from which the campaign will be evaluated at a future date. Third, the study will quantify respondents' knowledge of large commercial motor vehicle (*i.e.*, tractor trailers) limitations; their knowledge of ''share the road safely'' issues; and their knowledge of the STRS campaign and its messages.

It is anticipated that a sample of 4,000 potential respondents will be needed in order to complete 1,000 interviews for the study in households with telephones using a national random digit dial sample.

Respondents: The respondents will be randomly selected adult licensed drivers. An estimated 1,000 responses will be necessary to conduct the analysis.

Average Burden Per Response: The estimated average burden per response is 9 minutes. It is planned that each respondent will be asked up to 36 specific questions concerning highway safety.

Estimated Total Annual Burden: The estimated total annual burden is 150 hours (1,000 responses x 9 minutes per response).

Frequency: This initial study will help the FMCSA establish a baseline for determining the public's awareness of large commercial motor vehicle limitations, ''Share the Road Safely'' highway safety issues, and STRS campaign messages. The same information will be collected again in 2 to 3 years to assess improvements in public awareness as a result of STRS public outreach efforts.

Public Comments Invited: Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to (1) The necessity and utility of the information collection for the proper performance of the functions of the FMCSA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB clearance of this information collection.

Authority: Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.73.

Issued on: December 1, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–30377 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14621]

Impaired Driving Integrated Project Team (IPT) Plan

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

ACTION: Notice of availability of document.

SUMMARY: This notice announces the availability of NHTSA's high priority safety report describing the agency's current and planned activities to address impaired driving. The report is available from the Docket Management System, U.S. Department of Transportation, at *http://dms.dot.gov* or on NHTSA' Web site at *http://www.nhtsa.dot.gov/IPTReports.html.* While the document is final, the agency is offering the public the opportunity to comment on the agency's planned impaired driving activities. The comments will be considered for future agency efforts.

DATES: Comments must be received no later than January 22, 2004.

ADDRESSES: You may submit comments identified by Impaired Driving DOT DMS Docket Number [NHTSA–2003–14621] 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.

• Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket number. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided.

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: Jim Wright, National Highway Traffic Safety Administration, Room 5118, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–2724 or Dee Williams, National Highway Traffic Safety Administration, Room 5208, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–0498.

SUPPLEMENTARY INFORMATION: As a symptom of the larger substance abuse problem, impaired driving leaves thousands dead and injured each year, with a cost of billions to the nation. In 2002 alone, there was an estimated 17,419 alcohol-related motor vehicle deaths. Embedded within issues of alcoholism, underage and problem drinking, drug abuse, and illegal sale of alcohol and other drugs, the solutions to the impaired driving problem are complex, wide-ranging and expensive. NHTSA has made finding solutions to reduce impaired driving one of the agency's highest priorities. Initiatives the agency plans to pursue include:

(1) Priority Initiatives: National Level

a. Behavioral Modification Initiatives
  Provide Leadership in Fostering Federal Agency Collaboration
  Screening and Brief Intervention
  Coordinated Mass Media Campaign
b. Motor Vehicle and Environmental Initiatives
  Generate Vehicle-Based Solutions
  Collaborate with the Federal Highway Administration to Promote Roadway-Based Solutions

(2) Priority Initiatives: State Program Needs

a. Countermeasures
  High Visibility Law Enforcement
  DWI Courts
  DWI Prosecutors
  Increase Efficiency of Offender Processing
  Strong ABC Policy and Enforcement
  Alternative Sanctions/Limitations on Pre-Conviction Diversion Programs
b. Infrastructure Needs
  Promote Statewide Self-Sufficiency
  Increase BAC Testing
  Implement Model Impaired Driving Records System
  Establish DWI Task Forces
  Enact or Strengthen Effective Laws

NHTSA believes the initiatives described in this report will lead to both near-term and longer-term solutions to reducing impaired driving among the United States population.

In September 2002, NHTSA assembled integrated project teams (IPTs) to address four highway safety programs of special interest: safety belt use; impaired driving; vehicle compatibility; and vehicle rollover. The reports associated with vehicle compatibility and vehicle rollover were released in June 2003. The report on safety belt use was released in July 2003. All can be found on NHTSA's Web site at *http://www.nhtsa.dot.gov/IPTReports.html* and also on DOT's docket management system (DMS) at *http://dms.dot.gov/.* The docket numbers for each of the respective reports are as follows:

• Safety Belt Use—NHTSA–2003–14620;

• Impaired Driving—NHTSA–2003–14621;

• Rollover Mitigation—NHTSA–2003–14622; and

• Vehicle Compatibility—NHTSA–2003–14623.

Each document describes the safety problem and provides strategies the agency plans to pursue in addressing vehicle compatibility, increasing safety belt use, reducing impaired driving and mitigating rollover. Comments received will be evaluated and incorporated, as appropriate, into planned agency activities.

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document (NHTSA–2003–14621) in your comments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is U.S. Department of Transportation Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Docket Management System Web site at *http://dms.dot.gov* and click on ''Help & Information'' or ''Help/Info'' to obtain instructions.

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–110, National Highway Traffic Safety

Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

Will the Agency Consider Late Comments?

In our response, we will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

How Can I Read the Comments Submitted by Other People?

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW, Washington, DC from 10 a.m. to 5 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

- Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov*).
- On that page, click on ''search.''
- On the next page (*http://dms.dot.gov/search/*) type in the four-digit Docket number shown at the beginning of this document (14621). Click on ''search.''
- On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

Authority: 49 U.S.C. 30111, 30117, 30168; delegation of authority at 49 CFR 1.50 and 501.8.

Noble N. Bowie,

Associate Administrator for Planning, Evaluation & Budget.

[FR Doc. 03–30361 Filed 12–5–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34417 (Sub–No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Partial revocation of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, revokes the class exemption as it pertains to the trackage rights described in STB Finance Docket No. 34417 to permit the trackage rights to expire on October 15, 2004, in accordance with the agreement of the parties.[1]

DATES: This exemption is effective on January 7, 2004. Petitions to stay must be filed by December 18, 2003. Petitions to reopen must be filed by December 29, 2003.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34417 (Sub-No. 1) must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative: Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1609. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: ASAP Document Solutions, Suite 405, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 293–7878. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at ''*http://www.stb.dot.gov*.''

Decided: November 24, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

[FR Doc. 03–29811 Filed 12–5–03; 8:45 am]

BILLING CODE 4915–00–P

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[1] On October 14, 2003, UP concurrently filed a verified notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by BNSF to grant temporary local trackage rights to UP over a BNSF line of railroad between milepost 114.5 and milepost 117.0 near Endicott, NE, a distance of approximately 2.5 miles. UP submits that the trackage rights are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's new class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 34417 (STB served Nov. 3, 2003). The trackage rights operations under the exemption were scheduled to begin on October 21, 2003.

Corrections

Federal Register

Vol. 68, No. 235

Monday, December 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program: Certifications for 2003 Under the Federal Unemployment Tax Act

Correction

In notice document 03–28404 beginning on page 64369 in the issue of Thursday, November 13, 2003, make the following corrections:

1. On page 64370, in the first column, under the heading ''**Certification of States to the Secretary of the Treasury Pursuant to Section 3304(c) of the Internal Revenue Code of 1986**'', directly under the entry ''North Carolina'', add the entry ''North Dakota''.

2. On the same page, in the same column, under the same heading, the entry ''Virgin Island'' should read ''Virgin Islands''.

3. On the same page, in the same column, under the same heading, directly under the entry ''Wisconsin'', add the entry ''Wyoming''.

4. On the same page, in the second column, under the heading ''**Certification of State Unemployment Compensation Laws to the Secretary of the Treasury Pursuant to Section 3303(b)(1) of the Internal Revenue Code of 1986**'', directly under the entry ''North Carolina'', add the entry ''North Dakota''.

[FR Doc. C3–28404 Filed 12–5–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16498; Airspace Docket No. 03–ACE–82]

Modification of Class E Airspace; Mount Pleasant, IA

Correction

In rule document 03–30014 beginning on page 67357 in the issue of Tuesday, December 2, 2003, make the following correction:

§71.1 [Corrected]

On page 67358, in the first column, in §71.1, under the heading, **ACE IA E5 Mount Pleasant, IA**, the second line should read ''(Lat. 40°56′48″N., long. 91°30′40″W.)''.

[FR Doc. C3–30014 Filed 12–5–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
December 8, 2003

Part II

Department of the Interior

Bureau of Land Management

43 CFR Part 4100

Grazing Administration—Exclusive of Alaska; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 4100

[WO–220–1020–24 1A]

RIN: 1004–AD42

Grazing Administration—Exclusive of Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) proposes amending its regulations concerning how BLM administers livestock grazing on public lands. The proposed changes would: improve BLM's day-to-day grazing management efficiency; ensure BLM documents its considerations of the social, cultural, environmental, and economic consequences of grazing changes; provide that changes in grazing use be phased-in under certain circumstances; allow BLM to share title with permittees and lessees to range improvements in certain circumstances; make clear how BLM will authorize grazing if a BLM decision affecting a grazing permit is stayed pending administrative appeal consistent with court rulings; remove provisions in the present regulations concerning conservation use grazing permits; ensure adequate time for developing and successfully implementing an appropriate management action when BLM finds that current grazing management does not meet standards and guidelines for rangeland health, and that authorized grazing is a significant factor in not achieving one or more land health standards or not conforming with guidelines for grazing administration; and revise some administrative fees. We intend these changes to improve working relationships with permittees and lessees, enhance administrative efficiency, and cost effectiveness, clarify the regulations and protect the health of rangelands.

DATES: You should submit your comments on or before February 6, 2004. The BLM may not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decision-making process on the final rule.

Public meetings will be held on dates and at times and places to be announced in subsequent **Federal Register** documents.

ADDRESSES: Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1004–AD42.

Personal or messenger delivery: 1620 L Street NW., Suite 401, Washington, DC 20036.

Direct Internet response: *http://www.blm.gov/nhp/news/regulatory/index.htm.* or *http://www.blm.gov/grazing.*

E-mail: WOComment@blm.gov.

FOR FURTHER INFORMATION CONTACT: Ken Visser, Rangeland Management Specialist, Rangeland, Soils, Water and Air Group, (202) 452–7743, Ted Hudson (202) 452–5042 or Cynthia Ellis (202) 452–5012 of the Regulatory Affairs Group. Individuals who use a telecommunications device for the deaf (TDD) may contact them individually through the Federal Information Relay Service at 1–800/877–8339, 24 hours a day, seven days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Why We Are Proposing This Rule
IV. Section-by-Section Analysis
V. Procedural Matters

I. Public Comment Procedures

A. How Do I File Comments?

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail your comments to: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia, 22153.
- You may deliver comments to 1620 L Street NW., Suite 401, Washington, DC 20036.
- You may comment via the Internet by accessing our automated commenting system located at *www.blm.gov/nhp/news/regulatory/index.htm* and following the instructions there.
- You may comment via email at *WOComment@blm.gov.*

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

The Department of the Interior may not necessarily consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

B. May I Review Comments Others Submit?

BLM intends to post all comments on the Internet. If you are requesting that your comment remain confidential, do not send us your comment at the Internet or e-mail address because we immediately post all comments we receive on the Internet. Also, comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**: Personal or messenger delivery'' during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

II. Background

The regulations on livestock grazing provide the framework for a public land use that has its roots in the settlement of West. The tradition of orderly use of public range in conjunction with private lands was recognized in law with the passage of the Taylor Grazing Act (TGA) in the 1930s, and again in 1976 with the Federal Land Policy and Management Act. The intent of the regulations has always been for the agency to consult and cooperate with the ranchers, private landowners, and other users of the public lands. Our shared purpose must be to sustain the open space, habitat, and watershed values that the public and private lands together can offer.

Providing for livestock grazing is part of the BLM mission to sustain the health, diversity, and productivity of public lands. In part because of its long history, public land grazing is woven into the landscapes and cultures of the rural West, and contributes valuable landscape and culture elements. Our challenge is to establish a framework that helps us accomplish our shared stewardship purpose in a manner that works well in the social and economic context of affected communities.

The ranching families of livestock permittees live and work in the heart of the Western rural landscapes. Their relationship with BLM needs to be more than regulatory if we are to engage in conservation of entire landscapes. Our goals must be to establish simple and

practical ways for permittees, lessees, affected state and local officials, and the interested public to engage with BLM in partnerships that will leave improved open space, watershed, and habitat conditions to the next generation.

Without careful consideration of policy decisions affecting ranching, conversion of this rural West to something different is entirely possible. This conversion is frequently in evidence along the expanding urban interfaces of the West: development of ranchland into subdivisions, changes in water use and watershed characteristics, and changes in fire frequency and effects. Some of these changes are necessary as populations grow and shift, but also necessary is retaining large tracts of the rural West. A proper regulatory framework for managing grazing use can contribute to maintaining Western landscapes.

Whenever BLM addresses changes in regulations, we engage in a public dialogue to ensure all points of view are considered. The changes proposed in this rule seek to strike a balance among competing goals, and to keep administrative processes as simple, understandable, and flexible as possible. Meaningful, positive, and sustainable change on the rangelands of the West can best be accomplished through cooperation.

The proposed amendments of the grazing regulations were developed using three primary concepts:

(1) Improving cooperation with all interested persons, especially with directly affected permittees and landowners;

(2) Promoting practical mechanisms for assessing change in rangelands and protecting rangelands by increasing monitoring activities; and

(3) Enhancing administrative efficiency and effectiveness, including addressing legal issues that need clarification.

Applying these three concepts should strengthen the regulations and promote communication oriented toward seeking agreement and working together. Together we can gather more and better information on observed trends in the vegetation communities of the West. We can resolve some legal matters that have been barriers to meaningful dialogue about the issues we need to address. And we can sharpen the focus on the issues that truly need our attention as we seek to ensure proper grazing management as a part of conserving the rural landscapes of the West.

BLM administers livestock grazing on BLM lands within the continental United States under the regulations found at 43 CFR 4100. Statutory authorities supporting these regulations include the following:

1. The Taylor Grazing Act (TGA) as amended (43 U.S.C. 315, 315a through 315r);

2. The Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1701 *et seq.*) as amended by the Public Rangelands Improvement Act (PRIA) (43 U.S.C. 1901 *et seq.*);

3. Section 4 of the Oregon and California Railroad Lands Act (43 U.S.C. 1181d);

4. Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1012) to the Secretary and authorize administration under TGA; and

5. Public land orders, executive orders and agreements authorizing the Secretary to administer livestock grazing on specified lands under TGA or on other lands as specified.

BLM land use plans guide and direct public lands resource management under the multiple-use mandate of the Federal Land Policy and Management Act of 1976. Land use plans specify lands that are available for livestock grazing and the parameters under which grazing is to occur. BLM issues grazing permits or leases for available grazing lands. Grazing permits and leases specify the portion of the landscape BLM authorizes to the permittee or lessee for grazing (*i.e.*, one or more allotments) and establish the terms and conditions of grazing use. Terms and conditions include, at a minimum, the number and class of livestock, when and where they are allowed to graze, and for how long. Grazing use must conform to any applicable allotment management plans, the terms and conditions of the permit or lease, land use plan decisions, and the grazing regulations.

Since the first set of grazing regulations was issued after passage of the TGA in 1934, they have been periodically amended and updated. The last major revision effort was called ''Rangeland Reform '94''. In February 1995, BLM published comprehensive changes to the grazing regulations and put them into effect in August 1995. Changes made to the rules in 1995 include the following:

1. Revised the term ''grazing preference'' to mean a priority position against other applicants for receiving a grazing permit, rather than a specified amount of public land forage apportioned and attached to a base property owned or controlled by a permittee or lessee, and added the term ''permitted use'' to describe forage use amounts authorized by grazing permits or leases;

2. Removed the requirement that one must be engaged in the livestock business to qualify for grazing use on public lands;

3. Required applicants for a new or renewed grazing permit to have a satisfactory record of performance;

4. Provided that BLM could issue a conservation use permit to authorize permittees not to graze their permitted allotments;

5. Limited authorized temporary nonuse to 3 years;

6. Required grazing fee surcharges for permittees who do not own the cattle that graze under their permits;

7. Provided that the United States holds 100 percent of the vested title to permanent range improvements, constructed under cooperative agreements, rather than proportionately sharing title with the cooperators;

8. Required livestock operators and the BLM to use cooperative agreements to authorize new permanent water developments, instead of allowing some water developments to be authorized under range improvement permits;

9. Provided that after August 21, 1995, the United States, if allowed by state water laws, would acquire livestock water rights on public lands;

10. Authorized BLM to approve non-monetary settlement of non-willful grazing trespass under certain circumstances;

11. Expanded the list of prohibited acts applicable to grazing activities;

12. Established Fundamentals of Rangeland Health; and

13. Created a process for developing and applying state or regional standards for land health and guidelines for livestock grazing as a yardstick for grazing management performance.

The Public Lands Council sought judicial review with respect to a number of these provisions. The court upheld all provisions except conservation use (*see* 4, above) (*Public Lands Council* v. *Babbitt,* 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part,* 167 F.3d 1287 (10th Cir. 1999), *aff'd,* 529 U.S. 728 (2000)).

III. Why We Are Proposing This Rule

The current regulations, issued in 1995, require amending to comply with court decisions, improve working relationships with permittees and lessees, enhance administrative procedures and business practices, and promote conservation of public lands.

BLM published an Advance Notice of Proposed Rulemaking (ANPR) and Notice of Intent (NOI) to Prepare an Environmental Impact Statement (EIS) in the **Federal Register** on March 3, 2003, (68 FR 9964–66 and 10030–

10032). These notices requested public comment and input to assist BLM with the scoping process for this proposed rule and the EIS. The comment period on the ANPR and the NOI ended on May 2, 2003.

During the scoping process, BLM held four public meetings to elicit comments and suggestions for the proposed rule and development of the draft environmental impact statement. The meetings were held during March 2003 in Albuquerque, New Mexico; Reno, Nevada; Billings, Montana; and Washington, DC.

We received approximately 8,300 comments on the ANPR and the NOI. The majority of these were varying types of form letters. In response to the ANPR, the majority of commenters opposed allowing livestock operators to temporarily lock gates on public lands in order to protect private property in specific limited situations. We have dropped this proposal from this proposed rule. Many commenters also opposed making any changes to the 1995 grazing regulations and several questioned why BLM was proposing amendments to the grazing regulations so soon after the 1995 changes. Some members of the ranching industry commented that they supported allowing categorical exclusions for routine activities during National Environmental Policy Act (NEPA) compliance; however, this is outside the scope of the rulemaking and is not addressed in today's proposed rule. Many commenters urged BLM to consider increasing monitoring efforts on grazing allotments. Some commenters recommended raising the grazing fees to reflect current market values for livestock. BLM is not addressing grazing fees in today's proposed rule.

We will distribute the Draft EIS (DEIS) on approximately December 19, 2003. Copies will be available on the Internet at *http://www.blm.gov/grazing,* and at the Department of the Interior Library, C Street Lobby, 1849 C Street, NW, Washington, DC 20240. Copies of the DEIS will also be available at BLM State Offices. BLM will publish a Notice of Availability of the DEIS in a separate publication in the **Federal Register**. The DEIS examines the impact of the proposed regulatory changes and alternatives for improving the management of the Nation's public rangelands.

This proposed rule would make changes in several sections of BLM's existing regulations, including revising and creating definitions for key terms pertinent to the grazing administration program. Such changes would include modifying the public participation requirements relating to some day-to-day grazing management matters, and removing provisions authorizing conservation use permits to comply with a Federal Court decision.

The 1995 rule greatly expanded the list of situations in which BLM solicits public comment on pending grazing management decisions. This has led to BLM focusing scarce staff resources and time primarily on managing the public participation process, including organizing and updating mailing lists and handling mailings, rather than on conducting necessary day-to-day grazing management work such as monitoring resource conditions. BLM proposes to retain the interested public consultation requirements for the following specific BLM actions:

1. Apportioning additional forage on BLM managed lands;
2. Development or modification of a grazing activity plan and other BLM land use plans;
3. Planning of the range development or improvement program; and
4. Reviewing and commenting on grazing management evaluation reports.

Also retained in the regulations will be the requirement that BLM provide the interested public with copies of proposed and final grazing decisions and allow them respectively to protest and appeal such grazing decisions.

Although this proposed rule would remove the requirement that BLM consult with the interested public about the following administrative day-to-day actions, BLM could still consult voluntarily on these matters before:

1. Adjusting allotment boundaries,
2. Changing grazing preference,
3. Issuing emergency closures,
4. Renewing or issuing a grazing permit or lease,
5. Modifying permits and leases, or
6. Issuing temporary and non-renewable grazing permits.

BLM may also consult with permittees and lessees, state and local officials, and the interested public on any other matter where the authorized officer finds that such consultation would facilitate management of grazing on the public lands.

This change would require consultation with the interested public where such input would be of the greatest value, such as when deciding vegetation management objectives in an allotment management plan, or preparing reports evaluating range conditions. BLM in cooperation with the grazing operator, would retain the discretion to determine and implement the most appropriate on-the-ground management actions to achieve the objectives and/or respond to the conditions. BLM values productive consultation with the interested public. However, BLM needs some flexibility in order to take responsive, timely, and efficient management action without being required to first undertake mandatory consultation.

