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Rules and Regulations

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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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701 and 741

Suretyship and Guaranty; Maximum Borrowing Authority

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is revising its rules concerning maximum borrowing authority to permit federally insured, state-chartered credit unions (FISCUs) to apply for a waiver from the maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus (shares and undivided earnings, plus net income or minus net loss). This amendment will provide FISCUs with more flexibility by allowing them to apply for a waiver up to the amount permitted under state law.

NCUA is also adding a provision to its regulations that allows a federal credit union (FCU) to act as surety or guarantor on behalf of its members. The final rule establishes certain requirements to ensure that FCUs, and FISCUs if permitted under state law to act as a surety or guarantor, are not exposed to undue risk.

DATES: This final rule is effective March 26, 2004.

FOR FURTHER INFORMATION CONTACT: Mary F. Rupp, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

On September 24, 2003, the NCUA Board requested comment on proposed changes to §§ 701.20 and 741.2 of its regulations. 68 FR 56586 (October 1, 2003). Proposed § 701.20 created a new provision to recognize that an FCU, as part of its incidental powers, may act as a guarantor or surety on behalf of a member. Section 741.2 sets forth a maximum borrowing limitation of 50 percent of paid-in and unimpaired capital and surplus for all federally insured credit unions. The proposed amendment permitted federally insured, state-chartered credit unions (FISCUs) to apply for a waiver up to the amount permitted by state law.

B. Summary of Comments

The NCUA Board received 10 comments on the proposal: three from credit unions; three from credit union trade groups; two from credit union leagues; and two from bank trade groups. Below is a summary of the comments.

Suretyship and Guaranty

Eight of the ten commenters support allowing a credit union to act as a surety or guarantor. Two of the eight positive commenters suggested allowing FISCUs to apply for a waiver from the safety and soundness limitations placed on the transactions. One of the positive commenters suggested slightly different collateral requirements. The two negative commenters were the bank trade groups.

The positive commenters noted that allowing credit unions to enter into suretyship and guaranty agreements with the safety and soundness requirements in the proposal will give credit unions additional flexibility to meet the needs of their members while ensuring the safety and soundness of the transaction. The commenters noted that this activity could become a valuable service for credit unions. A couple of the commenters suggested, because this activity is so new for credit unions, that NCUA review the rule after it has been in effect for a few years to address any operational issues that may arise. The Board intends to incorporate this suggestion into its regulatory review process.

Two of the positive commenters suggested allowing FISCUs to apply for a waiver that would allow the state regulator or legislature to authorize more flexible guarantor or surety requirements. They suggest that a waiver only be granted if there are no safety and soundness implications. Because, as some of the commenters noted, this activity is new for credit unions, NCUA believes it is premature to adopt a waiver provision. The Board believes the requirements in the rule that would be the subject of a waiver all relate directly to safety and soundness, however, as NCUA and credit unions gain more experience in this area, the Board may reconsider this issue.

One of the commenters suggested that corporate credit unions have a role to play when a natural person credit union is acting as a guarantor for its member. The commenter recommended including deposits at corporate credit unions in the 100% collateral category. Because it is the natural person member that is providing the collateral and natural person members do not have deposits at corporate credit unions, we do not believe it is appropriate to implement this suggestion.

The two bank trade groups believe allowing credit unions to engage in these transactions conflicts with a credit union's mission of serving people of modest means. They also assert that allowing this activity is an expansion of a credit union's commercial lending powers and should not be allowed as long as credit unions are tax exempt. Congress has specifically authorized commercial lending for FCUs. 12 U.S.C. 1757a. Contrary to the bankers' claims, this rule is consistent with Congress' intent for FCUs with respect to serving their members and business lending.

Waiver of Maximum Borrowing Limitations for FISCUs

Eight of the ten commenters supported this proposal. The two negative commenters were the bank trade groups.

Those in support of the proposal contend that: It is inherent in the concept of dual chartering to allow state-chartered credit unions to exercise powers authorized under state law and regulation within the bounds of safety and soundness; the proposal's approach is similar to the approach used by the other banking agencies; and the waiver provision will assist FISCUs in providing service to low income families by allowing FISCUs to borrow from the Federal Home Loan Bank a greater amount than the regulatory limitation currently permits. Finally, a few of the positive commenters suggested NCUA seek similar authority for FCUs through a legislative change.

The two negative bank commenters expressed concern that the waiver provision could negatively impact on the safety and soundness of FISCUs. As

noted in the proposal and echoed by many of the commenters, NCUA has incorporated the appropriate safeguards into the rule to ensure these transactions are handled in a safe and sound manner. One of the negative commenters incorrectly characterized the proposal as an ''attempt by the credit union industry to exceed its statutory, maximum borrowing authority.'' As noted in the proposal, the statutory limitation applies only to FCUs.

C. Final Amendments

New Sections 701.20 and 741.221—Suretyship and Guaranty

The final rule is identical to the proposal. Section 701.20 recognizes that an FCU, as part of its incidental powers, may act as a guarantor or surety on behalf of a member. 12 U.S.C. 1757(17). Acting as a guarantor or surety on behalf of an FCU member meets the definition of an incidental power because it: Is convenient or useful to an FCU in extending credit to its members; is a logical extension of an FCU's authority to make loans to its members and to provide letters of credit on behalf of members; and involves risks that are similar in nature to the risks involved in an FCU's lending activity. 12 CFR 721.2.

The final rule defines suretyship, guaranty agreements, and principal and includes three requirements designed to ensure the safety and soundness of surety and guaranty agreements. The Board has the same safety and soundness concerns for FISCUs authorized under state law to enter into surety and guaranty agreements as it does for FCUs. Accordingly, the requirements will apply to FISCUs as provided in § 741.220. The requirements are modeled after the requirements in the Office of the Comptroller of the Currency (OCC) and the Office of Thrift Supervision (OTS) rules on guaranty and suretyship. 12 CFR 7.1017 and 560.60.

The first two requirements are substantially similar to the requirements in the OTS rule. The first requires that the obligation under the agreement be limited to a fixed amount and limited in duration. Without a requirement to limit the amount and duration of the agreement, an FCU may take on more risk than it anticipated in the agreement.

The second provision requires that an FCU's performance under the agreement create a loan that is permissible under applicable law because the nature of a surety or guaranty agreement is a loan. The FCU is lending its credit and, in effect, is lending to its member. An FCU may not use a surety or guaranty agreement as a mechanism to avoid the applicable regulatory requirements for loans. These regulatory requirements are in place to ensure the safety and soundness of the transactions. For example, if an FCU will be a surety or guarantor for a member's obligation for a business loan, it must comply with the member business loan requirements. 12 CFR part 723.

This provision also highlights that an FCU must treat its obligation under the agreement as a contractual commitment to advance funds to the principal under the loans-to-one-borrower limits and loans to insider restrictions. 12 CFR 560.60(b)(3), 701.21(c)(5), (d) and 723.8. Again, these requirements are in place to ensure the safety and soundness of the transaction and should not be circumvented through the use of a surety or guaranty agreement.

The third provision addresses collateral requirements and parallels requirements in the OCC and OTS rules. Depending on the nature of the collateral, an FCU must have collateral equal to 100 or 110 percent of the obligation. The 100 percent collateral category includes cash, obligations of the United States or its agencies, obligations fully guaranteed by the United States or its agencies as to principal and interest, and notes, drafts, bills of exchange, and bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank. Because the value of some of these types of collateral can fluctuate, the proposal requires that the collateral have a market value at the close of each business day equal to 100 percent of the FCU's total potential liability.

The 110 percent collateral category includes real estate and marketable securities. If the collateral is real estate, an FCU must establish the value of the collateral by an evaluation or appraisal of the real estate consistent with NCUA's appraisal regulation. 12 CFR 722.3. If the collateral is marketable securities, an FCU must be authorized to invest in the securities and must ensure that the value of the securities is equal to 110 percent of the obligation at all times. To protect against risk of loss, an FCU must perfect its security interest in the collateral.

Section 741.2—Maximum Borrowing Authority

The final rule is identical to the proposal. It allows an FISCU to apply for a waiver from § 741.2 up to the amount permitted under state law or by the state regulator. Prerequisites for a waiver request include that appropriate safeguards must be in place and that either state law permits the higher limit than that specified in the FCU Act for which the FISCU seeks approval, which is verified by the state regulator, or the state regulator has duly approved a higher limit than that allowed under state law. Instances in which it would seem appropriate to seek a waiver could include a situation where, for example, the borrowing has minimal risk associated with it but the FISCU is unable to enter into the transaction because of the regulatory prohibition. Circumstances presenting minimal risk could be, for example, a transaction where the FISCU is acting as a co-borrower with a member and the member has provided collateral sufficient to cover its obligation if the member defaults on the loan. The waiver process will permit regional directors to take into consideration the circumstances of the FISCU, its community, and members, and provide additional flexibility to address particular needs or benefits on a case-by-case basis. The final regulation contemplates that FISCUs wishing to engage in particular transactions, programs or projects, which would otherwise take their borrowings above the regulatory limitation, will have the opportunity to apply for a waiver, which will include a thorough explanation of the business purposes and strategies the FISCU has in place to mitigate risk, so that regional directors may make an informed determination regarding safety and soundness.

To apply for a waiver, an FISCU must submit its request to the appropriate regional director. The request must include a detailed analysis of the safety and soundness implications of the waiver, a proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation, a letter from the state regulator approving the request, and an explanation demonstrating the need for a higher limit. The regional director will approve the waiver request if he or she determines that the proposed borrowing limit will not adversely affect the safety and soundness of the FISCU.

D. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. The rule authorizes FCUs to enter into surety and guaranty agreements and permits FISCUs to request a waiver from the maximum borrowing limitation. It is

unlikely that small credit unions will participate in either of these activities. The final rule will not have a significant economic impact on a substantial number of small credit unions, and therefore, a Regulatory Flexibility Analysis is not required.

Paperwork Reduction Act

The NCUA Board has determined that the final rule that allows FISCUs to file for a waiver from the borrowing limitations in § 741.2 is covered under the Paperwork Reduction Act. NCUA submitted a copy of the proposed rule to the Office of Management and Budget (OMB) for its review and is awaiting approval and issuance of a new OMB control number (3133–____).

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it has a valid OMB number. The control number will be displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule will apply directly to federally insured state-chartered credit unions. NCUA has determined that the final rule will not have a substantial direct effect on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that the final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA) (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of SBREFA.

E. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. The final rule is understandable and imposes minimum regulatory burden.

List of Subjects

12 CFR Part 701

Credit unions.

12 CFR Part 741

Credit unions, Requirements for insurance.

By the National Credit Union Administration Board on February 19, 2004.

Becky Baker,

Secretary of the Board.

■ For the reasons set forth in the preamble, the National Credit Union Administration is amending 12 CFR parts 701 and 741 as follows:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

■ 1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, 1789.

■ 2. Add new § 701.20 to read as follows:

§ 701.20 Suretyship and guaranty.

(a) *Scope.* This section authorizes a federal credit union to enter into a suretyship or guaranty agreement as an incidental powers activity. This section does not apply to the guaranty of public deposits or the assumption of liability for member accounts.

(b) *Definitions.* A *suretyship* binds a federal credit union with its principal to pay or perform an obligation to a third person. Under a *guaranty* agreement, a federal credit union agrees to satisfy the obligation of the principal only if the principal fails to pay or perform. The *principal* is the person primarily liable, for whose performance of his obligation the surety or guarantor has become bound.

(c) *Requirements.* The suretyship or guaranty agreement must be for the benefit of a principal that is a member and is subject to the following conditions:

(1) The federal credit union limits its obligations under the agreement to a fixed dollar amount and a specified duration;

(2) The federal credit union's performance under the agreement creates an authorized loan that complies with the applicable lending regulations, including the limitations on loans to one member or associated members or officials for purposes of §§ 701.21(c)(5), (d); 723.2 and 723.8; and

(3) The federal credit union obtains a segregated deposit from the member that is sufficient in amount to cover the federal credit union's total potential liability.

(d) *Collateral.* A segregated deposit under this section includes collateral:

(1) In which the federal credit union has perfected its security interest (for example, if the collateral is a printed security, the federal credit union must have obtained physical control of the security, and, if the collateral is a book entry security, the federal credit union must have properly recorded its security interest); and

(2) That has a market value, at the close of each business day, equal to 100 percent of the federal credit union's total potential liability and is composed of:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or banker's acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank; or

(3) That has a market value equal to 110 percent of the federal credit union's total potential liability and is composed of:

(i) Real estate, the value of which is established by a signed appraisal or evaluation in accordance with part 722 of this chapter. In determining the value of the collateral, the federal credit union must factor in the value of any existing senior mortgages, liens or other encumbrances on the property except those held by the principal to the suretyship or guaranty agreement; or

(ii) Marketable securities that the federal credit union is authorized to invest in. The federal credit union must ensure that the value of the security is 110 percent of the obligation at all times during the term of the agreement.

PART 741—REQUIREMENTS FOR INSURANCE

■ 3. The authority citation for part 741 continues to read as follows:

Authority: 12 U.S.C. 1757, 1766(a), and 1781–1790; Pub.L. 101–73.

■ 4. Amend § 741.2 by designating the existing paragraph as (a) and adding new

paragraphs (b), (c) and (d) to read as follows:

§ 741.2 Maximum borrowing authority.

(a) * * *

(b) A federally insured state-chartered credit union may apply to the regional director for a waiver of paragraph (a) of this section up to the amount permitted under the applicable state law or by the state regulator. The waiver request must include:

(1) Written approval from the state regulator;

(2) A detailed analysis of the safety and soundness implications of the proposed waiver;

(3) A proposed aggregate dollar amount or percentage of paid-in and unimpaired capital and surplus limitation; and

(4) An explanation demonstrating the need to raise the limit.

(c) The regional director will approve the waiver request if the proposed borrowing limit will not adversely affect the safety and soundness of the federally insured state-chartered credit union.

■ 5. Add new § 741.221 to read as follows:

§ 741.221 Suretyship and guaranty requirements.

Any credit union, which is insured pursuant to Title II of the Act, must adhere to the requirements in § 701.20 of this chapter. State-chartered, NCUSIF-insured credit unions may only enter into suretyship and guaranty agreements to the extent authorized under state law.

[FR Doc. 04–4076 Filed 2–24–04; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708a

Conversion of Insured Credit Unions to Mutual Savings Banks

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating its rule regarding conversion of insured credit unions to mutual savings banks. This amendment requires a converting credit union to provide additional information in the notice to members of its intent to convert. Specifically, the credit union must disclose any economic benefit a director or senior management official of a converting credit union may receive in connection with the conversion. A converting credit union must also disclose how conversion to a mutual savings bank will affect members' voting rights, and how any subsequent conversion to a stock institution may affect ownership interests. NCUA believes this amendment enhances a member's ability to make informed decisions about the conversion without increasing the regulatory burden for converting credit unions and helps converting credit unions to more fully understand what NCUA expects to be included in the notice to members.

DATES: This final rule is effective March 26, 2004.

FOR FURTHER INFORMATION CONTACT: Frank Kressman, Staff Attorney, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Credit Union Membership Access Act (CUMAA) was enacted into law on August 7, 1998. Public Law 105–21. Section 202 of CUMAA amended the provisions of the Federal Credit Union Act (Act) concerning conversion of insured credit unions to mutual savings banks. 12 U.S.C. 1785(b). CUMAA required NCUA to promulgate final rules regarding charter conversions that were: (1) Consistent with CUMAA; (2) consistent with the charter conversion rules promulgated by other financial regulators; and (3) no more or less restrictive than rules applicable to charter conversions of other financial institutions. NCUA issued rules in compliance with this mandate. 63 FR 65532 (November 27, 1998); 64 FR 28733 (May 27, 1999).

In the approximately five years since NCUA first amended Part 708a to comply with CUMAA, NCUA has grown concerned that credit union members may not fully appreciate the effect the conversion may have on their ownership interests in the credit union and voting power in the mutual savings bank. Accordingly, NCUA issued a proposed rule in September 2003 to require a converting credit union to disclose additional information to its members to better educate them regarding the conversion. 68 FR 56589 (October 1, 2003).

B. Discussion

There are increasing indications that a high percentage of credit unions that convert to mutual savings banks have or will undertake a second conversion to become a stock institution. While it is certainly within the rights of the credit union membership to exercise their right to convert and change the structure of the institution, converting credit unions generally do not adequately discuss in the notice to credit union members the likelihood and ramifications of a second conversion to a stock institution.

While state laws may vary, under the Office of Thrift Supervision's regulations, there is no minimum waiting period for a newly chartered federal mutual savings bank to convert to a stock institution. As a result, it is possible for a credit union that converts to a federal mutual savings bank to attempt to convert to a stock institution in as little as two years. In most cases, a conversion from a mutual savings bank to a stock institution will result in a loss of ownership interest for the vast majority of members because they do not purchase stock, while most officers and directors do obtain stock in the newly created stock institution. While members and officials generally have the same opportunity to purchase stock at an initial public offering, officials also obtain stock through other methods such as employee stock ownership plans, restricted stock awards and stock options. These opportunities, which are not available to the general membership, have in the past been little understood and inadequately explained to the members.

While CUMAA provides that an insured credit union may convert to a mutual savings bank without the prior approval of NCUA, it also requires NCUA to administer the member vote on conversion and review the methods and procedures by which the vote is taken. This is reflected in NCUA's conversion rule. The rule requires a converting credit union to provide its members with written notice of its intent to convert. 12 CFR 708a.4. It also specifies that the member notice must adequately describe the purpose and subject matter of the vote on conversion. *Id.* In addition, a converting credit union must notify NCUA of its intent to convert. 12 CFR 708a.5. A credit union must provide for NCUA's review a copy of the member notice, ballot, and all other written materials it has provided or intends to provide to its members in connection with a conversion. *Id.*

A converting credit union has the option of submitting these materials to NCUA before it begins to distribute them to its members. *Id.* This enables a credit union to obtain NCUA's preliminary determination on the methods and procedures of the member vote based on NCUA's review of the written materials. A credit union can then decide whether to move forward with the often expensive, labor intensive conversion process with an understanding of NCUA's position.

NCUA believes its review of these materials is a practical and unintrusive way of fulfilling, at least part of, its congressionally mandated responsibility to review the methods and procedures of the vote to ensure that all reasonable measures to accomplish full disclosure and transparency have been taken to inform the credit union membership of the potential consequences of their vote. Prior submission of these materials does not relieve the credit union of its other obligations under Part 708a, nor does it eliminate NCUA's right to disapprove the methods and procedures of the vote if the credit union fails to conduct the vote in a fair and legal manner. 12 CFR 708a.5.

If NCUA disapproves of the methods and procedures of the member vote, after the vote is conducted, then NCUA is authorized to direct a new vote be taken. 12 CFR 708a.7. NCUA interprets its responsibility to review the methods and procedures of the member vote to include determining that the member notice and other materials sent to the members are accurate and not misleading, that all required notices are timely, and that the membership vote is conducted in a fair and legal manner.

NCUA believes that full and proper disclosure to members that they could potentially lose their ownership interest in their credit union if it ultimately became a stock institution is key to describing the purpose and subject matter of the member vote adequately. Failing to discuss this integral risk associated with the conversion adequately is tantamount to providing misleading information. Most of the conversion documentation NCUA has reviewed since CUMAA went into effect has contained some information relating to this issue, but it has become apparent to NCUA that it has not addressed it sufficiently to make this point clear to members.

A charter conversion is a sophisticated transaction with consequences that might not surface for a number of years and that are often not recognizable at the time of conversion to even the most astute members. As a result, few members can make a truly informed decision about how the conversion will affect their ownership interest in the credit union unless the credit union provides them with this information. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA amends Part 708a to require a converting credit union to disclose that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converted to a stock institution and the members do not become stockholders.

The Act provides that a member of a federal credit union is entitled to only one vote irrespective of the number of shares held by that member. The ''one member one vote'' structure gives an equal voice to all members, even those of modest means. 12 U.S.C. 1760. Most, if not all, state credit unions also are required to follow this approach. This is not usually the case with mutual savings banks. In most instances, mutual savings banks allot votes based on the amount of a member's deposits. Commonly, one vote is granted for each $100 a member has on deposit up to a maximum of 1,000 votes. Also, many issues, such as election of directors, which are subject to a member vote in a credit union, may not be subject to a vote in a mutual savings bank. As noted above, NCUA believes that disclosing that members could have lesser voting power in the mutual savings bank than they do in the credit union is central to describing adequately the purpose and subject matter of the member vote. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA amends Part 708a to require a converting credit union to disclose how the conversion from a credit union to a mutual savings bank will affect members' voting rights. The language of the proposal would have required a disclosure that the members may have lesser voting rights in a mutual savings bank. This final rule requires an actual explanation of how voting rights will change. This is a clearer articulation of the information the proposal intended members to receive and will assist members in casting a better informed vote on the proposed conversion.

NCUA's conversion rule echoes CUMAA by providing that directors and senior management officials of a credit union may not receive any economic benefit from the conversion of their credit union other than compensation and benefits paid to them in the ordinary course of business. 12 CFR 708a.10. This is intended to insure that management's decision to begin the conversion process is based on sound business judgment reflecting the best interests of the members. Consistent with this statutory and regulatory limitation, NCUA believes it is appropriate to require a converting credit union to disclose in the member notice any conversion related benefits a director or senior management official may receive, including compensation not permitted in the credit union context. To be complete, this disclosure must include any stock related benefits associated with a subsequent conversion to a stock institution. Accordingly, for the reasons discussed above and in an effort to achieve full disclosure and transparency, NCUA amends Part 708a to require a converting credit union to disclose any increased compensation or other conversion related benefits, including stock related benefits, that directors or senior management officials may receive. This disclosure must include a comparison of the stock related benefits available to the general membership with those available to officials and employees in the event of conversion to a stock institution. This comparison of stock benefits more clearly articulates the information the proposal intended members to receive and will assist members in casting a better informed vote.

C. Summary of Comments

NCUA received forty-five comment letters regarding the proposed rule: nine from federal credit unions, seven from state credit unions, one from a professional association representing the forty-eight state credit union regulators, sixteen from credit union trade organizations, two from state financial institution regulators, one from a financial services company that has been involved in facilitating the majority of credit union conversions to mutual savings banks, two from law firms that also have been involved in facilitating many credit union conversions to mutual savings banks (together these law firms and the financial services company will be referred to as conversion consultants), one from an attorney who represents credit unions, three from private individuals, and three from banking trade organizations.

Thirty-four of the commenters fully supported the proposal and acknowledged the importance of educating credit union members about the effects and ramifications of the conversion to enable them to cast informed votes. Over two-thirds of those supporters stated that they believe NCUA should impose more disclosures and requirements on converting credit unions than proposed. The kinds of additional disclosures and requirements they suggested include: requiring the member vote be conducted by an independent third party, establishing a voting standard greater than the present simple majority of those who actually vote, disclosing the percentage of credit unions that have converted to mutual savings banks that went on to convert to the stock form of ownership, disclosing the views of a converting credit union's

directors who do not favor converting or have specific reservations, permitting members to post comments on the conversion proposal as a part of the conversion process, disclosing that voluntary liquidation of the credit union is an option for members to extract their ownership interests in the credit union if management believes the institution can no longer serve its members' needs as a credit union, increasing the number of members required for a quorum for special meetings to insure that there is sufficient member participation for such a monumental decision, disclosing the estimated cost of the conversion, providing additional financial data to support claims that the conversion will benefit members, and disclosing historical data regarding the percentage of stock management buys as compared to the amount members buy in a stock bank that previously converted from a credit union to a mutual savings bank to the stock form of ownership.

One commenter supported parts of the proposal, but opposed some sections it believes require speculation on the credit union's part. Three commenters stated that the current disclosure requirements are sufficient.

The conversion consultants and the banking trade organizations opposed the proposal. Some of these commenters believe the proposal is inconsistent with CUMAA, duplicates the disclosures required by other regulators like the Securities and Exchange Commission (SEC), the Federal Deposit Insurance Corporation (FDIC) and the Office of Thrift Supervision (OTS), or requires the credit union to determine whether it will *ever* convert to the stock form of ownership. One of these commenters stated that it did not believe that a credit union disclosing its intent to convert to stock would enhance a member's ability to cast an informed vote. NCUA is aware of the limitations that CUMAA has placed on its authority to approve a conversion but is mindful of its responsibility to oversee the methods and procedures applicable to the member vote on conversion and protect the interests of credit union members. The proposal does not require a converting credit union to speculate about future events, rather it simply provides that the credit union must disclose its present intent regarding its business plans and provide information about how future events might affect members' interests. Although NCUA does not necessarily agree that the proposal duplicates disclosures required by the SEC, FDIC, and OTS, NCUA believes that, even if it did, these disclosures are necessary at the time the credit union's members are deciding how to vote on the conversion to a mutual savings bank. If credit union members wait to receive similar disclosures from the SEC, FDIC, or OTS, then that means the credit union has already converted to a mutual savings bank and may be on its way to converting to the stock form of ownership. Obviously, at that point, the disclosures are too late with respect to enabling a credit union member to make an informed decision on the conversion from a credit union to a mutual savings bank. For the reasons discussed above, NCUA adopts the proposed amendments as final without change.