We received comments asking BLM to remove the term ''interested public'' from the regulations and replace the term with ''affected interests'' as it appeared prior to the 1995 grazing regulation changes. Commenters stated that the involvement of ''interested public'' is more appropriate for the broader land use plan process and that increased participation from the interested public in day-to-day grazing management matters created more work for BLM and resulted in substantial program-related backlogs. As discussed above, our proposal attempts to address these issues through a change to the definition and modifications in requirements to consult with the interested public.

In order to comply with the 10th Circuit Court of Appeals decision in *Public Lands Council* v. *Babbitt*, 929 F.Supp. 1436 (D. Wyo. 1996), *rev'd in part and aff'd in part*, 167 F.3d 1287 (10th Cir. 1999), *aff'd*, 529 U.S. 728 (2000) the proposed rule would remove language from the 1995 regulations that allowed BLM to issue conservation use permits. The court ruled that the TGA does not authorize BLM to grant conservation use permits.

BLM issues grazing permits and leases to authorize livestock grazing on public lands. In contrast, conservation use permits allowed a permittee to elect not to graze allotments for the duration of the permit, which is typically 10 years. The TGA requires BLM to issue a grazing permit expecting a permittee or lessee to use it to graze livestock. (167 F.3d at 1307–1308). If the permittee or lessee does not plan to graze livestock, BLM can cancel the permit and issue one for that allotment to someone who will use it for its intended purpose. There are circumstances, however, where it is desirable to allow the land to be rested from grazing to protect or improve the condition of resources or to allow relatively short periods of nonuse for the personal or business needs of the operator.

The Tenth Circuit Court's decision in *Public Lands Council* v. *Babbitt* affects another regulatory provision related to ''not grazing under a permit.'' BLM can authorize, on an annual basis, permittees and lessees to graze less than what is provided for in their permit, including not grazing at all. BLM calls

this practice ''authorized temporary nonuse'' and can allow it for purposes of conservation and protection of the public lands, or for reasons associated with business or personal needs of the permittee. The current regulation limits authorized temporary nonuse to 3 consecutive years, after which the permittees must graze as much as they are authorized in their permit or risk losing the unused portion.

The 3 consecutive year temporary nonuse limitation rule was intended to work in conjunction with the regulation that provided for conservation use permits. For example, if the permittee wanted authorized temporary nonuse for more than 3 consecutive years, and BLM agreed that continuing not to graze the allotment(s) was necessary to protect or enhance resources, BLM could replace his ''regular'' permit with a conservation use permit. However, because of the 10th Circuit Court decision, we no longer have that option, and BLM is limited to issuing ''regular'' permits only. The current regulations limit authorized temporary nonuse to 3 consecutive years. Therefore, BLM must require permit holders to use the grazing permit at the end of the 3 years even if both the permittee and BLM wish to continue the nonuse for resource stewardship purposes. BLM proposes not to require grazing use of a permit when both the BLM and permittee agree that temporary nonuse is needed for resource stewardship reasons. Although we propose to remove the 3-consecutive-year limitation on authorized nonuse if the purpose of the nonuse is for resource stewardship reasons, we realize that some may wish to acquire a permit and not use it indefinitely, despite the 10th Circuit Court's decision that BLM cannot issue grazing permits not to graze. Where land use plans provide that an acceptable use of the public lands is domestic livestock grazing, then BLM will manage those lands for grazing in accordance with the land use plan.

Failing to ''make substantial grazing use as authorized for two consecutive fee years'' is prohibited under current grazing regulations. BLM does not propose to amend this provision in this rule. BLM may deny nonuse of a permit if the permittee cannot justify that nonuse is for resource stewardship or personal or business reasons. If BLM denies nonuse, and the permittee does not graze livestock as allowed under the permit for two years in a row, the permit or portion of the permit that is not used is subject to cancellation and would be available for awarding to another applicant. (These same principles pertain to leases.) The changes to nonuse provisions that BLM is proposing today would provide that BLM could authorize nonuse for no longer than one year at a time, but could repeat such annual authorizations for more than 3 consecutive years.

We considered many of the substantive issues that were raised during the scoping period and have incorporated several of these as alternatives in the draft EIS. We did not address, however, some of the issues that commenters raised because they are either beyond the scope of the document, did not meet the basic purposes of these proposed changes to the regulations, or BLM decided we could better address the issues through policy.

The following are issues we considered but do not address in this proposed rule:

- Increasing grazing fees and restructuring grazing based on market demand are outside the scope of this proposed rule.
- Reestablishing BLM grazing advisory boards to provide local advice and recommendations to BLM on grazing issues is not addressed because BLM grazing advisory boards were ''sunset'' on December 31, 1985, by FLPMA. This proposed rulemaking, however, would provide that BLM cooperate with state, county or locally established grazing boards in reviewing range improvements and allotment management plans on public lands. This review would supplement the counsel of Resource Advisory Councils that BLM established in 1995 to advise BLM and recommend strategies for managing public lands under our multiple-use mandate.
- Modifying management of wild horses and burros or making any changes to The Wild Horse and Burro Act or its implementing regulations are outside the authority and scope of this proposed rule. Issues involving allocation of forage are addressed in land use plans.
- Counting 7 sheep, rather than the current 5, as the equivalent of one animal unit for the purposes of calculating grazing fee billings are not addressed because matters involving the grazing fee are outside the scope of this proposed rule.
- Establishing and managing Reserve Common Allotments is not addressed in this proposed rule. In the ANPR, BLM stated that we were considering proposing provisions to define, establish a regulatory framework, and otherwise support the creation of Reserve Common Allotments. BLM has decided not to proceed with developing Reserve Common Allotments at this time. During BLM's public scoping period many commenters expressed concern about adding special provisions for Reserve Common Allotments in the grazing regulations. Many commenters said they did not think such regulatory provisions were warranted. Ranching interests indicated they would rather have ''normal'' allotments while environmental interests questioned whether this would be the best use of the land. After considering the reception to this concept, BLM determined it was not in the public interest to proceed with this provision through regulations. BLM will continue to examine the concept of forage reserves through policy-making processes.
- Removing the grazing fee surcharge is not addressed in this proposed rule. The 1995 regulations added a grazing fee surcharge to address the concerns raised by the General Accounting Office and Office of the Inspector General regarding the potential for rancher ''windfall profits'' arising from BLM's practice of allowing for the subleasing of public land grazing privileges. Some BLM grazing permittees enter pasturing agreements allowing them to take temporary control of a third party's livestock and graze them under their permit or lease. The permittee pays the federal grazing fee and charges the third party an amount negotiated between them for the forage and care of the livestock. BLM assesses a fee surcharge in this circumstance that equals 35 percent of the difference between the current Federal grazing fee and private grazing land lease rates with one exception. BLM does not assess the surcharge when the livestock that are grazed under the permit or lease under a pasturing agreement belong to children of the permittee or lessee under certain circumstances set out under section 4130.7(f). BLM is not proposing to alter the existing surcharges for the following reasons:

  1. BLM continues to believe that the surcharge is an equitable manner in which to address the issue of potential windfall profits to BLM permittees and lessees who choose to enter into pasturing agreements, and
  2. BLM does not want to open issues related to grazing fees at this time.
- Assigning burden of proof to the BLM for appeals is not addressed in this proposed rule. BLM considered including a provision in the proposed rule requiring the BLM to assume the burden of proof for all appeals before the Office of Hearings and Appeals. The burden of proof has been clarified by the Supreme Court to mean the ''burden of persuasion'' which refers to ''the notion that if evidence is evenly balanced, the

party who bears the burden of persuasion must lose.'' (*Director, Office of Workers' Compensation Programs, Department of Labor* v. *Greenwich Collieries*, 512 U.S. 267, 272 (1994)). Often, the burden of proof had been confused with the ''burden of production,'' which refers to a party's obligation to come forward with evidence to support its claim. The burden of proving a fact remains where it started, but once the party with this burden establishes a prima facie case, the burden to produce evidence shifts. The burden of persuasion, on the other hand, does not shift except in the case of affirmative defenses. Decisions of the Interior Board of Land Appeals (IBLA) hold that a party appealing a BLM decision has the burden of showing the error in the agency's decision. If, for example, the agency denies a permit or lease to a new grazing applicant, that applicant would be expected to point out the error in BLM's decision. Because each case must be analyzed on its own facts, BLM is not proposing to change our regulations to assign the burden of proof for all appeals.

• Changing the definition of monitoring and the process for conducting monitoring is not addressed in this proposed rule. Few comments directly addressed the definition of ''monitoring'' and those we did receive did not recommend any substantive changes in the definition. Therefore we are not proposing changes to the definition of monitoring. Many comments contained recommendations on how BLM should conduct monitoring. We received many comments from the livestock industry, and environmental and conservation groups, asking BLM to increase monitoring efforts on public lands. BLM considered including new regulatory language regarding monitoring that would have contained explicit direction on the development of allotment-specific resource management objectives and short and long term monitoring programs in consultation with the permittee or lessee. The current regulations, however, already allow BLM to develop resource management objectives and monitoring plans as part of its allotment management plans. As a result, we determined that establishing monitoring methodologies and working with permittees and lessees in collecting and interpreting data and developing monitoring reports are more appropriately handled through BLM's own policy guidance in Manuals and Handbooks. Therefore, BLM has decided not to incorporate details on how to monitor in the proposed rule. We have, however, added a requirement for monitoring in making determinations on rangeland health.

• Requiring permittees or lessees to submit an application for renewal of their permit or lease when their permits or leases expire is not explicitly addressed in the current regulations nor incorporated in the proposed regulations. We are especially interested in public comment on this issue.

• Adding another opportunity for administrative remedy by allowing a protesting party to appeal a BLM field office decision to the BLM State Director was recommended by several commenters during scoping. Such a provision would allow the BLM State Director to stay a decision pending further review. BLM determined it was not advisable to include this provision in the proposed rule. Such authority could cause the appeals process to become too cumbersome and result in more delays in the decision-making process.

• Providing for permittees and lessees to have control of water developments authorized under a range improvement permit was recommended by commenters during scoping. The current regulations do not allow for water developments to be authorized under a range improvement permit. Other commenters suggested that the rule should propose that BLM allow the permittee or lessee to enter into a Memorandum of Understanding with the BLM allowing the improvements to be used other than by livestock owned or controlled by the permit holder. BLM does not believe these regulatory changes are necessary and therefore will not address them in this proposed rule. We believe we can better address these issues in BLM policy and guidance.

• Establishing criteria for BLM's use of full force and effect decision authority was recommended by some commenters during scoping. BLM believes that full force and effect decisions are fact-specific, so that it would be impossible to establish criteria to address each conceivable new decision. We disagree that developing criteria is necessarily helpful or relevant to the decision to issue a full force and effect decision to protect resources.

• Allowing for exchange of use agreements across allotments was recommended during scoping. Under the existing regulations, an exchange-of-use situation occurs where the permittee owns or controls unfenced private lands within the allotment where he grazes or wishes to graze. The permittee may request to graze additional livestock on the allotment to reflect the amount of forage on the private land. If BLM authorizes the additional grazing, all the authorized livestock may graze anywhere within the allotment, and BLM will not charge grazing fees for the extra livestock. BLM received comments requesting that BLM expand this authority to accommodate a transaction called ''trade of use'' by removing the requirement that private lands in the exchange-of-use situation be located in the same allotment being permitted for grazing. This kind of case might arise in the situation where one permittee or lessee owns or controls unfenced intermingled private lands that are not within his allotment, but rather, within a second permittee's allotment.

The first permittee cannot derive economic gain from the grazing use made on his private lands by the second permittee, unless either—

(1) The first permittee acts to control use of his own land, by means of fencing or through sale of the land or assignment of the land lease for a consideration to the second permittee; or

(2) BLM manages the second permittee's grazing on the first permittee's private land, which BLM currently does not have regulatory authority to do.

A commenter urged that BLM facilitate the ''trade-of-use'' between these permittees by collecting a grazing fee from the second permittee for grazing use of lands owned by the first permittee but located in the second permittee's allotment, and crediting the fees collected from the second permittee for these lands to the first permittee's grazing fee billing. BLM believes that this type of arrangement is best handled by private arrangement between the permittees, but we encourage additional comments as to whether BLM should set up a separate process for such ''trade of use'' arrangements, or act as a broker between grazers on such transactions affecting private lands, perhaps for a service charge.

• Allowing BLM to have unrestricted discretion to determine circumstances that would warrant non-monetary settlement of a non-willful grazing trespass was recommended by a commenter during scoping. The current regulations identify the following four conditions—all of which must be satisfied before BLM can approve a non-monetary settlement for non-willful unauthorized livestock use:

1. Evidence that unauthorized use occurred through no fault of the operator.

2. The forage used was insignificant.

3. Public lands have not been not been damaged.

4. Non-monetary settlement is in the best interest of the United States.

We believe this continues to be a reasonable approach, and therefore BLM has decided not to change this provision.

• Removing the requirement for Secretarial approval of amendments to regional standards for healthy rangelands was not addressed in this proposed rule. BLM received a comment urging that we revise the process for approving standards for rangeland health to allow approval of revisions to the standards by BLM State Directors. BLM believes that the requirement for Secretarial approval of standards that BLM State Directors develop ensures that the basic components of rangeland health are reflected in the regionally developed standards. We are not proposing any changes to the applicable provisions of the current regulations.

• Allowing grazing operators, when authorized by BLM, to temporarily lock gates on public lands when necessary to protect private property or livestock was initially considered for incorporation in this proposed rule. Comments during the scoping were nearly unanimously in opposition to this suggestion. This proposed rule does not include this provision.

• Using competitive bidding for assigning permits and leases in place of the current system for allocating grazing preference, assigning grazing permits and the present grazing fee formula was recommended by several commenters. This recommendation would require legislative action and is therefore beyond the scope of this proposed rule.

• Requiring the posting of a bond before filing an appeal was recommended by several commenters. BLM considered the implications and potential challenges to such a provision, and determined that such a provision would burden the general public as well as permittees and lessees. Therefore, it is not included in the proposed rule.

• Moving the general requirements in section 4180 related to the fundamentals of rangeland health and public land health standards and guidelines to BLM's planning regulations at 43 CFR 1610 was recommended during scoping. BLM did not consider such an expansion of the scope of this rulemaking appropriate at this time, and therefore it is not included in the proposed rule.

Whenever BLM proposes changes to these regulations, we are continuing a public dialogue. These proposed changes seek to keep administrative processes as simple, understandable, and flexible as possible.

When we developed proposed changes to the grazing regulations, we considered whether each specific change facilitates any of the following:

1. Promoting cooperation, especially with directly affected permittees and landowners;

2. Promoting practical mechanisms for protecting rangeland health; and

3. Improving administrative efficiency.

By incorporating these criteria, BLM can improve the regulations while creating a climate for communication and cooperation. Working together, BLM, and the public we serve, can obtain better information about observed trends in the vegetative communities of the West. BLM can improve some of the administrative processes so that we can sharpen our focus on the issues that are truly in need of attention as we seek to conserve the rural landscapes of the West.

IV. Section-by-Section Analysis

Rules of Construction: Words and Phrases

For simplicity and to make the rule easier to read and understand we use words that signify the singular to include and apply to the plural and vice versa as provided in 43 CFR 1810.1. Words that signify the masculine gender also include the feminine. Words used in the present tense also apply to the future. The terms ''BLM'' and ''authorized officer'' are used interchangeably and include any person authorized by law or by lawful delegation of authority to perform the duties described in this proposed rule.

Section 4100.0–2 Objectives

The proposed rule would remove reference to 43 CFR part 1720, subpart 1725, to reflect changes made to the regulations in 1994 (59 F.R. 29206). Today's proposal acknowledges that the Public Rangelands Improvement Act (PRIA) contributes to the objectives of the regulations. These are technical and editorial corrections.

Section 4100.0–3 Authority

The proposed rule would make 3 editorial corrections to this section. These are non-substantive and would not change the existing regulations.

Section 4100.0–5 Definitions

During the scoping period, BLM received public comments addressing specific definitions. Several commenters asked BLM to keep all current terms consistent with their use, definition, and intent in the TGA. The following describes the proposed changes in definitions and the rationale for each change.

Active use: BLM proposes amending this definition to make clear that the term refers to a forage amount based on the carrying capacity of, and resource conditions in, an allotment. The term does not refer to forage that had been allocated in the past but which BLM has determined is no longer present. We now consider such forage to be in suspension, not in active use. The current definition of ''active use'' includes ''current authorized use including livestock grazing and conservation use.'' BLM must remove conservation use from the definition because of the 1999 10th Circuit Court decision in *Public Lands Council* v. *Babbitt*.

The 1995 final rules defined conservation use as ''authorized active use,'' in contrast to ''nonuse'' and ''suspended use'' even though the term conservation use did, by definition, exclude livestock grazing. The 1995 definition used the term livestock grazing to distinguish between ''active'' authorized grazing use and ''active'' authorized conservation use. Removing conservation use from this definition eliminates the need for this distinction. We propose that the amended definition of active use refer to that portion of grazing preference (see proposed definition, this section) that is now available for livestock grazing use based on the known livestock carrying capacity of the rangeland and the resource conditions in an allotment under a permit or lease. The definition would make it plain that ''suspended use'' is not active use.

Conservation use: The proposed rule would remove the term conservation use, from the definition of ''active use,'' and anywhere else it appears in the existing regulations, in keeping with the 10th Circuit Court decision discussed above. Removing the term conservation use includes revising the definitions of grazing lease and grazing permit to remove all references to conservation use.

Grazing lease: In addition to removing conservation use, BLM proposes editorial changes to this definition to make it easier to read. These changes will not substantively change the current regulations. Several commenters stated that the original meaning of ''grazing lease'' comes from the TGA and has been subsequently changed and therefore, BLM should restore it. The definition is consistent with the TGA. We intend only to make it clear that BLM issues grazing leases to authorize grazing on lands that are not within grazing districts established under the

TGA, and that these leases include both mandatory terms and conditions (livestock number, place of use, period of use, and amount of forage removal), and other terms and conditions of grazing use.

Grazing permit: In addition to removing conservation use, BLM proposes editorial changes in this definition to make the section easier to read. BLM intends to make it clear that BLM issues grazing permits authorizing grazing within grazing districts established under the TGA. These permits include both mandatory terms and conditions (livestock number, place of use, period of use and amount of forage removal), and other terms and conditions of grazing use. Several environmental and conservation advocacy groups said this term was adequately addressed in the last rulemaking effort and they do not think BLM is justified in changing it now. As with the term ''grazing lease,'' this change is only to clarify and standardize, not substantively change, this definition. We are not making substantive changes to this definition other than removing the term conservation use.

Grazing preference or *preference:* BLM is proposing to define ''grazing preference'' or ''preference'' as: ''the total number of animal unit months (AUMs) on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.''

This definition is similar to the definition in the grazing regulations in 1978, which was used until the 1995 rule changes. The 1995 definition, which changed preference from a term having a quantitative meaning (number of AUMs) to a qualitative meaning (superior position), has proven to be confusing. We believe that returning to its long standing meaning will provide greater clarity throughout the regulations.

The concept of grazing preference, as we would define it in this rulemaking, includes two elements:

1. Livestock forage allocation on public lands.

2. Priority for receipt of that allocation, as determined through ownership or control of attached base property.

BLM is proposing to define grazing preference as the total number of AUMs within a grazing allotment that BLM has allocated for livestock use. This forage amount would include ''active use,'' use that is currently available, and ''suspended use,'' that is, use that had been allocated and used by the permittee or lessee, or a predecessor, but that currently is not available and therefore the subject of a BLM suspension. These apportioned forage amounts would be attached to base property. Base property, in turn, is land or water owned or controlled by a permittee, lessee, or party who holds or has applied for a permit or lease.

Ownership or control of base property gives the owner or person controlling the property a preference for receiving a grazing permit or lease authorizing grazing use to the extent of the active preference already ''attached'' to that property, and priority for receipt of forage that BLM may later determine to be available for livestock grazing to the extent of any suspended preference that may be attached to that property. Attaching or associating a public land forage allocation to or with base property provides a reliable and predictable way to connect ranch property transactions with the priority for use of the public land grazing privileges that BLM associates with that property. This has been the basis for BLM's system of tracking who has priority for receipt of public land grazing privileges since the enactment of the TGA.

The ranch property transaction alone, however, does not provide absolute assurance of receiving the privileges, for two reasons:

(1) TGA provides that only certain parties qualify for grazing use on public lands. Therefore, if an unqualified party acquires a base property, BLM would not issue the party a term grazing permit or lease, regardless of the preference for public land grazing use associated with the base property that the party acquired; and

(2) The forage amount available for livestock grazing use on public lands can fluctuate because of changed resource conditions or changed administrative or management circumstances. When necessary, BLM may adjust the amount of forage available for livestock grazing. Case law has determined that BLM land use planning decisions may adjust livestock forage allocations made before enactment of the Federal Land Policy and Management Act of 1976 to change grazing use to meet objectives specified in land use plans (*see*, for example, *Public Lands Council* v. *Babbitt*, 529 U.S. 728, 739–744 (2000)).

The 1978 definition of ''grazing preference'' was crafted to meet a specific need. Pre-FLPMA public land livestock forage allocations were linked to base property productivity. This means that among applicants competing for grazing privileges on public lands BLM would not grant privileges to support livestock in excess of the number that they could support on their base property during the time that their livestock were not allowed on public lands. The connection between this base property productivity, called ''commensurability,'' and the amount of grazing privileges granted on public lands was severed by the 1978 regulation change (the same change that defined, for the first time, the term ''grazing preference''). The 1978 rule provided that BLM would associate public land grazing privileges with private base properties on a pro-rata acreage basis, rather than on base property productivity.

This change simplified BLM's record-keeping needs. However, the commensurability requirement served as a guidepost for fair and consistent allocation of available forage. To ensure that the record of allocation was preserved, BLM defined the term ''grazing preference.'' Attaching Federal grazing privileges to base properties has been and continues to be the foundation for adjudicating these privileges. BLM has always had the authority and discretion to adjust grazing levels on public lands. The proposed change will once again associate the term ''preference'' with an amount of allocated forage on public land.

Today's proposed change would ensure that the term ''preference'' is used consistently. For example, 43 CFR 4110.2–3 (4) states, regarding the transfer of preference, that ''The transferee shall file an application for a grazing permit or lease to the extent of the transferred preference * * *'' although preference is defined in the same regulations as a ''priority position,'' that is, a singular quality. One either has a priority position or one does not. It is not possible to define the ''extent'' of a ''priority position'' in terms of anything but a level or amount, and in the context of the remainder of the rule, that would mean a level or amount of forage.

Another inconsistency arises if one considers the circumstance of a parcel of base property owned by one party, giving that party a priority position (preference), which is subdivided and half sold to another party. Then, the single ''preference'' accorded the sole owner now is split into two ''preferences'' because the second party now is accorded preference due to its ownership of base property. The proposed change to this definition and

its usage throughout the rule should provide a consistent framework for the efficient administration of the public rangelands.

Interested public: BLM proposes amending the present definition to mean an individual, group, or organization that has:

1. Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a BLM decision on the management of livestock grazing on public lands, and

2. Followed up that request by commenting on or otherwise participating in the decision-making process as to the management of a specific allotment if there has been an opportunity for such participation, or

3. Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

Permitted Use: BLM proposes removing the definition of ''permitted use'' and replacing this term wherever it occurs in the regulations with either ''grazing preference'' or ''preference,'' or ''active use'' depending on the regulatory context. ''Permitted use'' was introduced as a term in the 1995 regulations change to define an amount of forage allocated by a land use plan for livestock grazing in an allotment. It is expressed in AUMs and includes ''active use'' (which was further divided into ''livestock use'' and conservation use) and ''suspended use.'' As discussed above, BLM is proposing to return to using the term ''grazing preference'' or ''preference'' to refer to that same livestock forage allocation. Therefore, there is no need for the term ''permitted use.'' Grazing preference would have two components:

1. ''Active use,'' or use currently available on a sustained yield basis, and

2. ''Suspended use,'' or use that had been allocated and available for livestock grazing at some point in the past, but is now in suspension until BLM determines that an increased amount of forage is available on a sustained yield basis for allocation to livestock grazing.

Although the connection between land use plans and grazing preference would not be stated in the definition of ''grazing preference'' or ''preference'' as it is being proposed today, the regulatory text would reflect the relationship between ''active use'' and land use plans at §§ 4110.2–2, 4110.3(a)(3), and 4110.3–1 and between grazing permits and leases and land use plans at § 4130.2.

Suspension: BLM proposes to remove the word ''temporary'' from the current definition because the word is superfluous. The status of suspended preference is not affected.

Temporary nonuse: BLM proposes making it clear that ''temporary nonuse'' would mean that portion of active use that BLM allows a permittee or lessee not to use. The permittee or lessee must apply for temporary nonuse.

Subpart 4110—Qualifications and Preference

Section 4110.1 Mandatory Qualifications

We revised this section by moving parts of paragraph (b) and all of paragraph (c), which relate to procedure as opposed to qualifications, to section 4130 and redesignating paragraph (d) as paragraph (c).

Section 4110.2–1 Base Property

The proposed rule makes editorial changes to this section.

Section 4110.2–2 Specifying Grazing Preference

BLM proposes removing the term ''permitted use'' wherever it occurs in this section and replacing it with the term ''grazing preference'' or ''preference'' for the reasons previously explained. BLM does not establish a grazing preference in designated ephemeral or annual rangelands because the forage production on these lands can vary greatly from year to year. On these rangelands, BLM bases the authorized forage removal amount on the availability of forage in that year. As stated earlier, BLM also proposes that grazing preference would include active use and any suspended use.

Section 4110.2–3 Transfer of Grazing Preference

The proposed rule would make editorial changes to this section to conform the rule to the definition of ''grazing preference.''

Section 4110.2–4 Allotments

BLM proposes to remove the requirement that BLM consult with the interested public before making an allotment boundary adjustment because it is primarily an administrative matter that we implement by decision or agreement following a NEPA analysis of the action. BLM would provide the interested public an opportunity to comment on the action as part of the NEPA process. The interested public would also receive a copy of the proposed and final decisions, including those on allotment boundary adjustments, and would be able to protest and appeal such decisions. This change would contribute to administrative efficiency as discussed above under changes to section 4100.0–5, Definitions.

Section 4110.3 Changes in Grazing Preference

BLM proposes to remove the term ''permitted use'' wherever it occurs in this section and replace it with the term ''grazing preference'' for the reasons explained previously. BLM also proposes to simplify this section by dividing the existing text into two paragraphs and adding a third paragraph to clarify that our NEPA documentation addressing changes in grazing preference would include our consideration of the effects of changes in grazing preference on relevant social, economic, and cultural factors.

Generally, BLM managers routinely consider the possible effects of their decisions on these factors through the NEPA process. Public officials use the NEPA process to understand the environmental consequences of potential decisions affecting the human environment. NEPA (42 U.S.C. 4321 *et seq.*) requires Federal agencies to utilize a systematic, interdisciplinary approach to ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making. In the proposed rule, BLM would analyze and, if appropriate, document the relevant social, economic and cultural effects of the proposed action. BLM is proposing the change to ensure that our managers document their consideration of relevant social, economic, and cultural factors when they comply with NEPA.

Section 4110.3–1 Increasing Active Use

In the 1995 rule, section 4110.3–1 addressed ''permitted use.'' This proposed amendment addresses that portion of the livestock forage allocation that is ''active use'' as explained in the discussion of its definition. This change is necessary to link the proposed definitions of ''preference'' and ''suspended use.'' BLM proposes to remove the term ''permitted use'' from this section wherever it appears and replace it with the term ''active use'' for the reasons explained previously.

Because the regulation would affect how we regulate available forage, we are asking the public to comment on whether BLM should use the term ''available forage'' instead of ''active use.''

BLM is also asking for specific comments relating to this section to help determine whether there have been

situations in which the ability of permittees or lessees to obtain loans was adversely affected by having some of their forage allocation suspended.

BLM also proposes to reorganize this section to describe how we would authorize increased grazing use when additional forage is available either temporarily, or on a sustained yield basis. BLM proposes to add two new paragraphs, (a) and (b), that would clarify who gets priority when we grant additional grazing use because livestock forage has become available on either a nonrenewable basis or a sustained yield basis. This change would clarify existing language and does not substantially depart from the requirements of the existing regulations.

Section 4110.3–2 Decreasing Active Use

BLM proposes replacing the term ''permitted use'' with the term ''active use'' wherever it occurs in this section. BLM is proposing to clarify this section by amending paragraph (a) to provide that BLM will document its observations that support the need for temporary suspension of active use and by amending paragraph (b) to provide that BLM will place any reductions in active use made under this paragraph into suspension rather than require a permanent reduction. BLM wants to ensure that it clearly documents the justification for the suspension and believes that it is important to maintain a complete record of forage allocation actions so that it may fairly remove suspensions upon future range recovery.

Section 4110.3–3 Implementing Changes in Active Use

BLM proposes changing the title of this section to reflect that it pertains to both increases and decreases grazing use and to add language to this section to modify how BLM would implement changes in active use. This section would provide that BLM would phase in changes in active use of more than 10 per cent over a 5-year period unless either the affected permittee or lessee agrees to a shorter period or the changes must be made before the end of 5 years to comply with applicable law. When possible, the 5-year phase-in period for changes in active use would provide time for gradual operational adjustments by grazing permittees or lessees to lessen sudden adverse economic impacts that may arise from a reduction, or to allow time to build their herd in the event of an increase. The phase-in period also allows for ongoing monitoring in order to determine whether the initial decision needs to be adjusted. This 5-year phase in period is similar to that specified by the regulations in effect before 1995.

BLM also proposes amending paragraphs (a) and (b) by removing the phrase ''the interested public'' from this section. Any change in active use would be preceded by reports, including NEPA documents, that analyze data that BLM would use to support the change. Under section 4130.3–1, BLM would provide the interested public the opportunity to comment on these reports. Under section 4160.1 BLM would provide a copy of the proposed and final grazing decisions to implement the change to the interested public. BLM will provide the interested public full opportunity for participation and comment on the action prior to actual implementation. For this reason additional consultation with the interested public regarding the actual scheduling of the change is redundant.

Section 4110.4–2 Decrease in Land Acreage

BLM proposes removing the term ''permitted use'' from this section and replacing it with the term ''grazing preference'' for the reasons explained previously.

Subpart 4120—Grazing Management

Section 4120.2 Allotment Management Plans and Resource Activity Plans

BLM proposes to revise paragraph (c) for clarity only.

4120.3 Range Improvements

4120.3–1 Conditions for Range Improvements

BLM proposes to revise paragraph (f) for clarity and to correct a citation to NEPA. The change is not substantive.

4120.3–2 Cooperative Range Improvement Agreements

BLM proposes to revise paragraph (b) to provide that, subject to valid existing rights, cooperators and the United States would share title to permanent structural range improvements constructed under cooperative range improvement agreements on public lands. Such structural improvements include wells, pipelines, or fences constructed on BLM managed public lands. BLM is proposing to revise the regulations to allow contributors to share title to range improvements of public lands proportionate to the value of their contributed labor, material, or equipment to make on-the-ground structural improvements, subject to valid existing rights. This would return the provision on how title for improvements constructed under Cooperative Range Improvement Agreements is shared to that in place before 1995.

During scoping, BLM received comments supporting and opposing the revision. Some opponents to the revision commented that, by re-instituting shared title to range improvements, BLM would be allowing private property rights on public lands. Some commenters supported the provision, stating that it gives livestock operators, who pay for and construct improvements, incentive to invest funds, time, and effort in their allotments.

The current regulations provide that the United States has title to new permanent structural range improvements. BLM has the discretion in administrating the public rangelands to determine where title to range improvements should lie. Sharing title among cooperators and the United States provides the opportunity to maintain some asset value for investments made, thereby encouraging and facilitating private investment in range improvements. Granting title to a structural improvement on public lands does not grant title to the underlying lands. Cooperative Range Improvement Agreements will continue to include provisions that protect the interests of the United States in its lands and resources and ensure BLM's management flexibility on public lands.

Section 4120.3–3 Range Improvement Permits

BLM must remove the term conservation use from this section to comply with the decision of the Tenth Circuit Court of Appeals.

Section 4120.3–8 Range Improvement Fund

BLM is proposing to amend this section only to correct a misspelling.

Section 4120.3–9 Water Rights for the Purpose of Livestock Grazing

BLM proposes to amend this section by removing the reference date in the first sentence and the second sentence in total. This would remove the requirement that livestock water rights be acquired, perfected, maintained and administered in the name of the United States to the extent allowed by the laws of the states where the rights would be acquired. The proposed amendment would provide BLM greater flexibility in negotiating arrangements, within the scope of state processes, for construction of watering facilities in states where the United States is allowed to hold a livestock water right. In those states, BLM would continue to have the option of acquiring the water

right as long as we do so in compliance with state water law.

Section 4120.5–2 Cooperation with State, County, and Federal Agencies

BLM proposes amending this section by making an editorial correction and adding a new paragraph (c) to specify that BLM would add state, local, and county-established grazing boards to those groups we routinely cooperate with in administering laws and regulations relating to livestock, livestock diseases, and sanitation. Currently BLM's Resource Advisory Councils provide advice to BLM on the broad range of multiple use activities on public lands including grazing management. Field-level range improvement and allotment management planning programs would also benefit from the additional perspective that locally established grazing advisory boards could provide.

Many states have state, county, or locally established grazing advisory boards whose function is to provide guidance on range improvements on public lands. Section 401(b)(1) of FLPMA states that a portion of the grazing fees BLM collects are set aside for range betterment. BLM is authorized to use one-half the amount collected from the area in which the moneys were derived. BLM may direct these funds after consulting with local area user representatives, to implement on-the-ground range rehabilitation, protection, and improvements on the lands.

Grazing interests and state and local governments expressed concern that BLM has not used state, county, and locally established grazing advisory boards effectively. They commented that these grazing advisory boards are underutilized, yet are a valuable tool for gathering local input for BLM's decision-making processes related to range improvements and allotment management planning. This proposed rule would require BLM to cooperate with state, county, or locally established grazing advisory boards when reviewing range improvements and allotment management plans on public lands. A requirement for BLM to cooperate with such boards would ensure a consistent community-based decision-making process throughout the BLM.

Subpart 4130—Authorizing Grazing Use

Section 4130.1–1 Filing Applications

The existing regulations are somewhat unclear as to the circumstances under which BLM will consider an applicant for a new permit or lease not to have a satisfactory record of performance.

The existing regulations state that we deem applicants for renewals of permits and leases not to have a satisfactory record of performance if:

1. They have had a Federal lease canceled within the previous 36 months;
2. They have had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months, or
3. They have been legally barred from holding a grazing permit or lease.

Under the proposed regulations BLM would limit the number of possible infractions that we would take into account for determining whether an applicant for a new permit has a satisfactory record of performance. The proposed rule would deem applicants for issuance of a new permit or lease to have a satisfactory record of performance if:

1. The applicant or affiliate has not had a Federal lease canceled within the previous 36 months;
2. The applicant or affiliate has not had a state lease canceled, for lands in the grazing district where they are seeking a Federal permit, within the previous 36 months, or
3. The applicant or affiliate has not been legally barred from holding a federal grazing permit or lease by a court of competent jurisdiction.

In addition, BLM proposes moving provisions specifying what we consider to be ''satisfactory performance'' by an applicant for a permit or lease from section 4110.1 to this section to better organize the regulations.

Section 4130.2 Grazing Permits or Leases

BLM proposes revising this section to make it clear that the grazing permit or lease is the document BLM uses to authorize grazing use for those who hold grazing preference on BLM-managed lands. BLM has been questioned about what we consider to be the fundamental document authorizing preference holders' grazing use. This section makes it clear that it is the permit or lease that authorizes such grazing use and no other document. An example of such a non-authorizing document is a paid grazing fee billing. Although not paying a fee when it is due is a prohibited act, the document upon which BLM bases fees, either a permit or lease, is the document that authorizes the grazing use, not the billing. BLM also uses ''other grazing authorizations'' such as free use permits, exchange-of-use permits, and crossing permits to authorize grazing for preference and non-preference holders in limited circumstances. These are addressed in §§ 4130.5 and 4130.6.

We propose removing the phrase ''types and levels of use authorized'' from paragraph (a) and replacing it with the term ''grazing preference'' because the level of use, the forage amount expressed in AUMs, and the ''type'' of use, whether active or suspended, are embodied in the term ''grazing preference.''

We also propose removing the requirement in paragraph (b) that BLM would consult, cooperate, and coordinate with the interested public prior to the issuance or renewal of grazing permits and leases because this consultation is redundant to consultation that already would have occurred as part of the process of completing NEPA analysis and other documentation that is pre-requisite to permit or lease issuance or renewal.

Section 4130.3 Terms and Conditions

BLM proposes adding a new paragraph to this section to specify that when BLM offers a permit or lease, the terms and conditions may be protested and appealed unless the terms and conditions are not subject to OHA appeals (*e.g.* terms and conditions mandated by a biological opinion issued under the Endangered Species Act) or terms and conditions that are part of a permit or lease offered for grazing use on additional land acreage (*see* 4110.1). The proposed rule further states that if those terms and conditions are stayed, BLM could authorize grazing use in accordance with section 4160.4. By adding this language, BLM seeks to clarify that we are providing the opportunity to protest and appeal decisions that specify the terms and conditions of the permit or lease we are offering.

Section 4130.3–2 Other Terms and Conditions

BLM proposes removing paragraph (h) from this section because it is unnecessary. There is no need to disclose on the permit or lease the requirement that the permittee or lessee provide administrative access to BLM. The absence of such disclosure under the proposed rule would not affect the underlying requirement. In 1999 IBLA held that administrative access is an implied condition of a grazing permit whenever administrative access is necessary in order for BLM to carry out its statutory responsibilities on the public lands. (IBLA 98–180R; 98–404R)

Section 4130.3–3 Modifications of Permits or Leases

BLM proposes to amend this section to make it clear that BLM may modify terms and conditions of a permit or lease if we determine that either the active use or related management practice is no longer meeting the management objectives specified in the land use plan, an allotment management plan, or an applicable decision issued under section 4160.3. In addition, BLM is removing the regulatory requirement that we consult with the interested public on any decisions to modify terms and conditions on a permit or lease for the reasons discussed previously.

In the proposed rule the interested public retains, to the extent practical, the opportunity to review and provide input on reports supporting BLM's decisions to increase or decrease grazing use. In clarifying this provision, BLM recognizes that the interested public, permittees and lessees, and the state should all have opportunity to review and submit input to Biological Assessments when they are used to supplement grazing management evaluations.

BLM also proposes to reorganize this section for the sake of clarity and logical flow.

Section 4130.4 Authorization of Temporary Changes in Grazing Use Within the Terms and Conditions of Permits and Leases

BLM is proposing to amend section 4130.4 to provide additional detail on what is meant by the phrase ''within the terms and conditions of the permit or lease.'' BLM proposes that when we refer to ''temporary changes within the terms and conditions of the permit or lease,'' we mean changes to the number of livestock and period of use that BLM may grant in any one grazing year. We would authorize such changes in response to annual variations in growing conditions that arise from normal year-to-year fluctuations in temperature and the timing and amounts of precipitation and to meet locally established range readiness criteria. Under the proposed regulations, ''within the terms and conditions of a permit or lease'' means that grazing use will:

1. Not result in removing more forage than the ''active use'' specified by the permit or lease;

2. Begin no earlier than 14 days before the grazing begin date specified by the permit or lease, and end no later than 14 days after the grazing end date specified by the permit or lease.

Providing for temporary changes allows sufficient flexibility to BLM land managers, permittees, and lessees to address seasonal and annual changes, thereby supporting efficient and responsive management of public rangelands.

Livestock periods of use established by the grazing permits are based on the anticipated average dates that the range is ''ready'' to be grazed. ''Range readiness'' is the stage of plant growth at which grazing may begin without doing permanent damage to the vegetation community or the soil. The point where the range is ''ready'' for grazing use can and does vary from year to year around a long-term average date of readiness. A 14-day flexibility period on either side of the grazing begin and end dates specified by the permit or lease is a reasonable way to allow for minor adjustments in grazing use in response to these variations to better correspond grazing use to rangeland conditions. BLM would consider applications for changes in grazing use ''within the terms and conditions of the permit or lease'' on a case-by-case basis. If BLM approves the change, no formal action other than the issuance and payment of a relevant grazing fee billing would be required. The change would not constitute a formal permit or lease modification. In other words, a temporary change that BLM allowed in one year to respond to the conditions of that year would not be carried forward to the next year. BLM would not consider an application for grazing use that falls outside of this flexibility ''within the terms and conditions'' of the authorizing permit or lease.

BLM proposes to move provisions addressing approval of ''temporary nonuse'' from section 4130.2 to this section and amend them to allow BLM to have the discretion to approve applications on a year-to-year basis for temporary nonuse of all or part of the grazing use authorized by a permit or lease when the nonuse is warranted by rangeland conditions or the personal or business needs of the permittee or lessee. Events such as drought, fire or less than average forage growth typically result in ''rangeland conditions'' that will prompt the need for temporary nonuse of all or part of the grazing use allowed by the permit or lease.

When rangeland conditions are such that less grazing use would be appropriate, BLM encourages operators, if they have not done so already, to apply for nonuse for ''conservation and protection of rangeland resources.'' This is the simplest way to achieve temporary reduced use to respond to rangeland condition needs. In some cases, approval of an application for temporary nonuse precludes the need for BLM to issue a decision to temporarily suspend use under section 4110.3–3(b), although BLM retains the discretion to do this. ''Personal and business needs'' of the grazing operator refer to actions operators take in the course of managing their business, such as livestock sale, that result in temporary herd size reductions.