D. Additional Information

NCUA appreciates the valuable suggestions offered by commenters who believe NCUA should impose more disclosures and requirements on converting credit unions. Many of these suggestions deserve further consideration but are beyond the scope of the proposal and will have to be considered in a separate rule making. Also, over time, NCUA has gained a more in-depth, practical understanding of the nuances of the disclosure and voting processes associated with a conversion. Accordingly, in the near future, NCUA intends to further fine tune the conversion regulation by providing more specific guidelines to help credit unions understand what will satisfy the regulatory standard that the vote be conducted in a fair and legal manner.

Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. This rule provides the procedures an insured credit union must follow to convert to a mutual savings bank. The final amendments will not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the final rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The final rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this final rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedure Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this rule is not a major rule for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 708a

Charter conversions, Credit unions.

By the National Credit Union Administration Board on February 19, 2004.

Becky Baker,

Secretary of the Board.

■ For the reasons stated above, NCUA amends 12 CFR part 708a as follows:

PART 708a—CONVERSION OF INSURED CREDIT UNIONS TO MUTUAL SAVINGS BANKS

■ 1. The authority citation for part 708a continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1785(b).

■ 2. Section 708a.4 is amended by adding paragraph (d) to read as follows:

§ 708a.4 Voting procedures.

* * * * *

(d)(1) An adequate description of the purpose and subject matter of the

member vote on conversion, as required by paragraph (c) of this section, must include:

(i) A disclosure that the conversion from a credit union to a mutual savings bank could lead to members losing their ownership interests in the credit union if the mutual savings bank subsequently converts to a stock institution and the members do not become stockholders;

(ii) A disclosure of how the conversion from a credit union to a mutual savings bank will affect members' voting rights; and

(iii) A disclosure of any conversion related economic benefit a director or senior management official may receive including receipt of or an increase in compensation and an explanation of any foreseeable stock related benefits associated with a subsequent conversion to a stock institution. The explanation of stock related benefits must include a comparison of the opportunities to acquire stock that are available to officials and employees, with those opportunities available to the general membership.

(d)(2) In connection with the disclosures required by paragraphs (d)(1)(i) through (iii) of this section, the converting credit union must include an affirmative statement, that at the time of conversion to a mutual savings bank, the credit union does or does not intend to:

(i) Convert to a stock institution;

(ii) Provide any compensation to previously uncompensated directors or increase compensation or other conversion related benefits, including stock related benefits, to directors or senior management officials; and

(iii) Base member voting rights on account balances.

[FR Doc. 04–4075 Filed 2–24–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE203, Special Condition 23–143–SC]

Special Conditions; Avidyne Corporation, Inc.; Various Airplane Models; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773, for a Supplemental Type Certificate for the models listed under the heading ''Type Certification Basis.'' This special condition includes various airplane models to streamline the certification process needed to improve the safety of the airplane fleet by fostering the incorporation of new technologies that can be certificated affordably under 14 CFR part 23.

The airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of an electronic flight instrument system (EFIS) display, Model 700–00006–1XX(), manufactured by Avidyne Corporation, Inc., for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is February 11, 2004. Comments must be received on or before March 26, 2004.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE203, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE203. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329–4127.

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

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. CE203.'' The postcard will be date stamped and returned to the commenter.

Background

On July 3, 2003, Avidyne Corporation, 55 Old Bedford Road, Lincoln, MA 01773, made an application to the FAA for a new Supplemental Type Certificate for airplane models listed under the type certification basis. The models are currently approved under the type certification basis listed in the paragraph headed ''Type Certification Basis.'' The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Avidyne Corporation must show that affected airplane models, as changed, continue to meet the applicable provisions, of the regulations incorporated by reference in Type Certificate Numbers listed below or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the original ''type certification basis'' and can be found in the Type Certificate Numbers listed below. In addition, the type certification basis of airplane models that embody this modification will include § 23.1301 of Amendment 23–20; §§ 23.1309, 23.1311, and 23.1321 of Amendment

23–49; and § 23.1322 of Amendment 23–43; exemptions, if any; and the special conditions adopted by this rulemaking action.

Aircraft make	Aircraft model(s)	Type Certificate No.	Certification basis
Aerostar Aircraft Corporation	PA–60–600, PA–60–601, PA–60–601P, PA60–602P, PA–60–700P	A17WE	FAR 23
	360, 400	A11WE	FAR 23
American Champion	7AC, 7ACA, S7AC, 7BCM, 7CCM, S7CCM, 7DC, S7DC, 7EC, S7EC, 7ECA, 7FC, 7GC, 7GCA, 7GCB, 7GCBA, 7GCBC, 7GCAA, 7HC, 7JC, 7KC, 7KCAB.	A–759	CAR 3
	8GCBC, 8KCAB	A21CE	FAR 23
Cessna Aircraft Company	140A	5A2	CAR 3
	150, 150A, 150B, 150C, 150D, 150E, 150F, 150G, 150H, 150J, 150K, A150K, 150L, A150L, 150M, A150M, 152, A152.	3A19	CAR 3
Cessna Aircraft Company (cont'd)	170, 170A, 170B	A–799	CAR 3
	172, 172A, 172B, 172C, 172D, 172E, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S.	3A12	CAR 3, 14 CFR 23
	172RG, P172D, R172E, R172F, R172G, R172H, R172J, R172K, 175, 175A, 175B, 175C.	3A17	CAR 3
	177, 177A, 177B, 177RG	A13CE	14 CFR 23
	180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K	5A6	CAR 3
	182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, R182, T182, TR182.	3A13	CAR 3, 14 CFR 23
	185, 185A, 185B, 185C, 185D, 185E, A185E, A185F	3A24	CAR 3
	190, 195, 195A, 195B	A–790	CAR 3
	210, 210A, 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, P210N, T210N, 210R, P210R, T210–R, 210–5, 210–5A.	3A21	CAR 3
	205, 206, P206, P206–A, P206–B, P206–C, P206–D, P206–E, TP206–A, TP206–B, TP206–C, TP206–D, TP206–E, U206, U206–A, U206–B, U206–C, U206–D, U206–E, U206–F, U206–G, TU206A, TU206–B, TU206–C, TU206–D, TU206–E, TU206–F, TU206–G, 206H, T206H.	A4CE	CAR 3, 14 CFR 23
	207, 207A, T207, T207A	A16CE	14 CFR 23
	208, 208A, 208B	A37CE	14 CFR 23
	310, 310A (USAF U–3A), 310B, 310C, 310D, 310E (USAF U–3B), 310F, 310G, 310H, E310H, 310I, 310J, 310J–1, E310J, 310K, 310L, 310N, 310P, T310P, 310Q, T310Q, 310R, T310R.	3A10	CAR 3
	320, 320–1, 320A, 320B, 320C, 320D, 320E, 320F, 340, 340A, 335, 340, 340A.	3A25	CAR 3
	336	A2CE	CAR 3
Cessna Aircraft Company (cont'd)	337 and 337A (USAF O2B), 337B, T337B, 337C, T337C, 337D, T337D, M337B (USAF O2A), 337E, T337E and T337F, 337F, T337G, 337G, 337H, T337H, P337H, T337H–SP.	A6CE	CAR 3, 14 CFR 23
	401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425.	A7CE	CAR 3
	441	A28CE	FAR23
	404, 406	A25CE	FAR23
	500	A22CE	FAR23
	501, 551	A27CE	FAR23
	525, 525A	A1WI	FAR23
Cirrus Design Corp	SR20, SR22	A00009CH	FAR23
Commander Aircraft	112, 114, 112TC, 112B, 112TCA, 114A, 114B, 114TC	A12SO	CAR 3
De Havilland Inc	DHC–2 Mk. I, DHC–2 Mk. II, DHC–2 Mk. III	A–806	CAR 3
	(Twin Otter) DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300	A9EA	CAR 3
Diamond Aircraft Industries	DA 20–A1, DA20–C1	TA4CH	14 CFR 23
	DA40	A47CE	14 CFR 23
Fairchild	SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT.	A5SW	CAR 3
	SA–226–TC, SA227–AC (C–26A), SA227–BC (C–26A), SA227–PC	A8SW	14 CFR 23
Lancair	Columbia 300, LC40–550FG	A00003SE	14 CFR 23
Learjet	23	A5CE	CAR 3
Maule Aerospace Technology, Inc	BEE DEE M–4, M–4, M–4C, M–4S, and M–4T, M–4–210, M–4–210C, M–4–210S, and M–4–210T, M–4–220, M–4–220C, M–4–220S, and M–4–220T, M–4–180C, M–4–180S, and M–4–180T, M–5–210C, M–5–220C, M–5–235C, M–5–180C, M–5–210TC, M–6–235, M–6–180, M–5–200, M–7–235, MX–7–235, MX–7–180, MX–7–420, MXT–7–180, MT–7–235, M–8–235, MX–7–160, MXT–7–160, MX–7–180A, MXT–7–180A, MX–7–180B, MXT–7–420, M–7–235B, M–7–235A, M–7–235C, MX–7–180C.	3A23	CAR 3
	M–7–260, M–7–420, M7–7–260, MT–7–420, M–7–260C	3A23	CAR3
Mitsubishi Heavy Industries, Ltd	MU–2B–25, MU–2B–35, MU–2B–26, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–28–40, MU–2B–60.	A10SW	CAR 3

Aircraft make	Aircraft model(s)	Type Certificate No.	Certification basis
Mooney Aircraft Corp	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S.	2A3	CAR 3
	M22	A6SW	CAR 3
Partenavia Costruzioni Aeronauticas S.p.A.	P 68, P 68B, P 68C, P 68C–TC, P 68 ''OBSERVER'', AP68 TP series 300 ''SPARTACUS'', P68TC, ''OBSERVER'', AP68TP 600 ''VIATOR'', P68 ''OBSERVER 2''.	A31EU	14 CFR 23
	VA300		
The New Piper Aircraft, Inc	PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250	1A10	CAR 3
	PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–180, PA–28S–160, PA–28S–180, PA–28–235, PA–28–236, PA–28R–180, PA–28R–200, PA–28–181, PA–28–161, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T.	2A13	CAR 3
	PA–30, PA–39, PA–40	A1EA	CAR 3
	PA–31, PA–31–300, PA–31–325, PA–31–350	A20SO	CAR 3
	PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P–350	A8EA	CAR 3
	PA–32–260, PA–32–300, PA–32S–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (SP), PA–32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T.	A3SO	CAR 3
	PA–34–200, PA–34–200T, PA–34–220T, PA–34–220T (III), PA–34–220T (IV).	A7SO	CAR 3
	PA–42, PA–42–720, PA–42–1000	A23SO	FAR 23
	PA–42–720R	A32SO	FAR 23
	PA–44–180, PA–44–180T	A19SO	14 CFR 23
	PA–38–112	A18SO	14 CFR 23
	PA–46–310P, PA–46–350P	A25SO	14 CFR 23
Raytheon Aircraft Company	H35, J35, K35, M35, 35–33, N35, 35–A355, 35–B33, P35, S35, 35–C33, E33, F33, V35, V35A, V35B, 35–C33A, E33A, E33C, 36, A36, F33A, F33C, G33, A36TC, B36TC.	3A15	CAR 3
Raytheon Aircraft Company (cont'd).	95, B95, 95–55, 95–A55, B95A, D95A, E95, 95–B55, 95–B55A, 95–B55B, 95–C55, D55, 95–C55A, D55A, E55, E55A, 56TC, A56TC, 58, 58A.	3A16	CAR 3
	58P, 58PA, 58TC, 58TCA	A23CE	14 CFR 23
	F90	A31CE	FAR 23
	99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U–21F), A100A, A100C, B100.	A14CE	FAR 23
	200, A100–1 (U–21J), 200C, 200CT, 200T, A200 (C–12A) or (C–12C), A200C (UC–12B), A200CT (C–12D) or (FWC–12D) or (RC–12D) or (C–12F) or (RC–12G), or (RC–12H) or (RC–12K) or (RC–12P) or (RC–12Q), B200, B200C (C–12F) or (UC–12F) or (UC–12M), or (C–12R), B200CT, B200T, 300, B300, B300C, 300LW, 1900, 1900C (C–12J), 1900D.	A24CE	FAR 23
	65–90, 65–A90, B90, C90, C90A	3A20	CAR 3, FAR 23
Revo, Incorporated	Colonial C–1, Colonial C–2, Lake LA–4, LA–4A, LA–4P, Lake LA–4–200, Lake 250.	1A13	CAR 3, 14 CFR 23
Sky International	Husky A–1, A–1A, A–1B	A22NM	FAR 23
Socata Aerospatiale	TB 20, TB 10, TB 21, TB9, TB 200	A51EU	14 CFR 23
	TBM 700	A60EU	14 CFR 23
Twin Commander Aircraft Corp	500, 500–A, 500–B, 500–U, 500–S, 520, 560, 560–A, 560–E	6A1	CAR 23
	560–F, 680, 680E, 680F, 720, 680FL, 680FL(P), 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B.	2A4	CAR 23
	700	A12SW	FAR 23

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38 after public notice and become part of the type certification basis in accordance with § 21.101(b)(2) of Amendment 21–69.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model already included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

Avidyne Corporation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital

electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–GHz 6	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to one modification to the airplane models listed under the heading ''Type Certification Basis.'' Should Avidyne Corporation apply at a later date for a supplemental type certificate to modify any other model on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features of one modification to several models of airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of some airplane models, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for airplane models listed under the ''Type Certification Basis'' heading modified by Avidyne Corporation, to add an EFIS.

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF). Each system

that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on February 11, 2004.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4177 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16534; Airspace Docket No. 03–ASO–19]

Establishment of Class D and E Airspace; Olive Branch, MS; Amendment of Class E Airspace; Memphis, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: This action delays indefinitely the establishment of Class D and E4 airspace at Olive Branch, MS, and the amendment of Class E5 airspace at Memphis, TN. The construction of a new federal contract tower with a weather reporting system has been delayed, with an uncertain completion date; therefore, the effective date of the establishment of Class D and E airspace and amendment of Class E airspace must also be delayed indefinitely.

EFFECTIVE DATE: The effective date of the final rule published February 3, 2004, at 69 FR 5009 (0901 UTC, April 15, 2004) is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

Docket No. FAA–2003–16534, Airspace Docket No. 03–ASO–19, published in the **Federal Register** on February 3, 2004, (69 FR 5009), established Class D and E4 airspace at Olive Branch, MS, and amended Class E5 airspace at Memphis, TN. The construction of a federal contract tower and weather reporting system at Olive Branch Airport made this action necessary. This action was originally scheduled to become effective on April 15, 2004; however, an unforeseen delay in beginning construction on the tower has required the effective date of this action to be delayed. A notice announcing a new effective date will be published in the **Federal Register** at least 90 days prior to the new effective date.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Delay of Effective Date

■ The effective date on Docket No. FAA–2003–16534; Airspace Docket No. 03–ASO–19 is hereby delayed indefinitely.

Authority 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

* * * * *

Issued in College Park, Georgia, on February 9, 2004.

Jeffrey U. Vincent,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 04–4190 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No.FAA–2004–16988; Airspace Docket No. 04–ACE–6]

Modification of Class E Airspace; Neodesha, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Neodesha, KS. A review of controlled airspace for Neodesha Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 12, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16988/ Airspace Docket No. 04–ACE–6, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Neodesha, KS. An examination of controlled airspace for Neodesha Municipal Airport reveals it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order

7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment expands the airspace area from a 6-mile radius to a 6.4 mile radius of Neodesha Municipal Airport and brings the legal description of the Neodesha, KS Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economical, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16988/Airspace Docket No. 04–ACE–6''. The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE KS E5 Neodesha, KS

Neodesha Municipal Airport, KS
(Lat. 37°26′07″ N., long. 95°38′46″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Neodesha Municipal Airport.

* * * * *

Issued in Kansas City, MO, on February 11, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–4185 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16984; Airspace Docket No. 04–ACE–2]

Modification of Class E Airspace; Clinton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

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

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before March 20, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16984/Airspace Docket No. 04–ACE–2, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the

public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Clinton, MO. An examination of controlled airspace for Clinton Memorial Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA order 7400.2E for an aircraft to reach 1200 feet AGE is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The review also identified that the Clinton, MO Class E airspace area legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The Class E airspace area extensions should be defined in relation to the Golden Valley nondirectional radio beacon (NDB). This amendment expands the airspace area from a 6-mile radius to a 6.4-mile radius of Clinton Memorial Airport, adds the Golden Valley NDB to the legal description, defines the Class E airspace area extensions as they relate to the NDB and brings the legal description of the Clinton, MO Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16984/Airspace Docket No. 04–ACE–2.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE MO E5 Clinton, MO

Clinton Memorial Airport, MO
(Lat. 38°21′24″ N., long. 93°41′03″ W.)
Golden Valley NDB
(Lat. 38°21′31″ N., long. 93°41′05″ W.)

The airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Clinton Memorial Airport and within 2.6 miles each side of the 054° bearing from the Golden Valley NDB extending from the 6.4-mile radius of the airport to 7 miles northeast of the NDB and within 2.6 miles each side of the 217° bearing from the Golden Valley NDB extending from the 6.4-mile radius of the airport to 7 miles southwest of the NDB.

* * * * *

Issued in Kansas City, MO, on February 10, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–4186 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16986; Airspace Docket No. 04–ACE–4]

Modification of Class E Airspace; Parsons, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: The Tri-City Airport airport reference point (ARP) has been redefined. This action requires modifications to Parsons, KS controlled airspace in order to provide appropriate airspace for diverse departures at Tri-City Airport. An examination of controlled airspace for Parsons, KS revealed discrepancies in the legal description for the Parsons, KS Class E airspace area. The intended effect of this rule is to provide controlled airspace of appropriate dimensions to protect aircraft departing from and executing Standard Instrument Approach Procedures (SIAPs) to Tri-City Airport. The radius of the Class E area is decreased, discrepancies in the legal descriptions of Parsons, KS Class E airspace area are corrected and the airspace area and its legal descriptions are brought into compliance with FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 2, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16986/ Airspace Docket No. 04–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Parsons, KS. The Tri-City Airport ARP has been redefined. The Parsons, KS Class E airspace area must be decreased from a 6.6-mile radius of Tri-City Airport to a 6.5-mile radius in order to comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. An examination of controlled airspace for Parsons, KS revealed discrepancies in the legal description for the Parsons, KS Class E airspace area. Extensions to the Class E airspace area are incorrectly defined. This amendment redefines current extensions to the airspace area relative to the Parsons nondirectional radio beacon (NDB) and describes the centerline of the south extension as the 172° bearing from the NDB versus the current 174° bearing. It also establishes a northwest extension to protect aircraft executing the very high frequency omni-directional range (VOR)—A SIAP to Tri-City Airport and brings the legal description of the Parsons, KS Class E airspace area into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16986/Airspace Docket No. 04–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE KS E5 Parsons, KS

Parsons, Tri-City Airport, KS
(Lat. 37°19′48″ N., long. 95°30′22″ W.)
Parsons NDB
(Lat. 37°20′17″ N., long. 95°30′31″ W.)
Oswego VORTAC
(Lat. 37°09′27″ N., long. 95°12′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tri-City Airport and within 2.6 miles each side of the 009° bearing from the Parsons NDB extending from the 6.5-mile radius of the airport to 7 miles north of the NDB and within 2.6 miles each side of the 172° bearing from the NDB extending from the 6.5-mile radius of the airport to 7 miles south of the NDB and within 4 miles each side of the Oswego VORTAC 306° radial extending from the 6.5-mile radius of the airport to 10.9 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on February 10, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–4188 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16990; Airspace Docket No. 04–ACE–8]

Modification of Class E Airspace; Larned, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Larned, KS. A review of controlled airspace for Larned-Pawnee County Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures. The area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, June 10, 2004. Comments for inclusion in the Rules Docket must be received on or before April 13, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16990/ Airspace Docket No. 04–ACE–8, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Larned, KS. An examination of controlled airspace for Larned-Pawnee County Airport reveals it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The controlled airspace examination also revealed non-compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The Larned, KS Class E airspace area extension should be defined in relation to the Larned NDB versus the airport. This amendment expands the airspace area from a 6-mile radius to a 6.4-mile radius of Larned-Pawnee County Airport, defines the airspace extension in terms of the NDB and brings the legal description of the Larned, KS Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

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

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or

arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16990/Airspace Docket No. 04–ACE–8.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

ACE KS E5 Larned, KS

Larned-Pawnee County Airport, KS
(Lat. 38°12′31″ N., long. 99°05′10″ W.)
Larned NDB
(Lat. 38°12′16″ N., long. 99°05′15″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Larned-Pawnee County Airport and within 2.6 miles each side of the 003° bearing from the Larned NDB extending from the 6.4-mile radius of the airport to 7 miles north of the NDB.

* * * * *

Issued in Kansas City, MO, on February 13, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–4189 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16342; Airspace Docket No. 03–AAL–15]

Establishment of Class E Airspace; Southeast, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace over Southeast Alaska. Creation of Class E controlled airspace is needed to contain aircraft that will be flying new Area Navigation (RNAV) Routes created in support of the Capstone Initiative. The RNAV Routes established throughout Southeast Alaska will require the use of Global Positioning System (GPS) Wide Area Augmentation System (WAAS) avionics. Anchorage Air Route Traffic Control Center (ANC ARTCC) will utilize this controlled airspace to provide Air Traffic Control (ATC) services to aircraft that will be flying Southeast Alaska RNAV Routes under Instrument Flight Rules (IFR). The RNAV Routes will permit flight at significantly lower altitudes than those available on airways constructed from land based Navigational Aids (NAVAIDS).

EFFECTIVE DATE: 0901 UTC, June 10, 2004.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

On Wednesday, November 19, 2003, the FAA proposed to revise part 71 of the Code of Federal Regulations (14 CFR part 71) to create new Class E airspace extending upward from 1,200 ft. above the surface over Southeast AK (68 FR 65225). The action was necessary because Class E airspace is needed that is sufficient in size to contain aircraft while flying new RNAV Routes (GPS–WAAS Required) that will be established in support of the Capstone program. The Class E airspace created by this action will enable ATC to provide IFR service to aircraft flying enroute and connecting to Standard Instrument Approach Procedures (SIAP) to and from various airports throughout Southeast Alaska. The effect of this proposal is to: (1) Provide adequate controlled airspace for commercial air carriers and others conducting IFR operations in Southeast Alaska, (2) validate new operational procedures and equipment in the IFR environment, (3) provide an enroute IFR structure for operations that can be flown safely at significantly lower altitudes than those permitted on airways defined on land based NAVAIDS, and (4) provide IFR access via Public and Special approach and departure procedures to airports not otherwise able to connect to the IFR infrastructure. ATC will provide IFR services within the new Class E airspace. The establishment of Class E airspace in this rule will have an impact on pilot's flight visibility and cloud avoidance requirements while flying under VFR, during the day above 1,200

feet Above Ground Level (AGL) and below 10,000 feet Mean Sea Level (MSL). The pilot's flight visibility requirement increases to three (3) statute miles. VFR weather minimums are shown in the following table extracted from 14 CFR 91.155 *Basic VFR weather minimums:*

BASIC VFR WEATHER MINIMUMS

	Flight Visibility (statute mile)	Distance from clouds
Class G (uncontrolled):		
1,200 feet or less AGL, day	1	Clear of Clouds.
1,200 feet or less AGL, night	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, day	1	500 feet below. 1,000 feet above. 2,000 feet horizontal.
1,200 feet or more and less than 10,000 feet MSL, night	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
More than 1,200 feet AGL and at or above 10,000 feet MSL	5	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.
Class E (controlled):		
Less than 10,000 feet MSL	3	500 feet below. 1,000 feet above. 2,000 feet horizontal.
At or above 10,000 feet MSL	5	1,000 feet below. 1,000 feet above. 1 statute mile horizontal.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The comment period closed on January 5, 2004.

One letter commenting on the proposal was received. The commenter made the following recommendations:

Return Petersburg and Wrangell CTAF to Sitka Radio.

Return Gustavus CTAF to Juneau Radio.

The FAA disagrees with these two proposals. Previous evaluations of the assignments of CTAF frequencies to Juneau, Gustavus, Sitka, Wrangell, and Petersburg have concluded that CTAF and In-flight Position frequency congestion have been a problem when too many airports share a single frequency. This is the case at Juneau and Gustavus, and at Wrangell, Petersburg and Sitka. The nature of communications between the FSS/AFSS and pilots frequently require lengthy transmissions (flight-plans, pilot reports, weather briefings, etc.) that tie up frequencies when other information needs to be exchanged in a timely manner, *e.g.,* CTAF traffic information. It has become necessary to separate the CTAFs from the In-flight Position frequencies in order to accomplish and/or allow all the functions that are needed. This is especially true in the busy summer months. Users benefit from the frequency separation by being able to exchange traffic with each other on frequencies that are unimpeded by lengthy transmissions not pertinent to airport environs.

Evaluate the proposed ZAN [Anchorage Air Route Traffic Control Center] Sector 8/Sector 68 divide between Petersburg and Wrangell so that one controller handles the IFR and Special VFR traffic throughout SE Alaska, or at a minimum, between Petersburg and Wrangell.

The FAA has accomplished this action and has made a split between high altitude and low altitude traffic. Sector 8 now handles all SE Alaska traffic (below FL270), whether IFR or Special VFR. Sector 68 handles the majority of the high-altitude (FL 270 and above) traffic that used to be handled by Sector 8.

With anticipated increase of IFR traffic into Juneau, staff the Juneau Tower full time. (In the past, allowing JNU FSS personnel to work out of JNU Tower was beneficial and may be an adequate alternative to full-time staffing of the Tower.)

The FAA disagrees with this comment. Juneau Airport Traffic Control Tower (JNU ATCT) is staffed to match airport demand. However, an enhancement to airport advisories from the JNU AFSS that are currently available when the JNU ATCT is closed, are planned. A one-year test using ADS–B surveillance for airborne traffic and ground vehicles, that are appropriately equipped, on the JNU Airport is planned to begin in the summer of 2005. Transponder equipped aircraft will be included when milti-lateration becomes available.

In the past, JNU AFSS personnel have worked in JNU ATCT only for short periods when the FSS/AFSS was unavailable due to construction activities, *e.g.,* when the FSS was decommissioned and the AFSS was commissioned. The FAA has not routinely staffed the JNU ATCT with FSS or AFSS personnel. This concept would require extensive communications and equipment remodeling, as well as re-certification of personnel. JNU ATCT does not have the room to house the equipment necessary to support the AFSS function.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 of FAA Order 7400.9L, *Airspace Designations and Reporting Points*, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be revoked and revised subsequently in the Order.

The Rule

This revision to 14 CFR part 71 establishes Class E airspace over Southeast Alaska within an area beginning at lat. 58°54′25.2″ N. long. 137°31′55.3″ to lat. 58°38′33.2″ N., long.

138°12′21.25″ W., thence southeast along the offshore airspace 12 nautical miles west of and parallel to the shoreline to the point of intersection with the Alaska/Canada Border, thence along the Alaska/Canada Border to the point of beginning excluding that airspace designated for federal airways.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

AAL AK E6 Southeast, AK [New]

That airspace extending upward from 1,200 feet AGL to the base of overlaying Class E airspace above 14,500 feet MSL, within an area beginning at lat. 58°54′25.2″ N. long. 137°31′55.3″ W. to lat. 58°38′33.2″ N. long. 138°12′21.25″ W., thence southeast along the offshore airspace 12 nautical miles west of and parallel to the shoreline to the point of intersection with the Alaska, United States/Canada Border, thence along the Alaska, United States/Canada Border to the point of beginning excluding that airspace designated for federal airways and excluding that airspace within the Ketchikan, AK Class E5, the Klawock, AK Class E5, the Wrangell, AK Class E5, the Petersburg, AK Class E5, the Kake, AK Class E5, the Sitka, AK Class E5, and the Juneau, AK Class E5 airspace areas.

* * * * *

Issued in Anchorage, AK, on February 13, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–4175 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[T.D. TTB–9; Re: ATF Notice No. 947]

RIN 1513–AA48

Oak Knoll District of Napa Valley Viticultural Area (2002R–046P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: This final rule establishes the ''Oak Knoll District of Napa Valley'' viticultural area in Napa County, California. This new viticultural area is entirely within the established Napa Valley viticultural area and covers approximately 8,300 acres, of which about 3,500 acres are plantable to vines. The establishment of viticultural areas allows wineries to describe more accurately where their wines come from and enables consumers to better identify the wines they purchase.

EFFECTIVE DATE: This final rule is effective on April 26, 2004.

FOR FURTHER INFORMATION CONTACT: Joanne C. Brady, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 45797, Philadelphia, PA 19149; telephone (215) 333–7050.

SUPPLEMENTARY INFORMATION:

Impact of the Homeland Security Act on Rulemaking

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms (ATF) into two new agencies, the Alcohol and Tobacco Tax and Trade Bureau (TTB) in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of alcohol beverage labels, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003.

Background on Viticultural Areas

What Is TTB's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity and prohibits the use of deceptive information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out the Act's provisions. The Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. A list of approved viticultural areas is contained in 27 CFR part 9, American Viticultural Areas.

What Is the Definition of an American Viticultural Area?

Section 4.25(e)(1), title 27 CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features the boundaries of which have been delineated in subpart C of part 9. The establishment of viticultural areas allows the identification of regions where a given quality, reputation, or other characteristic of a wine is essentially attributable to its geographic origin. We believe that the establishment of viticultural areas allows wineries to describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Establishment of a viticultural area is neither an approval nor endorsement by TTB of the wine produced there.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2), title 27 CFR, outlines the procedure for proposing an American viticultural area. Any interested person may petition TTB to

establish a grape-growing region as a viticultural area. The petition must include:

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence that the proposed area's growing conditions, such as climate, soils, elevation, physical features, etc., distinguish it from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features that can be found on United States Geological Survey (USGS)-approved maps; and
- A copy of the appropriate USGS-approved map(s) with the boundaries prominently marked.

Impact on Current Wine Labels

With the establishment of this viticultural area, bottlers who use brand names similar to or containing part of the name of the viticultural area must ensure that their existing products are eligible to use the name of the viticultural area as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the named viticultural area. If the wine is not eligible to use the appellation, bottlers must change the brand name of that wine and obtain approval of a new label. Different rules apply if you label a wine in this category with a brand name approved before July 7, 1986. *See* 27 CFR 4.39(i) for details.

Rulemaking Proceeding

Oak Knoll District Petition

The Oak Knoll District Committee petitioned ATF to establish the ''Oak Knoll District'' viticultural area in the southern end of the Napa Valley in Napa County, California. Situated entirely within the established Napa Valley viticultural area, the Oak Knoll District area lies between the established Yountville viticultural area and the city of Napa. The petitioned viticultural area covers approximately 8,300 acres, of which about 3,500 acres are plantable to vines.

Comments on the Notice of Proposed Rulemaking

ATF published Notice No. 947, a notice of proposed rulemaking, in the **Federal Register** on July 9, 2002 (67 FR 45437). The comment period for the proposed rule closed on September 9, 2002. During this 60-day time period, ATF requested comments concerning the proposed Oak Knoll District viticultural area from all interested persons. ATF received seven written comments.

Two commenters, Mary Ann Tsai, president of Luna Vineyards, and Mr. James Verhey, president of UCC Vineyards Group, supported the Oak Knoll District's establishment, but sought to expand the area to include a vineyard just outside its eastern boundary along the Silverado Trail. Both Mr. Verhey and Ms. Tsai, in second comments, withdrew their first comments and supported the area's proposed boundaries. Ms. Dawnine Dyer, president of the Napa Valley Vintners Association, also wrote to express the group's support of the viticultural area as originally proposed.

Two comments opposed the area's establishment because the commenters believed the public would confuse the Oak Knoll District with the name and reputation of the Oak Knoll Winery in the Willamette Valley in Oregon. Mr. Ronald Vuylsteke and Ms. Marjorie Vuylsteke, founders of the Oak Knoll Winery, and Mr. Thomas Burton, the winery's general manager, expressed their opposition to the Oak Knoll District name in a jointly signed comment. They stated that use of this name would create significant consumer confusion, infringe upon their Oak Knoll brand name, and allow California winemakers to capitalize on their 30 years of work in the wine trade. They did suggest, however, that the alternative name ''Oak Knoll District of the Napa Valley'' might help differentiate the California wines from the Oregon wines.

Mr. Hugh Thacher, president, and Mr. James Faber, vice president of the San Francisco Wine Exchange, the marketing and sales agent for the Oak Knoll Winery in Oregon, also opposed the Oak Knoll District's establishment. They stated that an Oak Knoll District viticultural area would impact their ability to effectively market the Oak Knoll brand as an Oregon winery.

The petitioner recently advised TTB that they are willing to revise the name of the viticultural area to ''Oak Knoll District of Napa Valley.'' They have also corrected the amount of acreage in the petition from approximately 9,940 acres, of which 4,040 are plantable to vines, to approximately 8,300 acres, with 3,500 acres plantable to vines. This correction is to the amount of acres listed only. The boundaries in Notice No. 947 are accurate and have not changed.

TTB Decision

The petitioner provided substantial historical and current name evidence for the proposed Oak Knoll District viticultural area. After evaluating the petition, and the comments received, TTB has decided that the name ''Napa Valley'' should be made a part of the viticultural area name in order to distinguish the name of this area from the Oak Knoll Winery located in Willamette Valley, Oregon, which must continue to comply with the provisions of 27 CFR 4.39(i). The regulatory text contained in this final rule has been modified accordingly, and the new viticultural area will be formally known as the ''Oak Knoll District of Napa Valley.''

Supporting Evidence for the Oak Knoll District of Napa Valley

What Name Evidence Has Been Provided?

The petitioners supplied name evidence in the form of articles from various publications and trade magazines that make reference to the ''Oak Knoll District'' in Napa Valley. An excerpt from the article ''Dances with Cows'' by Richard Paul Hinkle in the Lifestyle section of the August/September 1999 issue of Wine News states that the Trefethen family bought the Eshcol estate, a 600-acre walnut, wheat, grape and prune ranch, ''in the Oak Knoll District of Napa'' in 1968. An article from the July 16, 1997, Los Angeles Times states, ''Trefethen's 600 acres of vines are in the (not yet legally designated) Oak Knoll District at the cool southern end of Napa Valley, not far from the city of Napa.''

The petition included historical evidence for the Oak Knoll name in a report submitted by historian Charles L. Sullivan, which included newspaper articles that extend back to the 1800s. According to the report, the viticultural area is the site of the historic Oak Knoll Ranch, which dates from the early days of American settlement in the Napa Valley. Also within the viticultural area are the former Oak Knoll School District, the historic Oak Knoll train station, the Oak Knoll Inn, and the Oak Knoll Cellars vineyard.

The petitioner also offers some modern evidence of the area's name recognition, noting that Oak Knoll Avenue traverses the viticultural area from Highway 29 on its western side to the Silverado Trail on its eastern side.

What Boundary Evidence Has Been Provided?

The Oak Knoll District of Napa Valley viticultural area is located in the southern end of Napa Valley in Napa County, California, and is completely within the established Napa Valley

viticultural area. The northern boundary of Oak Knoll District of Napa Valley is the same as the southern boundary of the Yountville viticultural area, and the Mt. Veeder viticultural area boundary line to Redwood Road defines part of its western boundary. Professor Deborah L. Elliott-Fisk, in her climate and soil report included with the petition, states that the area's southern boundary approximates the southern edge of the Dry Creek alluvial fan. She also concludes the most logical west-east line to follow for this boundary is Redwood Road, which becomes Trancas Road to the east of Highway 29, and states the area's logical eastern boundary is the Silverado Trail.

The petitioner submitted two USGS maps. See the narrative boundary descriptions and the listing of maps for the viticultural area in the final rule published at the end of this notice.

What Evidence Relating to Growing Conditions Was Provided?

Soil

According to the reports and studies cited by Dr. Elliott-Fisk, the soils in the Oak Knoll District of Napa Valley viticultural area are ''more uniform than in other approved Napa Valley viticultural areas, due principally to the dominance of the large Dry Creek alluvial fan.'' Dr. Elliott-Fisk notes that across the large Dry Creek fan, soils include fine, gravelly clay loam, silt loam, and loam soils. The alluvial deposits from Dry Creek and the Napa River have buried the Diablo clays and Haire clay loams within this viticultural area. This contrasts with the land south of this viticultural area where Diablo and Haire soils are common at the surface.

Bedrock, seen in the hillsides along the western edge of the Oak Knoll District of Napa Valley area is diverse and primarily volcanic in origin. Serpentine, sandstone and shale are found on the hillsides. The toeslope soils are unusually rich in clay and are found in many different colors.

Topography

According to reports cited by Dr. Elliott-Fisk, the Oak Knoll District of Napa Valley viticultural area lies at relatively low elevations along the valley floor, with the Dry Creek Fan spreading out across the valley floor as sea-level dropped and San Pablo Bay regressed south and west many years ago. Valley floor elevations and the valley floor gradient increase just south of Yountville. This is the most abrupt topographic change along the entire Napa Valley floor.

Climate

The petitioners state that, outside of the Los Carneros viticultural area, one of the coolest regions in the Napa Valley is the Oak Knoll District of Napa Valley viticultural area, which has a long cool growing season for grapevines lasting approximately eight months of the year. This uniform climate is due to the broad, flat valley floor's topography. Along the western and eastern edges of the Oak Knoll District of Napa Valley area, small pockets of an even cooler climate are found in the immediate Napa River floodplain and in the small stream tributaries on the lower foothills.

The petitioner also states the proximity of this area to San Pablo Bay results in a maritime influence, with cool breezes coming off the bay. Coastal fog is common is the mornings, especially in the summer. The petitioner adds that the area is sub-humid and receives approximately 28 to 30 inches of precipitation in a normal year. Annual precipitation can reach 60 inches in an abnormally wet year.

Regulatory Analyses and Notices

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

TTB has determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

TTB certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation imposes no new reporting, recordkeeping, or other administrative requirements. The establishment of a viticultural area is neither an endorsement nor approval by TTB of the quality of wine produced in the area. Any benefit derived from the use of a viticultural area name is the result of a proprietor's own efforts and consumer acceptance of wines from that area. Accordingly, a regulatory flexibility analysis is not required.

Drafting Information

The principal author of this document is Joanne Brady, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Alcohol and alcoholic beverages, Consumer protection, and Wine.

Authority and Issuance

■ For the reasons set forth in the preamble, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Subpart C is amended by adding § 9.161 to read as follows:

§ 9.161 Oak Knoll District of Napa Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Oak Knoll District of Napa Valley''.

(b) *Approved maps.* The appropriate maps for determining the boundary of the Oak Knoll District of Napa Valley viticultural area are the following United States Geological Survey Quadrangle maps (7.5 Minute Series):

(1) Napa, California, 1951 (Photo revised 1980); and

(2) Yountville, California, 1951 (Photo revised 1968).

(c) *Boundaries.* The Oak Knoll District of Napa Valley viticultural area is located entirely within Napa County, California. The boundaries of the Oak Knoll District of Napa Valley viticultural area, using landmarks and points of reference found on the appropriate U.S.G.S. maps, are as follows:

(1) Beginning at the intersection of State Highway 29 and Trancas Road in the city of Napa on the Napa, CA quadrangle map;

(2) Proceed easterly along Trancas Road until it meets the Napa River;

(3) Proceed southerly along the Napa River approximately 3,500 feet to its confluence with Milliken Creek;

(4) Continue northerly up Milliken Creek to its intersection with Monticello Road;

(5) Then proceed westerly along Monticello Road to its intersection with Silverado Trail;

(6) Then proceed northerly and then northeasterly along Silverado Trail to its intersection with an unimproved dirt road located approximately 1,300 feet north of the intersection of Silverado Trail and Oak Knoll Avenue;

(7) From that point, proceed west in a straight line to the confluence of Dry Creek and the Napa River;

(8) Then proceed northwesterly along Dry Creek onto the Yountville map to

the fork in the creek; then northwesterly along the north fork of Dry Creek to its intersection with the easterly end of the light-duty road labeled Ragatz Lane;

(9) Proceed southwesterly along Ragatz Lane to the west side of State Highway 29;

(10) Then proceed southerly along the west side of State Highway 29 for 982 feet to a point marking the easterly extension of the northern boundary of Napa County Assessor's parcel number 034–170–015 (marked in part by a fence along the southern edge of the orchard shown along the west side of State Highway 29 just above the bottom of the Yountville map);

(11) Then proceed westerly for 3,550 feet along the northern boundary of Napa County Assessor's parcel number 034–170–015 and its westerly extension to the dividing line between Range 5 West and Range 4 West on the Napa, CA map;

(12) Then proceed southwest in a straight line to the peak marked with an elevation of 564 feet; then south-southwest in a straight line to the peak marked with an elevation of 835 feet;

(13) Then proceed southwest in a straight line approximately 1,300 feet to the reservoir gauging station located on Dry Creek; then proceed west in a straight line across Dry Creek to the 400 foot contour line;

(14) Proceed along the 400-foot contour line in a generally southeasterly direction to its intersection with the line dividing Range 5 West and Range 4 West; then proceed south along that dividing line approximately 2,400 feet to the center of Redwood Road;

(15) Then proceed southerly and then easterly along Redwood Road to the point of beginning at Highway 29.

Dated: January 5, 2004.

Arthur J. Libertucci,

Administrator.

Approved: January 28, 2004.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 04–4087 Filed 2–24–04; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 147

[FRL–7623–1]

Revision to the Texas Underground Injection Control Program Approved Under Section 1422 of the Safe Drinking Water Act and Administered by the Texas Commission on Environmental Quality

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today, EPA is amending the Code of Federal Regulations (CFR), and incorporating by reference (IBR), the revised Underground Injection Control (UIC) Program for the Texas Commission on Environmental Quality (TCEQ, formerly the Texas Natural Resources Conservation Commission). EPA initially approved the Texas UIC program, which is the subject of this rule, on January 6, 1982. Since approval, the State has had primary authority to implement the UIC program. The State has made changes to its EPA approved program and submitted them to EPA for review. Those changes are the subject of this rule. EPA, after conducting a thorough review, is hereby approving and codifying the State program revisions. As required in the Federal UIC regulations, substantial State UIC program revisions must be approved and codified in the CFR by a rule signed by the EPA Administrator. The intended effect of this action is to approve, update and codify the revisions to the authorized Texas UIC Program and to incorporate by reference the relevant portions of the revisions in the Code of Federal Regulations.

DATES: This rule is effective on March 26, 2004. The Director of the Federal Register approves the incorporation by reference contained in this rule as of March 26, 2004.

FOR FURTHER INFORMATION CONTACT: Mario Salazar, (*salazar.mario@epa.gov*), Mail Code 4606M, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460, voice (202) 564–3894, fax (202) 564–3756. For technical information, contact Ray Leissner, (*leissner.ray@epa.gov*) Ground Water/UIC Section (6WQ–SG), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, TX, 75202–2733, voice (214) 665–7183, fax (214) 665–2191.

SUPPLEMENTARY INFORMATION:

I. Regulated Entities

This action does not impose any regulation on the public, and in fact there are no entities affected. This action merely approves, codifies, and incorporates by reference into the Code of Federal Regulations the revisions to the Texas UIC program previously adopted by the TCEQ. The rules that are the subject of this codification are already in effect in Texas under Texas law. The IBR allows EPA to enforce the State authorized UIC program, if necessary, and to intervene effectively in case of an imminent and substantial endangerment to public health and/or USDWs in the State.

II. Background

Section 1421 of the Safe Drinking Water Act (SDWA) requires the Administrator to promulgate minimum requirements for effective State programs to prevent underground injection activities which endanger underground sources of drinking water (USDWs). Section 1422 of SDWA allows States to apply to the EPA Administrator for authorization of primary enforcement and permitting authority (primacy) over injection wells within the State. Section 1422(b)(1)(A) provides that States shall submit to the Administrator an application that: (1) contains a showing satisfactory to the Administrator that the State has adopted and will implement an underground injection control program that meets the requirements of regulations in effect under Section 1421 of SDWA, and (2) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation. Section 1422(b)(1)(B)(2) requires, after reasonable opportunity for public comment, the Administrator by rule to approve, disapprove, or approve in part, the State UIC program.

EPA's approval of primacy for the State of Texas for underground injection into Class I, III, IV, and V wells, to be implemented by the Texas Water Commission, was published on January 6, 1982 (47 FR 618), and became effective on February 7, 1982.

On January 26, 1982, the Governor of the State of Texas requested approval of a complimentary program for Class II (oil and gas related) wells, under Section 1425 of SDWA, to be implemented by the Texas Railroad Commission (RRC). In addition to wells commonly classified as Class II in the UIC program, the request included two well types considered Class V wells: geothermal return and *in situ*

combustion of coal wells. The UIC program implemented by the RRC, including Class V geothermal return and *in situ* combustion of coal wells, was approved by EPA on April 23, 1982 (47 FR 17488) and became effective 30 days later.

In 1985, the 69th Texas Legislature enacted legislation that transferred jurisdiction over Class III brine mining wells from the Texas Water Commission, now the Texas Commission on Environmental Quality (TCEQ), to the RRC. Therefore, two types of Class V wells, geothermal return and *in situ* combustion of coal, as well as Class III brine mining wells, are not included in the UIC program implemented by the TCEQ. The elements of the State's primacy application, originally approved by EPA and published in the **Federal Register** on January 6, 1982, submitted through the Texas Department of Water Resources, a predecessor to the TCEQ, [1] were codified in Title 40 of the Code of Federal Regulations, at 40 CFR 147.2200. These regulations were last updated on March 6, 1991 (56 FR 9408).

After EPA's initial approval of the UIC program in 1982, TCEQ predecessors revised the program several times. The revisions included regulation changes, for which Texas was required by § 145.32 to obtain approval from EPA, and three name changes.

On June 17, 1996, Mr. Richard Lowerre of the law firm of Henry, Lowerre, Johnson, Hess and Fredrick, acting on behalf of his clients (''Petitioners''), filed a petition for partial withdrawal of program approval for the Texas UIC program. Mr. Lowerre represented the Environmental Defense Fund (EDF, now Environmental Defense, ED) and later the Oil and Chemical Association of Workers (OCAW, now Paper, Allied Industrial, Chemical and Energy Workers Union, PACE). The petition informed EPA of the Petitioners' intent to sue under sections 1422 and 1449 of SDWA and EPA rules at 40 CFR Part 135, Subpart B. The petition alleged that, due to changes made by the Texas Legislature to environmental statutes and the implementation of those changes, TCEQ's UIC program no longer met the Federal requirements for primacy for the UIC program. The petition identified specific elements of TCEQ's UIC program that formed the basis for EDF's request to EPA to withdraw approval of TCEQ's UIC program. These included: inadequate enforcement authority due to recently passed audit privilege [2] and takings [3] laws, inadequate public participation in enforcement activities, inadequate public participation in permitting decisions and inadequate opportunities for judicial review of permit decisions made by TCEQ. Over the course of the resolution of the petition, additional issues were raised by the Petitioners that were not included in the original petition. All these issues were satisfactorily resolved through negotiations with Petitioners.

On August 14, 1998, TCEQ submitted a complete UIC program revision application package. Over the course of the review of this package, EPA received comments on the submission from the Petitioners, including numerous additional issues relating to past and present UIC program and legislative activities. EPA comments given to the TCEQ included issues raised by Petitioners, as well as issues identified by EPA. TCEQ submitted two application revision supplements in response to EPA comments.

Issues raised by the Petitioners related to aspects of Texas' UIC program implementation. For those issues, a negotiated agreement was reached between EPA, Texas, and Petitioners. In exchange for additional reporting by TCEQ and oversight by EPA, the Petitioners withdrew their petition for withdrawal of program authorization in August 2000 and agreed not to contest this program revision. With resolution of the petition issues and EPA's comments, there were no unresolved issues that warranted EPA disapproval of this program revision application. Specific details on the Petitioners' issues and their resolution can be found in the **Federal Register** proposal dated November 8, 2001 (66 FR 56496—56503), and are also available from Ray Leissner of EPA Region 6 Offices at (214) 665–7183 or *leissner.ray@epa.gov.*

The proposed revisions to implement the regulatory changes called for in the agreement with Petitioners were published in the August 8, 1997,[4] edition of the Texas Register. The regulatory actions included adoption of rule changes in 30 TAC, Chapter 55, Subchapter B, section 52.25, repeal of 30 TAC, section 305.106 to avoid duplication of the new rules, and adoption of new rules at 30 TAC, Chapter 80, Subchapters C and F, sections 80.105–80.257. These final changes were published in the Texas Register on November 21, 1997, effective December 1, 1997.

EPA published its proposed decision to approve and codify these revisions in the **Federal Register** on November 8, 2001 (66 FR 56496–56503), and in five major newspapers within the State. The proposal provided the public the opportunity to comment and request a hearing. No comments or requests for hearing were received.

The changes to 40 CFR 147.2200, promulgated in today's rule differ from the proposal only in formatting. There was also a name change for the Texas UIC Agency for Class I, III, IV and V, from Texas Natural Resources Conservation Commission (TNRCC) to the Texas Commission on Environmental Quality (TCEQ). The Agency duties did not change, only the name.

Today's action approves, codifies, and incorporates by reference those revisions submitted by the TCEQ to the Class I, III, IV and V portions of the State's UIC program originally approved under section 1422 of SDWA in 1982.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

[1] On September 1, 2002, the Texas Natural Resources Conservation Commission (TNRCC) changed its name to the Texas Commission on Environmental Quality (TCEQ). None of the duties of the Agency were changed or transferred. The proposal to approve the revisions to the UIC program in Texas mentioned in this document and published in the **Federal Register** on November 8, 2001 (66 FR 56496—56503) had the former name of the Agency (TNRCC). References to the TCEQ include actions that could have been done by one of its predecessors.