Paragraph (e) of this section (paragraph 4130.2(h) in the existing regulations, as revised for clarity) would continue BLM's current discretion to issue a nonrenewable authorization to other qualified applicants to use the forage that became temporarily available as a result of nonuse approved for business or personal reasons. When BLM approves nonuse because we agree that rangeland conditions would benefit from temporary nonuse, we would not authorize another operator to use it. We propose moving the current paragraph (a) to the end of this section and redesignating it as paragraph (f). In newly designated paragraph (f), BLM makes several editorial changes.

BLM also proposes to remove the current three-consecutive-year limit on temporary nonuse. In the ANPR we stated that we would be considering increasing the number of consecutive years that we could authorize temporary nonuse from 3 years to 5 years. In response, BLM received numerous comments on this topic. Some commenters appeared to be confused about this provision as presented in the ANPR because they did not distinguish between the permittee-initiated action of applying for nonuse in proposed section 4130.3 and a BLM initiated action to change preference in proposed section 4110.3. Other commenters asked BLM to allow longer periods of temporary nonuse, and some expressed concerns that extending the authorized nonuse could have impacts on a permittee's ability to retain water rights. We are proposing that BLM have the same discretion to approve temporary nonuse as existed before the 1995 rule changes, to provide us with management flexibility needed to respond to the common occurrence of site-specific fluctuations in available forage levels that may occur for a variety of reasons as explained above.

Section 4130.5 Free-Use Grazing Permits

The proposed rule would remove reference to conservation use in paragraph (b)(1) of this section to conform the regulation to the decision of the Tenth Circuit Court of Appeals. We also propose to remove the word ''authorize'' to keep the rule internally consistent.

Section 4130.6–2 Nonrenewable Grazing Permits and Leases

The proposed changes to this section would remove the requirement that BLM consult with the interested public before issuing nonrenewable permits and leases. BLM issues nonrenewable permits and leases to allow grazing use of additional forage that is temporarily available. One circumstance under which we would apply this is when BLM has approved an application for nonuse for personal or business reasons as described above. Another circumstance where this regulation might apply is to manage grazing use authorized on ''cheatgrass'' ranges.

Cheatgrass (*Bromus tectorum*), a nonnative introduced annual, is established on vast acreages in the intermountain west. Its growth characteristics are such that under favorable growing conditions, ranges dominated by cheatgrass may produce 5 times or more forage than what that same range produces in a year experiencing average growing conditions. Its value as forage, however, is limited (hence the common name) because its nutritional value diminishes rapidly by summer, when it dries and becomes highly flammable. Grazing permits issued for use of ''cheatgrass range'' specify stocking rates on the number of livestock that can be supported in the ''average'' growth year, and provide generally that we allow use during the spring, when the cheatgrass can meet livestock nutritional needs. When the growth year is favorable, cheatgrass range provides more forage, and in some cases considerably more forage, than that which is allowed to be grazed under the term grazing permit. When this occurs, BLM must be able to respond rapidly to applications for temporary and nonrenewable grazing use because forage quality declines rapidly as the season progresses. Because BLM provides full opportunity for the interested public to comment during the NEPA and planning processes, and because consultation can be a time-consuming process, not generally conducive to the ''rapid response'' needed to take advantage of situations that would give rise to approval of an application for temporary and nonrenewable use, BLM is proposing to remove the additional public consultation requirement before issuing temporary and nonrenewable grazing permits or leases.

Section 4130.8–1 Payment of Fees

BLM is proposing editorial changes to this section to make it easier to read and corrects a cross-reference in the existing regulations in paragraph (f) (paragraph (h) in the proposed rule) to subpart 4160.

Section 4130.8–3 Service Charge

The proposed rule would remove the reference to conservation use in this section to conform to the Tenth Circuit decision.

BLM is authorized under FLPMA to assess a service charge that reflects our processing costs. The current regulations provide for periodic fee adjustments as costs change. BLM has not adjusted our service charges in many years. When BLM does make changes, the current regulations require public notification in the **Federal Register**.

Except when BLM initiates an action, we are proposing to increase service charge fees as shown in the following table:

Action	Current service charge	Proposed service charge
Issue Crossing Permit ..	$10	$75
Grazing Preference Transfer	10	145
Canceling and replacing grazing fee billing	10	50

As required by Section 304(b) of FLPMA, the service fees on this chart represent BLM's average cost of processing these applications less the estimated portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant.

Subpart 4140—Prohibited Acts

The current regulations specify a number of prohibited acts. Some of the prohibited acts apply only to grazing permittees or lessees while others apply to anyone who commits those acts while on BLM lands. There are 3 different categories of prohibited acts in the current regulations.

The first category of prohibited acts is set forth in section 4140.1(a) which provides that permittees and lessees who perform any of the 6 prohibited acts listed under this section may be subject to civil penalties under § 4170.1 (*e.g.*, withholding issuance, suspending, or canceling a permit or lease.) Examples of prohibited acts in this category include: violations of special terms and conditions of permits or leases and refusing to remove range improvements when BLM directs their removal. In this category, BLM is proposing to clarify the provision which prohibits the placement of supplemental feed on public lands without authorization. Under the proposed regulation, we are proposing to add that placement of supplemental feed without authorization ''or contrary to the terms and conditions of the permit or lease'' is a prohibited act. This will further clarify the intent of this section to ensure strict compliance with the terms and conditions of the permit or lease.

A second category of prohibited acts is set forth in section 4140.1(b). Any person (not just a permittee or lessee) who performs one of the 11 prohibited acts in this section is subject to civil and criminal penalties under sections 4170.1 and 4170.2. Examples of the prohibited acts identified in this section include: allowing livestock or other privately owned or controlled animals to graze on or be driven across public lands without a permit or lease; destroying vegetation; and damaging property owned by the United States. BLM is proposing to clarify that a violation of any of the prohibited acts set forth in § 4140.1(b) must occur on BLM-administered lands to be considered a violation. BLM is also proposing to modify and clarify one of the prohibited acts in this section. The current rule at § 4140.1(b)(1)(i) states that it is a prohibited act to graze livestock without a permit or lease and ''an annual grazing authorization.'' This paragraph would be revised to state that it is a prohibited act to graze without a permit or lease or other grazing use authorization and ''timely payment of grazing fees.'' This revision would more accurately characterize the relationship between the document that authorizes grazing, the permit or lease, and the requirement to pay grazing fees as stated in Section 3 of the Taylor Grazing Act. Section 3 states:

> The Secretary of the Interior is * * * authorized to issue * * * permits to graze livestock * * * to settlers, residents and other stock owners * * * upon the payment annually of reasonable fees * * *.

The requirement to pay fees annually has led to the characterization of a paid grazing fee billing as an ''annual grazing authorization'' for the purposes of applying other provisions of the regulations such as requirements for consultation, the ability to protest and appeal grazing decisions, and what grazing use BLM may authorize if a grazing permitting decision is stayed. This change is intended to make this regulation consistent with the regulation at section 4130.2 which provides that the grazing permit or lease is the document that authorizes grazing use on public lands.

The third category of prohibited acts is set forth in section 4140.1(c). Under this provision, the BLM may take civil

action under section 4170.1 against a grazing permittee or lessee that violates any of the prohibited acts identified in this section. For this category of prohibited acts, unlike the first two categories, the primary responsibility for enforcement generally rests with a Federal or state agency other than BLM. Three sets of prohibited acts are identified in this section. The first set consists of Federal or State laws or regulations pertaining to 6 different activities. Examples include: placement of poisonous bait or hazardous devices designed for the destruction of wildlife; pollution of water resources; and illegal removal or destruction of archeological or cultural resources. The second set of prohibited acts in this section identifies as prohibited acts the violation of specific laws and regulations including the Bald Eagle Protection Act, Endangered Species Act, and any provision of the regulations concerning wild horses and burros. The third set of prohibited acts in this section identifies as prohibited acts the violation of State livestock laws or regulations relating to branding and other livestock related issues. BLM proposes to retain the provisions in the third category of prohibited acts which allow us to withhold, suspend, or cancel all or part of a grazing permit if the lessee or permittee is convicted of violating any of the prohibited acts. The proposed rule would, however, clarify and limit BLM's enforcement authority by limiting its application to prohibited acts performed by a permittee or lessee on his allotment where he is authorized to graze under a BLM permit or lease. This change is intended to further ensure that the performance of the prohibited act is related to the permit or lease under which the violator is operating.

In the ANPR, BLM announced that it was considering which ''non-permit related'' violations BLM may take into account in penalizing a permittee. BLM received numerous comments opposing and supporting changes to this section. Many affiliates of the livestock industry characterized the current rule's provisions as a form of ''double jeopardy.'' BLM does not believe that violation of the Federal or state laws listed in section 4140.1 violates the Double Jeopardy Clause of the Fifth Amendment of the Constitution when a civil sanction, such as suspending or canceling a permit after conviction for violating environmental laws on an allotment where an individual has a permit or lease to graze, furthers the legitimate objective of encouraging responsible stewardship of public rangelands. Therefore, section 4140.0 is not a punitive measure that can be viewed as causing multiple punishments for the same offense. Furthermore, both the Endangered Species Act (ESA) and the Bald Eagle Protection Act (BEPA) provide for grazing sanctions. The ESA provides that if a Federal grazing permittee or lessee is convicted for a criminal violation of the Act, the agency may suspend, modify, or revoke the permit or lease. The BEPA provides that the head of a Federal agency that issues a grazing permit or lease may immediately cancel such permit or lease when a person who holds it is convicted of violating the Act. Commenters who opposed any changes in the prohibited acts section of the regulations urged BLM to retain current authority to cancel, suspend, or deny permits when the violation is related to environmental protection.

Subpart 4150—Unauthorized Grazing Use

Section 4150.3 Settlement

Existing paragraph (e) of this section has been modified to correct the reference to subpart 4160. We also propose adding a new paragraph (f) to this section to specify that if a permittee or lessee obtains a stay of a decision that demands payment or cancels or suspends a grazing authorization, BLM will allow him to graze under his existing authorization pending resolution of the appeal. This proposed change clarifies existing procedures and will ensure consistent implementation of the regulations.

Subpart 4160—Administrative Remedies

Section 4160.1 Proposed Decisions

BLM proposes to amend this section to specify that a biological evaluation or biological assessment that BLM prepares for purposes of the Endangered Species Act (16 U.S.C. 1531–1544) (ESA) is not a proposed decision for purposes of a protest to BLM, or a final decision for purposes of an appeal to the Office of Hearings and Appeals under the Taylor Grazing Act. This provision would prospectively supersede the decision of the Interior Board of Land Appeals (IBLA) in *Blake* v. *BLM*, 145 IBLA 154, 166 (1998) *aff'd*, 156 IBLA 280 (2000), holding that the protest and appeal provisions of 43 CFR subpart 4160 apply to a biological evaluation or biological assessment.

A Federal agency prepares a biological assessment or biological evaluation when it considers action that may affect species or habitats that are protected under the ESA and are located on land managed by the Federal agency. A biological assessment or biological evaluation necessarily identifies what action an agency is considering, so that the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service (NMFS) can prepare a biological opinion pursuant to section 7 of the ESA (16 U.S.C. 1536). In addition, a description of the contemplated action would be necessary under proposed section 4130.3–3(b), which would provide for consultation with the interested public and others during the preparation of biological assessments or biological evaluations, to the extent practical. However, biological assessments and biological evaluations are tools that the FWS and the NMFS use to decide whether to initiate formal consultation under section 7 of the ESA. Therefore, they are not proposed grazing decisions that may be protested to BLM, or final grazing decisions appealable to OHA. If formal consultation is not required upon completion of the biological assessment, BLM will issue a proposed decision, such as the issuance of a permit or lease, that may be protested and appealed. If formal consultation is required, upon completion of the Section 7 consultation process BLM will issue a decision that may be the subject of protest and appeal.

Section 4160.3 Final Decisions

In order to reconcile statutory directives found in the Administrative Procedure Act, 5 U.S.C. 701–706 (APA), TGA and FLPMA, BLM proposes to amend this section by—

- Cross-referencing the Department's administrative appeals regulations,
- Clarifying the requirement that one must exhaust administrative remedies, and
- Defining what grazing is authorized while an administrative appeal is pending.

Current paragraph (c) states the 30-day deadline for filing an appeal of a final grazing decision or of a proposed decision that has become final ''by default'' because no party protested it. The proposed rule would move this text to section 4160.4 on Appeals, where it more properly belongs. BLM believes that the proposed revision would avoid duplication and more clearly cross-reference procedures applicable to grazing decision appeals in the regulations at 43 CFR 4.470. Paragraph (f) of this section would be redesignated paragraph (c) and edited for clarity.

Current paragraphs (d) and (e) describe what grazing is authorized if a petition for stay of a final grazing

decision is granted by the Office of Hearings and Appeals. Additional discussions related to those paragraphs appear in section 4160.4, below.

Section 4160.4 Appeals

The proposed rule would amend this section by adding language clarifying how the appeal of a BLM grazing decision, and a petition for a stay of the decision pending appeal, affect the effectiveness of the decision and the continuity of ongoing grazing operations, if any. The current provision merely states the procedural requirements for filing appeals, and defers to the Department of the Interior regulations at 43 CFR 4.470, which do not address the issues of whether and to what degree ongoing activities should continue in the face of an appeal or stay.

The APA provides a right of action against agencies and officers of the United States to persons adversely affected or aggrieved by agency action. However, such action may be sought in a federal court only when a decision is ''final.'' 5 U.S.C. 704. An agency action is not considered final where the agency requires by rule that an administrative appeal to a superior agency authority be filed and provides that the agency action is inoperative while the appeal is pending. The Department's administrative appeals regulations recognize the requirement that a party must first exhaust administrative remedies before resorting to Federal Court: ''No decision which at the time of its rendition is subject to appeal to the Director or an Appeals Board shall be considered final so as to be agency action subject to judicial review under 5 U.S.C. 704, unless a petition for a stay of decision has been timely filed and the decision being appealed has been made effective. * * *'' 43 CFR 4.21(c).

Under the Department's administrative appeals regulations, unless the authorized officer, the Director of OHA, or IBLA places a decision in immediate effect, a BLM grazing decision is ineffective until the 30-day appeal period expires. If a petition for stay is filed within the appeal period, the decision is not in effect for 45 days after the expiration of the appeal period or until OHA acts on the stay petition, whichever occurs first. If the stay is not granted, the party has exhausted his administrative remedies and may seek review in federal court. If a stay is granted, the decision, with exceptions discussed below, is inoperative while the appeal is pending, and thus under the APA a party must exhaust his administrative remedies before resorting to federal court.

There are instances, however, where grazing may continue even though an appeal has been filed and a stay of the decision has been granted. These situations do not, however, present a conflict with the ''finality'' requirement found in the APA. The first example occurs when a party appeals, but does not seek a stay of the decision. In such a case the decision will be in effect after the 30-day appeal period, but it is not considered ''final'' for purposes of the APA since the party did not exhaust his administrative remedies. Under the current regulations, grazing is allowed even after the decision is stayed when there was no valid permit or lease in effect at the time of the appealed decision. BLM regulations provide that in such a situation, grazing would be allowed consistent with the appealed decision even when the decision is stayed. In such a case, a party would have fully complied with OHA's regulations pertaining to exhaustion of administrative remedies, but grazing would be allowed. BLM believes it is necessary to allow grazing even if a stay is granted because the OHA regulations do not establish time frames for resolution of appeals. To do otherwise would potentially eliminate grazing and deny a user the ability to graze the lands for years awaiting an administrative decision. As a result, a party could seek judicial review of the decision since the decision would be effective during the appeal. In cases such as these, the BLM is attempting to find a balance between the exhaustion of administrative remedies under the APA and its responsibilities under FLPMA and TGA to:

- Manage lands for multiple use and sustained yield,
- Regulate the occupancy and use of the rangelands,
- Safeguard grazing privileges,
- Preserve the public rangelands from destruction or unnecessary injury, and
- Provide for the orderly use, improvement, and development of the range.

BLM proposes to set forth the kinds of grazing decisions that would be rendered inoperative by the granting of a stay of a BLM grazing decision:

- Those that modify terms and conditions of a permit or lease during its current term or during the renewal process; and
- Those that offer a permit or lease to a preference transferee with terms and conditions that are different from the previous permit or lease terms and conditions.

It is proposed that if a stay of either of these kinds of decisions is granted, the immediately preceding grazing authorization would not expire and the affected permittee, lessee, or preference applicant would continue grazing under the immediately preceding grazing authorization, subject to any applicable provisions of the stay order and subject to the provisions of proposed section 4130.3(b).

As a result, the appealed decision is inoperative. Nonetheless, grazing under the prior grazing authorization would continue under the APA provision at 5 U.S.C. 558 requiring that ''a license with reference to an activity of a continuing nature'' does not expire until an agency makes a new determination. Thus, a permittee or lessee who has made timely and sufficient application for a renewal or a new license in accordance with part 4100 would not have his permit or lease expire until the application has been finally determined by the Department of the Interior (5 U.S.C. 558(c)). This approach reconciles the exhaustion provision of the APA and the expectation set forth in the APA that a permittee will continue to operate under the immediately preceding authorization in order to ensure security of tenure.

Where a party has no valid grazing authorization at the time that the decision is rendered, there is a reduction in area available for grazing use, or the applicant is seeking use of ephemeral or annual rangelands, BLM could not authorize use based on the previous year's authorization. Thus, under the proposed rule, grazing would continue pursuant to the decision even in the case of a stay when a decision:

- Modifies a permit or lease because of a decrease in public land acreage available for grazing;
- Affects an application for grazing use of BLM-designated ephemeral or annual rangeland;
- Affects an application for additional forage temporarily available;
- Affects an application for a grazing permit or lease that is not made in conjunction with a preference transfer application.

In these cases, BLM would authorize grazing consistent with the final decision that has been stayed, and affected parties could resort to the Federal Courts without exhausting administrative remedies.

BLM specifically invites comment on this section regarding how it might effectively incorporate both the exhaustion and ''activity of a continuing nature'' requirements of the APA, and ensure that the public land grazing is managed in such a way as to meet the direction of the TGA and FLPMA.

Subpart 4170—Penalties

Section 4170.1–2 Failure To Use

BLM proposes to remove the term ''permitted use'' from this section and replace it with the term ''active use.'' This is consistent with our proposed definitions.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

Section 4180.1 Fundamentals of Rangeland Health

BLM proposes revising the introduction to provide that BLM will take action to change grazing management so that it will assist in achieving the fundamentals, only if there are no applicable standards and guidelines in place.

In the preamble to the final rule for the 1995 grazing regulation amendments, the fundamentals of rangeland health were identified as the basic components of rangeland health and were intended to serve as overarching principles to be supplemented by the standards and guidelines. Stated another way, the standards and guidelines were to be developed under the umbrella of the fundamentals. As such, the standards and guidelines serve as more locally specific measures of rangeland health and acceptable management practices consistent with intent of the fundamentals.

Under the existing regulations at section 4180.1, BLM is required to take appropriate action upon determining that existing grazing management needs to be modified to ensure that the four conditions, which make up the fundamentals of rangeland health, exist. In addition, under the existing regulations at section 4180.2, BLM is required to take appropriate action upon determining that existing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform to the guidelines for grazing administration. Where regionally specific standards and guidelines have been developed and approved, there is no need for BLM managers to make two separate determinations as suggested by the existing rule. An evaluation of standards attainment and guidelines conformance to determine whether existing grazing management practices or levels of grazing use are significant factors in failing to achieve the standards and conform with the standards and guidelines will effectively satisfy the requirement for an evaluation to determine if existing grazing management needs to be changed to ensure the existence of the conditions as defined by the fundamentals. Thus, an evaluation relating to the fundamental of rangeland health is necessary only in those circumstances where standards and guidelines have not been developed and approved.

BLM proposes revising the introduction also to change the amount of time BLM would need to take action to ensure that resource conditions conform to the requirements of this section. The deadline would change from not later than the start of the next grazing year to not later than the start of the grazing year following BLM's completion of action, including consultation under sections 4110.3–3 and 4130.3–3. This change will provide time for BLM to complete relevant and applicable requirements of law and regulation, such as NEPA compliance documentation, consultation under ESA if applicable, and required consultation under sections 4110.3–3 and 4130.3–3. BLM is doing this because some decisions must address complex resource management circumstances and require time to determine the most appropriate course of action.

BLM received few comments on this provision in response to the ANPR. The ANPR stated that we are considering whether to amend the provision stating when BLM will implement action that changes grazing management after determining that the allotments used by a permittee or lessee are not meeting or significantly progressing toward meeting land health standards. Most of the comments BLM received asked us to implement stricter adherence to the already existing standards and to establish time frames for compliance and consequences for not achieving those time frames. We believe the current framework is effective and achieves compliance. Other commenters asked that we move the fundamentals of rangeland health provisions to Subpart 1610, Resource Management Planning. At this time we plan to leave the health standards in the grazing portion of our regulations.

Section 4180.2 Standards and Guidelines for Grazing Administration

BLM proposes revising paragraph (c) to provide that we would require both assessments of standards attainment and monitoring to support a determination that grazing practices are a significant factor in failing to achieve, or not making significant progress towards achieving rangeland health standards. BLM's current policy is to use all available relevant information, including monitoring data when available, to assess standards attainment.

The change proposed by this rule would require that BLM support standards attainment determinations with assessment and monitoring data.

We would also revise paragraph (c) to provide that within 24 months following a determination that current grazing practices are a significant factor in failing to achieve or make progress towards achievement of standards, BLM would, in compliance with applicable law and with consultation requirements, analyze, formulate, and propose appropriate action intended to remedy the failure to meet the standards. Under the current rule, following the determination BLM must take appropriate action ''before the start of the next grazing year.''

The new provision states that these requirements would be met upon execution of an agreement or issuance of a final decision to implement appropriate action. Following the agreement or decision, and resolution of any appeals to the decision, BLM would be required to implement the appropriate action before the start of the next grazing year.

BLM also proposes removing the phrase ''Category 1 or 2'' with respect to the designation of special status to candidate threatened and endangered (T&E) species because the FWS no longer uses these designations.

These changes are being proposed for several reasons. BLM recognizes that one of the thrusts of ''Rangeland Reform '94'' was to require BLM to implement timely and responsive remedial action upon determining that existing grazing practices were preventing achievement of rangeland health standards. Since the implementation of this rule, BLM has found that in many cases, requiring our field offices to take action ''before the start of the next grazing year,'' *i.e.* within a maximum of 12 months of the determination, is insufficient time to complete the governmental processes involved in making a reasoned choice regarding the appropriate action, and it does not allow for operation adjustments by the affected grazing operators that are not unduly economically disruptive.

Arriving at a proposed remedial response that requires gathering and analyzing relevant information and necessary coordination takes time. BLM must then consider the appropriate action and document reasonable alternatives in accordance with NEPA. Consultation under ESA, which can be time-consuming, may be required at this stage. Then, BLM must develop a proposed grazing decision that

implements the action, which is subject to protest and appeal. Should the final decision be stayed pending appeal, further time is consumed. In practice, implementing appropriate action within 12 months of determining that grazing practices need to be changed is unrealistic in many cases. BLM proposes to extend its self-imposed deadline to 24, rather than 12 months in which to complete these processes. BLM believes that this will allow the necessary time to deliberate and implement responsive, reasonable, and lasting remedies.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget determined that these proposed regulations are a significant regulatory action and therefore subject to review under Executive Order 12866. These proposed regulations would not have an effect of $100 million or more on the economy. The proposed regulatory changes would not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. BLM is aware that there are differences between its grazing program and the program administered by the U.S. Forest Service (USFS). For example, the USFS regulations and procedures do not include a temporary suspension category, unlike the BLM proposal in section 4110.3–2. The USFS regulations at 36 CFR 222.9(b)(2) provide that title to permanent structural range improvements on National Forest System lands such as pipelines and water troughs remains with the United States, unlike the BLM proposal in section 4120.3–2 that allows for the sharing of the title for some improvements with permittees and lessees. The USFS regulations may provide for a more streamlined process to modify grazing permits, particularly in situations where grazing activities need to be restricted.

Despite these and other differences, BLM believes that any inconsistencies between BLM's grazing program and USFS' are not serious and will not interfere with actions taken or planned by the agencies. They merely represent differences in management approach and philosophy. However, we specifically invite public comment on whether any inconsistencies between the regulations and practices of the two agencies interfere with the operations of any BLM lessees or permittees, or otherwise inconvenience them or any other stakeholders.

These proposed regulations do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal issues. However, the proposed rule raises novel policy issues by reversing or otherwise changing policy established in a 1995 rule.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. BLM prepared an Initial Regulatory Flexibility Act Analysis to address changes we are considering in this proposed rule and has concluded that this proposed rule will not have significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This document is available for review at 1620 L Street NW., Washington, DC 20036 and on the Internet at *http://www.blm.gov.grazing.*

The proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The proposed change would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; nor does it raise novel legal or policy issues, except as discussed in the previous section of the preamble.

Small Business Regulatory Enforcement Fairness Act

This proposed rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The changes BLM is proposing to the current grazing regulations would not result in an effect on the economy of $100 million or more, in an increase in costs or prices, or in significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

The changes BLM proposes are intended to clarify existing requirements and qualifications. These changes would positively affect all applicants, whether small entities or not.

Unfunded Mandates Reform Act

This amendment of 43 CFR Part 4100, as proposed, would not result in any unfunded mandate to state, local, or tribal governments, or to the private sector, in the aggregate, of $100 million or more. The rule would continue and strengthen requirements for BLM to consult with all of these governmental and other entities whenever they would likely be affected by our actions relating to livestock grazing.

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights

The proposed rule does not represent a government action capable of interfering with constitutionally protected property rights. The relevant statutes and regulations governing grazing on Federal land and case law interpreting these statutes and regulations have consistently recognized grazing on Federal land as a revocable license and not a property interest. Therefore, the Department of the Interior has determined that the rule would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The proposed rule 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. BLM's inability to issue conservation use grazing permits neither hinders nor enhances authority vested in states or local governments. The rule would continue and strengthen requirements for BLM to consult with all of these governmental and other entities whenever they would likely be affected by our actions relating to livestock grazing. Therefore, in accordance with Executive Order 13132, BLM has determined that this proposed rule does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 13175 Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have determined that this rule does not include policies that have tribal implications. The rule expressly does not apply to, and these rules

expressly exclude, Indian lands set aside or held for the benefit of Indians from the effects of the rule.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule would not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), BLM must consider whether this proposed rule will create any additional collection, paperwork, or record keeping burdens on the public. These burdens are permissible only when BLM can justify the practical utility of the information collected under the rule. Office of Management and Budget (OMB) approval is required of any new requirements for a collection of information imposed on 10 or more persons, and a valid OMB control number must be obtained for any covered paperwork.

The information collection requirements contained in Group 4100 have been approved by the OMB under 44 U.S.C. 3501 *et seq.* and assigned the following clearance numbers: 1004–0005, 1004–0019, 1004–0020, 1004–0041, 1004–0047, 1004–0051, 1004–0068. The information would be collected to permit BLM to determine whether an application to utilize public lands for grazing or other purposes should be approved.

Today's proposed rule will necessitate some modifications of terms in the forms used to collect information. However, there will be no change in the reporting burden as a result of today's proposed rule. Therefore, these regulations do not contain information collection requirements that OMB must approve.

National Environmental Policy Act

The BLM has determined that these proposed regulations constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM and all Federal agencies are required by the National Environmental Policy Act (NEPA) to prepare an EIS if a proposed action has potential for significant environmental impacts. BLM has prepared a draft environmental impact statement (DEIS) which will be on file and available to the public in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The Draft Environmental Impact Statement will also be available at *http://www.blm.gov/grazing.* The draft document considers the impacts of this proposed rulemaking to amend the regulations governing livestock grazing on public lands. You may comment on the EIS via the interactive ePlanning Web site, at *http://www.blm.gov/grazing.*

Executive Order 13211, Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, BLM finds that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The distribution of or use of energy would not be unduly affected by this proposed rule.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical language or jargon that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? (4) Would the regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' appears in bold type and is preceded by the symbol ''§'' and a numbered heading, for example ''§ 4160.4.'') (5) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand?

Please send any comments you have on the clarity of the regulations to the address specified in the **ADDRESSES** section.

Author

The principal author of this rule is Ken Visser, Rangeland Management Specialist; Rangeland, Soil, Water and Air Group, assisted by Ted Hudson and Cynthia L. Ellis of the Regulatory Affairs Group.

List of Subjects in 43 CFR Part 4100

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and record keeping requirements.

For the reasons stated in the Preamble, and under the authorities cited below, we propose to amend Title 43, Subtitle B, Chapter II, Subchapter D, Part 4100, as follows:

Dated: November 18, 2003.

J. Steven Griles,

Deputy Secretary of the Interior.

PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a–315r, 1181d, 1740.

Subpart 4100—Grazing Administration—Exclusive of Alaska; General

2. Amend § 4100.0–2 by redesignating the first sentence as paragraph (a) and the second sentence as paragraph (b), and by revising newly designated paragraph (b) to read as follows:

§ 4100.0–2 Objectives.

* * * * *

(b) These objectives will be realized in a manner consistent with land use plans, multiple use, sustained yield, environmental values, economic and other objectives stated in the Taylor Grazing Act of June 28, 1934, as amended (43 U.S.C. 315, 315a–315r); section 102 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901(b)(2)).

3. Amend § 4100.0–3 by revising paragraphs (c), (d), and (f) to read as follows:

§ 4100.0–3 Authority.

* * * * *

(c) Executive orders that transfer land acquired under the Bankhead-Jones Farm Tenant Act of July 22, 1937, as amended (7 U.S.C. 1012), to the Secretary and authorize administration under the Taylor Grazing Act.

(d) Section 4 of the Oregon and California Railroad Land Act of August 28, 1937 (43 U.S.C. 1181d);

* * * * *

(f) Public land orders, Executive orders, and agreements that authorize the Secretary to administer livestock grazing on specified lands under the Taylor Grazing Act or other authority as specified.

4. Amend § 4100.0–5 by removing the definitions of ''conservation use'' and ''permitted use'', and revising the definitions of ''active use'', ''grazing lease'', ''grazing permit'', ''grazing preference or preference'', ''interested public'', ''suspension'', and ''temporary nonuse'', and adding a definition of ''preference'', to read as follows:

§ 4100.0–5 Definitions.

* * * * *

Active use means that portion of the grazing preference that is:

(1) Available for livestock grazing use under a permit or lease based on rangeland carrying capacity and resource conditions in an allotment; and

(2) Not in suspension.

* * * * *

Grazing lease means a document that authorizes grazing use of the public lands under Section 15 of the Act. A grazing lease specifies grazing preference and the terms and conditions under which lessees make grazing use during the term of the lease.

Grazing permit means a document that authorizes grazing use of the public lands under Section 3 of the Act. A grazing permit specifies grazing preference and the terms and conditions under which permittees make grazing use during the term of the permit.

Grazing preference or *preference* means the total number of animal unit months on public lands apportioned and attached to base property owned or controlled by a permittee, lessee, or an applicant for a permit or lease. Grazing preference includes active use and use held in suspension. Grazing preference holders have a superior or priority position against others for the purpose of receiving a grazing permit or lease.

Interested public means an individual, group, or organization that has:

(1) (i) Submitted a written request to BLM to be provided an opportunity to be involved in the process leading to a BLM decision on the management of livestock grazing on public lands, and

(ii) Followed up that request by commenting on or otherwise participating in the decisionmaking process as to the management of a specific allotment if there has been an opportunity for such participation; or

(2) Submitted written comments to the authorized officer regarding the management of livestock grazing on a specific allotment, as part of the process leading to a BLM decision on the management of livestock grazing on the allotment.

* * * * *

Preference means grazing preference (see definition of ''grazing preference'').

* * * * *

Suspension means the withholding from active use, through a decision issued by the authorized officer or by agreement, of part or all of the grazing preference specified in a grazing permit or lease.

Temporary nonuse means that portion of active use that the authorized officer authorizes not to be used, in response to an application made by the permittee or lessee.

* * * * *

5. Revise § 4100.0–9 to read as follows:

§ 4100.0–9 Information collection.

The information collection requirements contained in Group 4100 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* The information is collected to enable the authorized officer to determine whether to approve an application to utilize public lands for grazing or other purposes.

Subpart 4110—Qualifications and Preference

6. Amend § 4110.1 by removing paragraphs (b)(1), (b)(2), and (c), by redesignating paragraph (d) as paragraph (c), and by revising paragraph (b) to read as follows:

§ 4110.1 Mandatory qualifications.

* * * * *

(b) Applicants for the renewal or issuance of new permits and leases and any affiliates must be determined by the authorized officer to have a satisfactory record of performance under § 4130.1–1(b).

* * * * *

7. Amend § 4110.2–1 by redesignating paragraphs (d) and (e) as paragraphs (e) and (f), respectively, and by redesignating the last two sentences of paragraph (c) as paragraph (d).

8. Revise § 4110.2–2 to read as follows:

§ 4110.2–2 Specifying grazing preference.

(a) All grazing permits and grazing leases will specify grazing preference, except for permits and leases for designated ephemeral rangelands, where BLM authorizes livestock use based upon forage availability, or designated annual rangelands. Preference includes active use and any suspended use. Active use is based on the amount of forage available for livestock grazing as established in the land use plan, activity plan, or decision of the authorized officer under § 4110.3–3, except, in the case of designated ephemeral or annual rangelands, a land use plan or activity plan may alternatively prescribe vegetation standards to be met in the use of such rangelands.

(b) The grazing preference specified is attached to the base property supporting the grazing permit or grazing lease.

(c) The animal unit months of grazing preference are attached to:

(1) The acreage of land base property on a pro rata basis, or

(2) Water base property on the basis of livestock forage production within the service area of the water.

9. Amend § 4110.2–3 by revising paragraph (b) to read as follows:

§ 4110.2–3 Transfer of grazing preference.

* * * * *

(b) If base property is sold or leased, the transferee shall within 90 days of the date of sale or lease file with BLM a properly executed transfer application showing the base property and the grazing preference being transferred in animal unit months.

* * * * *

10. Revise § 4110.2–4 to read as follows:

§ 4110.2–4 Allotments.

After consultation, cooperation, and coordination with the affected grazing permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer may designate and adjust grazing allotment boundaries. The authorized officer may combine or divide allotments, through an agreement or by decision, when necessary for the proper and efficient management of public rangelands.

11. Revise § 4110.3 to read as follows:

§ 4110.3 Changes in grazing preference.

(a) The authorized officer will periodically review the grazing preference specified in a grazing permit or lease and make changes in the grazing preference as needed to:

(1) Manage, maintain, or improve rangeland productivity;

(2) Assist in restoring ecosystems to properly functioning conditions;

(3) Conform with land use plans or activity plans; or

(4) Comply with the provisions of subpart 4180.

(b) The authorized officer will support these changes by monitoring, documented field observations, ecological site inventory, or other data acceptable to the authorized officer.

(c) Before changing grazing preference, the authorized officer will undertake the appropriate analysis as

required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The authorized officer will analyze and, if appropriate, document the relevant social, economic, and cultural effects of the proposed action.

12. Revise § 4110.3–1 to read as follows:

§ 4110.3–1 Increasing active use.

BLM may apportion additional forage to qualified applicants for livestock grazing use consistent with multiple-use management objectives specified in the applicable land use plan.

(a) *Additional forage temporarily available.* When the authorized officer determines that additional livestock forage is temporarily available, he may authorize its use on a nonrenewable basis in the following order:

(1) To permittees or lessees who have preference for grazing use in the allotment where the forage is available, in proportion to their active use; and

(2) To other qualified applicants under § 4130.1–2.

(b) *Additional forage available on a sustained yield basis.* When the authorized officer determines that additional forage is available on a sustained yield basis, he will apportion it in the following manner:

(1) First, to remove all or a part of the suspension of preference of permittees or lessees with permits or leases in the allotment where the forage is available; and

(2) Second, if additional forage remains after ending all suspensions, the authorized officer will consult, cooperate, and coordinate with the affected permittees or lessees, the state having lands responsibility for managing resources within the area, and the interested public, and apportion it in the following order:

(i) Permittees or lessees in proportion to their contribution to stewardship efforts that result in increased forage production;

(ii) Permittee(s) or lessee(s) in proportion to the amount of their grazing preference; and

(iii) Other qualified applicants under § 4130.1–2.

13. Revise § 4110.3–2 to read as follows:

§ 4110.3–2 Decreasing active use.

(a) The authorized officer may suspend active use in whole or in part on a temporary basis due to reasons specified in § 4110.3–3(b)(1), or to facilitate installation, maintenance, or modification of range improvements.

(b) When monitoring or documented field observations show grazing use or patterns of use are not consistent with the provisions of subpart 4180, or grazing use is otherwise causing an unacceptable level or pattern of utilization, or when use exceeds the livestock carrying capacity as determined through monitoring, ecological site inventory, or other acceptable methods, the authorized officer will reduce active use, otherwise modify management practices, or both. To implement reductions under this paragraph, BLM will suspend active use.

14. Revise § 4110.3–3 to read as follows:

§ 4110.3–3 Implementing changes in active use.

(a)(1) After consultation, cooperation, and coordination with the affected permittee or lessee and the state having lands or managing resources within the area, the authorized officer will implement changes in active use through a documented agreement or by a decision. The authorized officer will implement changes in active use in excess of 10 percent over a 5-year period unless:

(i) After consultation with the affected permittees or lessees, an agreement is reached to implement the increase or decrease in less than 5 years, or

(ii) The changes must be made before 5 years have passed in order to comply with applicable law.

(2) Decisions implementing § 4110.3–2 will be issued as proposed decisions pursuant to § 4160.1, except as provided in paragraph (b) of this section.

(b)(1) After consultation with, or a reasonable attempt to consult with, affected permittees or lessees and the state having lands or responsibility for managing resources within the area, the authorized officer will close allotments or portions of allotments to grazing by any kind of livestock or modify authorized grazing use notwithstanding the provisions of paragraph (a) of this section when the authorized officer determines and documents that—

(i) The soil, vegetation, or other resources on the public lands require immediate protection because of conditions such as drought, fire, flood, insect infestation; or

(ii) Continued grazing use poses an imminent likelihood of significant resource damage.

(2) Notices of closure and decisions requiring modification of authorized grazing use may be issued as final decisions effective upon issuance or on the date specified in the decision. Such decisions will remain in effect pending the decision on appeal unless the Office of Hearings and Appeals grants a stay in accordance with § 4.21 of this title.

15. Amend § 4110.4–2 by revising the first sentence of paragraph (a)(2) to read as follows:

§ 4110.4–2 Decrease in land acreage.

(a) * * *

(2) Grazing preference may be canceled in whole or in part. * * *

* * * * *

Subpart 4120—Grazing Management

16. Amend § 4120.2 by revising the final sentence of paragraph (c) to read as follows:

§ 4120.2 Allotment management plans and resource activity plans.

* * * * *

(c) * * * The decision document following the environmental analysis will be issued in accordance with § 4160.1.

* * * * *

17. Amend § 4120.3–1 by revising paragraph (f) to read as follows:

§ 4120.3–1 Conditions for range improvements.

* * * * *

(f) The authorized officer will review proposed range improvement projects as required by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). The decision document following the environmental analysis shall be issued in accordance with § 4160.1.

18. Amend § 4120.3–2 by revising paragraph (b) to read as follows:

§ 4120.3–2 Cooperative range improvement agreements.

* * * * *

(b) Subject to valid existing rights, cooperators and the United States share title to permanent structural range improvements such as fences, wells, and pipelines where authorization is granted after February 6, 2004 in proportion to their contribution to on-the-ground project development and construction costs. The authorization for all new permanent water developments, such as spring developments, wells, reservoirs, stock tanks, and pipelines, shall be through cooperative range improvement agreements. The authorized officer will document a permittee's or lessee's interest in contributed funds, labor, and materials to ensure proper credit for the purposes of §§ 4120.3–5 and 4120.3–6(c).

* * * * *

19. Amend § 4120.3–3 by revising the introductory text of paragraph (c) to read as follows:

§ 4120.3–3 Range improvement permits.

* * * * *

(c) Where a permittee or lessee cannot make use of the forage available for livestock and an application for temporary nonuse has been denied or the opportunity to make use of the available forage is requested by the authorized officer, the permittee or lessee shall cooperate with the temporary authorized use of forage by another operator, when it is authorized by the authorized officer following consultation with the preference permittee(s) or lessee(s).

* * * * *

20. Amend § 4120.3–8 by removing the misspelling ''whith'' from where it appears in the last sentence of paragraph (b) and adding in its place the word ''which''.

21. Revise § 4120.3–9 to read as follows:

§ 4120.3–9 Water rights for the purpose of livestock grazing on public lands.

Any right that the United States acquires to use water on public land for the purpose of livestock watering on public land will be acquired, perfected, maintained, and administered under the substantive and procedural laws of the state within which such land is located.

22. Amend § 4120.5–2 by removing the word ''and'' after the semicolon at the end of paragraph (a), removing the period at the end of paragraph (b) and adding in its place a semicolon and the word ''and'', and adding paragraph (c) to read as follows:

§ 4120.5–2 Cooperation with state, county, and Federal agencies.

* * * * *

(c) State, local, or county-established grazing boards in reviewing range improvements and allotment management plans on public lands.

23. Revise § 4130.1–1 to read as follows:

§ 4130.1–1 Filing applications.

(a) Applications for grazing permits or leases (active use and nonuse), free-use grazing permits and other grazing authorizations shall be filed with the authorized officer at the local Bureau of Land Management office having jurisdiction over the public lands involved.

(b) The authorized officer will determine whether applicants for the renewal or issuance of new permits and leases and any affiliates have a satisfactory record of performance. The authorized officer will not approve such renewal or issuance unless the applicant and all affiliates have a satisfactory record of performance.