[2] Audit privilege laws were conceived originally as a way for operators to perform self audits and correct problems. In some cases, these laws can have the effect of keeping all records of a violation sealed if the offender voluntarily corrects the violation. This might be inconsistent with public participation requirements under the minimum standards for States' UIC programs.

[3] These laws generally require the State to compensate private companies or individuals for any significant damage caused by regulatory actions. Such laws may limit the State's ability to regulate and take enforcement action.

[4] Note that the regulatory changes published in 1997 were not contested by Petitioners. The issues still remaining in 1997 were not regulation related. Those issues were finally resolved in 2000.

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* It does not impose any information collection, reporting, or record-keeping requirements. It merely approves, codifies, and incorporates by reference State revisions to its EPA approved UIC program.

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.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9, and 48 CFR Chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, we defined small entities as (1) a small business based on Small Business Administration (SBA) size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule merely approves, codifies, and incorporates by reference into 40 CFR Part 147 the revisions to the Texas program regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. Codification of these revisions does not result in additional regulatory burden to or directly impact small businesses in Texas.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written Statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector because the rule imposes no enforceable duty on any State, local or Tribal governments or the private sector. This final rule only approves the State's UIC regulations as revised and in effect in the State of Texas. Thus today's rule is not subject to the requirements of sections 202 and 205 of UMRA. For the same reason, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the State, on the relationship between the national government and the State, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule merely approves and codifies regulations already adopted and implemented by the State of Texas ensuring the protection of underground sources of drinking water. This codification revises the existing federally approved Texas UIC program, described at 40 CFR 147.2200, to reflect current statutory, regulatory, and other key programmatic elements of the program. Thus,

Executive Order 13132 does not apply to this rule. Although Executive Order 13132 does not apply to this rule, extensive consultation between EPA and the State of Texas went into revising the UIC regulations. The proposal published in the **Federal Register** on November 8, 2001 (66 FR 56496–56503) provides a detailed description of the consultations that took place in preparation of the Texas UIC regulations which are the subject of this codification. In addition, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop ''an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

This final rule does not have Tribal implications. It will not have substantial direct effects on Tribal governments, 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, as specified in Executive Order 13175. The UIC program for Indian lands is separate from the State of Texas UIC program. The UIC program for Indian lands in Texas is administered by EPA and can be found at 40 CFR 147.2205 of the Code of Federal Regulations. Thus, Executive Order 13175 does not apply to this rule. Nevertheless, in the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and Tribal governments, EPA specifically solicited comment on the proposed rule from Tribal officials in its notice published in the **Federal Register** on November 8, 2001 (66 FR 56496–56503) and in five major newspapers within the State.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. Further, it does not concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate risk to children.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide to Congress, through the Office of Management and Budget (OMB), explanations when EPA decides not to use available and applicable voluntary consensus standards.

This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations or Low-Income Populations

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. This rule does not affect minority or low income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on March 26, 2004.

List of Subjects in 40 CFR Part 147

Environmental protection, Incorporation by reference, Indians-lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water supply.

Dated: February 9, 2004.

Michael O. Leavitt,

Administrator.

■ For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is amended as follows:

PART 147—STATE UNDERGROUND INJECTION CONTROL PROGRAMS

■ 1. The authority citation for part 147 continues to read as follows:

Authority: 42 U.S.C. 300h; and 42 U.S.C. 6901 *et seq.*

Subpart SS—Texas

■ 2. Section 147.2200 is revised to read as follows:

§ 147.2200 State-administered program—Class I, III, IV, and V wells.

The UIC program for Class I, III, IV, and V wells in the State of Texas, except for those wells on Indian lands, Class III brine mining wells, and certain Class V wells, is the program administered by the Texas Commission on Environmental Quality approved by EPA pursuant to section 1422 of the Safe Drinking Water Act (SDWA). Notice of the original approval for Class I, III, IV, and V wells was published in the **Federal Register** on January 6, 1982 and became effective February 7, 1982. Class V geothermal wells and wells for the *in situ* combustion of coal are regulated by the Rail Road Commission of Texas under a separate UIC program approved by EPA and published in the **Federal Register** on April 23, 1982. A subsequent program revision application for Class I, III, IV, and V wells, not including Class III brine mining wells, was approved by the EPA pursuant to section 1422 of SDWA. Notice of this approval was published in the **Federal Register** on February 25, 2004; the effective date of these programs is March 26, 2004. The program for Class I, III, IV, and V wells, not including Class III brine mining wells, consists of the following elements as submitted to the EPA in the State's revised program applications.

(a) *Incorporation by reference.* The requirements set forth in the State statutes and regulations cited in this paragraph are hereby incorporated by reference and made part of the applicable UIC program under SDWA for the State of Texas. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials that are incorporated by reference in this paragraph are available from the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington DC or at EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202.

(1) Texas Statutory and Regulatory Requirements Applicable to the Underground Injection Control Program for Class I, III, IV, and V Wells, except for Class III Brine Mining Wells, March 2002.

(2) [Reserved]

(b) *Other laws.* The following statutes and regulations, as effective on March 31, 2002, although not incorporated by reference except for any provisions identified in paragraph (a) of this section, are also part of the approved State-administered UIC program.

(1) *Class I, III, IV, and V wells.* (i) Title 30 of the Texas Administrative Code Chapters 39, 50, 55, 80, and 281.

(ii) Vernon's Texas Codes Annotated, Water Code, Chapters 5, 7, 26, and 32, Health and Safety Code Section 361, Government Code (ORA) Chapter 552 and Government Code (APA) Chapter 2001.

(2) [Reserved]

(c) *Memorandum of Agreement*—(1) *Class I, III, IV, and V wells.* The Memorandum of Agreement between EPA Region VI and the Texas Natural Resource Conservation Commission a predecessor to the Texas Commission on Environmental Quality (TCEQ), revised March 23, 1999, and signed by the EPA Regional Administrator on October 23, 2001.

(2) [Reserved]

(d) *Statement of legal authority*—(1) *Class I, III, IV, and V wells.* ''State of Texas Office of Attorney General Statement for Class I, III, IV, and V Underground Injections Wells,'' signed by the Attorney General of Texas, June 30, 1998.

(2) [Reserved]

(e) *Program Description*—(1) *Class I, III, IV, and V wells.* The Program Description and any other materials submitted as part of the revision application or as supplements thereto.

(2) [Reserved]

[FR Doc. 04–3222 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 27

[WT Docket No. 00–230; DA 04–75]

Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date, correction.

SUMMARY: We are correcting the **DATES** section of a document published February 12, 2004, which delayed the effective date of various rules adopted in the Secondary Markets Proceeding, WT Docket No. 00–230. We omitted a rule that should have been listed among the rules which were excepted from the delayed effective date. The corrected **DATES** sections follows.

DATES: The effective date of the rules published on November 25, 2003 at 68 FR 66252, except for the amendments to §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e) and 1.9035(e), was delayed from January 26, 2004 to February 2, 2004.

FOR FURTHER INFORMATION CONTACT: Katherine M. Harris, Mobility Division, at (202) 418–0620.

SUPPLEMENTARY INFORMATION: This is a correction to the summary of the Commission's *Public Notice*, DA 04–75, released on January 15, 2004 which published at 69 FR 6920, February 12, 2004, to include § 1.948(j) in the previous listing of rules excepted from the delayed February 2, 2004 effective date. The full text of the *Public Notice* is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Federal Communications Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at *http://wireless.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

1. On October 6, 2003, the Commission released a *Report and Order and Further Notice of Proposed Rulemaking*, 68 FR 66252 (November 25, 2003) in WT Docket No. 00–230, In the Matter of Promoting Efficient Use of Spectrum through Elimination of Barriers to the Development of Secondary Markets (Secondary Markets Report and Order). A summary of the *Secondary Markets Report and Order* portion of the *Further Notice of Proposed Rulemaking* prescribed that, except for §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules, the various rules adopted in the *Secondary Markets Report and Order* were to be effective January 26, 2004.

2. In order to comply with the requirements of the Congressional Review Act under the Contract with America Advancement Act of 1996, *see* 5 U.S.C. 801(a)(3), the effective date of the rules that otherwise currently were to become effective on January 26, 2004 was delayed to February 2, 2004. The effective dates of §§ 1.913(a), 1.913(a)(3), 1.948(j), 1.2002(d), 1.2003, 1.9003, 1.9020(e), 1.9030(e), and 1.9035(e) of the Commission's rules are not affected by this extension of the effective date for all other rules adopted in the *Secondary Markets Report and Order.*

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Radio, Reporting and recordkeeping requirements, Telecommunications.

47 CFR Part 27

Communications common carriers, Radio.

Federal Communications Commission.

Katherine M. Harris,

Deputy Division Chief.

[FR Doc. 04–4094 Filed 2–24–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–4062–05; I.D. 022004A]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan (ALWTRP)

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

ACTION: Temporary rule.

SUMMARY: The Assistant Administrator for Fisheries (AA), NOAA, announces temporary restrictions consistent with the requirements of the ALWTRP's implementing regulations. These regulations apply to lobster trap/pot and anchored gillnet fishermen in an area totaling approximately 1,896 square nautical miles (nm^2) (6,503 km^2), east of Portsmouth, NH. The regulations are effective for 15 days. The purpose of this action is to provide protection to an aggregation of North Atlantic right whales (right whales).

DATES: Effective beginning at 0001 hours February 27, 2004, through 2400 hours March 12, 2004.

ADDRESSES: Copies of the proposed and final Dynamic Area Management rules, Environmental Assessments (EAs), Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may also be obtained by writing Diane Borggaard, NMFS/Northeast Region, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS/Northeast Region, 978–281–9328 x6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.noaa.gov/whaletrp/*.

Background

The ALWTRP was developed pursuant to section 118 of the Marine Mammal Protection Act (MMPA) to reduce the incidental mortality and serious injury of three endangered species of whales (right, fin, and humpback) as well as to provide conservation benefits to a fourth non-endangered species (minke) due to incidental interaction with commercial fishing activities. The ALWTRP, implemented through regulations codified at 50 CFR 229.32, relies on a combination of fishing gear modifications and time/area closures to reduce the risk of whales becoming entangled in commercial fishing gear (and potentially suffering serious injury or mortality as a result).

On January 9, 2002, NMFS published the final rule to implement the ALWTRP's Dynamic Area Management (DAM) program (67 FR 1133). On August 26, 2003, NMFS amended the regulations by publishing a final rule, which specifically identified gear modifications that may be allowed in a DAM zone (68 FR 51195). The DAM program provides specific authority for NMFS to restrict temporarily on an expedited basis the use of lobster trap/pot and anchored gillnet fishing gear in areas north of 40° N. lat. to protect right whales. Under the DAM program, NMFS may: (1) require the removal of all lobster trap/pot and anchored gillnet fishing gear for a 15–day period; (2) allow lobster trap/pot and anchored gillnet fishing within a DAM zone with gear modifications determined by NMFS to sufficiently reduce the risk of entanglement; and/or (3) issue an alert to fishermen requesting the voluntary removal of all lobster trap/pot and anchored gillnet gear for a 15–day period and asking fishermen not to set any additional gear in the DAM zone during the 15–day period.

A DAM zone is triggered when NMFS receives a reliable report from a qualified individual of three or more right whales sighted within an area (75 nm2 (139 km^2)) such that right whale density is equal to or greater than 0.04 right whales per nm^2 (1.85 km2). A qualified individual is an individual ascertained by NMFS to be reasonably able, through training or experience, to identify a right whale. Such individuals include, but are not limited to, NMFS staff, U.S. Coast Guard and Navy personnel trained in whale identification, scientific research survey personnel, whale watch operators and naturalists, and mariners trained in whale species identification through disentanglement training or some other training program deemed adequate by NMFS. A reliable report would be a credible right whale sighting.

On February 12, 2004, NMFS Aerial Survey Team reported a sighting of six right whales in the proximity of 42° 41.56′ N lat. and 70° 02.03′ W long. This position lies east of Portsmouth, NH. Thus, NMFS has received a reliable report from a qualified individual of the requisite right whale density to trigger the DAM provisions of the ALWTRP.

Once a DAM zone is triggered, NMFS determines whether to impose restrictions on fishing and/or fishing gear in the zone. This determination is based on the following factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data.

NMFS has reviewed the factors and management options noted above relative to the DAM under consideration. Pursuant to this review, NMFS prohibits lobster trap/pot and anchored gillnet gear in this area during the 15–day restricted period unless it is modified in the manner described in this temporary rule. The DAM zone is bound by the following coordinates:

43°03′ N, 70°32′ W (NW Corner)
43°03′ N, 69°32′ W
42°20′ N, 69°32′ W
42°20′ N, 70°32′ W

In addition to those gear modifications currently implemented under the ALWTRP at 50 CFR 229.32, the following gear modifications are required in the DAM zone. If the requirements and exceptions for gear modification in the DAM zone, as described below, differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone.

Lobster Trap/Pot Gear

Fishermen utilizing lobster trap/pot gear within the portion of the Northern

Nearshore Lobster Waters, Northern Inshore State Lobster Waters, and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys.

Fishermen utilizing lobster trap/pot gear within the portion of the Offshore Lobster Waters Area that overlap with the DAM zone are required to utilize all of the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per trawl; and
4. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys.

Anchored Gillnet Gear

Fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with the DAM zone are required to utilize all the following gear modifications while the DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. All buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. Fishermen are allowed to use two buoy lines per string;
4. Each net panel must have a total of five weak links with a maximum breaking strength of 1,100 lb (498.8 kg). Net panels are typically 50 fathoms (91.4 m) in length, but the weak link requirements would apply to all variations in panel size. These weak links must include three floatline weak links. The placement of the weak links on the floatline must be: one at the center of the net panel and one each as close as possible to each of the bridle ends of the net panel. The remaining two weak links must be placed in the center of each of the up and down lines at the panel ends; and
5. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22 lb (10.0 kg) Danforth-style anchor at each end of the net string.

The restrictions will be in effect beginning at 0001 hours February 27, 2004, through 2400 hours March 12, 2004, unless terminated sooner or extended by NMFS through another notification in the **Federal Register**.

The restrictions will be announced to state officials, fishermen, Atlantic Large Whale Take Reduction Team (ALWTRT) members, and other interested parties through e-mail, phone contact, NOAA website, and other appropriate media immediately upon filing with the **Federal Register**.

Classification

In accordance with section 118(f)(9) of the MMPA, the Assistant Administrator (AA) for Fisheries has determined that this action is necessary to implement a take reduction plan to protect North Atlantic right whales.

This action falls within the scope of alternatives and impacts analyzed in the Final EAs prepared for the ALWTRP's DAM program. Further analysis under the National Environmental Policy Act (NEPA) is not required.

NMFS provided prior notice and an opportunity for public comment on the regulations establishing the criteria and procedures for implementing a DAM zone. Providing prior notice and opportunity for comment on this action, pursuant to those regulations, would be impracticable because it would prevent NMFS from executing its functions to protect and reduce serious injury and mortality of endangered right whales. The regulations establishing the DAM program are designed to enable the agency to help protect unexpected concentrations of right whales. In order to meet the goals of the DAM program, the agency needs to be able to create a DAM zone and implement restrictions on fishing gear as soon as possible once the criteria are triggered and NMFS determines that a DAM restricted zone is appropriate. If NMFS were to provide prior notice and an opportunity for public comment upon the creation of a DAM restricted zone, the aggregated right whales would be vulnerable to entanglement which could result in serious injury and mortality. Additionally, the right whales would most likely move on to another location before NMFS could implement the restrictions designed to protect them, thereby rendering the action obsolete. Therefore, pursuant to 5 U.S.C. 553(b)(B), the AA finds that good cause exists to waive prior notice and an opportunity to comment on this action to implement a DAM restricted zone to reduce the risk of entanglement of endangered right whales in commercial lobster trap/pot and anchored gillnet gear as such procedures would be impracticable.

For the same reasons, the AA finds that, under 5 U.S.C. 553(d)(3), good cause exists to waive the 30–day delay in effective date. If NMFS were to delay for 30 days the effective date of this action, the aggregated right whales would be vulnerable to entanglement, which could cause serious injury and mortality. Additionally, right whales would likely move to another location between the time NMFS approved the action creating the DAM restricted zone and the time it went into effect, thereby rendering the action obsolete and ineffective. Nevertheless, NMFS recognizes the need for fishermen to have time to either modify or remove (if not in compliance with the required restrictions) their gear from a DAM zone once one is approved. Thus, NMFS makes this action effective 2 days after the date of publication of this notice in the **Federal Register**. NMFS will also endeavor to provide notice of this action to fishermen through other means as soon as the AA approves it, thereby providing approximately 3 additional days of notice while the Office of the **Federal Register** processes the document for publication.

NMFS determined that the regulations establishing the DAM program and actions such as this one taken pursuant to those regulations are consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Following state review of the regulations creating the DAM program, no state disagreed with NMFS' conclusion that the DAM program is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program for that state.

The DAM program under which NMFS is taking this action contains policies with federalism implications

warranting preparation of a federalism assessment under Executive Order 13132. Accordingly, in October 2001 and March 2003, the Assistant Secretary for Intergovernmental and Legislative Affairs, DOC, provided notice of the DAM program and its amendments to the appropriate elected officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rules implementing the DAM program. A copy of the federalism Summary Impact Statement for the final rules is available upon request (**ADDRESSES**).

The rule implementing the DAM program has been determined to be not significant under Executive Order 12866.

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3)

Dated: February 20, 2004.

Rebecca Lent,

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

[FR Doc. 04–4148 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 031125290–4058–02; I.D. 111003D]

RIN 0648–AQ97

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Annual Specifications

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

ACTION: Final rule.

SUMMARY: NMFS issues a regulation to implement the annual harvest guideline for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast for the fishing season January 1, 2004, through December 31, 2004. This action adopts a harvest guideline and initial subarea allocations for Pacific sardine off the Pacific coast that have been calculated according to the regulations implementing the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP).

DATES: Effective March 26, 2004.

ADDRESSES: The report Stock Assessment of Pacific Sardine with Management Recommendations for 2004 may be obtained from Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. An environmental assessment/regulatory impact review/final regulatory flexibility analysis (FRFA) may be obtained at this same address.

FOR FURTHER INFORMATION CONTACT: Svein Fougner, Southwest Region, NMFS, 562–980–4040.

SUPPLEMENTARY INFORMATION: The FMP, which was implemented by publication of the final rule in the **Federal Register** on December 15, 1999 (64 FR 69888), divides management unit species into two categories: actively managed and monitored. Harvest guidelines for actively managed species (Pacific sardine and Pacific mackerel) are based on formulas applied to current biomass estimates. Biomass estimates are not calculated for species that are only monitored (jack mackerel, northern anchovy, and market squid).

At a public meeting each year, the biomass for each actively managed species is reviewed by the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (Team). The biomass, harvest guideline, and status of the fisheries are then reviewed at a public meeting of the Council's CPS Advisory Subpanel (Subpanel). This information is also reviewed by the Council's Scientific and Statistical Committee (SSC). The Council reviews reports from the Team, Subpanel, and SSC and after providing time for public comment, makes its recommendation to NMFS. The annual harvest guideline and season structure are published by NMFS in the **Federal Register** as soon as practicable before the beginning of the appropriate fishing season. The Pacific sardine season begins on January 1 and ends on December 31 of each year.

The Team meeting took place at the Southwest Fisheries Science Center in La Jolla, CA, on October 14, 2003. A public meeting between the Team and the Subpanel was held at the same location that afternoon. The Council reviewed the report at its November meeting in Del Mar, CA, when it also heard comments from its advisory bodies and the public.

Based on a biomass estimate of 1,090,587 metric tons (mt)(in U.S. and Mexican waters), using the FMP formula, the harvest guideline for Pacific sardine in U.S. waters for January 1, 2004, through December 31, 2004, is 122,747 mt. The biomass estimate is slightly higher than last year's estimate; however, the difference between this year's biomass is not statistically significant from the biomass estimates of recent years.

Under the FMP, the harvest guideline is allocated one-third for Subarea A, which is north of 39° 00′ N. lat. (Pt. Arena, CA) to the Canadian border, and two-thirds for Subarea B, which is south of 39° 00′ N. lat. to the Mexican border. Under this final rule, the northern allocation for 2004 would be 40,916 mt, and the southern allocation would be 81,831 mt. In 2003, the northern allocation was 36,969 mt, and the southern allocation was 73,939 mt.

An incidental landing allowance of sardine in landings of other CPS would become effective if the harvest guideline is reached and the fishery closed. A landing allowance of sardine up to 45 percent by weight of any landing of CPS is authorized by the FMP, and this is the level set for 2004. An incidental allowance prevents fishermen from being cited for a violation when sardine occur in schools of other CPS, and it minimizes wasteful bycatch of sardine if sardine are inadvertently caught while fishing for other CPS. Sardine landed with other species also requires sorting at the processing plant, which adds to processing costs. Mixed species in the same load may damage smaller fish.

The sardine population was estimated using a modified version of the integrated stock assessment model called Catch at Age Analysis of Sardine Two Area Model (CANSAR TAM). CANSAR-TAM is a forward-casting, age-structured analysis using fishery dependent and fishery independent data to obtain annual estimates of sardine abundance, year-class strength, and age-specific fishing mortality for 1983 through 2003. The modification of CANSAR-TAM was developed to account for the expansion of the Pacific sardine stock northward to include waters off the northwest Pacific coast. Information on the fishery and the stock assessment is found in the report Stock Assessment of Pacific Sardine with Management Recommendations for 2004 (see **ADDRESSES**).

The formula in the FMP uses the following factors to determine the harvest guideline:

1. *The biomass of age one sardine and above.* For 2004, this estimate is 1,090,587 mt.

2. *The cutoff.* This is the biomass level below which no commercial fishery is allowed. The FMP established this level at 150,000 mt.

3. *The portion of the sardine biomass that is in U.S. waters.* For 2004, this estimate is 87 percent, based on the

average of larval distribution obtained from scientific cruises and on the distribution of the resource obtained from logbooks of fish-spotters.

4. *The harvest fraction.* This is the percentage of the

biomass above 150,000 mt that may be harvested. The fraction used varies (5–15 percent) with current ocean temperatures. A higher fraction is used for warmer ocean temperatures, which favor the production of Pacific sardine, and a lower fraction is used for cooler temperatures. For 2004, the fraction was 15 percent based on three seasons of sea surface temperature at Scripps Pier, California.

As indicated above, the harvest guideline for U.S. waters is allocated one-third (40,916 mt) to Subarea A and two-thirds (81,831 mt) to Subarea B.

A proposed rule for the specification of the harvest guideline and initial allocations was published on December 3, 2003 (68 FR 67638). One comment was received on the proposed rule and urged that the harvest guideline be reduced 10 percent per year for an unspecified period, but it did not provide information to warrant such an action, and thus no changes have been made in the final rule.

Classification

These specifications are issued under the authority of, and NMFS has determined that they are in accordance with, the Magnuson-Stevens Fishery Conservation and Management Act, the FMP, and the regulations implementing the FMP at 50 CFR part 660, subpart I.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an Initial Regulatory Flexibility Analysis (IRFA) that described the economic impact this rule, if implemented, would have on small entities. No comments were received on any aspect of the IRFA or the analysis of the economic impacts of the proposed rule. NMFS then prepared a FRFA for this final rule. The FRFA is available from NMFS (see **ADDRESSES**). A summary of the FRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and in the **SUPPLEMENTARY INFORMATION** of this rule. A harvest guideline is established by the FMP to limit harvests to levels that protect the resource while providing a source of revenue for the fishing industry and other benefits to society over the long term.

The harvest formula in the FMP is conservative and a significantly higher harvest than that allowed by the FMP could be realized without a detrimental effect on the resource, at least in the short term; this could provide substantial economic benefits to the fishing industry. However, there are both biological and economic reasons to restrain harvests. First, there is uncertainty about the effect of expanded harvests in the northern subarea. This fishery takes larger fish that may play an important role in maintenance of resource productivity. Research into the relationship of the northern and southern components is necessary before allowing higher harvests. Specifically, the research will address the question of whether harvest of the larger fish in the north has a disproportionate impact on the stock compared to equivalent harvest in the south. Second, the harvest guideline derived by the current formula has been sufficient in recent years in satisfying existing markets; therefore, there would not likely be a significant economic benefit from a higher harvest guideline. The best information available on the economics of the CPS fishery indicates that landings and revenue have increased steadily since recovery of the resource began and could increase in 2004 if additional markets were developed. However, landings in 2003 are projected to be similar to the landings in 2001 and 2002, suggesting that markets are saturated. Therefore, there would not likely be a significant increase in harvests even if more fish were made available. That is, there is little opportunity to increase revenue in 2004.

Implementing the 2003 harvest guideline and allocations (i.e., the no action alternative) would keep the fishery at 2003 levels. There would not be much difference between this alternative and the proposed action as the harvest guideline would be quite similar.