(1) *Renewal of permit or lease.*

(i) The authorized officer will deem the applicant for renewal of a grazing permit or lease, and any affiliate, to have a satisfactory record of performance if the authorized officer determines the applicant and affiliates to be in substantial compliance with the terms and conditions of the existing Federal grazing permit or lease for which renewal is sought, and with the rules and regulations applicable to the permit or lease.

(ii) The authorized officer may take into consideration circumstances beyond the control of the applicant or affiliate in determining whether the applicant and affiliates are in substantial compliance with permit or lease terms and conditions and applicable rules and regulations.

(2) *New permit or lease.* The authorized officer will deem applicants for new permits or leases, and any affiliates, to have a record of satisfactory performance when—

(i) The applicant or affiliate has not had any Federal grazing permit or lease canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(ii) The applicant or affiliate has not had any state grazing permit or lease, for lands within the grazing allotment for which a Federal permit or lease is sought, canceled, in whole or in part, for violation of the permit or lease within the 36 calendar months immediately preceding the date of application; and

(iii) A court of competent jurisdiction does not bar the applicant or affiliate from holding a Federal grazing permit or lease.

(c) In determining whether affiliation exists, the authorized officer will consider all appropriate factors, including, but not limited to, common ownership, common management, identity of interests among family members, and contractual relationships.

24. Amend § 4130.2 as follows:

A. By adding the word ''and'' after the semicolon at the end of paragraph (e)(2);

B. By removing paragraphs (g) and (h) and redesignating paragraphs (i) and (j) as paragraphs (g) and (h), respectively;

C. In redesignated paragraph (g), by revising the reference ''(see § 4130.3–2)'' to read ''(see § 4130.3–2(g))''; and

D. By revising paragraphs (a), (b), and (f) to read as follows:

§ 4130.2 Grazing permits and leases.

(a) Grazing permits and leases authorize use on the public lands and other BLM-administered lands that are designated in land use plans as available for livestock grazing. Permits and leases will specify the grazing preference, including active and suspended use. These grazing permits and leases will also specify terms and conditions pursuant to §§ 4130.3, 4130.3–1, and 4130.3–2.

(b) The authorized officer will consult, cooperate, and coordinate with affected permittees and lessees, and the state having lands or responsibility for managing resources within the area, before issuing or renewing grazing permits and leases.

* * * * *

(f) A permit or lease is not valid unless both the BLM and the permittee or lessee have signed it.

* * * * *

25. Amend § 4130.3 by redesignating the existing text as paragraph (a) and adding paragraphs (b) and (c) to read as follows:

§ 4130.3 Terms and conditions.

* * * * *

(b) Upon a BLM offer of a permit or lease, the permit or lease terms and conditions may be protested and appealed under part 4 and subpart 4160 unless:

(1) The terms and conditions of the permit or lease, such as terms and conditions mandated by a biological opinion prepared under the Endangered Species Act, are not subject to review by the Office of Hearings and Appeals; or

(2) The offer of permit or lease responds to an application for a permit or lease for grazing use on additional land acreage (see § 4110.4–1).

(c) If any of the terms and conditions of a BLM-offered permit or lease are stayed pending appeal, BLM will authorize grazing use as provided in § 4160.4.

26. Amend § 4130.3–2 by adding the word ''and'' after the semicolon at the end of paragraph (f), by removing the semicolon and the word ''and'' at the end of paragraph (g) and adding in their place a period, and by removing paragraph (h).

27. Revise § 4130.3–3 to read as follows:

§ 4130.3–3 Modification of permits or leases.

(a) Following consultation, cooperation, and coordination with the affected lessees or permittees and the state having lands or responsibility for managing resources within the area, the authorized officer may modify terms and conditions of the permit or lease when the active use or related management practices:

(1) Do not meet management objectives specified in:

(i) The land use plan;

(ii) The pertinent allotment management plan or other activity plan; or

(iii) An applicable decision issued under § 4160.3; or

(2) Do not conform to the provisions of subpart 4180.

(b) To the extent practical, during the preparation of biological assessments or biological evaluations prepared under the Endangered Species Act, and other reports that evaluate monitoring and other data, that the authorized officer uses as a basis for making decisions to increase or decrease grazing use, or to change the terms and conditions of a permit or lease, the authorized officer will provide review opportunity and opportunity to provide input to:

(1) Affected permittees or lessees;

(2) States having lands or responsibility for managing resources within the affected area; and

(3) The interested public.

28. Revise § 4130.4 to read as follows:

§ 4130.4 Authorization of temporary changes in grazing use within the terms and conditions of permits and leases.

(a)(1) The authorized officer may authorize temporary changes in grazing use within the terms and conditions of the permit or lease to:

(i) Respond to annual fluctuations in timing and amount of forage production; or

(ii) Meet locally established range readiness criteria.

(2) The authorized officer will consult, cooperate and coordinate with the permittees or lessees regarding their applications for changes within the terms and conditions of their permit or lease.

(b) For the purposes of this subpart, ''within the terms and conditions of the permit or lease'' means temporary changes in livestock number, period of use, or both, that would result in grazing use that:

(1) Results in forage removal that does not exceed the amount of active use specified in the permit or lease; and

(2) Occurs either not earlier than 14 days before the begin date specified on the permit or lease, and not later than 14 days after the end date specified on the permit or lease.

(c) Permittees and lessees must apply if they wish—

(1) Not to use all or a part of their active use by applying for temporary nonuse under paragraph (d) of this section;

(2) To activate forage in temporary nonuse; or

(3) To use forage that is temporarily available on designated ephemeral or annual ranges.

(d)(1) Temporary nonuse is authorized—

(i) Only if the authorized officer approves in advance; and

(ii) For no longer than one year at a time.

(2) Permittees or lessees applying for temporary nonuse use must state on their application the reasons supporting nonuse. The authorized officer will authorize nonuse to provide for:

(i) Natural resource conservation, enhancement, or protection, including more rapid progress toward meeting resource condition objectives or attainment of rangeland health standards; or

(ii) The business or personal needs of the permittee or lessee.

(e) Under § 4130.6–2, the authorized officer may authorize qualified applicants to graze forage made available as a result of temporary nonuse approved for the reasons described in paragraph (d)(2)(ii) of this section. The authorized officer will not authorize anyone to graze forage made available as a result of temporary nonuse approved under paragraph (d)(2)(i) of this section.

(f) Permittees or lessees who wish to apply for temporary changes in grazing use within the terms and conditions of their permit or lease should file an application with BLM. The authorized officer will assess a service charge under § 4130.8–3 to process applications for changes in grazing use that require the issuance of a replacement or supplemental billing notice.

29. Amend § 4130.5 by removing the words ''authorized'' and ''or conservation use'' from where they appear in paragraph (b)(1).

30. Amend § 4130.6–2 by revising the second sentence to read as follows:

§ 4130.6–2 Nonrenewable grazing permits and leases.

* * * The authorized officer shall consult, cooperate, and coordinate with affected permittees or lessees, and the state having lands or responsibility for managing resources within the area, before issuing nonrenewable grazing permits and leases.

31. Amend § 4130.8–1 by redesignating paragraphs (d), (e), and (f) as paragraphs (f), (g), and (h), respectively, by revising paragraph (c), adding new paragraphs (d) and (e), and revising the last sentence of redesignated paragraph (h), to read as follows:

§ 4130.8–1 Payment of fees.

* * * * *

(c) Except as provided in § 4130.5, the full fee will be charged for each animal unit month of grazing use. For the purposes of calculating the fee, an animal unit month is defined as a month's use and occupancy of range by 1 cow, bull, steer, heifer, horse, burro, mule, 5 sheep, or 5 goats:

(1) Over the age of 6 months at the time of entering the public lands or other lands administered by BLM;

(2) Weaned regardless of age; or

(3) Becoming 12 months of age during the authorized period of use.

(d) BLM will not charge grazing fees for animals that are less than 6 months of age at the time of entering BLM-administered lands, provided that they are the progeny of animals upon which fees are paid, and they will not become 12 months of age during the authorized period of use.

(e) In calculating the billing, the authorized officer will prorate the grazing fee on a daily basis and will round charges to reflect the nearest whole number of animal unit months.

* * * * *

(h) * * * Failure to make payment within 30 days may be a violation of § 4140.1(b)(1) and will result in action by the authorized officer under § 4150.1 and subpart 4160.

32. Revise § 4130.8–3 to read as follows:

§ 4130.8–3 Service charge.

(a) Under Section 304(a) of the Federal Land Policy and Management Act of 1976, the service charge BLM assesses will reflect processing costs. BLM will adjust the charge periodically as costs change, and will inform the public of the changes by publishing a notice in the **Federal Register**.

(b) Except when BLM initiates an action, the authorized officer will assess a service charge for each of the following actions as shown on the table below—

Action	Service charge
Issue crossing permit	$75
Transfer grazing preference	145
Cancel and/or replace a grazing fee billing	50

Subpart 4140—Prohibited Acts

33. Amend § 4140.1 by—

a. Removing the introductory text; and

b. Revising paragraphs (a)(2), (a)(3), the introductory text of paragraph (b), paragraph (b)(1)(i), and paragraph (c) to read as follows:

§ 4140.1 Acts prohibited on public lands.

(a) * * *

(2) Failing to make substantial grazing use as authorized for 2 consecutive fee years. This does not include approved temporary nonuse or use temporarily suspended by the authorized officer;

(3) Placing supplemental feed on these lands without authorization, or contrary to the terms and conditions of the permit or lease;

* * * * *

(b) Persons performing the following prohibited acts on BLM-administered lands are subject to civil and criminal penalties set forth at §§ 4170.1 and 4170.2:

(1) * * *

(i) Without a permit or lease or other grazing use authorization (see § 4130.6) and timely payment of grazing fees;

* * * * *

(c)(1) A grazing permittee or lessee performing any of the prohibited acts listed in paragraphs (c)(2) or (c)(3) of this section on an allotment where he is authorized to graze under a BLM permit or lease may be subject to the civil penalties set forth at § 4170.1–1, if:

(i) The permittee or lessee performs the prohibited act while engaged in activities related to grazing use authorized by his permit or lease;

(ii) The permittee or lessee has been convicted or otherwise found to be in violation of any of these laws or regulations by a court or by final determination of an agency charged with the administration of these laws or regulations; and

(iii) No further appeals are outstanding.

(2) Violation of Federal or state laws or regulations pertaining to the:

(i) Placement of poisonous bait or hazardous devices designed for the destruction of wildlife;

(ii) Application or storage of pesticides, herbicides, or other hazardous materials;

(iii) Alteration or destruction of natural stream courses without authorization;

(iv) Pollution of water sources;

(v) Illegal take, destruction or harassment, or aiding and abetting in the illegal take, destruction or harassment of fish and wildlife resources; and

(vi) Illegal removal or destruction of archeological or cultural resources.

(3) (i) Violation of the Bald Eagle Protection Act (16 U.S.C. 668 *et seq.*), Endangered Species Act (16 U.S.C. 1531 *et seq.*), or any provision of part 4700 of this chapter concerning the protection and management of wild free-roaming horses and burros; or

(ii) Violation of State livestock laws or regulations relating to the branding of livestock; breed, grade, and number of bulls; health and sanitation requirements; and violating State, county, or local laws regarding the stray of livestock from permitted public land grazing areas onto areas that have been formally closed to open range grazing.

Subpart 4150—Unauthorized Grazing Use

34. Amend § 4150.3 by revising the second sentence of paragraph (e) and adding paragraph (f) to read as follows:

§ 4150.3 Settlement.

* * * * *

(e) * * * The authorized officer may take action under subpart 4160 to cancel or suspend grazing authorizations or to deny approval of applications for grazing use until such amounts have been paid. * * *

(f) Upon a stay of a decision issued under paragraph (e) of this section, the authorized officer will allow a permittee or lessee to graze in accordance with this part pending resolution of any appeal.

Subpart 4160—Administrative Remedies

35. Amend § 4160.1 by adding paragraph (d) to read as follows:

§ 4160.1 Proposed decisions.

* * * * *

(d) A biological assessment or biological evaluation prepared for purposes of an Endangered Species Act consultation or conference is not a decision for purposes of protest or appeal.

36. Amend § 4160.3 by removing paragraphs (c), (d), and (e), by redesignating paragraph (f) as paragraph (c), and by revising redesignated paragraph (c) to read as follows:

§ 4160.3 Final decisions.

* * * * *

(c) Notwithstanding the provisions of § 4.21(a) of this title pertaining to the period during which a final decision will not be in effect, the authorized officer may provide that the final decision shall be effective upon issuance or on a date established in the decision, and shall remain in effect pending the decision on appeal unless a stay is granted by the Office of Hearings and Appeals when the authorized officer has made a determination in accordance with § 4110.3–3(b) or § 4150.2(d). Nothing in this section shall affect the authority of the Director of the Office of Hearings and Appeals, the Interior Board of Land Appeals, or an administrative law judge, to provide that the decision becomes effective immediately as provided in § 4.21(a)(1) of this title.

37. Revise § 4160.4 to read as follows:

§ 4160.4 Appeals.

(a) Those who wish to appeal or seek a stay of a BLM grazing decision must follow the requirements set forth in § 4.470 *et seq.* of this title. The appeal or petition for stay must be filed with the BLM office that issued the decision within 30 days after its receipt or within 30 days after the proposed decision becomes final as provided in § 4160.3(a).

(b) When OHA stays implementation of a decision described in paragraph (b)(1) or (b)(2) of this section, the immediately preceding authorization and any terms and conditions therein will not expire, and the permittee, lessee, or preference applicant may continue to graze under the immediately preceding grazing authorization, subject to any relevant provisions of the stay order and § 4130.3(b), and except as provided in paragraph (c) of this section. This paragraph applies to decisions that:

(1) Change the terms and conditions of a permit or lease during the current term;

(2) Offer a permit or lease to a preference transferee with terms and conditions that are different from the permit or lease terms and conditions that are most recently applicable to the allotment or portion of the allotment in question; or

(3) Renew a permit or lease with changed terms and conditions.

(c) When OHA stays implementation of a decision described in paragraphs (c)(1) through (c)(4) of this section, the authorized officer, notwithstanding paragraph (b) of this section, will authorize grazing consistent with the final decision when the decision:

(1) Modifies a permit or lease because of a decrease in public land acreage available for grazing (see § 4110.4–2);

(2) Affects an application for grazing use of BLM-designated ephemeral or annual rangeland;

(3) Affects an application for additional forage temporarily available under § 4110.3–1(a); or

(4) Affects an application for a grazing permit or lease that is not made in conjunction with a preference transfer application (see § 4110.2–3(d)).

Subpart 4170—Penalties

38. Revise § 4170.1–2 to read as follows:

§ 4170.1–2 Failure to use.

If a permittee or lessee has, for 2 consecutive grazing fee years, failed to make substantial use as authorized in the lease or permit, or has failed to maintain or use water base property in

the grazing operation, the authorized officer, after consultation, coordination, and cooperation with the permittee or lessee and any lienholder of record, may cancel whatever amount of active use the permittee or lessee has failed to use.

Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration

39. Amend § 4180.1 by revising the introductory text and paragraph (d) to read as follows:

§ 4180.1 Fundamentals of rangeland health.

Where standards and guidelines have not been established under § 4180.2(b), and the authorized officer determines that grazing management needs to be modified to assist in achieving the following conditions, the authorized officer will take appropriate action as soon as practicable under § 4180.2 but not later than the start of the grazing year that follows BLM's completion of relevant and applicable requirements of law and regulations and the consultation requirements of §§ 4110.3–3 and 4130.3–3:

* * * * *

(d) Habitats are, or are making significant progress toward being, restored or maintained for Federal threatened and endangered species, Federal proposed or candidate threatened and endangered species, and other at-risk and special status species.

40. Amend § 4180.2 by removing the semicolon at the end of paragraph (e)(12) and adding in its place a period, by revising paragraph (c), the introductory text of paragraph (d), paragraph (d)(4), paragraph (e)(9), the introductory text of paragraph (f), and paragraph (f)(2)(viii), to read as follows:

§ 4180.2 Standards and guidelines for grazing administration.

* * * * *

(c)(1) If the authorized officer determines through standards assessment and monitoring that existing grazing management practices or levels of grazing use on public lands are significant factors in failing to achieve the standards and conform with the guidelines that are made effective under this section, the authorized officer will, in compliance with applicable laws and with the consultation requirements of this part, formulate, propose, and analyze appropriate action to address the failure to meet standards or to conform to the guidelines not later than 24 months after the determination. The requirements of this paragraph are met when the parties execute an applicable and relevant documented agreement or the authorized officer issues an applicable final decision under § 4160.3.

(2) Upon executing the agreement or in the absence of a stay of the final decision, the authorized officer will implement the appropriate action as soon as practicable, but not later than the start of the next grazing year.

(3) The authorized officer will take appropriate action as defined in this paragraph by the deadlines established in paragraphs (c)(1) and (c)(2) of this section. Appropriate action means implementing actions pursuant to subparts 4110, 4120, 4130, and 4160 that will result in significant progress toward fulfillment of the standards and significant progress toward conformance with the guidelines. Practices and activities subject to standards and guidelines include the development of grazing-related portions of activity plans, establishment of terms and conditions of permits, leases, and other grazing authorizations, and range improvement activities such as vegetation manipulation, fence construction, and development of water.

(d) At a minimum, state and regional standards developed or revised under paragraphs (a) and (b) of this section must address the following:

* * * * *

(4) Habitat for endangered, threatened, proposed, candidate, or other at-risk or special status species; and

* * * * *

(e) * * *

(9) Restoring, maintaining or enhancing habitats of Federal proposed, Federal candidate, and other at-risk and special status species to promote their conservation;

* * * * *

(f) Until such time as state or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in paragraph (f)(2) of this section will apply and will be implemented in accordance with paragraph (c) of this section.

* * * * *

(2) * * *

(viii) Conservation of Federal threatened or endangered, proposed, candidate, and other at risk or special status species is promoted by the restoration and maintenance of their habitats;

* * * * *

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Part III

Department of Labor

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions; Notice

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of revisions to the program.

SUMMARY: The Occupational Safety and Health Administration, wishing to revise the benchmark injury and illness rates used within its Voluntary Protection Programs (VPP), published proposed changes and requested comments from the public (**Federal Register** notice 68 FR 44181, July 25, 2003). The Agency now publishes a discussion of those comments and its final VPP revisions. The revisions change the way OSHA uses Bureau of Labor Statistics industry injury and illness rates to determine whether VPP applicants and participants meet the rate requirements for the VPP Star Program. The revisions also apply to construction applicants' qualification for the Merit Program. No other VPP requirements are changed. Participants will continue to undergo rigorous OSHA assessment to ensure that only worksites with excellent, effective safety and health management systems qualify for VPP Star.

EFFECTIVE DATE: December 8, 2003.

FOR FURTHER INFORMATION CONTACT: Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N–3700, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693–2213.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** notice 47 FR 29025, July 2, 1982, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with active employee involvement to prevent or control the safety and health hazards at the worksite. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

One way that OSHA determines the qualification of applicants and the continuing qualification of participants in the VPP Star Program, the most challenging participation category, is to compare their injury and illness rates to industry rates—benchmarks—published annually by the Bureau of Labor Statistics (BLS). For Star eligibility, rates must be below the benchmark BLS rates. This notice changes the benchmark rates that OSHA employs.

Until now, the benchmarks have been two rates obtained from the most recent year's BLS industry averages for nonfatal injuries and illnesses. These are the industry average incidence rate for nonfatal injuries and illnesses (at the most precise level available), and the industry average incidence rate for cases involving days away from work and restricted work activity. OSHA has been concerned for some time about the effect on some VPP applicants and participants of substantial fluctuations from year to year in a limited number of these BLS industry rates. These fluctuations, statistical anomalies related to BLS sampling, have resulted in the creation of an unpredictable moving target. In any particular year, the fluctuating rate may not fairly represent the injury and illness situation in an industry. There is no easy solution to this problem. Injury and illness rates are useful tools in judging how well a worksite is protecting its employees. OSHA believes, however, that the goals of VPP are not well served when worksites that have established excellent protective systems and that are steadily improving their injury and illness rates fail to obtain Star approval because of statistical anomalies in national rates.

In a July 25, 2003 **Federal Register** notice (68 FR 44181), OSHA proposed a change in the VPP Star benchmark rates and requested public comment. After careful consideration, including analysis of comments received, OSHA has decided to adopt its original proposal. To qualify for Star, applicants' and participants' rates will need to be below the two BLS industry rates for at least 1 of the 3 most recent years published. This change also will apply to construction applicants' qualification for the Merit Program.

No other initial application requirements or ongoing requirements for continued participation are changed. Participants will continue to undergo rigorous OSHA assessment to ensure that only worksites with excellent, effective safety and health management systems qualify for VPP Star.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, was enacted ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources * * *.''

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions that establish the legislative framework for the Voluntary Protection Programs:

* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;

* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;

* * * (5)* * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;

* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment.

II. Discussion of the Comments

This section includes a review of the public comments submitted to OSHA in response to its July 25, 2003 notice. OSHA received comments from 21 respondents. These included seven VPP participating companies, three companies attempting to qualify for VPP, one labor organization, four trade associations, two private consultants, two other occupational safety and health professionals, the Voluntary Protection Programs Participants' Association, and one respondent contacting OSHA on a matter unrelated to VPP.

Overview of Comments

Of the 20 relevant responses, 11 fully supported OSHA's proposal. These included current VPP Star participants, companies seeking VPP approval, and other organizations. A twelfth respondent wrote that the proposal was a ''step in the right direction'' (Manuel (Mel) Rosas, Safety and Health Consultant, Carolinas Associated General Contractors) and suggested OSHA go further by welcoming into VPP any employer that applies and then mentoring those who need help to meet program requirements. OSHA agrees

that all companies willing to make the effort to achieve VPP recognition deserve the opportunity and the help they may need. OSHA, VPP participants, and others offer outreach, mentoring, VPP application workshops, and training opportunities to interested employers. OSHA is in the process of launching new pilot initiatives designed to assist and recognize incremental improvements in the safety and health management systems of employers willing to commit to the VPP process.

A general theme among the nine respondents who opposed the proposed change was concern that OSHA maintain the high standards of its premier recognition program. Many of the nine interpreted OSHA's proposal as a weakening of VPP eligibility requirements that, as one respondent put it, ''would allow substandard applicants [to] achieve the most prestigious safety designation in the United States, that being a VPP Star facility.'' (James J. Mercurio, CSP.) See II.I. below for a discussion of this concern.

Several respondents took this opportunity to make other suggestions—not related to the benchmark rate issue—for improving VPP. OSHA appreciates this input and intends to consider these suggestions in its continuing effort to improve the program.

What follows is a discussion of alternative proposals put forward by respondents.

A. Address Root Cause of the Rate Fluctuations

One respondent noted that OSHA's proposal did not address the root cause of the rate fluctuations. Bureau of Labor Statistics (BLS) yearly injury and illness rates fluctuate because of the limited size of the sample and the different establishments surveyed each year. Any attempt to eliminate the substantial fluctuations encountered in some industries would require BLS to survey a much larger sample of employers each year. BLS has no plans to change its sampling methodology at this time.

B. Alternative Use of BLS Average Rates

Two respondents favored use of a ''rolling average'' derived from 3 or 5 years of Bureau of Labor Statistics industry average rates. A site's 3-year rates would have to be below this multiple-year industry average to qualify for Star. Before issuing its proposal, OSHA considered and rejected this approach. A rolling average of, for example, 3 years of BLS industry averages would be meaningful only if the hours worked were roughly equal for each year. However, hours worked in an industry vary from year to year, depending on the economy. It is possible, using unpublished BLS data, to calculate legitimate 3-year averages. Because VPP spans so many industries, however, this would be a costly, time-consuming task. Each year new 3-year averages would need to be calculated and published. OSHA does not consider this a reasonable solution.

C. Alternative To Using National Statistics

One respondent objected to using national statistics when judging a company's qualification for Star. The respondent suggested that OSHA ''put the pressure on the companies to really keep the employees safe. Use a hard gauge as a standard. For example, zero deaths, no lost workdays, or no broken bones.'' The agency has no problem supporting a goal of zero deaths. It believes, however, that setting the injury and illness rate standard for VPP qualification as high as the respondent suggests would be counter-productive. Fewer worksites, particularly those in traditionally hazardous industries, would be willing to commit to the VPP process, a process that has proven its value as a feasible and flexible way to reduce injuries, illnesses, and fatalities substantially. The number of qualifying worksites would drop drastically. Fewer sites would enjoy the benefits of VPP participation, not least of which are the prestige and national recognition that invigorate a site's efforts to continuously improve worker protection. Industries would lose models that currently demonstrate VPP's successful, systematic approach to safety and health management and generously share their expertise and resources by mentoring other companies. As one corporation with sites in the program and a corporate-wide commitment to VPP noted, ''The purpose of VPP is to form a partnership between employees, OSHA, and company management to ensure a safe working environment.'' An unduly restrictive standard for qualification ''is not in the best interest of the company and, most importantly, the employees.'' (Kerry A. Shaffar, Safety Director, Lozier Corporation.)

D. Data From Worker's Compensation System as Alternative Benchmark

One respondent suggested that VPP adopt as its Star benchmark the workers' compensation insurance experience modification rate (EMR), asserting that this is a more reliable indicator of an employer's safety and health experience. The respondent proposed an EMR of less than 1.0 as the rate criterion for Star qualification. OSHA has considered using EMRs for various purposes in the past and has concluded that, for most purposes, EMRs are not as reliable an indicator of industry and worksite conditions as the data the agency currently employs. For example, experience modifications differ from state to state. Using such data for a national program such as VPP poses numerous difficulties. Moreover, workers' compensation system data reflect claims made for compensation, a different universe of injuries and illnesses than OSHA recordables.

As OSHA noted when it issued its final rule revising the recordkeeping requirements ''* * * the injury and illness information compiled pursuant to Part 1904 [which BLS uses to calculate its industry rates] is much more reliable, consistent and comprehensive than data from any available alternative data source * * * This is the case because, although some State workers' compensation programs voluntarily provide injury and illness data to OSHA for various purposes, others do not. Further, workers' compensation data vary widely from state to state. Different state workers' compensation laws and administrative systems have resulted in large variations in the content, format, accessibility, and computerization of that system's data. In addition, workers' compensation databases often do not include injury and illness data from employers who elect to self-insure.'' (66 FR 5923–4, January 19, 2001)

E. Median or Other Distributional Statistic as Alternative Benchmark

One respondent argued that average rates are appropriate only when data follow a normal distribution, with half the sample having values above and half below the median or midpoint of the distribution. The respondent pointed to BLS published data that show injury and illness rates to be skewed, with average rates well above the median. Instead of using an average rate, the respondent argued for OSHA to ''designate what fraction of worksites would be considered 'exemplary,' and then set a percentile recorded injury and illness rate based on that * * *. The 75th percentile recorded injury illness rate is readily accessible and would be a minimal criterion.'' OSHA does not view this approach as a solution. So long as OSHA uses a single year BLS rate as its benchmark—whether that be an industry average rate or an industry 75th percentile rate—the problem of rate fluctuations will remain.

F. Greater Use of Merit Program

One respondent interpreted the proposed change as a way to increase the number of sites participating in VPP and suggested that, rather than change Star requirements, OSHA should admit a company to the VPP Merit program when the applicant's rates do not qualify it for Star. In fact, OSHA currently offers Merit participation to applicants with good safety and health management systems but lower-than-Star-standard rates. The Agency also is piloting a program designed to offer VPP participation to sites not ready for Merit. OSHA desires and expects to expand program participation. However, when a substantial BLS rate fluctuation—a fluctuation that does not appear to reflect a genuine industry trend—is the only reason a site fails to qualify in a particular year for Star and its attendant prestige, OSHA does not view this as a fair and consistent way to operate VPP. It is not unusual for applicants, once they make the commitment to seek Star recognition, to spend years developing and improving their safety and health management systems. The majority of new VPP approvals are to the Star program precisely because most applicants wait until they are operating excellent programs with rates well below their industry average. For a fluctuating industry rate to stymie employees' and managers' efforts to gain Star approval can be frustrating and demoralizing, as attested by numerous applicants, including respondents to this proposal who have gone through this experience.

An applicant, nonetheless, can temporarily enter the Merit program and look forward to gaining Star approval. No such solution exists for the worksite that gains Star approval and continues to provide its employees with exemplary protection, only to have its participation jeopardized by a subsequent substantial one-year drop in the BLS rate. See G. below.

G. Two-Year Rate Reduction Plan

One respondent wrote that OSHA already has a model for addressing the fluctuation in rates: the 2-year rate reduction plan that a Regional Administrator may provide, on a case-by-case basis, to a Star participant whose rate fails to stay below the latest BLS national average. The agency does not view this existing mechanism as a solution to the problem of fluctuating rates. If the site is operating a comprehensive safety and health management system, if there is no indication of problems with the system or the site's performance, if the site's rates are stable or decreasing, and if the site is demonstrating continuous improvement as required, then it is OSHA's position that the site deserves continued, unconditional Star participation.

H. Impact of NAICS on Benchmark Rates

Two respondents suggested postponing any change until more is known about the impact of the changeover from SIC codes to NAICS. OSHA's Office of Statistics and economists we consulted in BLS do not expect the transition to NAICS to produce a different situation with respect to rate fluctuations and benchmarking. No purpose would be served by postponing a solution to this problem.

I. Is This Change a Weakening of VPP Standards?

Among the comments opposing the benchmarking change, one theme stood out: This change will weaken VPP eligibility standards. This is neither OSHA's intent nor its expectation. Central to VPP's eligibility standards is the complex requirement that a site demonstrate it has a safety and health management system that effectively protects employees. Injury and illness rates have always been one of many performance criteria that OSHA uses when assessing a worksite's qualification for VPP Star.

The benchmark change will have the greatest impact on those industries that show significant injury and illness rate variation year to year. Most industries show small trend changes on a year-to-year basis and will be impacted in a small way. Other criteria, including the expectation of continuous improvement, remain unchanged.

One respondent predicted that, under the proposal, a site could potentially have 3 consecutive years of significantly declining performance as measured by rates and still meet the qualification criteria. OSHA cannot imagine a situation where an applicant or participant with such experience would meet the criteria of continuous improvement. Applicants to VPP undergo a lengthy, rigorous review of their safety and health management system and their performance. Once approved, participants continue to undergo OSHA scrutiny. Each year they must submit to OSHA a detailed evaluation of their performance, progress, and plans for improvement that the OSHA Regional VPP Manager then reviews. In addition, OSHA periodically sends a team of safety and health specialists onsite to perform a critical assessment, issue a report, and make a recommendation about continued participation. None of this will change.

In its response to the proposal, the Voluntary Protection Programs Participants' Association (VPPPA), a long-time and vocal advocate for maintaining VPP's high standards, wrote, ''The VPPPA believes OSHA's proposal would have the desired effect of normalizing in a fair and equitable manner the benchmarking rates by adjusting for unreasonably divergent rates that may occur in any one particular year.'' The respondent acknowledged that a ''sudden inexplicably large increase in a particular industry rate may make it easier for a worksite to meet the VPP Star requirements.'' It nonetheless gave its support to the benchmarking change, concluding, ''The Association is certain the many other stringent requirements and numerous elements of the VPP certainly continue to ensure that only the worksites with excellent safety and health management systems will gain VPP Star approval, thus maintaining the quality and integrity of the VPP.''

OSHA has carefully considered the comments submitted. All clearly were offered in the spirit of protecting and improving a remarkable program that has had a strongly positive impact on worker safety and health. The agency's analysis of the varied alternatives offered, with their potential advantages and disadvantages, has strengthened OSHA's confidence in its original proposal.

Therefore, OSHA is making the following changes to the Voluntary Protection Programs. These changes apply to the latest full version of VPP, published as **Federal Register** notice 65 FR 45650, July 24, 2000.

II. Changes to the VPP

A. The Star Rate Requirement

The following language is substituted for the first sentence of III.F.4.a.(1): For site employees—Two rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses at the most precise level published by the Bureau of Labor Statistics (BLS). OSHA will compare the two site rates against the single year that is most advantageous to the site out of the last 3 published years.'' The two site rates referenced here are the 3-year total recordable case incidence rate (a single rate that reflects 3 years of total recordable injuries and illnesses), and the 3-year incidence rate for cases

involving days away from work and restricted work activity.

B. The Alternative Rate Calculation for Qualifying Small Businesses

The following language is substituted for III.F.4.a.(2)(a):

''To determine whether the employer qualifies for the alternative calculation method, do the following:

- Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;
- Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and
- If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method.''

C. Construction Applicants' Qualification for Merit

The following language is substituted for the first sentence of III.H.2.b.(2):

''For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry, at the most precise published level. OSHA will compare the two company-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years.''

Signed at Washington, DC, this 2nd day of December 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 03–30326 Filed 12–5–03; 8:45 am]

BILLING CODE 4510–26–P

Federal Register

Monday,
December 8, 2003

Part IV

The President

Proclamation 7741—To Provide for the Termination of Action Taken With Regard to Imports of Certain Steel Products

Federal Register
Vol. 68, No. 235
Monday, December 8, 2003

Presidential Documents

Title 3—

The President

Proclamation 7741 of December 4, 2003

To Provide for the Termination of Action Taken With Regard to Imports of Certain Steel Products

By the President of the United States of America

A Proclamation

1. Proclamation 7529 of March 5, 2002, implemented actions (safeguard measures) of a type described in section 203(a)(3)(A) and (B) of the Trade Act of 1974, as amended (19 U.S.C. 2253(a)(3)(A) and (B)) (the ''Trade Act''), with respect to imports of certain flat steel (consisting of slabs, plate, hot-rolled steel, cold-rolled steel, and coated steel), hot-rolled bar, cold-finished bar, rebar, certain welded tubular products, carbon and alloy fittings, stainless steel bar, stainless steel rod, tin mill products, and stainless steel wire, as defined in paragraph 7 of Proclamation 7529 (collectively, ''certain steel products'').

2. In Proclamation 7529 and Proclamation 7576 of July 3, 2002, I authorized the United States Trade Representative (USTR) to further consider any request for exclusion of a particular product and upon finding that a particular product should be excluded, to modify the provisions of the Harmonized Tariff Schedule of the United States (HTS) created by the Annex to Proclamation 7529 to exclude such particular product from the pertinent safeguard measure established in Proclamation 7529. Pursuant to that authorization, the USTR published four notices of exclusions of products from the safeguard measures in the **Federal Register** at 67 Fed. Reg. 16484 (April 5, 2002), 67 Fed. Reg. 46221 (July 12, 2002), 67 Fed. Reg. 56182 (August 30, 2002), and 68 Fed. Reg. 15494 (March 31, 2003). The USTR also published notice in the **Federal Register** of technical corrections to that Annex.

3. In a Memorandum of March 5, 2002 (67 Fed. Reg. 10593), pursuant to section 203(a)(3)(I) of the Trade Act (19 U.S.C. 2253(a)(3)(I)), I instructed the Secretary of the Treasury and the Secretary of Commerce to establish a system of import licensing to facilitate the monitoring of imports of certain steel products. To provide for efficient and fair administration of this action, pursuant to section 203(g) of the Trade Act, I instructed the Secretary of Commerce to publish regulations in the **Federal Register** establishing such a system of import licensing (the ''Licensing System''). Those regulations were published on December 31, 2002, at 67 Fed. Reg. 79845.

4. Section 204(a) of the Trade Act (19 U.S.C. 2254(a)) requires the United States International Trade Commission (ITC) to monitor developments with respect to the domestic industry while action taken under section 203 remains in effect. If the initial period of a safeguard action exceeds 3 years, then the ITC must submit to the President a report on the results of such monitoring not later than the date that is the mid-point of the initial period of the safeguard action. The ITC report in Investigation Number TA–204–9 was submitted on September 19, 2003.

5. Section 204(b)(1)(A) of the Trade Act (19 U.S.C. 2254(b)(1)(A)) authorizes the President to reduce, modify, or terminate a safeguard action if, after taking into account any report or advice submitted by the ITC and after seeking the advice of the Secretary of Commerce and the Secretary of Labor, he determines that changed circumstances warrant such reduction, modification, or termination. The President's determination may be made, *inter alia*,

on the basis that the effectiveness of the action taken under section 203 has been impaired by changed economic circumstances.

6. In view of the information provided in the ITC report, and having sought advice from the Secretary of Commerce and the Secretary of Labor, I determine that the effectiveness of the actions taken under section 203(a)(3)(A) and (B) of the Trade Act with respect to imports of certain steel products and the exclusions from and technical corrections to the coverage of Proclamation 7529 has been impaired by changed economic circumstances. Accordingly, I have determined, pursuant to section 204(b)(1)(A)(ii), that termination of the actions taken under section 203(a)(3)(A) and (B) set forth in Proclamation 7529 taken with respect to certain steel imports is warranted. The action taken under section 203(a)(3)(I) set forth in the Memorandum of March 5, 2002, requiring the licensing and monitoring of imports of certain steel products remains in effect and shall not terminate until the earlier of March 21, 2005, or such time as the Secretary of Commerce establishes a replacement program.

7. Section 604 of the Trade Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including, but not limited to sections 204 and 604 of the Trade Act and section 301 of title 3, United States Code, do proclaim that:

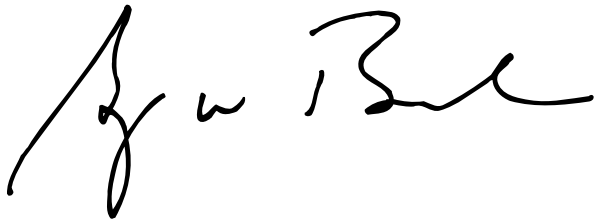
(1) The HTS is modified as provided in the Annex to this proclamation.

(2) The United States Trade Representative is authorized, upon his determination that the Secretary of Commerce has established a replacement program pursuant to paragraph 6 of this proclamation, to terminate the action under section 203(a)(3)(I) of the Trade Act set forth in the Memorandum of March 5, 2002, and the Licensing System and to publish notice of this determination and action in the **Federal Register**.

(3) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(4) The modifications to the HTS made by this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., eastern standard time, December 5, 2003.

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



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Annex

Modifications to the Harmonized Tariff Schedule of the United States

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:01 a.m., eastern standard time, December 5, 2003, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by striking U.S. note 11, subheadings 9903.72.03 through 9903.83.00, and all superior descriptions to any such subheadings.

[FR Doc. 03–30578
Filed 12–5–03; 9:22 am]
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Reader Aids

Federal Register

Vol. 68, No. 235

Monday, December 8, 2003

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
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Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
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FEDERAL REGISTER PAGES AND DATE, DECEMBER

67013–67356 1
67357–67584 2
67585–67786 3
67787–67936 4
67937–68232 5
68233–68486 8

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7529 (See Proc. 7741) 68483
7576 (See Proc. 7741) 68483
7740 67787
7741 68483
Executive Orders:
13183 (Amended by EO 13319) 68233
13119 68233
Administrative Orders:
Memorandums:
Memorandum of March 5, 2002 (See Proc. 7741) 68483

7 CFR

354 67937
1412 67938
1421 67938
Proposed Rules:
900 67381

8 CFR

264 67578

10 CFR

Proposed Rules:
50 67811
300 68204
850 68276
851 68276

11 CFR

100 67013
102 67013

12 CFR

905 67789

14 CFR

39 ..... 67018, 67020, 67021, 67024, 67025, 67027, 67585, 67588, 67789, 67792, 67794, 67796, 67798
71 ..... 67357, 67358, 67359, 67360, 67361, 67590, 68449
97 67363
1260 67364
Proposed Rules:
39 ..... 67385, 67611, 67613, 67616, 67618, 67622, 67812, 67814, 67816, 67971, 67973, 67975, 67978, 67980, 67981, 67984, 67986, 67988, 68299, 68301, 68304, 68306, 68308, 68311

15 CFR

742 67030
774 67030
806 67939

17 CFR

Proposed Rules:
200 68186
201 68186
240 68186

18 CFR

11 67592

19 CFR

4 68140
10 67338
103 68140
113 68140
122 68140
123 68140
163 67338
178 68140
192 68140

21 CFR

872 67365
Proposed Rules:
17 67094
872 67097

22 CFR

126 67032

24 CFR

891 67316

25 CFR

170 67941

26 CFR

1 67595
301 67595
602 67595

27 CFR

9 67367
Proposed Rules:
7 67388
25 67388

28 CFR

Proposed Rules:
901 67991

29 CFR

4011 67032
4022 67033
4044 67035

30 CFR

934 67801
948 67035
Proposed Rules:
732 67776

31 CFR

1.....67943
323.....67943
Proposed Rules:
50.....67100

33 CFR

66.....68235
100.....67944, 68239
165.....67371, 67946

36 CFR

242.....67595

37 CFR

1.....67805
253.....67045
Proposed Rules:
1.....67818

40 CFR

52 .....67045, 67598, 67805, 67807, 67948
61.....67932
63.....67953
Proposed Rules:
52.....67821, 67993
302.....67916
355.....67916

42 CFR

412.....67955
413.....67955
414.....67960
476.....67955
484.....67955

43 CFR

Proposed Rules:
4100.....68452

44 CFR

64.....67051
65.....67052
67.....67056
Proposed Rules:
67.....67106, 67107

45 CFR

1604.....67372

46 CFR

Proposed Rules:
501.....67510
535.....67510

47 CFR

2.....68241
73 .....67378, 67599, 67964, 68254
74.....68241
76.....67599
78.....68241
101.....68241
Proposed Rules:
64.....68312
73 .....67389, 67390, 67624
76.....67624

48 CFR

Ch. 30.....67868
2.....67354
9.....67354
22.....67354
28.....67354
44.....67354
52.....67354
Proposed Rules:
1809.....67995
1837.....67995
1852.....67995

49 CFR

171.....67746
571.....67068
586.....67068
1152.....67809
Proposed Rules:
171.....67821
173.....67821
174.....67821
176.....67821
177.....67821
192.....67128, 67129
195.....67129
571.....68319