Implementing the new harvest guideline for 2004 without allocating to the different subareas would set up a derby fishery without regard to the allocation procedures in the FMP. The fisheries in Subarea A and in Subarea B could harvest without restriction. There would be a possibility that the fishery in the northern subarea would harvest sardine at a level that would result in either a shift of fishery benefits from south to north or an early closure of the coastwide fishery. There would be increased revenue in the north at the expense of the southern fishery. However, premature closure would also result in substantial idle purse seine capacity in the southern subarea, where the fishery has traditionally been more active in the fall and winter.

Setting a harvest guideline above that authorized by the FMP is conceivable if the biomass and the harvest guideline were low and recruitment high. The harvest guideline is based on greater than age 1 plus sardine. If the biomass of sardine less than age 1 were known to be high, then some economic benefits would accrue to the fishing industry by allowing a harvest greater than that permitted by the formula in the FMP based on the premise that these fish are short-lived and should be harvested when available. If this situation occurred, economic benefits could be conferred on the fishing industry with the possibility of no negative biological impact. However, this approach faces two difficulties: (1) The higher the harvest is above that authorized by the FMP, the greater the potential for exacerbating a decline of the resource. The risk would be small at high biomass levels such as those of recent years, but as noted there is uncertainty, especially concerning the relationship between the northern and southern components of the stock. Further, there is no need for a higher harvest guideline at this time because, under the current approach, enough sardine has been available for harvest to satisfy existing market. (2) Such an approach (allowing higher harvests) would most likely be viewed favorably by industry if the biomass (and ensuing harvest guideline) were low and the fishery faced economic hardship from a lack of other fishing opportunities. In this situation, the potential for negative biological impacts is substantial. The uncertainty of the estimate of sardine less than age 1 is high. The estimates of biomass and/or recruitment could be high, but natural mortality is high, and how much biomass a zero age class will contribute to the biomass of the resource is uncertain. This increases the likelihood of negative biological impacts. In the final analysis, however, this alternative would have similar results as the proposed action. The proposed harvest guideline is at a level that allows maximum use by existing markets; therefore, there would not likely be significant benefits from a higher harvest guideline. If information on Pacific sardine became available that had not been previously considered indicating a risk of following the harvest formula in the FMP, a more conservative harvest guideline might be implemented to protect the resource. There is no such information at this time. The harvest formula in the FMP, however, sets a conservative harvest policy. Setting a harvest guideline lower than required by the FMP would not

likely bestow significant biological benefits at current biomass levels.

In summary, there are no factors that would justify deviation from the harvest guideline formula and allocation approach of the FMP. The requirements of the FMP that specify a harvest guideline action based on scientific data and a formula in the FMP continue to be valid. Setting a harvest guideline less than the proposed harvest guideline could have significant economic impacts. A reasonable assumption is that the harvest guideline will be attained. At an ex-vessel price of $114/mt (2001–2002 average), this would yield revenue of $13.9 million. Every 10,000 mt reduction in landings would reduce revenue by $1.14 million. Setting a harvest guideline above the level derived could generate increased landings (though that is unlikely with current market conditions) but at an unacceptable level of risk of economic dislocation (if northern fisheries expanded too quickly) and ecological difficulties in the future (if the stock is less resilient than thought or the northern component of the stock is more important than is now known).

Approximately 100 vessels participate in the CPS fishery off the U.S. West Coast. All of these vessels would be considered small businesses under the Small Business Administration standards. Therefore, there would be no economic impacts resulting from disproportionality between small and large vessels under the proposed action. A limited entry fishery occurs south of 39° N. Lat. A total of 65 vessels are permitted to participate in the limited entry fishery. An open access fishery exists north of 39° N. Lat. in which about 15 vessels participate. These are also small businesses. Vessels harvesting CPS for bait are also small businesses but are unregulated under the FMP.

Fisheries for Pacific sardine occur from Monterey, CA, south throughout the year and off Oregon and Washington in summer. Since 2000, most of the CPS fleet has obtained an average of 30 percent of its total revenue from Pacific sardine. This has occurred during a period in which there has been an increase in demand for market squid, as well as new markets for sardine that developed since 2000. The average annual revenue from Pacific sardine has been $9.1 million (2002 dollars) during the last 3 years (2000 through 2002). This is the revenue the industry might expect on average given the amount of sardine available for harvest and market demand. As of October 14, 2003, 65,000 mt had been landed. Based on historical landings, landings may reach 90,000 mt, which is below the harvest guideline. Known factors that have influenced the landings in 2003 is an outbreak of domoic acid in California, which makes Pacific sardine unmarketable, and the availability of market squid in the summer, which provides higher revenue to the fishing industry than sardine. If the harvest guideline is reached during the 2004 fishing season, there will be an increase of $3.7 million in ex-vessel revenue above that of the 2003 fishing season. With a harvest guideline of 122,747 mt and an average ex-vessel price of $114.00 per ton, potential revenue could be $14.0 million. The harvest guideline for the 2003 fishing season was 110,908 mt; however, landings are expected to reach only 90,000 or 95,000 mt by December 31, 2003. Market demand has not supported increased harvests, for the reasons noted above. The proposed action will yield potentially higher revenue (about $3 million) from Pacific sardine than the current year if the full harvest guideline is taken and prices remain constant.

Enforcement and administrative costs (primarily port sampling) remain unchanged because calls at ports of landing are designed not only to assess the status of Pacific sardine but all species harvested during the year by the CPS fleet.

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

Dated: February 20, 2004.

Rebecca Lent,

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

[FR Doc. 04–4147 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 69, No. 37
Wednesday, February 25, 2004

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapters I and III

[Docket No. FAA–2004–17168]

Review of Existing Regulations

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Request for comments.

SUMMARY: The FAA requests comments from the public to identify those regulations currently in effect that we should amend, remove, or simplify. We are publishing this notice under our ongoing regulatory review program required by Executive Order 12866. Getting public comments is a necessary element of our effort to make our regulations more effective and less burdensome.

DATES: Send comments to reach us by May 25, 2004.

ADDRESSES: You may send comments identified by Docket Number FAA–2004–17168 using any of the following methods:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001. **Note:** Due to suspension of mail delivery to DOT headquarters facilities, we encourage commenters to file comments electronically.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. For more information, see the Privacy Act discussion in the **SUPPLEMENTARY INFORMATION** section of this document.

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: Patrick W. Boyd, Office of Rulemaking, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–7320, facsimile (202) 267–5075.

SUPPLEMENTARY INFORMATION:

Background

Congress has authorized the Secretary of Transportation, and by delegation, the Administrator of the Federal Aviation Administration (FAA) to do the following, among other things:

- Develop and maintain a sound regulatory system that is responsive to the needs of the public,
- Regulate air commerce in a way that best promotes safety and fulfills national defense requirements, and
- Oversee, license, and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States.

Anyone interested in further information about FAA's authority and responsibilities should refer to Title 49 of the United States Code, particularly Subtitle VII, Aviation Programs.

For many years, the FAA has maintained an active regulatory review program:

- In 1992, the President announced a regulatory review to ''weed out unnecessary and burdensome government regulations, which impose needless costs on consumers and substantially impede economic growth.'' In response to a request for public comments published in the **Federal Register** (57 FR 4744), the FAA received more than 300 comments.
- In August 1993, the National Commission to Ensure a Strong Competitive Airline Industry recommended the FAA undertake a short-range regulatory review to remove or amend existing regulations to reduce regulatory burdens consistent with safety and security considerations.
- In September 1993, section 5 of Executive Order 12866 (58 FR 5173) required each agency to submit a program to the Office of Management and Budget by December 31, 1993, under which the agency will periodically review its existing significant regulations to determine whether any should be changed or removed.
- In January 1994, the FAA published a request for public comments in response to the Commission recommendation and to facilitate the review envisioned by E.O. 12866 (59 FR 1362). We received more than 400 comments from 184 commenters.
- In August 1995, the FAA published its proposed plan for periodic regulatory reviews for comment (60 FR 44142).
- In October 1996, the FAA adopted its current plan for periodic regulatory reviews based on a three-year cycle (61 FR 53610).
- In February 1997, the White House Commission on Aviation Safety and Security recommended the FAA simplify its regulations.
- In May 1997, the FAA published its first request for comments under the three-year review program and in accord with the Commission recommendation (62 FR 26894). We received 82 comments and published results of the review in October 1998 (63 FR 56540).
- In July 2000, the FAA began the second round of regulatory review under the three-year program (65 FR 43265). We received 476 comments and published results of the review in January 2002 (67 FR 4680).

In summary, since 1992 the FAA has completed four rounds of regulatory review and has received more than 1,250 comments. Currently, we have begun a comprehensive regulatory review of 14 CFR parts 125 and 135 to respond to industry dynamics, new technologies, new aircraft types and configurations, and current operating issues and environment (68 FR 5488).

Request for Comments

As part of its ongoing plan for periodic regulatory reviews, the FAA is requesting the public identify three regulations, in priority order, that it

believes we should amend or eliminate. To avoid duplication of effort, we ask the public to direct any comments concerning 14 CFR parts 125 and 135 to the address included in the February 3, 2003, notice announcing that special review (68 FR 5488). Also, readers should note that this is the first periodic regulatory review that specifically includes 14 CFR Chapter III, the regulations governing commercial space transportation. In earlier review cycles, the FAA requested comments only on 14 CFR Chapter I.

Our goal is to identify regulations that impose undue regulatory burden; are no longer necessary; or overlay, duplicate, or conflict with other Federal regulations. In order to focus on areas of greatest interest, and to effectively manage agency resources, the FAA asks that commenters responding to this notice limit their input to three issues they consider most urgent, and to list them in priority order.

The FAA will review the issues addressed by the commenters against its regulatory agenda and rulemaking program efforts and adjust its regulatory priorities consistent with its statutory responsibilities. At the end of this process, the FAA will publish a summary and general disposition of comments and indicate, where appropriate, how we will adjust our regulatory priorities.

Also, we request the public provide any specific suggestions where rules could be developed as performance-based rather than prescriptive, and any specific plain-language that might be used, and provide suggested language on how those rules should be written.

Issued in Washington DC, on February 20, 2004.

Nick Sabatini,

Associate Administrator for Regulation and Certification.

[FR Doc. 04–4171 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–288–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited (Jetstream) Model 4101 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 all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. This proposal would require a review of airplane maintenance records and an inspection of the nose landing gear (NLG) to determine the part number of the steering pinion, and follow-on/corrective actions as applicable. The actions specified by the proposed AD are intended to prevent failure of the steering pinion in the NLG, which could result in loss of steering and possible damage to the airplane during takeoff and landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by March 26, 2004.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–288–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–288–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 British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

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–288–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–288–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes. The CAA advises that the manufacturer of the landing gear reported that a batch of steering pinions installed in the nose landing gear (NLG) were incorrectly heat treated, resulting in a softer base metal and reduced fatigue life. A steering pinion with reduced strength can affect the structural integrity of the NLG. This condition, if not corrected, could result in failure of the steering pinion in the NLG, and consequent loss of steering and possible damage to the airplane during takeoff and landing.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin J41–32–076, dated July 3, 2001, which reduces the life limit of the steering pinion from 60,000 cycles to 12,000 cycles. Part 1 of the Accomplishment Instructions of the service bulletin describes procedures for identification of the part number for the steering pinion located in the NLG, including a review of airplane maintenance records and an inspection of the NLG to identify the part number, gear overhaul status, and total cycles since new and since overhaul; and establishing the replacement threshold for the steering pinion. For certain airplanes, the procedures include temporarily installing a placard in the flight deck prohibiting powered pushbacks. Also for certain airplanes, Part 2 of the Accomplishment Instructions of the service bulletin describes procedures of replacing the NLG with a serviceable NLG, and a functional test.

BAE Systems (Operations) Limited has also issued Service Bulletin J41–32–077, dated August 31, 2001, which includes procedures for installing a NLG having a new, improved steering pinion with a life limit of 60,000 landings; and a functional test of the landing gear. Accomplishment of this service bulletin restores the life limit of the steering pinion to 60,000 landings.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The CAA classified Service Bulletin J41–32–076 as mandatory and issued British airworthiness directive 001–07–2001 to ensure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

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

Explanation of Requirements of Proposed AD

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

Clarification of Terminology and Applicability

BAE Systems (Operations) Limited Service Bulletin J41–32–076 refers to the number of ''cycles'' on the NLG. Service Bulletin J41–32–077 refers to the number of ''landings'' on the NLG. For consistency we use the term ''landings'' throughout the body of this proposed AD.

The effectivity in the service bulletins and the applicability of the British airworthiness directive reference ''all series 4100 aircraft.'' Of the series 4100 airplanes, only Model Jetstream 4101 has been type certificated in the United States. The applicability for this proposed AD is all Model Jetstream 4101 airplanes.

Difference Among the Proposed AD, British Airworthiness Directive, and Service Bulletins

Part 1 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076 refers to steering pinion part number (P/N) AIR131714. BAE states that this part is acceptable as a serviceable replacement part for the existing steering pinion and was included in the service bulletin to remind operators that it has a fatigue life of 19,000 cycles instead of 12,000 cycles. This part number is not referenced in the British airworthiness directive, but a paragraph referencing this part has been included in this proposed AD. This difference has been coordinated with the CAA.

The service bulletins referenced in this proposed AD specify to notify the manufacturer when the actions in the service bulletins have been accomplished; however, this proposed AD does not include such a requirement.

Cost Impact

The FAA estimates that 57 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane to accomplish the proposed identification of the P/N for the steering pinion in Part 1 of BAE Systems (Operations) Limited Service Bulletin J41–32–076, and that the average labor rate is $65 per work hour. The cost for a temporary placard, if required, would be minimal. Based on these figures, the cost impact of the proposed P/N identification is estimated to be $51,870, or $910 per airplane.

Should an operator be required to replace a steering pinion per Part 2 of BAE Systems (Operations) Limited Service Bulletin J41–32–076, it would take approximately 16 work hours per airplane, at an average labor rate of $65 per work hour. The manufacturer of the NLG would provide parts to affected operators at no cost. Based on these figures, the cost impact of the replacement is estimated to be $1,040 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:

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket 2001–NM–288–AD.

Applicability: All Model Jetstream 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the steering pinion in the nose landing gear (NLG), which could result in a loss of steering and possible damage to the airplane during takeoff and landing, accomplish the following:

Identification of Steering Pinion Part Number and Follow-on/Corrective Actions

(a) Within 60 days after the effective date of this AD: Do a review of the airplane maintenance records and a general visual inspection of the NLG to identify the part number (P/N) of the steering pinion, and to determine the total cycles since new and since overhaul of the NLG, by accomplishing all of the applicable actions in accordance with Part 1 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001.

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

(b) If the steering pinion P/N is identified as AIR136088, and the NLG has more than 12,000 total landings since new or overhaul: Before further flight, after accomplishing the actions required by paragraph (a) of this AD, install a temporary placard prohibiting pushback with engines running in accordance with Part 1 of the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001.

(c) Based on the criteria in the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–076, dated July 3, 2001, if it is determined that the NLG must be replaced with a serviceable NLG, accomplish the replacement in accordance with the Accomplishment Instructions of the service bulletin. Do the replacement at the later of the times specified in paragraphs (c)(i) and (c)(ii) of this AD. After replacement of an existing NLG the temporary placard required by paragraph (b) of this AD may be removed from the airplane.

(i) Prior to the accumulation of 12,000 total landings on the NLG since new or overhaul.

(ii) Within 1,000 landings or 16 months after the effective date of this AD, whichever occurs first.

Repetitive Replacement

(d) After the initial replacement of a NLG as required by paragraph (c) of this AD: Replace the NLG with a serviceable NLG thereafter at intervals not to exceed 12,000 landings on the NLG, until accomplishment of paragraph (f) of this AD.

(e) If P/N AIR131714 is installed on the airplane, or if an operator installs this P/N as a serviceable replacement part, this part must be replaced at or before the accumulation of 19,000 total landings on the part, and thereafter at intervals not to exceed 19,000 total landings on the part, until accomplishment of paragraph (f) of this AD.

(f) Replacement of a NLG with a new NLG having P/N AIR83586–18, or any P/N AIR83586–xx (where xx represents the ''dash'' number of the part) with ''mod 19 strike-off'' recorded on the nameplate, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Service Bulletin J41–32–077, dated August 31, 2001, restores the life limits of the steering pinion to 60,000 landings on the NLG. Replace the NLG thereafter at intervals not to exceed 60,000 landings on the NLG.

Submission of Information to Manufacturer Not Required

(g) Although the service bulletins referenced in this AD specify to notify the manufacturer when the actions in the service bulletins have been accomplished, this AD does not include such a requirement.

Alternative Methods of Compliance

(h) 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 British airworthiness directive 001–07–2001.

Issued in Renton, Washington, on February 17, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4048 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16705; Airspace Docket No. 03–AGL–20]

Proposed Modification of Class D Airspace; Mount Clemens, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to modify Class D airspace at Mount Clemens, MI. Instrument Flight Rules (IFR) Category E circling procedures are being used at Selfridge Air National Guard Base, MI. Increasing the current radius of the Class D airspace area will allow for a lower Circling Minimum Descent Altitude. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approach procedures. This action would increase the area of the existing controlled airspace for Selfridge Air National Guard Base, Mount Clemens, MI.

DATES: Comments must be received on or before April 10, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket Number FAA–2003–16705/ Airspace Docket No. 03–AGL–20, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, and comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16705/Airspace Docket No. 03–AGL–20.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Mount Clemens, MI, for Selfridge ANGB. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace areas extending upward from the surface of the earth are published in paragraph 5000 of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 5000 Class D airspace.

AGL MI D Mount Clemens, MI [Revised]

Mount Clemens, Selfridge Air National Guard Base, MI
(Lat. 42°36′03″N., long. 82°50′14″.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 6.6-mile radius of the Selfridge Air National Guard Base. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on January 29, 2004.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 04–4183 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–16693; Airspace Docket No. 03–AGL–21]

Proposed Establishment of Class D Airspace; St. Cloud, MN; Proposed Modification of Class E Airspace; St. Cloud, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to establish Class D airspace at St. Cloud, MN, and modify Class E airspace at St. Cloud, MN. Standard Instrument Approach Procedures (SIAPS) to several runways have been developed for the St. Cloud Regional Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. Additionally, an Air Traffic Control Tower is under construction. This action would establish a radius of Class D airspace, and increase the existing area of Class E airspace for St. Cloud Regional Airport.

DATES: Comments must be received on or before April 10, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the Docket Number FAA–2003–16693/ Airspace Docket No. 03–AGL–21, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Patricia A. Graham, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this document must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2003–16693/Airspace Docket No. 03–AGL–21.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this document may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A Report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A. Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class D airspace at St. Cloud, MN, and modify Class E airspace at St. Cloud, MN, by establishing a radius of Class D airspace and modifying Class E airspace for the St. Cloud Regional Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, Class E airspace areas designated as surface areas are published in Paragraph 6002, and Class E airspace areas designated as an extension to a Class D or Class E surface area are published in paragraph 6004, of FAA Order 7400.9L dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

* * * * *

Paragraph 5000 Class D airspace.

* * * * *

AGL MN D St. Cloud, MN [New]

St. Cloud Regional Airport, MN
(Lat. 45°32′48″N., long. 94°03′36″W.)

That airspace extending upward from the surface to and including 3,500 feet MSL within a 4.1-mile radius of the St. Cloud Regional Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

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

* * * * *

AGL MN E5 St. Cloud, MN [Revised]

St. Cloud Regional Airport, MN
(Lat. 45°32′48″N., long. 94°03′36″W.)
St. Cloud VOR/DME
(Lat. 45°32′58″N., long. 94°03′31″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the St. Cloud Regional Airport and within 2.4 miles each side of the St. Cloud VOR/DME 143° extending from the 6.6-mile radius to 7.2 miles southeast of the airport.

* * * * *

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

AGL MN E2 St. Cloud, MN [Revised]

St. Cloud Regional Airport, MN
(Lat. 45°32′48″N., long. 94°03′36″W.)
St. Cloud VOR/DME
(Lat. 45°32′58″N., long. 94°03′31″W.)

Within a 4.1-mile radius of the St. Cloud Regional Airport and within 2.4 miles each side of the St. Cloud VOR/DME 143° radial, extending from the 4.1-mile radius to 7.2 miles southeast of the airport.

* * * * *

Paragraph 6004 Class E airspace designated as an extension to a Class D or Class E surface area.

* * * * *

AGL MN E4 St. Cloud, MN [NEW]

St. Cloud Regional Airport, MN
(Lat. 45°32′48″N., long. 94°03′36″W.)
St. Cloud VOR/DME
(Lat. 45°32′58″N., long. 94°03′31″W.)

That airspace extending upward from the surface within 2.4 miles each side of the St. Cloud VOR/DME 143° radial extending from the 4.1-mile radius of the St. Cloud Regional Airport to 7.2 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on January 29, 2004.

Nancy B. Shelton,

Manager, Air Traffic Division.

[FR Doc. 04–4182 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17081; Airspace Docket No. 04–AEA–01]

Proposed Amendment to Class E Airspace; Washington, DC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Class E airspace area in the Washington, DC, metropolitan area. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP) and the proliferation of airports within the Washington, DC, metropolitan area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace has made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for twenty four airports and heliports and result in the recision of nineteen separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before March 26, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17081/ Airspace Docket No. 04–AEA–01 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

FOR FURTHER INFORMATION CONTACT: Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. FAA–2004–17081/Airspace Docket No. 04–AEA–01.'' The postcard will be date/ time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both the docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class E airspace within the Washington, DC, metro area. The proposal would consolidate the following Class E–5 airspace designations into the Washington, DC, designation: Washington/Ronald Reagan Washington National Airport, DC; Andrews Air Force Base, MD; Lee Airport, MD; Baltimore Washington International Airport, MD; Martin State Airport, MD; College Park Airport, MD; Maryland State Police Heliport, MD; Tipton Airport, MD; Frederick Municipal Airport, MD; Potomac Airport, MD; Montgomery County Airpark, MD; Freeway Airport, MD; Bay Bridge Airport, MD; Cowley Shock Trauma Center Heliport, MD; Carroll County Airport, MD; Clearview Airpark, MD; Davison Army Air Field, VA; Birch Hollow, VA; Washington Dulles International Airport, VA; Leesburg Municipal/Godfrey Field, VA; Manassas

Municipal/Harry P. Davis Airport, VA; Mobil Business Resources Corporation Heliport, VA; Upperville Airport, VA. This action would result in the recision of nineteen Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Washington, DC, description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designations for airspace areas extending upward from 700 ft or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is proposed to be amended as follows:

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

* * * * *

AEA DC E5 Washington, DC (Revised)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 38°55′19″ N., long. 76°12′28″ W., to lat. 38°27′18″ N., long. 77°03′51″ W., to lat. 38°36′30″ N., long. 77°15′17″ W., to lat. 38°35′12″ N., long. 77°37′06″ W., to lat. 38°57′17″ N., long. 78°02′29″ W., to lat. 39°30′00″ N., long. 78°09′00″ W., to lat. 39°44′36″ N., long. 77°36′08″ W., to lat. 39°43′28″ N., long. 77°00′00″ W., to lat. 39°36′08″ N., long. 76°28′38″ W., to lat. 39°19′38″ N., long. 76°04′04″ W., to the point of beginning excluding the airspace that coincides with the Aberdeen, MD, Hagerstown, MD, Winchester, VA, Midland, VA Class E airspace areas and P–56A, P–56B, P–73, P–40, R–4009, R–4001A, R4001B, R–6608A, R–6608B and R–6608C when they are in effect.

* * * * *

Issued in Jamaica, New York, on February 17, 2004.

John G. McCartney,

Assistant Manager, Air Traffic Division, Eastern Region.

[FR Doc. 04–4181 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16985; Airspace Docket No. 04–ACE–3]

Proposed Establishment of Class E2 Airspace; and Modification of Class E5 Airspace; Muscatine, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to create a Class E surface area at Muscatine, IA. It also proposes to modify the Class E5 airspace at Muscatine, IA.

DATES: Comments for inclusion in the Rules Docket must be received on or before March 30, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–16985/Airspace Docket No. 04–ACE–3, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–16985/Airspace Docket No. 04–ACE–3.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published remaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling

(202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace designated as a surface area for an airport at Muscatine, IA. An Instrument Landing System (ILS) or Localizer (LOC)/Distance Measuring Equipment (DME) Standard Instrument Approach Procedure (SIAP) has been developed to serve the Muscatine Municipal Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing the instrument approach procedure. Weather observations would be provided by an Automatic Weather Observing/Reporting System (AWOS) and communications would be direct with Quad City Approach Control for those times when the airspace area is in effect.

This notice also proposes to revise the Class E airspace area extending upward from 700 feet above the surface at Muscatine, IA by expanding the airspace area from a 6.5-mile radius to a 6.6-mile radius of Muscatine Municipal Airport, correcting discrepancies in the identification of Port City Very High Frequency Omni-directional Range (VOR)/Distance Measuring Equipment (DME) radials used to describe the airspace area extensions, defining the extensions as they relate to Port City VOR/DME and bringing the legal description of the Muscatine, IA Class E airspace area into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. Terminal Airspace Data Requirements developed along with the ILS or LOC/DME SIAP necessitate an increase in 700 feet Above Ground Level (AGL) controlled airspace required for diverse departures. The criteria for 700 feet AGL airspace required for diverse departures specified in FAA Order 7400.2E are based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. A review of controlled airspace at Muscatine, IA also revealed non-compliance with FAA Order 8260.19C. The Class E airspace area extensions should be defined in relation to Port City VOR/DME. The areas would be depicted on appropriate aeronautical charts.

Class E airspace areas designated as surface areas are published in Paragraph 6002 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1 Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of the same Order. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Designated as Surface Areas.

* * * * *

ACE IA E2 Muscatine, IA

Muscatine Municipal Airport, IA
(lat. 41° 22′04″ N., long. 91° 08′54″ W.)

Within a 3.9-mile radius of Muscatine Municipal Airport. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ACE IA E5 Muscatine, IA

Muscatine Municipal Airport, IA
(lat. 41° 22′04″ N., long. 91° 08′54″ W.)
Port City VOR/DME
(lat. 41° 21′59″ N., long. 91° 08′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Muscatine Municipal Airport and within 2.6 miles each side of the 063° radial of the Port City VOR/DME extending from the 6.6-mile radius of the airport to 7 miles northeast of the VOR/DME and within 2.6 miles each side of the 233° radial of the VOR/DME extending from the 6.6-mile radius of the airport to 7 miles southwest of the VOR/DME.

* * * * *

Issued in Kansas City, MO, on February 9, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–4184 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–16987; Airspace Docket No. 04–ACE–5]

Proposed Establishment of Class E Airspace; Paola, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area at Paola, KS. The FAA has developed Standard Instrument Approach Procedures (SIAPs) to serve the Miami County Airport, Paola, KS. Controlled

airspace is needed to accommodate the SIAPs.

The intended effect of this proposal is to provide Class E controlled airspace for aircraft executing the SIAPs and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: Comments for inclusion in the Rules Docket must be received on or before April 12, 2004.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–16987/ Airspace Docket No. 04–ACE–5, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comment to Docket No. FAA–2004–16987/Airspace Docket No. 04–ACE–5.'' The postcard will date/ time stamped and returned to the commenter.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This notice proposes to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing a Class E airspace area at Paola, KS. The FAA has developed an Area Navigation (RNAV) Global Positioning System (GPS) Runway (RWY) 03, ORIGINAL SIAP and an RNAV (GPS) RWY 21, ORIGINAL SIAP to serve Miami County Airport, Paola, KS. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAPs. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ACE KS E5 Paola, KS

Paola, Miami County Airport, KS
(lat. 38°32′ 25″ N., long. 94°55′13″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-radius of Miami County Airport.

* * * * *

Issued in Kansas City, MO, on February 10, 2004.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–4187 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17042; Airspace Docket No. 04–AAL–03]

Proposed Revision of Class E Airspace; Platinum, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Platinum, AK. A new Standard Instrument Approach Procedure (SIAP) is being published for the Platinum Airport. The current SIAP will be canceled coincident with the effective date of the new SIAP. An airspace review has determined that the existing Class E airspace at Platinum is insufficient to contain aircraft executing the new SIAP. Adoption of this proposal would result in additional Class E airspace upward from 700 feet (ft.) above the surface at Platinum, AK.

DATES: Comments must be received on or before April 12, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17042/ Airspace Docket No. 04–AAL–03, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17042/Airspace Docket No. 04–AAL–03.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by revising Class E airspace at Platinum, AK. The intended effect of this proposal is to extend Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Platinum, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed a new SIAP for the Platinum Airport. The new approach is Area Navigation (Global Positioning System) (RNAV GPS) RWY 13, original. Additional Class E controlled airspace extending upward from 700 ft. above the surface within the Platinum, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedure for the Platinum Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Platinum, AK [Revised]

Platinum Airport, AK

(Lat. 59°00′41″ N., long. 161°49′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Platinum Airport.

* * * * *

Issued in Anchorage, AK, on February 11, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–4174 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–17019; Airspace Docket No. 04–AAL–02]

Proposed Establishment of Class E Airspace; Wales, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Wales, AK. Two new Standard Instrument Approach Procedures (SIAP) and a new Textual Departure Procedure are being published for the Wales Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Wales, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Wales, AK.

DATES: Comments must be received on or before April 12, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17019/ Airspace Docket No. 04–AAL–02, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.ctr.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17019/Airspace Docket No. 04–AAL–02.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Wales, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Wales, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs and a Textual Departure Procedure for the Wales Airport. The new approaches are Area Navigation (Global Positioning System) (RNAV GPS) RWY 18, original and RNAV GPS RWY 36, original. New Class E controlled airspace extending upward

from 700 ft. and 1,200 ft. above the surface within the Wales, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Wales Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9L, *Airspace Designations and Reporting Points,* dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

* * * * *

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

* * * * *

AAL AK E5 Wales, AK [New]

Wales Airport, AK
(lat. 65° 37′26″ N., long. 168° 05′57″ W.)

That airspace extending upward from 700 feet above the surface within a 6.35-mile radius of the Wales Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 65°24′00″ N 168°30′00″ W to 65°53′00″ N 168°30′00″ W to 66°′00′00″ N 167°50′00″ W to 65°24′00″ N 167°50′00″ W to point of beginning excluding that airspace within Tin City Class E airspace area.

* * * * *

Issued in Anchorage, AK, on February 11, 2004.

Judith G. Heckl,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 04–4173 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM04–4–000]

Creditworthiness Standards for Interstate Natural Gas Pipelines

February 12, 2004.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations to require interstate natural gas pipelines to follow standardized procedures for determining the creditworthiness of their shippers. The proposed regulations are intended to promote consistent practices among interstate pipelines and provide shippers with an objective and transparent creditworthiness evaluation. In addition, the Commission is proposing to incorporate by reference standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB) dealing with creditworthiness requirements for pipeline service.

DATES: Comments on the proposed rule are due March 26, 2004.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:

Jason Stanek, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8403.

Marvin Rosenberg, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–8292.

Kay Morice, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426; (202) 502–6507.

SUPPLEMENTARY INFORMATION:

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1. The Federal Energy Regulatory Commission (Commission) proposes to amend §§ 284.8 and 284.12 (18 CFR 284.8 and 284.12 (2003)) of its open access regulations governing capacity release and standards for business practices and electronic communications with interstate natural gas pipelines. The Commission is proposing to incorporate by reference 10 creditworthiness standards promulgated by the North American Energy Standards Board (NAESB) and adopt additional regulations related to the creditworthiness of shippers on interstate natural gas pipelines. These regulations are intended to benefit customers of the pipelines by establishing standardized processes for determining creditworthiness across all interstate pipelines.

I. Background

2. Since Order Nos. 436[1] and 636[2], the Commission has established terms and conditions relating to the credit requirements for obtaining open access service on interstate pipelines in individual proceedings. Recently, a number of interstate natural gas pipelines have made filings before the Commission to revise the creditworthiness provisions in their tariffs. These pipelines claimed that, due to increased credit rating downgrades to many energy companies, industry attention has focused on issues relating to a pipeline's risk profile and its credit exposure. As a result, the pipelines have argued that tariff revisions are needed to strengthen creditworthiness provisions and minimize the potential exposure to the pipeline and its other shippers in the event that a shipper defaults on its obligations.

3. In September 2002, the Commission issued orders that began to examine and investigate issues relating to a pipeline's ability to determine the creditworthiness of its shippers.[3] Several parties in these proceedings requested that the Commission develop uniform guidelines for pipeline creditworthiness provisions. The parties claimed that the issuance of creditworthiness guidelines would require the pipelines to make good-faith determinations using transparent and commercially reasonable methods to assess the credit risks borne by the pipeline. The parties further argued that generic guidelines would reduce the potential burden faced by customers who otherwise would need to comply with inconsistent and overly burdensome credit requirements.

4. The Commission agreed that it could be valuable to develop a generic standard for creditworthiness determinations since shippers would be able to provide the same documents to every pipeline to obtain capacity. The Commission therefore encouraged the parties to initiate the standards development process at the Wholesale Gas Quadrant (WGQ) of the North American Energy Standards Board (NAESB) to see whether a consensus standard could be developed for creditworthiness determinations. In addition, the Commission requested that NAESB file a report with the Commission by June 2003 indicating whether standards had been adopted, or if consensus could not be reached, an account of its deliberations, the standards considered, the voting records, and the reasons for the inability to reach consensus, so the Commission could determine if further action is necessary.

5. On November 6, 2002, the WGQ Business Practices Subcommittee (BPS) initiated the standards development process and eventually prepared a

[1] Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 436, FERC Stats. and Regs., Regulations Preambles (1982–1985) ¶ 30,665, at 31,505 (1985).

[2] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267 (April 16, 1992), FERC Stats. and Regs., Regulations Preambles (January 1991–June 1996) ¶ 30,939 at 30,446–48 (April 8, 1992); *order on reh'g,* Order No. 636–A, 57 FR 36128 (August 12, 1992), FERC Stats. and Regs., Regulations Preambles (January 1991–June 1996) ¶ 30,950 (August 3, 1992); *order on reh'g,* Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992); *reh'g denied,* 62 FERC ¶ 61,007 (1993); *aff'd in part and remanded in part, United Distribution Companies* v. *FERC,* 88 F.3d 1105 (D.C. Cir. 1996); *order on remand,* Order No. 636–C, 78 FERC ¶ 61,186 (1997).

[3] *See* Tennessee Gas Pipeline Co., 100 FERC ¶ 61,268 (2002), Northern Natural Gas Co., 100 FERC ¶ 61,278 (2002), and Natural Gas Pipeline Co. of America, 101 FERC ¶ 61,269 (2002).

recommendation of 24 proposed standards to the Wholesale Gas Quadrant's Executive Committee of NAESB (WGQ EC).[4] The WGQ EC, however, was unable to reach consensus on the ''package'' of 24 creditworthiness standards and adopted only ten of the BPS's proposed standards. Subsequently, on June 16, 2003, as supplemented on June 25, 2003, NAESB filed a progress report with the Commission in Docket No. RM96–1–000 containing the approved standards, the voting record, and comments from WGQ EC members describing the reasons for their opposition to some of the proposed standards, or their abstention. A number of parties also filed comments with the Commission after NAESB filed its report.[5] Many of these comments focused on issues relating to creditworthiness requirements for capacity release.

II. Discussion

6. The Commission is proposing to incorporate by reference the creditworthiness standards adopted by NAESB. In addition, the Commission is proposing to amend its regulations to include its own creditworthiness standards as well as creditworthiness requirements for capacity release. These standards are intended to promote greater efficiency on the national pipeline grid by creating uniform rules under which shippers acquire and maintain service on interstate pipelines.

7. In implementing Order Nos. 436 and 636, the Commission sought to establish policies regarding credit standards for obtaining open access service. However, as became clear after reviewing pipeline tariffs in the recent creditworthiness cases, the Commission's policies have at times conflicted with each other, or have not been applied consistently, resulting in pipeline tariff provisions on creditworthiness that are neither consistent nor uniform.

8. The goal of the Commission in Order Nos. 436 and 636 was to create a seamless and integrated pipeline grid that promotes competition by enabling shippers to move gas from the most competitive supply areas, across multiple pipelines, to the burner tip. Varying and overly burdensome credit and collateral requirements on pipelines can defeat this goal. If shippers face a myriad of different requirements for obtaining or retaining service on individual pipelines, they may be unable to easily and efficiently transport gas across the pipeline grid. In the past, lack of uniform tariff creditworthiness provisions may not have been as critical since the number of pipeline customers facing credit issues was small. However, in the current environment in which credit is an issue for a number of pipeline customers, standards are important to ensuring non-discriminatory and open access service. The Commission believes that customers, and pipelines, should be able to rely upon common, and reasonable practices and procedures for obtaining such open access service.

9. The 10 adopted WGQ standards provide procedural rules by which pipelines should deal with their customers with respect to credit issues, such as providing shippers with reasons for requesting credit information, procedures for communications between pipelines and customers, and the timeline for providing responses to requests for credit reevaluation. But the WGQ EC was unable to reach agreement on a number of important substantive policy questions relating to creditworthiness.

10. While the WGQ consensus standards process has been invaluable in creating business practice and communication standards that have benefited the natural gas industry, the Commission recognizes that a standards organization composed of representatives from every facet of the gas industry may be unable to reach consensus on policy issues that have disparate effects on each of the industry segments. In the past when the WGQ has been unable to reach consensus on issues concerning Commission policy, the Commission has endeavored to resolve the policy disputes when standardization is necessary to create a more efficient interstate grid.[6]

11. The Commission is therefore proposing regulations governing a range of creditworthiness issues to create a uniform and standardized policy. These include standards for the information shippers can be required to provide pipelines to establish creditworthiness, and a requirement that pipelines' creditworthiness determinations be made on the basis of objective and transparent criteria, collateral requirements for service on existing facilities as well as service obtained through pipeline construction, timelines for suspension and termination of service, and standards governing credit requirements for capacity release transactions. These proposals seek to balance the interests of the pipelines in obtaining reasonable assurances of creditworthiness against the need to ensure that open access services are reasonably available to all shippers. Like other Commission standards, the standards proposed here establish the minimum requirements that pipelines need to meet; pipelines can still choose to propose tariff provisions that are more lenient than the requirements contained in the standards.

A. Adoption of WGQ Standards

12. The Commission proposes to incorporate by reference the ten consensus standards[7] that were passed by the WGQ.[8] Among the consensus standards, a pipeline would be required to state the reason it is requesting credit evaluation information from existing shippers. Additionally, shippers would be required to acknowledge the receipt of a pipeline's request for information for creditworthiness evaluation, and the pipeline would be required to acknowledge to the shipper when it received that requested information.[9]

13. The WGQ approved the standards under its consensus procedures.[10] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad

[4] A complete list of the 24 proposed standards voted on by the WGQ EC, along with the voting record, can be found at: *http://www.naesb.org/pdf/wgq_ec060503a1.pdf.*

[5] Parties filing comments in Docket No. RM96–1–000 include the American Gas Ass'n; Consolidated Edison Co. of New York, Inc. and Orange and Rockland Utilities, Inc.; Encana Marketing (USA) Inc.; KeySpan Delivery Companies; Interstate Natural Gas Ass'n of America; Midland Cogeneration Venture, LP; National Fuel Gas Distribution Corp.; Reliant Energy Services, Inc.; and Stand Energy Corp.

[6] Standards for Business Practices of Interstate Natural Gas Pipelines, Order No. 587–G, 68 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000) ¶ 31,062 at 20,668–72 (Apr. 16, 1998) (resolving disputes over the bumping of interruptible service by firm service).

[7] Standards 0.3.zB, 0.3.zC, 0.3.zD, 0.3.zE, 0.3.zF, 0.3.zK, 0.3.zL, 0.3.zQ, 5.3.zD, and 5.3.zF. Request No.: 2003 Annual Plan Item 6 (July 28, 2003).

[8] Pursuant to the regulations regarding incorporation by reference, copies of the creditworthiness standards are available from NAESB. The standards can be found in the Final Actions portion of the WGQ Web site, *http://www.naesb.org/wgq/final.asp.* They can also be viewed, but not copied, in the Commission's Public Reference Room. 5 U.S.C. 552(a)(1); 1 CFR part 51 (2001).

[9] The Commission is also proposing technical corrections to its regulations, including revising the regulations to reflect NAESB's name change and its recent change of address, and to correct an incorrect cross reference.

[10] NAESB's voting process first requires a super-majority vote of 17 out of 25 members of the WGQ's Executive Committee with support from at least two members from each of the five industry segments—pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of the WGQ's general membership must ratify the standards.

spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires Federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB's WGQ, as means to carry out policy objectives or activities.[11]

B. Criteria for Determining Creditworthiness

14. In the recent orders on credit requirements, the Commission has found that pipelines must establish clear criteria governing the financial data and information shippers must provide to establish their creditworthiness as well as use objective criteria for determining creditworthiness.[12] Standardizing the types of information shippers have to provide to the pipeline to establish their credit should increase a shipper's ability to obtain and retain service on multiple pipelines by ensuring that the shipper would not have to assemble different packages of documentation for each pipeline. Such standards also could benefit pipelines because shippers will be able to more quickly respond to credit inquiries by the pipelines.

15. The WGQ EC considered, but did not pass, a proposed standard (0.3z.A) which would have established a uniform set of documents that shippers would have to provide to pipelines, distinguishing between the various customer groups that use pipeline services. This standard was supported by a majority of voting members on the Executive Committee, but failed principally because it did not obtain the required two votes from each of the five sectors.[13] The list of information under this standard is as follows:

a. Audited Financial Statements;

b. Annual Report;

c. List of Affiliates, Parent Companies, and Subsidiaries;

d. Publicly Available Information from Credit Reports of Credit and Bond Rating Agencies;

e. Private Credit Ratings, if obtained by the shipper;

f. Bank References;

g. Trade References;

h. Statement of Legal Composition;

i. Statement of Length of Time Business has been in Operation;

j. Most recent filed statements with the Securities and Exchange Commission (or an equivalent authority) or such other publicly available information;

k. For public entities, the most recent publicly available interim financial statements, with an attestation by its Chief Financial Officer, Controller, or equivalent (CFO) that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent;

l. For non-public entities, including those that are State-regulated utilities:

i. The most recent available interim financial statements, with an attestation by its CFO that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with GAAP or equivalent;

ii. An existing sworn filing, including the most recent available interim financial statements and annual financial reports filed with the respective regulatory authority, showing the shipper's current financial condition;

m. For State-regulated utility local distribution companies, documentation from their respective State regulatory commission (or an equivalent authority) of an authorized gas supply cost recovery mechanism which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent;

n. Such other information as may be mutually agreed to by the parties;

o. Such other information as the pipeline may receive approval to include in its tariff or general terms and conditions.

16. After reviewing this proposed standard, the Commission considers that, with the exception of item ''o'', this is a uniform list of reasonable information, which should provide pipelines with sufficient data to make creditworthiness evaluations. However, item ''o'' would permit pipelines to require non-uniform information and defeat the goal of standardization. In order to ensure that the same information can be used to establish credit across the pipeline grid, the Commission is proposing to require that this list, without item ''o'', constitute the complete list of information that pipelines can require shippers to provide.[14]

17. Process Gas Consumers Group and the American Forest & Paper Association filed comments included with NAESB's report stating that while they support a standard list of creditworthiness information, their support is conditioned on the premise that shippers will not be required to unnecessarily provide all the information included on the list. The Commission recognizes that not all items on the list are applicable to all shippers and is proposing that the pipelines can require shippers to provide information from the list only where applicable to that shipper.

18. With respect to the criteria to be used to evaluate a shipper's status, the Commission is proposing to require that each pipeline's tariff disclose the objective criteria to be used in evaluating a shipper's creditworthiness. Requiring the disclosure of the criteria in the tariff is necessary to ensure that shippers will know the basic standards that a pipeline will apply in determining its creditworthiness status. The Commission is also proposing to require a pipeline to provide the shipper within five days of a determination that a shipper is not creditworthy, upon request, a written explanation of such determination.[15]

19. Encana Marketing (USA) Inc. submits that rigid creditworthiness criteria and ''hard triggers'' should not be included in pipeline tariffs because the inclusion of such provisions may prevent the pipeline from considering all factors that may be relevant when evaluating a shipper's creditworthiness. The Commission is not proposing a defined set of criteria for evaluating creditworthiness. There may not be a defined set of criteria for evaluating each shipper, and the pipelines need to take into account the individual circumstances of a shipper in making

[11] Pub L. 104–113, sec. 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[12] *See* Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 41, *order on rehearing,* 103 FERC ¶ 61,275 at P 40–41 (2003), PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 67 (2003).

[13] The vote on this proposed standard was 15 Yes, 3 No, and 3 Abstentions. To pass, a standard must secure a super-majority of 17 votes, with at least two votes from each segment. Three members of the Producers segment were not present at the meeting. While the ''Yes'' votes were two votes short of the required 17, the Committee did not poll the missing members, because the proposal failed to secure the requisite two votes from the Distribution segment.

[14] Several members of the Distribution segment (the segment failing to receive two positive votes), objected to the proposed standard because item ''o'' would have permitted pipelines to include different requirements in their tariffs. *See* comments by KeySpan Energy and other members of the Distribution segment. The Commission's proposal addresses this concern by removing item ''o'' from the list of information pipelines may require.

[15] *See* Tennessee Gas Pipeline Co., 102 FERC ¶61,075 at P 46, *order on rehearing* 105 FERC ¶61,120 at P 28 (2003) (explanation need be provided only upon a shipper's request); Gulf South Pipeline Co., LP, 103 FERC ¶61,129 at P 21 (2003); Northern Natural Gas Co., 103 FERC ¶61,276 at P 43 (2003).

their determinations. The proposed requirement to set forth objective criteria in the pipeline's tariff along with the requirement to inform the shipper in writing of any adverse determination should permit the shipper to protest any such decision to the Commission. The Commission, however, seeks comment on whether it should adopt a defined set of criteria for determining creditworthiness. Those supporting the development of such criteria should include in their comments proposals as to the criteria that they believe should be used.

C. Collateral Requirements for Non-Creditworthy Shippers

20. Since Order Nos. 436 and 636, the Commission's general policy has been to permit pipelines to require shippers that fail to meet the pipeline's creditworthiness requirements for pipeline service to put up collateral equal to three months' worth of reservation charges.[16] The Commission also recognized that in cases of new construction, particularly project-financed pipelines,[17] pipelines and their lenders could require larger collateral requirements from initial shippers before committing funds to the construction project.[18] However, in approving these larger collateral requirements the Commission would often permit the pipeline to include these collateral requirements in the pipeline's tariff so that even after the lending or other agreement had expired, the larger collateral requirements would continue for shippers taking service on the pipeline. Indeed, in one case, the Commission approved a tariff provision which provided for ''security acceptable to [the pipeline's] lenders.''[19] This tariff provision then continued even after the pipeline had refinanced the original lending agreement (requiring such collateral), and the succeeding lending agreements contained no such provision. As a result of these and possibly other determinations (such as acceptance of uncontested tariff filings), there appears significant variance in pipeline tariff provisions establishing collateral for non-creditworthy shippers.[20]

21. The Commission is proposing here to standardize the collateral requirements applicable to shippers who fail to meet the creditworthiness standards of the pipeline's tariff.[21] This proposal is intended to ensure that shippers using multiple pipelines will not be exposed to disparate collateral requirements depending on which pipelines they choose to use.

1. Collateral for Service on Existing Facilities

22. For shippers seeking service on existing pipeline facilities, the Commission proposes to continue its traditional policy of requiring no more than the equivalent of three months' worth of reservation charges. The three months of reservation charges reasonably balances the risks to the pipeline from potential contract default against the need under open access service to ensure that existing pipeline services are reasonably available to all shippers. The three months corresponds to the length of time it takes a pipeline to terminate a shipper in default and be in a position to remarket the capacity.[22] Three months' worth of collateral therefore protects the pipeline against revenue loss while it completes the termination process and puts the pipeline in a position to remarket the capacity. The Commission views the risk of remarketing capacity as a business risk of the pipeline which is reflected in its rate of return on equity.[23]

23. The Commission requests comment on whether, as a variant of this approach, pipelines should be permitted to require a non-creditworthy shipper to provide an advance payment for one month of service.[24] The pipeline could then require the shipper to post collateral to cover the additional two months necessary to terminate the shipper's contract. Such an approach would recognize that non-creditworthy customers in other industries are frequently required to provide advance payment for services.

24. The Commission also requests comment on whether it should permit pipelines to take a shipper's creditworthiness and the extent of its collateral into account when the pipeline is allocating available firm capacity among various bidders. The Commission has allowed pipelines to allocate available capacity based on the highest valued bid for the capacity, without distinction as to customer class.[25] A bid by a creditworthy customer, or one that is willing to put up a larger amount of collateral, would ordinarily appear to be of more value than a bid by a non-creditworthy customer, or one willing to put up only the required three months' worth of collateral. For instance, a 10-year bid by a creditworthy customer could well be considered more valuable than a 25-year bid by a non-creditworthy customer. The Commission, therefore, requests

[16] See Florida Gas Transmission Co., 66 FERC ¶61,140 at 61,261 n.5&6, *order vacating prior order,* 66 FERC ¶ 61,376 at 62,257 (1994); Southern Natural Gas Co., 62 FERC ¶ 61,136 at 61,954 (1993); Valero Interstate Transmission Co., 62 FERC ¶ 61,197 at 62,397 (1993); Texas Eastern Transmission Corp., 41 FERC ¶ 61,373 at 62,017 (1987); Williams Natural Gas Co., 43 FERC ¶ 61,227 at 61,596 (1988); Pacific Gas Transmission Co., 40 FERC ¶ 61,193 at 61,622 (1987); Tennessee Gas Pipeline Co., 40 FERC ¶ 61,194 at 61,636 (1987); Natural Gas Pipeline Co. of America, 41 FERC ¶ 61,164 at 61,409, n.4 (1987); Northern Natural Gas Co., 37 FERC ¶ 61,272 at 61,822 (1986).