50 CFR

100.....67595
300.....67607
402.....68254
648.....67609
679 .....67086, 67379, 67964, 68265
Proposed Rules:
216.....67629
600.....67636
660 .....67132, 67638, 67640, 67998
679 .....67390, 67642, 68002
697.....67636

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 8, 2003

ENVIRONMENTAL PROTECTION AGENCY

Air programs:
- Fuels and fuel additives—
  - Reformulated gasoline, anti-dumping, and tier 2 gasoline sulfur control programs; alternative analytical test methods use; published 10-7-03

Air quality implementation plans; approval and promulgation; various States:
- California; published 11-6-03
- Iowa; published 10-8-03

Solid wastes:
- Municipal solid waste landfill permit program—
  - Virginia; published 10-7-03

Water programs:
- Water quality standards—
  - Arizona; Federal nutrient standards withdrawn; published 11-6-03

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
- Arizona; published 11-5-03
- California; published 11-5-03
- Oklahoma; published 11-5-03
- Texas and Louisiana; published 11-5-03
- West Virginia and Virginia; published 11-5-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Centers for Medicare & Medicaid Services

Medicare:
- National coverage and local coverage determinations; review; published 11-7-03
  - Correction; published 11-19-03

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food for human consumption:
- Beverages—
  - Bottled water; allowable level of uranium; published 3-3-03
  - Bottled water; allowable level of uranium; published 6-9-03

Human drugs:
- Labeling of drug products (OTC)—
  - Diphenhydramine-containing products; published 12-6-02

JUSTICE DEPARTMENT

Drug Enforcement Administration

National Defense Authorization Act:
- Federal departments or agencies; sale of chemicals that could be used in illicit manufacture of controlled substances; published 11-6-03

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
- Aging airplane safety; inspections and records reviews; published 12-6-02

Airworthiness directives:
- Eurocopter France; published 11-3-03
- McDonnell Douglas; published 11-3-03

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:
- Plum pox compensation; comments due by 12-15-03; published 10-16-03 [FR 03-26174]

Plant related quarantine; domestic:
- Emerald ash borer; comments due by 12-15-03; published 10-14-03 [FR 03-25881]

AGRICULTURE DEPARTMENT

Food and Nutrition Service

Child nutrition programs:
- Women, infants, and childrern; special supplemental nutrition program—
  - Food package revisions; comments due by 12-15-03; published 9-15-03 [FR 03-23498]

COMMERCE DEPARTMENT

Economic Analysis Bureau

International services surveys:
- BE-9; quarterly survey of foreign airline operators' U.S. revenues and expenses; comments due by 12-16-03; published 10-17-03 [FR 03-26298]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:
- Atlantic coastal fisheries cooperative management—
  - Weakfish; comments due by 12-17-03; published 12-3-03 [FR 03-30136]
- Caribbean, Gulf, and South Atlantic fisheries—
  - Atlantic States dolphin and wahoo; comments due by 12-18-03; published 11-3-03 [FR 03-27515]
- Northeastern United States fisheries—
  - Atlantic mackerel, squid, and butterfish; comments due by 12-15-03; published 11-14-03 [FR 03-28548]
  - Summer flounder, scup, and black sea bass; comments due by 12-15-03; published 11-28-03 [FR 03-29598]
- West Coast States and Western Pacific fisheries—
  - Pacific sardine; comments due by 12-17-03; published 12-3-03 [FR 03-30137]
  - Pelagic fisheries; environmental impact statement; comments due by 12-15-03; published 12-3-03 [FR 03-30135]

Marine mammals:
- Taking and importing—
  - Vandenberg Air Force Base, CA; 30th Space Wing, U.S. Air Force; space vehicle and test flight activities; pinnipeds; comments due by 12-18-03; published 12-3-03 [FR 03-29828]

DEFENSE DEPARTMENT

Engineers Corps

Danger zones and restricted areas:
- Narragansett Bay East passage, Coasters Harbor Island, RI; Newport Naval Station; comments due by 12-18-03; published 11-18-03 [FR 03-28706]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control:
- Aircraft and aircraft engines; emission standards and test procedures; comments due by 12-15-03; published 9-30-03 [FR 03-24412]

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 12-15-03; published 11-14-03 [FR 03-28305]
- Delaware; comments due by 12-15-03; published 11-14-03 [FR 03-28417]
- Montana; comments due by 12-19-03; published 11-19-03 [FR 03-28910]
- Pennsylvania; comments due by 12-19-03; published 11-19-03 [FR 03-28909]

Environmental statements; availability, etc.:
- Coastal nonpoint pollution control program—
  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Hazardous waste program authorizations:
- Colorado; comments due by 12-15-03; published 11-14-03 [FR 03-28578]

Superfund program:
- Hazardous chemical reporting; emergency planning and community right-to-know programs—
  - Trade secrecy claims and disclosures to health professionals; comments due by 12-15-03; published 11-14-03 [FR 03-28419]
  - Trade secrecy claims and disclosures to health professionals; comments due by 12-15-03; published 11-14-03 [FR 03-28420]
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 12-17-03; published 11-17-03 [FR 03-28574]
  - National priorities list update; comments due by 12-17-03; published 11-17-03 [FR 03-28575]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Interconnection—

Incumbent local exchange carriers; unbundling obligations; comments due by 12-16-03; published 10-17-03 [FR 03-26107]

Digital television stations; table of assignments:

Tennessee; comments due by 12-18-03; published 10-31-03 [FR 03-27431]

Radio stations; table of assignments:

Georgia; comments due by 12-15-03; published 11-5-03 [FR 03-27824]

Michigan; comments due by 12-15-03; published 11-5-03 [FR 03-27823]

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Reports and guidance documents; availability, etc.:

Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Drawbridge operations:

New Jersey; comments due by 12-15-03; published 10-14-03 [FR 03-25892]

Ports and waterways safety:

Lake Michigan, Captain of the Port of Milwaukee Zone; security zone; comments due by 12-16-03; published 10-17-03 [FR 03-26305]

HOMELAND SECURITY DEPARTMENT

Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (SAFETY Act); implementation; comments due by 12-15-03; published 10-16-03 [FR 03-26217]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitate designations—

Mexican spotted owl; comments due by 12-18-03; published 11-18-03 [FR 03-28483]

Migratory bird permits:

Mallards; release of captive-reared birds; comments due by 12-20-03; published 8-26-03 [FR 03-21761]

LABOR DEPARTMENT

Occupational Safety and Health Administration

Safety and health standards:

Longshoring and marine terminals; vertical tandem lifts; comments due by 12-15-03; published 9-16-03 [FR 03-23533]

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:

Electronic transactions; e-Appeal and e-Filing; comments due by 12-20-03; published 10-20-03 [FR 03-26172]

PERSONNEL MANAGEMENT OFFICE

Prevailing rate systems; comments due by 12-15-03; published 11-14-03 [FR 03-28466]

SMALL BUSINESS ADMINISTRATION

Government contracting programs:

Contract bundling; comments due by 12-19-03; published 10-20-03 [FR 03-26515]

STATE DEPARTMENT

Intercountry Adoption Act of 2000:

Hague Convention—

Agency accreditation and person approval; comments due by 12-15-03; published 11-13-03 [FR 03-28544]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:

Major repair data development (SFAR No. 36); comments due by 12-19-03; published 11-19-03 [FR 03-28888]

Airworthiness directives:

Airbus; comments due by 12-17-03; published 11-17-03 [FR 03-28609]

BAE Systems (Operations) Ltd.; comments due by 12-15-03; published 11-13-03 [FR 03-28401]

Boeing; comments due by 12-19-03; published 11-4-03 [FR 03-27671]

Bombardier; comments due by 12-15-03; published 11-5-03 [FR 03-27847]

Cessna; comments due by 12-15-03; published 10-17-03 [FR 03-26115]

Dassault; comments due by 12-15-03; published 11-13-03 [FR 03-28400]

Dornier; comments due by 12-17-03; published 11-17-03 [FR 03-28610]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 12-15-03; published 11-14-03 [FR 03-28495]

Hamburger Flugzeugbau G.m.b.H.; comments due by 12-15-03; published 11-13-03 [FR 03-28402]

McDonnell Douglas; comments due by 12-15-03; published 10-29-03 [FR 03-27213]

Raytheon; comments due by 12-19-03; published 11-4-03 [FR 03-27669]

Airworthiness standards:

Special conditions—

Honeywell, Inc., Pilatus PC-12/45 airplanes; comments due by 12-15-03; published 11-14-03 [FR 03-28530]

Class D airspace; comments due by 12-15-03; published 11-14-03 [FR 03-28539]

Class E airspace; comments due by 12-15-03; published 11-14-03 [FR 03-28534]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.access.gpo.gov/nara/nara005.html*. Some laws may not yet be available.

H.R. 23/P.L. 108–146

Tornado Shelters Act (Dec. 3, 2003; 117 Stat. 1883)

H.R. 1683/P.L. 108–147

Veterans' Compensation Cost-of-Living Adjustment Act of 2003 (Dec. 3, 2003; 117 Stat. 1885)

H.R. 1904/P.L. 108–148

Healthy Forests Restoration Act of 2003 (Dec. 3, 2003; 117 Stat. 1887)

H.R. 2744/P.L. 108–149

To designate the facility of the United States Postal Service located at 514 17th Street in Moline, Illinois, as the ''David Bybee Post Office Building''. (Dec. 3, 2003; 117 Stat. 1916)

H.R. 3175/P.L. 108–150

To designate the facility of the United States Postal Service located at 2650 Cleveland Avenue, NW in Canton, Ohio, as the ''Richard D. Watkins Post Office Building''. (Dec. 3, 2003; 117 Stat. 1917)

H.R. 3379/P.L. 108–151

To designate the facility of the United States Postal Service located at 3210 East 10th Street in Bloomington, Indiana, as the ''Francis X. McCloskey Post Office Building''. (Dec. 3, 2003; 117 Stat. 1918)

S. 117/P.L. 108–152

Florida National Forest Land Management Act of 2003 (Dec. 3, 2003; 117 Stat. 1919)

S. 189/P.L. 108–153

21st Century Nanotechnology Research and Development Act (Dec. 3, 2003; 117 Stat. 1923)

S. 286/P.L. 108–154

Birth Defects and Developmental Disabilities Prevention Act of 2003 (Dec. 3, 2003; 117 Stat. 1933)

S. 650/P.L. 108–155

Pediatric Research Equity Act of 2003 (Dec. 3, 2003; 117 Stat. 1936)

S. 1685/P.L. 108–156

Basic Pilot Program Extension and Expansion Act of 2003 (Dec. 3, 2003; 117 Stat. 1944)

S. 1720/P.L. 108–157

To provide for Federal court proceedings in Plano, Texas. (Dec. 3, 2003; 117 Stat. 1947)

S. 1824/P.L. 108–158

Overseas Private Investment Corporation Amendments Act of 2003 (Dec. 3, 2003; 117 Stat. 1949)

H.R. 2622/P.L. 108–159

Fair and Accurate Credit Transactions Act of 2003 (Dec. 4, 2003; 117 Stat. 1952)

Last List December 4, 2003

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–050–00001–6)	9.00	[4] Jan. 1, 2003
3 (2002 Compilation and Parts 100 and 101)	(869–050–00002–4)	32.00	[1] Jan. 1, 2003
4	(869–050–00003–2)	9.50	Jan. 1, 2003
5 Parts:			
1–699	(869–050–00004–1)	57.00	Jan. 1, 2003
700–1199	(869–050–00005–9)	46.00	Jan. 1, 2003
1200–End, 6 (6 Reserved)	(869–050–00006–7)	58.00	Jan. 1, 2003
7 Parts:			
1–26	(869–050–00007–5)	40.00	Jan. 1, 2003
27–52	(869–050–00008–3)	47.00	Jan. 1, 2003
53–209	(869–050–00009–1)	36.00	Jan. 1, 2003
210–299	(869–050–00010–5)	59.00	Jan. 1, 2003
300–399	(869–050–00011–3)	43.00	Jan. 1, 2003
400–699	(869–050–00012–1)	39.00	Jan. 1, 2003
700–899	(869–050–00013–0)	42.00	Jan. 1, 2003
900–999	(869–050–00014–8)	57.00	Jan. 1, 2003
1000–1199	(869–050–00015–6)	23.00	Jan. 1, 2003
1200–1599	(869–050–00016–4)	58.00	Jan. 1, 2003
1600–1899	(869–050–00017–2)	61.00	Jan. 1, 2003
1900–1939	(869–050–00018–1)	29.00	[4] Jan. 1, 2003
1940–1949	(869–050–00019–9)	47.00	Jan. 1, 2003
1950–1999	(869–050–00020–2)	45.00	Jan. 1, 2003
2000–End	(869–050–00021–1)	46.00	Jan. 1, 2003
8	(869–050–00022–9)	58.00	Jan. 1, 2003
9 Parts:			
1–199	(869–050–00023–7)	58.00	Jan. 1, 2003
200–End	(869–050–00024–5)	56.00	Jan. 1, 2003
10 Parts:			
1–50	(869–050–00025–3)	58.00	Jan. 1, 2003
51–199	(869–050–00026–1)	56.00	Jan. 1, 2003
200–499	(869–050–00027–0)	44.00	Jan. 1, 2003
500–End	(869–050–00028–8)	58.00	Jan. 1, 2003
11	(869–050–00029–6)	38.00	Jan. 1, 2003
12 Parts:			
1–199	(869–050–00030–0)	30.00	Jan. 1, 2003
200–219	(869–050–00031–8)	38.00	Jan. 1, 2003
220–299	(869–050–00032–6)	58.00	Jan. 1, 2003
300–499	(869–050–00033–4)	43.00	Jan. 1, 2003
500–599	(869–050–00034–2)	38.00	Jan. 1, 2003
600–899	(869–050–00035–1)	54.00	Jan. 1, 2003
900–End	(869–050–00036–9)	47.00	Jan. 1, 2003
13	(869–050–00037–7)	47.00	Jan. 1, 2003
14 Parts:			
1–59	(869–050–00038–5)	60.00	Jan. 1, 2003
60–139	(869–050–00039–3)	58.00	Jan. 1, 2003
140–199	(869–050–00040–7)	28.00	Jan. 1, 2003
200–1199	(869–050–00041–5)	47.00	Jan. 1, 2003
1200–End	(869–050–00042–3)	43.00	Jan. 1, 2003
15 Parts:			
0–299	(869–050–00043–1)	37.00	Jan. 1, 2003
300–799	(869–050–00044–0)	57.00	Jan. 1, 2003
800–End	(869–050–00045–8)	40.00	Jan. 1, 2003
16 Parts:			
0–999	(869–050–00046–6)	47.00	Jan. 1, 2003
1000–End	(869–050–00047–4)	57.00	Jan. 1, 2003
17 Parts:			
1–199	(869–050–00049–1)	50.00	Apr. 1, 2003
200–239	(869–050–00050–4)	58.00	Apr. 1, 2003
240–End	(869–050–00051–2)	62.00	Apr. 1, 2003
18 Parts:			
1–399	(869–050–00052–1)	62.00	Apr. 1, 2003
400–End	(869–050–00053–9)	25.00	Apr. 1, 2003
19 Parts:			
1–140	(869–050–00054–7)	60.00	Apr. 1, 2003
141–199	(869–050–00055–5)	58.00	Apr. 1, 2003
200–End	(869–050–00056–3)	30.00	Apr. 1, 2003
20 Parts:			
1–399	(869–050–00057–1)	50.00	Apr. 1, 2003
400–499	(869–050–00058–0)	63.00	Apr. 1, 2003
500–End	(869–050–00059–8)	63.00	Apr. 1, 2003
21 Parts:			
1–99	(869–050–00060–1)	40.00	Apr. 1, 2003
100–169	(869–050–00061–0)	47.00	Apr. 1, 2003
170–199	(869–050–00062–8)	50.00	Apr. 1, 2003
200–299	(869–050–00063–6)	17.00	Apr. 1, 2003
300–499	(869–050–00064–4)	29.00	Apr. 1, 2003
500–599	(869–050–00065–2)	47.00	Apr. 1, 2003
600–799	(869–050–00066–1)	15.00	Apr. 1, 2003
800–1299	(869–050–00067–9)	58.00	Apr. 1, 2003
1300–End	(869–050–00068–7)	22.00	Apr. 1, 2003
22 Parts:			
1–299	(869–050–00069–5)	62.00	Apr. 1, 2003
300–End	(869–050–00070–9)	44.00	Apr. 1, 2003
23	(869–050–00071–7)	44.00	Apr. 1, 2003
24 Parts:			
0–199	(869–050–00072–5)	58.00	Apr. 1, 2003
200–499	(869–050–00073–3)	50.00	Apr. 1, 2003
500–699	(869–050–00074–1)	30.00	Apr. 1, 2003
700–1699	(869–050–00075–0)	61.00	Apr. 1, 2003
1700–End	(869–050–00076–8)	30.00	Apr. 1, 2003
25	(869–050–00077–6)	63.00	Apr. 1, 2003
26 Parts:			
§§ 1.0–1–1.60	(869–050–00078–4)	49.00	Apr. 1, 2003
§§ 1.61–1.169	(869–050–00079–2)	63.00	Apr. 1, 2003
§§ 1.170–1.300	(869–050–00080–6)	57.00	Apr. 1, 2003
§§ 1.301–1.400	(869–050–00081–4)	46.00	Apr. 1, 2003
§§ 1.401–1.440	(869–050–00082–2)	61.00	Apr. 1, 2003
§§ 1.441–1.500	(869–050–00083–1)	50.00	Apr. 1, 2003
§§ 1.501–1.640	(869–050–00084–9)	49.00	Apr. 1, 2003
§§ 1.641–1.850	(869–050–00085–7)	60.00	Apr. 1, 2003
§§ 1.851–1.907	(869–050–00086–5)	60.00	Apr. 1, 2003
§§ 1.908–1.1000	(869–050–00087–3)	60.00	Apr. 1, 2003
§§ 1.1001–1.1400	(869–050–00088–1)	61.00	Apr. 1, 2003
§§ 1.1401–1.1503–2A	(869–050–00089–0)	50.00	Apr. 1, 2003
§§ 1.1551–End	(869–050–00090–3)	50.00	Apr. 1, 2003
2–29	(869–050–00091–1)	60.00	Apr. 1, 2003
30–39	(869–050–00092–0)	41.00	Apr. 1, 2003
40–49	(869–050–00093–8)	26.00	Apr. 1, 2003
50–299	(869–050–00094–6)	41.00	Apr. 1, 2003
300–499	(869–050–00095–4)	61.00	Apr. 1, 2003
500–599	(869–050–00096–2)	12.00	[5] Apr. 1, 2003
600–End	(869–050–00097–1)	17.00	Apr. 1, 2003

Title	Stock Number	Price	Revision Date
27 Parts:			
1–199	(869–050–00098–9)	63.00	Apr. 1, 2003
200–End	(869–050–00099–7)	25.00	Apr. 1, 2003
28 Parts:			
0–42	(869–050–00100–4)	61.00	July 1, 2003
43–End	(869–050–00101–2)	58.00	July 1, 2003
29 Parts:			
0–99	(869–050–00102–1)	50.00	July 1, 2003
100–499	(869–050–00103–9)	22.00	July 1, 2003
500–899	(869–050–00104–7)	61.00	July 1, 2003
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
201–End	(869–050–00168–3)	22.00	July 1, 2003
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	(869–050–00174–8)	50.00	Oct. 1, 2003
45 Parts:			
1–199	(869–050–00175–6)	60.00	Oct. 1, 2003
*200–499	(869–050–00176–4)	33.00	[9] Oct. 1, 2003
500–1199	(869–048–00174–3)	47.00	Oct. 1, 2002
1200–End	(869–050–00178–1)	60.00	Oct. 1, 2003
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	(869–050–00181–1)	14.00	Oct. 1, 2003
*90–139	(869–050–00182–9)	44.00	Oct. 1, 2003
*140–155	(869–050–00183–7)	25.00	[9] Oct. 1, 2003
*156–165	(869–050–00184–5)	34.00	[9] Oct. 1, 2003
166–199	(869–048–00182–4)	44.00	Oct. 1, 2002
200–499	(869–048–00183–2)	37.00	Oct. 1, 2002
500–End	(869–050–00187–0)	25.00	Oct. 1, 2003
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
80–End	(869–048–00189–1)	57.00	Oct. 1, 2002
48 Chapters:			
1 (Parts 1–51)	(869–050–00193–4)	63.00	Oct. 1, 2003
1 (Parts 52–99)	(869–048–00191–3)	47.00	Oct. 1, 2002
2 (Parts 201–299)	(869–048–00192–1)	53.00	Oct. 1, 2002
3–6	(869–048–00193–0)	30.00	Oct. 1, 2002
7–14	(869–048–00194–8)	47.00	Oct. 1, 2002
15–28	(869–048–00195–6)	55.00	Oct. 1, 2002
29–End	(869–050–00199–3)	38.00	[9] Oct. 1, 2003
49 Parts:			
1–99	(869–048–00197–2)	56.00	Oct. 1, 2002
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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.

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