[17] Project-financed pipelines are projects in which the lender secures its loans to the pipeline by the service agreements negotiated with the contract shippers. *See* Kern River Gas Transmission Co., 50 FERC ¶ 61,069 at 61,145 (1990).

[18] *Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶ 61,273, *reh'g denied,* 105 FERC ¶ 61,033 (2003) (30 months' worth of reservation charges found to be reasonable for an expansion project); North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 15 (2003) (approving 12 months' worth of reservation charges as collateral for initial shippers on new pipeline); Maritimes & Northeast Pipeline, L.L.C., 87 FERC ¶ 61,061 at 61,263 (1999) (12 months prepayment); Alliance Pipeline L.P., 84 FERC ¶ 61,239 at 62,214 (1998); Kern River Gas Transmission Co., 64 FERC ¶ 61,049 at 61,428 (1993) (stringent creditworthiness requirements required by lenders); Mojave Pipeline Co., 58 FERC ¶ 61,097 at 61,352 (1992) (creditworthiness provisions required by lender); Northern Border Pipeline Co., 51 FERC ¶ 61,261 at 61,769 (1990) (12 months' worth of collateral for new project).

[19] *E Prime, Inc.* v. *PG&E Gas Transmission,* 102 FERC ¶ 61,062 at P 26, *order on rehearing and compliance,* 102 FERC ¶ 61,289 (2003).

[20] *See* Northwest Pipeline Corp., FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 212 (proof of ability to pay, satisfactory to Transporter, including advance deposits); Questar Pipeline Co., First Revised Volume No. 1, Second Revised Sheet No. 70 (payment for six months' service); Centerpoint Energy Gas Transmission Co., Sixth Volume No 1, Original Sheet No. 475 (six months' contract demand).

[21] The Commission is not proposing any changes in alternative methods of satisfying creditworthiness standards, such as parental or third-party guarantees of payment.

[22] The three months for termination are as follows. The first month's collateral reflects the practice of billing shippers after the close of the prior month. *See* 18 CFR 284.12 (a)(1)(iiii), Standard 3.3.14 (billing by the 9th business day after the end of the production month). The second month accounts for the time period given the shipper to pay, and an opportunity to cure a default. The third month reflects the requirement that the pipeline provide 30 days notice prior to termination. *See* Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 49, n.10; 18 CFR 154.602 (2003).

[23] *See* Ozark Gas Transmission Co., 68 FERC ¶ 61,032 at 61,107–108 (1994) (business and financial risk determine where the pipeline should be placed within the zone of reasonableness); Williston Basin Interstate Pipeline Co., 67 FERC ¶ 61,137 at 61,360 (1994) (''Bad debts are a risk of doing business that is compensated through the pipeline's rate of return'').

[24] *See* Trailblazer Pipeline Co., 103 FERC ¶ 61,225 at P 42 (2003).

[25] *See* Tennessee Gas Pipeline Co., 76 FERC ¶ 61,101 at 61,518 (1996) (accepting NPV formula for allocating capacity, *aff'd, Process Gas Consumers Group* v. *FERC,* 292 F.3d 831 (D.C. Cir. 2002) (affirming no length of contract cap for NPV bids); Texas Eastern Transmission Corp., 79 FERC ¶ 61,258 (1997), *aff'd on rehearing,* 80 FERC ¶ 61,270 (1997) (use of net present value to allocate capacity), *aff'd, Municipal Defense Group* v. *FERC,* 170 F.3d 197 (D.C. Cir. 1999) (finding use of NPV allocation method not unduly discriminatory when applied to small customers seeking to expand service).

comment on whether it should permit the pipelines to implement a non-discriminatory method of considering credit status as part of a bidding mechanism. Under such an approach, there would be two standards for collateral: (1) The traditional three-month collateral requirement for interruptible service and for an existing shipper to retain service after a change in credit status; and (2) a potentially larger collateral requirement that can be applied when there are bids for new service.[26]

25. The comments on this issue should address whether such a proposal is consistent with open access service and practical methods by which pipelines could apply non-discriminatory criteria in seeking to value a shipper's credit position, including whether pipelines should be permitted to require bidders to increase their collateral offerings when competing for available capacity with creditworthy shippers and what outside limits (*e.g.*, six months or one year of reservation charges) should be placed on collateral requirements before considering bids equal in value.

2. Collateral for Construction Projects

26. For construction projects, the Commission proposes to continue its policy of permitting larger collateral requirements. Section 7 of the Natural Gas Act does not obligate pipelines to build new facilities for shippers.[27] If pipelines are prevented from requiring collateral from initial subscribers sufficient to protect their investments in new capacity requested by shippers, the result may be that pipelines would decide not to construct needed facilities, or that the cost of capital for the pipeline itself would increase, raising rates to other shippers. Pipelines, as well as their lenders, therefore have a legitimate interest in ensuring a reasonable amount of collateral from the initial shippers supporting the project to ensure, prior to the investment of significant resources in the project, that they can protect that investment in the event of a potential shipper default.[28] Construction projects can be of two types, mainline construction, and lateral line construction, and different collateral requirements are proposed for each type.

a. Mainline Construction

27. The Commission has found that pipelines and their shippers should negotiate appropriate risk sharing agreements with respect to collateral requirements for mainline construction projects in their precedent agreements, so that any disputes over the collateral requirements can be resolved in the pipeline's certificate proceeding, rather than after the pipeline has committed the funds and the project is built.[29] For mainline construction, the Commission is proposing that the pipeline's collateral requirement must reasonably reflect the reasonable risk of the project, particularly the risk to the pipeline of remarketing the capacity should the initial shipper default.[30] However, under no circumstance, should the collateral exceed the shipper's proportionate share of the project's cost.

28. The collateral requirements would apply only to the initial shippers on the project, because it is their contracts that support the construction. The collateral requirements would continue to apply to these initial shippers even after the project goes into service, since the collateral is designed to ensure payment of their reservation charges. The specifics of the pipeline's and shipper's risk sharing agreement are more appropriately negotiated and agreed to in the context of precedent agreements that may be reviewed in a certificate proceeding. The Commission is therefore proposing to require that all collateral agreements for construction be determined before the project is started. Requiring advance agreement as to the collateral for construction projects ensures that if there are disputes over the extent of collateral, they can be brought to the Commission's attention before the pipeline invests the funds to initiate construction.[31] In the absence of any specified collateral requirement, the pipeline's standard creditworthiness provisions would apply once the facilities go into service.

29. The pipeline would also be required to reduce the amount of collateral it holds as the shipper's contract term is reduced.[32] Once the contractual obligation is retired, the standard creditworthiness provisions of the pipeline's tariff would apply. In addition, in the event of a default by an initial shipper, the pipeline will be required to reduce the collateral it retains by mitigating damages.[33]

30. Further, since the collateral requirements for mainline construction relate to the collateral from the initial subscribers to a project, the Commission will no longer permit pipelines to place these requirements in the pipeline's tariff to be applied generally to shippers seeking service.[34] Once the facilities go into service, any subsequent shippers seeking service using these facilities will have the standard three-month collateral requirement applied to their request for service. For example, if an initial shipper on a project defaults, the pipeline faces its usual risk of remarketing that capacity. The subsequent shippers seeking to buy the now-available capacity should, therefore, be treated no differently than shippers seeking to purchase available, non-expansion capacity.

b. Lateral Line Construction

31. For lateral line construction,[35] the Commission proposes, consistent with its current policy, to allow pipelines to require collateral up to the full cost of the project.[36] Unlike mainline expansions, lateral lines are built to connect one or perhaps a few shippers, and the facilities will not be of significant use to other potential shippers. The likelihood of the pipeline remarketing that capacity in the event of a default by the shipper, therefore, is far less than for mainline construction. Because lateral line construction policies are part of a pipeline's tariff, collateral requirements for such projects

[26] Different standards for retention and acquisition of capacity may well be justified given the statutory protections against abandonment of service, and the lack of already established, entrenched interests when shippers are in competition for available service. *See Process Gas Consumers Group* v. *FERC,* 292 F.3d 831, 838 (D.C. Cir. 2002), (*affirming;* Tennessee Gas Pipeline Co., 94 FERC ¶ 61,097 at 61,400 (2001)).

[27] *Panhandle Eastern Pipe Line Co.* v. *FERC,* 204 F.2d 675 (3rd Cir. 1953); Panhandle Eastern Pipe Line Co., 91 FERC ¶ 61,037 at 61,141–42 (2000).

[28] *See* PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 33 (2003).

[29] *See Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶ 61,273 at P 30–34 and n.21 (2003).

[30] *See Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 103 FERC ¶ 61,273 at P 31 (2003) (approving 30 month collateral requirement based on the risks faced by the pipeline).

[31] *See Calpine Energy Services, L.P.* v. *Southern Natural Gas Co.,* 105 FERC ¶ 61,033 at P 24 (changes in collateral requirements need to be known prior to the start of the construction project).

[32] *See* Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 80–85; PG&E Northwest Corp., 103 FERC ¶ 61,137 at P 33, n.18, *order on rehearing,* 105 FERC ¶ 61,382 at P 64 (2003).

[33] One method of mitigation would be for the pipeline to determine its damages by taking the difference between the highest net present value bid for the capacity and the net present value of the remaining terms of the shipper's contract. The pipeline could then retain as much of the collateral as necessary to cover the damages. Pipelines could also develop alternative measures for determining mitigation.

[34] *See* North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 15 (2003).

[35] A lateral line includes facilities as defined in 18 CFR 154.109(b) and 18 CFR 157.202 (2003).

[36] *See* Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 80–85 (2003) (allowing pipeline to request security in an amount up to the cost of the new facilities from its customers prior to commencing construction of new interconnecting facilities). See also Panhandle Eastern Pipe Line Co., 91 FERC ¶ 61,037 at 61,141 (2000).

should be included in the pipeline's tariff.

3. Collateral for Loaned Gas

32. In three recent orders, the Commission permitted pipelines to impose collateral requirements with respect to gas that shippers borrow from the pipeline, either through imbalances [37] or the use of lending services such as park and loan services,[38] to protect itself from the risk that the loaned gas might not be returned. Including the value of loaned gas in the collateral protects pipelines and their customers against the risk of a shipper withdrawing gas from the system without replacing or paying for it, and the Commission has found that a pipeline's desire to cover the value of its gas is reasonable. The Commission requests comment on whether it should adopt standards governing collateral for loaned gas with respect to imbalances as well as with respect to services permitting the borrowing of gas, such as park and loan services.

a. Imbalances

33. In *Gulf South* the Commission allowed the pipeline to use a non-creditworthy shipper's highest monthly imbalance over the most recent 12-month period on which to base the amount of collateral it could require for gas that is loaned to the shipper through imbalances. For new shippers, the valuation would be based on ten percent of a shipper's estimated monthly usage multiplied by the estimated imbalance rate. Gulf South explained that it proposed 10 percent of a projected month's volume as an imbalance surrogate for new shippers because its customers can incur up to a 10 percent imbalance without incurring imbalance penalties.[39]

34. The Commission requests comment on whether to adopt as a general standard the one-month collateral requirement for imbalances by non-creditworthy shippers, or whether, due to variations in imbalance provisions, such determinations should be made on a case-by-case basis. Comments should address the method of calculating the imbalance (*e.g.*, the highest monthly imbalance over the last 12 months), and how collateral should be determined for new shippers without an imbalance history. For instance, should imbalances for new shippers be based on estimates of usage and tolerance levels, as in *Gulf South,* or an amount that may vary as the shipper accumulates imbalances? For example, a shipper could be required to provide no collateral for the first month, and then be required to provide collateral based on its first month's imbalance in the second month. After that, the amount of collateral could be updated as a track record is developed. Comments also should address the gas or index price that would be used to determine the collateral and how frequently collateral should change as a result of changes in the gas or index price.

b. Lending Services

35. With regard to park and loan (PAL) service, the Commission's decisions in *North Baja* and *GTN* permitted these pipelines to require collateral for any gas it loans to shippers under its PAL service. In these cases, the Commission allowed the pipelines to require collateral up to the shipper's maximum contract quantity multiplied by a reported per unit price. The Commission noted, however, that these PAL services may be different from PAL services offered by other pipelines in that they specify a total contract quantity rather than a maximum daily quantity.[40]

36. The Commission requests comments on how to establish collateral requirements for PAL and other lending services. In particular, comments should address whether non-creditworthy shippers should be permitted to provide a certain amount of collateral and be able to borrow gas only up to the amount of the collateral. This is similar to a provision that was adopted in *PJM,* whereby PJM would be permitted to limit a market participant's ability to submit a bid that exceeds that participant's credit exposure.[41] Similarly, the Commission accepted a proposal from PG&E allowing its interruptible transportation shippers to place a cash deposit with the pipeline and then have service up to the exhaustion of the defined balance account. Under this provision, unless the account is replenished by the shipper, service terminates when the balance becomes zero.[42] In this regard, comments should address, as discussed above, the gas index price that would be used to determine the collateral and how frequently collateral should change as a result of changes in the gas or index price, as well as the issue of when collateral should be returned to a non-creditworthy shipper that no longer borrows gas.

37. The Commission also requests comment on whether there may be other lending services for which collateral could be appropriate and whether, given the distinctions among PAL services, collateral determinations would be better addressed in individual cases where the Commission can consider the nature of the service being provided.

4. Interest on Collateral

38. The Commission proposes to require pipelines to offer shippers the opportunity to earn interest on collateral payments. Pipelines could satisfy this requirement either by holding the collateral itself or allowing the shipper to establish an interest-bearing escrow account where the principal can be accessed by the pipeline, but from which interest is paid to the shipper.[43] If the pipeline holds the collateral, it would pay interest based on the Commission's interest rate.[44]

D. Timeline for Suspension and Termination of Service

39. Since the advent of open-access service with pre-granted abandonment, the Commission has permitted pipelines to suspend and terminate service when shippers default on contractual obligations. Although pipeline tariffs are not always clear on this point, suspension of service refers to the stoppage of transportation service, while termination of service reflects the pipeline's ability to cancel the contractual obligation with the shipper.[45] In some cases, for instance, the Commission has required pipelines to provide 30 days notice prior to suspension of service.[46]

40. In the recent orders on creditworthiness, the Commission has sought to revise its policies and the timeline applicable to termination and suspension of service to take into account both the needs of the pipelines to be able to avoid future losses from

[37] *See* Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 45–46 (2003) (*Gulf South*).

[38] *See* North Baja Pipeline, LLC, 102 FERC ¶ 61,239 at P 11, *order on reh'g,* 105 FERC ¶ 61,374 at P 36–37 (2003) (*North Baja*); and PG&E Gas Transmission, Northwest Corp., 103 FERC ¶ 61,137 at P 42–44, *order on reh'g,* 105 FERC ¶ 61,382 at P 65–70 (2003) (*GTN*).

[39] *Gulf South* at P 44.

[40] *North Baja,* 105 FERC ¶ 61,374 at P 37.

[41] PJM Interconnection, L.L.C., 104 FERC ¶ 61,309 (2003) (*PJM*) (permitting PJM to require sufficient collateral to cover the level of financial risk that may be incurred when a market participant places a virtual bid in PJM's day-ahead energy market.)

[42] *See GTN,* 105 FERC ¶ 61,382 at P 14.

[43] *See* Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 38–39, *order on compliance and rehearing,* 103 FERC ¶ 61,276 at P 46–47 (2003).

[44] 18 CFR 154.501(d). *See* Tennessee Gas Pipeline Co., 103 FERC ¶ 61,275 at P 21 (2003).

[45] *See* Northern Natural Gas Co., 103 FERC ¶ 61,276 at P 51–56 (2003); Kinder Morgan Interstate Gas Transmission LLC, 102 FERC ¶ 61,230 at P 8 (2003); Columbia Gulf Transmission Corp., 79 FERC ¶ 61,087 at 61,408 (1997).

[46] *See* Columbia Gas Transmission Corp., 64 FERC ¶ 61,060 at 61,556 (1993); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,076 (1992).

defaulting or non-creditworthy shippers as well as the needs of the shippers to be able to have a reasonable time period in which to obtain the needed collateral.[47] The Commission, for instance, accepted tariff provisions that would permit pipelines to suspend or terminate service for failure to post required collateral.[48]

41. Under the proposed regulation, a pipeline may suspend the provision of service upon a shipper's default on its obligations or upon a finding that a shipper is no longer creditworthy. When a shipper is no longer creditworthy, the pipeline may not terminate or suspend the shipper's service without providing the shipper with an opportunity to satisfy the collateral requirements. In this circumstance, the shipper must be given at least five business days within which to provide advance payment for one month's service, and must satisfy the collateral requirements within 30 days. Upon default, where the shipper is permitted under the pipeline's tariff to continue service if it posts the required collateral,[49] the same timetable must be applied (a minimum of five business days to provide one month's advance payment, and 30 days to satisfy the creditworthiness requirements). If the shipper fails to satisfy these requirements, service may be suspended immediately.

42. Under the proposed regulation, after a shipper either defaults or fails to provide the required collateral, pipelines would need to provide the shipper and the Commission with 30 days notice prior to terminating the shipper's contract.[50] This approach provides an appropriate balance between the shipper's ability to obtain required collateral and the pipeline's need for protection against the possibility of default by a non-creditworthy shipper.

43. Consistent with its recent orders, the Commission's policy will not allow a pipeline to bill a firm shipper for transportation charges while service is suspended.[51] As the Commission explained in these cases, the non-breaching party to a contract must elect whether to continue the contract or suspend the contract, but it cannot suspend its performance while requiring performance by the other party. The pipelines retain full control of the shipper's obligation to pay. The pipeline can elect to suspend service or continue to provide service and sue the shipper for consequential, unmitigated damages caused by its contractual breach. When pipelines terminate service, they no longer can bill monthly reservation charges, and there appears no reason to treat suspension of service differently.

44. The Commission is proposing here to permit pipelines the added remedy of suspension of service on shorter notice than termination of service. But the provision of such added protection does not warrant providing the pipeline with the right to charge for service during suspension when it would not have that right if service is terminated. For instance, a shipper's contractual breach may consist only of failing to post required collateral due to a change in its creditworthiness evaluation. In this situation, the pipeline may deem the loss of creditworthiness sufficient to suspend service on short notice in order to protect against the incurrence of additional obligations. But the pipeline should not be given added incentive to suspend service by being protected against financial loss in the meantime. It must decide which remedy to elect: suspension of service or continuation of the contract and the shipper's obligation to pay.

E. Capacity Release

45. Since Order No. 636, the Commission has held that in capacity release situations, both the releasing and replacement shippers must satisfy a pipeline's creditworthiness requirements.[52] The Commission further found that releasing shippers could not establish creditworthiness provisions for released capacity different from those in the pipeline's tariff.[53] As the Commission explained, the same criteria should be applied to released capacity and pipeline capacity in order to ensure that all capacity, including released capacity, is available on an open access, non-discriminatory basis to all shippers.[54] However, these requirements were not included in the capacity release regulations.

46. In the recent creditworthiness cases, and in the WGQ discussion, additional issues regarding creditworthiness conditions with respect to capacity release have been raised. These issues have included: (1) The effect on replacement shippers of a termination of a releasing shipper's contract;[55] (2) the provision of notice to releasing shippers of a change in the creditworthiness status of the replacement shipper;[56] (3) the timing of a non-creditworthy replacement shipper's obligation to provide collateral in order to bid on pipeline capacity;[57] (4) the timing of notice provided to releasing shippers of changes to a replacement shipper's credit status; and (5) creditworthiness standards for replacement shippers under permanent capacity releases. In order to assure uniformity across pipelines, the Commission proposes to amend its capacity release regulations in each of the first three areas. The Commission, however, will not propose a regulation

[47] Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 18 (2003), Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 43–50 (2003), Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 52 (2003), Gulf South Pipeline Co., LP, 103 FERC ¶ 61,129 at P 49–52 (2003).

[48] Northern Natural Gas Co., 102 FERC ¶ 61,076 at P 43 (2003) (permitting pipeline to add provision for suspension or termination for failure to provide collateral); Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 16–19 (2003) (permitting provision for suspension or termination for failure to provide collateral).

[49] *See, e.g.*, Natural Gas Pipeline Co. of America, 102 FERC ¶ 61,355 at P 36–40 (2003) (Providing that pipeline may determine to suspend service to a defaulting shipper upon providing 15 days of notice. If defaulting shipper commits a subsequent default within six months after the initial default, pipeline may suspend service upon a shorter notice period.)

[50] *See* 18 CFR 154.602 (2003) (requiring 30 days of advance notice to the customer and the Commission prior to contract termination).

[51] Tennessee Gas Pipeline Co., 105 FERC ¶ 61,120 at P 10–14 (2003).

[52] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636–A, FERC Statutes and Regulations, Regulations Preambles, January 1991-June 1996 ¶ 30,950 at 30,588 (1992). Under the capacity release regulations, 18 CFR 284.8(f) (2003), the releasing shipper remains obligated under its contract to the pipeline, and must, therefore, satisfy the creditworthiness and other obligations associated with that contract, regardless of how many subordinate releases take place. For example, even if a replacement shipper is creditworthy, it may default and the releasing shipper would be responsible for payment. Moreover, given the ability of releasing shippers to recall and segment releases, both the releasing and replacement shippers need to be creditworthy to ensure their respective obligations.

[53] *See* El Paso Natural Gas Co., 61 FERC ¶ 61,333 at 62,299 (1992); Panhandle Eastern Pipe Line Co., 61 FERC ¶ 61,357 at 62,417 (1992); Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 at 61,098 (1993); and CNG Transmission Corp., 64 FERC ¶ 61,303 at 63,225 (1993).

[54] *See* Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 62 (2003) (a releasing shipper cannot impose creditworthiness conditions on a replacement shipper that are different from the creditworthiness conditions imposed by the pipeline.)

[55] *Tenaska Marketing Ventures* v. *Northern Border Pipeline Co.,* 99 FERC ¶ 61,182 (2002). *See* Texas Eastern Transmission, L.P., 101 FERC ¶ 61,071 at P 6 (2002); Trailblazer Pipeline Co., 101 FERC ¶ 61,405 at P 32 (2002); Northern Border Pipeline Co., 100 FERC ¶ 61,125 (2002); Natural Gas Pipeline Co. of America, 100 FERC ¶ 61,269 at P 7–19 (2002); Canyon Creek Compression Co., 100 FERC ¶ 61,283 (2002); Kinder Morgan Interstate Gas Transmission LLC, 100 FERC ¶ 61,366 (2002).

[56] Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 78 (2003).

[57] Dominion Cove Point LNG, LP, 104 FERC ¶ 61,184 at P 7–8, *order on compliance,* 105 FERC ¶ 61,225 (2003).

to specify the timing of notice to releasing shippers of changes in a replacement shipper's credit status since an adequate consensus standard was passed by the WGQ. Additionally, the Commission is not proposing to amend its regulations regarding creditworthiness standards applicable to permanent capacity releases.

1. Creditworthiness Requirements for Replacement Shippers

47. The Commission is proposing to include a regulation establishing its existing policy that a pipeline must apply the same creditworthiness requirements to a replacement shipper as it would if that shipper were applying for comparable capacity with the pipeline outside of the capacity release process. This regulation would ensure that a releasing shipper could not impose creditworthiness standards on a replacement shipper that are different from the creditworthiness standards imposed by the pipeline. Since the replacement shipper has obligations to the pipeline (usage charges, penalties, imbalance cashouts, etc.) that are not covered by the releasing shipper's underlying contract, the pipeline does have a legitimate interest in assuring sufficient creditworthiness (or collateral) to cover the replacement shipper's obligations. In addition, the application of creditworthiness requirements to replacement shippers protects releasing shippers, since it provides them with some assurance of payment for the release in the event the replacement shipper defaults.[58]

2. Rights of Replacement Shipper on Termination of Releasing Shipper's Contract

48. The Commission proposes to permit a pipeline to terminate a release of capacity to the replacement shipper if the releasing shipper's service agreement is terminated, provided that the pipeline provides the replacement shipper with an opportunity to continue receiving service if it agrees to pay, for the remaining term of the replacement shipper's contract, the lesser of: (1) The releasing shipper's contract rate; (2) the maximum tariff rate applicable to the releasing shipper's capacity; or (3) some other rate that is acceptable to the pipeline.

49. This provision establishes a reasonable balance between the pipeline and replacement shippers in the event a releasing shipper's contract is terminated. Although the replacement shipper has a contract with the pipeline, the releasing shipper, not the pipeline, has established the rate for the release. Under a release transaction, the contract of the releasing shipper serves to guarantee that the pipeline receives the original contract price for the capacity. Once the releasing shipper's contract has been terminated, the pipeline may no longer wish to continue service to the replacement shipper at a lower rate, and should have the opportunity to remarket the capacity to obtain a higher rate.[59] On the other hand, the replacement shipper also has an investment in the use of the capacity, and should, therefore, have first call on retaining the capacity if it is willing to provide the pipeline with the same revenue as the releasing shipper. Under this proposal, therefore, the replacement shipper is given the opportunity to retain the capacity by paying the releasing shipper's contract rate or the maximum rate for the remaining term of the contract.

50. With respect to segmented releases, the Commission proposes to apply the same general policy. A replacement shipper would have the right to continue service if it agreed to take the full contract path of the releasing shipper at the rate paid by the releasing shipper. As the Commission found in National Fuel:

> [W]e do not agree with DETM that the replacement shipper holding a geographically-segmented portion of the defaulted releasing shipper's capacity should be able to retain that geographic segment of capacity. The pipeline did not negotiate the release of the segment and should not be held to that segmented release agreement once the releasing shipper's contract terminates. The replacement shipper in that instance should be required to pay for the full capacity path of the defaulted shipper at the lower of the rate the defaulted shipper paid or the maximum rate applicable to the defaulted shipper's full capacity path.[60]

In the case of multiple replacement shippers with geographically segmented releases, a pipeline would have to propose a reasonable method of allocating capacity among them if they each matched the releasing shipper's rate for the full rate.[61]

3. Time for Proffering Collateral for Biddable Releases

51. The Commission proposes to require pipelines to establish procedures that allow releasing shippers to require potential replacement shippers to post any necessary collateral prior to the awarding of capacity. In Order No. 637, the Commission required pipelines to provide for scheduling equality between released capacity and pipeline capacity. [62] As part of establishing such equality, the Commission encouraged pipelines to establish procedures by which replacement shippers could obtain pre-approval of creditworthiness.[63] The Commission found that the releasing shipper should have the option whether to: (1) require bidders for its released capacity to pre-qualify under the pipeline's creditworthiness standards, or (2) waive the prequalification requirement and post a bond or assume liability for the usage charge in the event of the replacement shipper's default.[64]

52. But the Commission did not address how a non-creditworthy replacement shipper could pre-qualify to bid on releases in the event it would have to post collateral in order to satisfy the pipeline's creditworthiness standards. Although shippers easily can pre-qualify by meeting the pipeline's creditworthiness requirements, providing collateral on an ongoing basis is more difficult. For example, the amount of capacity posted for bid on each pipeline will change over time,

[58] In the event of a default by a replacement shipper, pipelines would be required to credit to a releasing shipper any collateral from the replacement shipper that is not used to defray the replacement shipper's obligation to the pipeline.

[59] The pipeline is not required to terminate the replacement shipper's contract. It could decide to continue to provide service under that contract at the rate prescribed in the release. In that event, the replacement shipper would not have the right to terminate its contractual obligation since it is receiving the full service for which it contracted. *See Tenaska Marketing Ventures* v. *Northern Border Pipeline Co.*, 99 FERC ¶ 61,182 (2002) (replacement shipper could not cancel release contract upon bankruptcy of releasing shipper).

[60] National Fuel Gas Supply Corp., 101 FERC ¶ 61,063 at P12 (2002).

[61] In the event of such multiple bids by replacement shippers, regardless of the allocation method used by the pipeline, the shippers should be able to replicate their geographically segmented capacity by releasing segments of capacity to each other.

[62] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000) ¶ 31,091 at 31,297 (Feb. 9, 2000); *order on rehearing*, Order No. 637–A, FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000) ¶ 31,099 (May 19, 2000); *order on rehearing*, Order No. 637–B, 92 FERC ¶ 61,062 (July 26, 2000); *aff'd in part and remanded in part, Interstate Natural Gas Ass'n of America* v. *FERC*, 285 F.3d 18, (D.C. Cir. Apr. 5, 2002); *order on remand*, 101 FERC ¶ 61,127 (2002).

[63] In order to be ''pre-qualified'' the pipeline would have determined that the shipper bidding on the release offer is either: (1) Creditworthy as defined in the pipeline's tariff; or (2) sufficiently collateralized (*i.e.*, the shipper has posted a level of collateral, at the time it submits its bid, that would cover the amount of capacity on which it is bidding, up to a maximum of three months' worth of reservation charges.)

[64] *See* Dominion Cove Point LNG, LP, 104 FERC ¶ 61,184 at P 7–8 (2003).

and the replacement shipper, therefore, would not be able to determine how much collateral to maintain on an ongoing basis on any pipeline. Moreover, if the replacement shipper seeks to obtain capacity on multiple pipelines, maintaining collateral on each pipeline on an ongoing basis to cover any potential bids could be financially impractical.

53. By the same token, the Commission did not address when non-creditworthy shippers should be required to post collateral and how capacity would be allocated in a bidding situation when the replacement shipper is not creditworthy. Allowing the replacement shipper winning the bid to post collateral after the award of capacity could compromise the speed and certainty of capacity release transactions the Commission sought to achieve in Order No. 637. Under the capacity release standards of the WGQ, releases of less than one year, subject to bid, are only posted once a day, at 12 p.m. CCT [65], with the award of capacity communicated by 2 p.m., unless there is a match involved, in which case the award is posted by 3 p.m.[66] If the replacement shipper were permitted to post collateral after the final award, and it was unable to do so quickly, the capacity release would not take place, because the releasing shipper would be unable to repost the capacity until the next day. Thus, other shippers would lose the ability to obtain that capacity and the releasing shipper would lose at least one day of release revenues. In some cases, however, the releasing shipper might decide to waive the prequalification requirement, for example, if it thought that doing so would enlarge the number of potential bidders.[67]

54. Among the NAESB standards that were passed, Standard 5.3zD provides that a pipeline should not award a release to a replacement shipper until and unless that shipper meets the pipeline's creditworthiness requirements. While this standard comports with basic Commission policy, it does not appear sufficient to resolve the issue of non-creditworthy bidders. The standard does not specify when a non-creditworthy shipper must post collateral to have its bid considered, nor does it address what happens to the allocation of capacity in a bidding situation where the winning bidder is non-creditworthy, but other bidders are creditworthy.

55. The Commission, therefore, proposes to supplement the WGQ standard by allowing the releasing shipper to determine whether it wants all bidders to be qualified prior to having their bids considered.[68] If the releasing shipper insists on pre-qualification, all potential non-creditworthy replacement shippers would be required to post collateral prior to the award of capacity at 2 p.m. This approach ensures that a potential non-creditworthy replacement shipper will not be required to maintain collateral on an ongoing basis with multiple pipelines.[69] Although the Commission recognizes that this approach does not provide potential non-creditworthy replacement shippers with a surfeit of time to obtain collateral, it appears as the only workable method of ensuring that capacity release transactions can be consummated quickly, as required by Order No. 637, while protecting the releasing shipper against losing its release revenue in the event the replacement shipper fails to post collateral. The Commission is also proposing to require pipelines to return any collateral or security posted by potential replacement shippers prior to the next nomination opportunity.[70] This will ensure that the replacement shipper has the collateral or security available to acquire released capacity through a pre-arranged deal on the same or another pipeline.

56. There also appear to be ways a potential non-creditworthy replacement shipper can avoid the need to obtain collateral quickly. For instance, the potential non-creditworthy replacement shipper could obtain a standing letter of credit from a financial institution that it could apply to any pipeline as it bids on releases. If its bid did not prevail, the letter of credit would then be available for use on subsequent bids.

57. In its comments, Reliant Energy Services, Inc. (Reliant) states there is much confusion among the pipelines as to when a non-creditworthy shipper must provide collateral in connection with a bid. Some pipelines, it asserts, want the shipper to maintain collateral prior to making a bid, while others require that collateral be posted at the time of the bid, or even at the time of the award. Instead, Reliant submits that it would not be unreasonable to permit a winning bidder with some amount of time, after notification of an award, to arrange for the necessary collateral. Reliant contends that providing a substantial amount of collateral at the time of the award (or earlier) can be problematic, especially if the shipper is making bids over multiple pipelines. Moreover, Reliant argues that a shipper should not have to provide collateral prior to being awarded the capacity since no service had yet been rendered.

58. Reliant's proposal, however, would not ensure that capacity releases can take place quickly, as required by Order No. 637, nor does it address the potential revenue loss to the releasing shipper. The Commission's proposal appears to better meet the scheduling requirements of Order No. 637 and protect releasing shippers against a potential loss of revenue, while also providing a means by which non-creditworthy shippers can arrange for collateral prior to the award of capacity.

4. Notice to Releasing Shippers

59. In several of the creditworthiness orders, the Commission required pipelines to provide simultaneous notice to a releasing shipper and a replacement shipper upon determining that a replacement shipper is not creditworthy.[71] The Commission, however, finds no need to propose such a regulation since the membership of NAESB's WGQ passed a consensus standard (Standard 5.3.zF) that appears to adequately address this issue. Standard 5.3.zF, which we propose to incorporate by reference into the Commission's regulations, provides that a pipeline should provide notice to the original releasing shipper reasonably proximate in time to when it gives notice to the releasing shipper's replacement shipper(s) of an event pertaining to the replacement shipper(s) creditworthiness. Such events include when a replacement shipper is: (1) Past due or in default of the pipeline's tariff; (2) having its service suspended or its contract terminated for cause; and (3) no longer creditworthy and has not provided credit alternative(s) pursuant to the pipeline's tariff.

[65] CCT refers to central clock time (which takes daylight savings into account).

[66] 18 CFR 284.12(a)(1)(v), Capacity Release Related Standards 5.3.2 (Version 1.6).

[67] If the releasing shipper waived the prequalification requirement, the pipeline would not have to flow gas for the replacement shipper until the replacement shipper satisfied the creditworthiness requirement.

[68] Pipelines could insert a default provision in their tariffs, but would have to provide the releasing shipper an option to waive that provision. *See* Dominion Cove Point LNG, LP, 105 FERC ¶ 61,225.

[69] *See* Dominion Cove Point LNG, LP, 105 FERC ¶ 61,225 at P 18 (rejecting a pipeline's tariff requiring the replacement shipper to maintain collateral on a ''continuing basis.'')

[70] Under the WGQ nomination timeline, the collateral or security would have to be returned prior to the Evening Nomination cycle at 6 p.m. CCT.

[71] *See, e.g.*, Tennessee Gas Pipeline Co., 102 FERC ¶ 61,075 at P 78 (2003), Northern Natural Gas Co., 103 FERC ¶ 61,276 at P 43 (2003).

5. Creditworthiness Requirements for Permanent Releases

60. The WGQ EC considered a proposed standard (5.3.zE) that would have required pipelines to relieve releasing shippers from any liability arising from their transportation contracts if they permanently released capacity to a replacement shipper that meets the pipeline's creditworthiness provisions. This proposed standard failed as a result of the Pipelines segment's opposition to the language.

61. Many parties filed comments in support of or opposition to the proposed standard. However, some of the comments appear to confuse the basic definition of a ''permanent release.'' [72] Under the Commission's policy, a permanent release occurs when a pipeline relieves a releasing shipper from all of its obligations to the pipeline under its service agreement upon the assignment of such obligations to a replacement shipper on a permanent basis (*i.e.*, for the remainder of the contract term).[73]

62. The Pipelines segment contends that the proposed standard would require pipelines to relieve shippers of their obligations, even when the creditworthiness of the replacement shipper does not warrant such relief. Similarly, the Interstate Natural Gas Association of America (INGAA) fears such a standard would strip the pipeline of the ability to employ reasonable business judgment in assessing whether a shipper that releases its capacity should be relieved of its contractual liability once the capacity is assigned. INGAA states that the capacity release program was never intended to be an easy loophole whereby an existing shipper can terminate contractual obligations by assigning its contract to a replacement shipper that meets only the minimum criteria set forth in the pipeline's tariff.

63. American Gas Association (AGA), however, argues that the proposed standard is consistent with the Commission's permanent release policy in *El Paso,* and as such AGA requests that the Commission clarify that permanent releases must be made to creditworthy shippers that otherwise meet pipeline tariff requirements. Similarly, National Fuel Distribution and KeySpan Delivery Companies (KeySpan) state that pipelines must be prevented from unreasonably holding the releasing shipper liable under an otherwise reasonable, full-term release of its capacity at the pipeline's maximum rate. KeySpan contends that in determining whether to allow a permanent release, pipelines must apply the same creditworthiness criteria as they would in a situation involving an equivalent request for new service, as any other result would be unduly discriminatory and unlawful.

64. The Commission is not proposing a standard for creditworthiness for permanent releases. The Commission's policy with respect to permanent releases is that a ''pipeline may not unreasonably refuse to relieve a releasing shipper of liability under the contract where there is a permanent release of capacity.'' [74] If there is a dispute regarding the reasonableness of the pipeline's decision in allowing a permanent release, that dispute must be judged by the Commission on a case-by-case basis.[75] Because disputes as to permanent releases must be adjudged on a case-by-case basis, a regulation establishing a standard creditworthiness criteria does not appear appropriate.

III. Notice of Use of Voluntary Consensus Standards

65. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that Federal agencies should publish a request for comment in a NOPR when the agency is seeking to issue or revise a regulation proposing to adopt a voluntary consensus standard or a government-unique standard. In this NOPR, the Commission is proposing to incorporate by reference voluntary consensus standards developed by NAESB, in addition to proposing new regulations in areas where standards were not passed.

IV. Information Collection Statement

66. The following collections of information contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimates include the costs to implement the WGQ's creditworthiness standards and the Commission's proposed creditworthiness regulations. The burden estimates are primarily related to start-up to implement these standards and regulations and will not result in on-going costs.

Data collection	Number of responses	Number of responses per respondent	Hours per response	Total number of hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	924	85,932

Total Annual Hours for Collection: (Reporting and Recordkeeping, (if appropriate)) = 89,466

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be the following:

	FERC–545	FERC–549C
Annualized Capital/Startup Costs	$182,111	$4,428,183

[72] The Pipelines segment appears to argue that a permanent release means only the ability to release capacity for the full remaining term of the contract, with the releasing shipper remaining liable for the reservation charges. National Fuel Gas Distribution Corp. (National Fuel Distribution) maintains that a permanent release means that the releasing shipper's obligation under the contract is terminated.

[73] *See* El Paso Natural Gas Co., 61 FERC ¶ 61,333 at 62,312 (1992) (*El Paso*).

[74] *Id.*

[75] *See Texas Eastern Transmission Corp.* 83 FERC ¶ 61,092 at 61,446 (1998) (permitting pipeline to refuse to permit a permanent release when the pipeline has a reasonable basis to conclude that it will not be financially indifferent to the release.)

	FERC–545	FERC–549C
Annualized Costs (Operations & Maintenance)	0	0
Total Annualized Costs	182,111	4,428,183

67. OMB regulations [76] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549C, Standards for Business Practices of Interstate Natural Gas Pipelines.

Action: Proposed collections.

OMB Control No.: 1902–0154, 1902–0174.

Respondents: Business or other for profit (interstate natural gas pipelines (not applicable to small business)).

Frequency of Responses: One-time implementation (business procedures, capital/start-up).

Necessity of Information: This proposed rule, if implemented, would upgrade the Commission's current business practice and communication standards to include the latest creditworthiness standards approved by the WGQ as well as promulgate Commission regulations governing creditworthiness. The implementation of these standards and regulations is necessary to increase the efficiency of the pipeline grid.

68. The information collection requirements of this proposed rule will be included in pipeline tariffs or reported directly to the industry users. The implementation of these data requirements will help the Commission carry out its responsibilities under the Natural Gas Act to monitor activities of the natural gas industry to ensure its competitiveness and to assure the improved efficiency of the industry's operations. The Commission's Office of Markets, Tariffs and Rates will use the data in rate proceedings to review rate and tariff changes by natural gas companies for the transportation of gas, for general industry oversight, and to supplement the documentation used during the Commission's audit process.

69. *Internal Review:* The Commission has reviewed the requirements pertaining to business practices and electronic communication with natural gas interstate pipelines and made a determination that the proposed revisions are necessary to establish a more efficient and integrated pipeline grid. Requiring such information ensures both a common means of communication and common business practices which provide participants engaged in transactions with interstate pipelines with timely information and uniform business procedures across multiple pipelines. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

70. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Executive Director, 888 First Street, NE., Washington, DC 20426. Tel: (202) 502–8415/fax: (202) 273–0873; e-mail: *michael.miller@ferc.gov.*

71. Comments concerning the collection of information(s) and the associated burden estimate(s), should be sent to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202) 395–7856, fax: (202) 395–7285).

V. Environmental Analysis

72. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[77] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[78] The actions proposed here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[79] Therefore, an environmental assessment is unnecessary and has not been prepared in this NOPR.

VI. Regulatory Flexibility Act Certification

73. The Regulatory Flexibility Act of 1980 (RFA)[80] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations proposed here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

VII. Comment Procedures

74. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due March 26, 2004. Comments must refer to Docket No. RM04–4–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments. Comments may be filed either in electronic or paper format.

75. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC 20426.

76. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to

[76] 5 CFR 1320.11.

[77] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles, 1986–1990 ¶ 30,783 (1987).

[78] 18 CFR 380.4 (2003).

[79] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27) (2003).

[80] 5 U.S.C. 601–612.

serve copies of their comments on other commenters.

VIII. Document Availability

77. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

78. From FERC's home page on the Internet, this information is available in the eLibrary. The full text of this document is available in the eLibrary both in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

79. User assistance is available for eLibrary and the FERC's Web site during our normal business hours. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Linda Mitry,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 284, chapter I, title 18, Code of Federal Regulations, as follows.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

2. Section 284.8 is amended by revising paragraph (i) to read as follows:

§ 284.8 Release of firm capacity on interstate pipelines.

* * * * *

(i) In effectuating capacity releases, pipelines must adhere to the following requirements applicable to creditworthiness and default:

(1) The pipeline must apply to replacement shippers the same creditworthiness criteria applied to shippers holding or obtaining capacity from the pipeline.

(2) The pipeline is permitted to terminate the contract of a replacement shipper upon the termination of the releasing shipper's contract, provided that the pipeline provides the replacement shipper with the opportunity to continue receiving service if it agrees to pay, for the remaining term of the replacement shipper's contract, the lesser of:

(i) The releasing shipper's contract rate;

(ii) The maximum tariff rate applicable to the releasing shipper's capacity; or

(iii) Some other rate that is acceptable to the pipeline.

(3) The pipeline must include procedures in its tariff under which a releasing shipper may require potential replacement shippers to establish creditworthiness prior to the award of capacity in order for the replacement shipper's bid to be considered in making the award. If a potential replacement shipper's bid is not accepted, collateral or other security posted by potential replacement shippers for bidding must be returned to the bidder prior to the next nomination cycle.

3. Section 284.12 is amended as follows:

a. Redesignate paragraphs (a)(1)(i) through (a)(1)(v) as paragraphs (a)(1)(ii) through (a)(1)(vi).

b. In paragraph (a)(1), revise the reference to ''North American Energy Standards Board'' to read ''Wholesale Gas Quadrant of the North American Energy Standards Board;''

c. In paragraph (a)(2), revise the reference to ''1100 Louisiana, Suite 3625'' to read ''1301 Fannin, Suite 2350''.

d. In paragraph (b), revise the reference to ''Gas Industry Standards Board standards incorporated by reference in paragraph (b)(1) of this section'' to read ''standards promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board incorporated by reference in paragraph (a)(1) of this section.''

e. Newly designated paragraph (a)(1)(vi) is revised, and paragraphs (a)(1)(i) and (b)(4) are added to read as follows:

§ 284.12 Standards for pipeline business operations and communications.

(a) * * *

(1) * * *

(i) General Standards 0.3.zB, 0.3.zC, 0.3.zD, 0.3.zE, 0.3.zF, 0.3.zK, 0.3.zL, 0.3.zQ (Request No.: 2003 Annual Plan Item 6, July 28, 2003);

* * * * *

(vi) Capacity Release Related Standards (Version 1.6, July 31, 2002), with the exception of Standards 5.3.6 and 5.3.7, and including the standards contained in Recommendations R02002 and R02002–2 (October 31, 2002) and Standards 5.3.zD, 5.3.zF (Request No.: 2003 Annual Plan Item 6, July 28, 2003).

* * * * *

(b) * * *

(4) Creditworthiness standards—(i) *Criteria applied in determining creditworthiness.* (A) In determining a shipper's, or potential shipper's, credit status, pipelines can require no more than the following information, where such information is applicable to the shipper, and must maintain any non-public information included in such information on a confidential basis:

(1) Audited financial statements;

(2) Annual report;

(3) List of affiliates, parent companies, and subsidiaries;

(4) Publicly available information from credit reports of credit and bond rating agencies;

(5) Private credit ratings, if obtained by the shipper;

(6) Bank references;

(7) Trade references;

(8) Statement of legal composition;

(9) Statement of length of time business has been in operation;

(10) Most recent filed statements with the Securities and Exchange Commission (or an equivalent authority) or such other publicly available information;

(11) For public entities, the most recent publicly available interim financial statements, with an attestation by its Chief Financial Officer, Controller, or equivalent (CFO) that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with Generally Accepted Accounting Principles (GAAP) or equivalent;

(12) For non-public entities, including those that are State-regulated utilities:

(i) The most recent available interim financial statements, with an attestation by its CFO that such statements constitute a true, correct, and fair representation of financial condition prepared in accordance with GAAP or equivalent;

(ii) An existing sworn filing, including the most recent available interim financial statements and annual financial reports filed with the respective regulatory authority, showing the shipper's current financial condition;

(13) For State-regulated utility local distribution companies, documentation from their respective state regulatory commission (or an equivalent authority) of an authorized gas supply cost recovery mechanism which fully recovers both gas commodity and transportation capacity costs and is afforded regulatory asset accounting treatment in accordance with GAAP or equivalent;

(14) Such other information as may be mutually agreed to by the parties.

(B) Each pipeline must set forth in its tariff objective criteria for evaluating creditworthiness.

(C) Upon a determination that a shipper or potential shipper is non-creditworthy, the pipeline must provide, within five days of the request of the shipper, a written explanation of the basis for its determination.

(ii) *Collateral requirements.* Upon a pipeline's determination that a shipper or potential shipper is non-creditworthy, the shipper must be given the option to provide the pipeline with collateral in order to receive or retain service.

(A) *Service on existing facilities.* Collateral for service on existing facilities may not exceed three months' worth of charges for the service.

(B) *Construction of new facilities. (1)* Collateral for construction of mainline facilities, as defined in § 157.202 (b)(5) of this chapter, must be reasonable in light of the risks of the project, provided that the amount of collateral cannot exceed the shipper's proportionate share of the cost of the facilities.

(2) Collateral for construction of lateral line facilities, as defined in § 154.109(b) of this chapter, must not exceed the shipper's proportionate share of the cost of the facilities.

(3) Collateral for construction of facilities must be determined prior to the initiation of construction.

(4) The outstanding amount of collateral for construction of facilities must be reduced as the shipper pays off the obligation.

(C) *Interest on collateral.* Pipelines must provide shippers with an opportunity to earn interest on collateral. On collateral held by the pipeline, interest will be calculated using the interest rate required to be used in calculating refunds, as defined in § 154.501(d) of this chapter.

(iii) *Suspension and termination of service.*

(A) Pipelines may not terminate a shipper's service without providing 30 days notice to the shipper and to the Commission.

(B) Pipelines may suspend the provision of service upon a shipper's default or a finding that the shipper is no longer creditworthy. Pipelines may not charge a shipper for service during suspension.

(C) When a shipper loses its creditworthiness status, the pipeline cannot suspend or terminate service without permitting the shipper to continue service as provided in paragraph (b)(4)(iii)(D) of this section.

(D) When a non-creditworthy shipper, or defaulting shipper is permitted to continue service by providing collateral, the shipper may continue service by providing an advance payment of an amount equal to one month's charges for service, and satisfying the requisite creditworthiness requirements within 30 days of the date of the notice.

[FR Doc. 04–4095 Filed 2–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 870 and 882

[Docket No. 2003N–0567]

Cardiovascular and Neurological Devices; Reclassification of Two Embolization Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify two embolization devices to change the names of the devices, revise the identification of the devices, and reclassify the two devices from class III (premarket approval) into class II (special controls). The vascular embolization device (previously the arterial embolization device) is intended to control hemorrhaging due to aneurysms, certain tumors, and arteriovenous malformations. The neurovascular embolization device (previously the artificial embolization device) is intended to permanently occlude blood flow to cerebral aneurysms and cerebral arteriovenous malformations. These reclassifications are being proposed under the agency's own initiative under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) based on new information. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of the draft guidance document that the agency proposes to use as a special control for these devices.

DATES: Submit written or electronic comments on the proposed rule by May 25, 2004.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Peter L. Hudson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The act, as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629), the FDAMA (Public Law 105–115), and MDUFMA (Public Law 107–250) established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Postamendments devices require premarket approval, unless FDA issues an order finding the device to be

substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

In 1990, the SMDA added section 515(i) to the act. This section requires FDA to issue an order to manufacturers of preamendments class III devices for which no final regulation requiring the submission of PMAs has been issued to submit to the agency a summary of, and a citation to, any information known or otherwise available to them respecting such devices, including adverse safety and effectiveness information that has not been submitted under section 519 of the act (21 U.S.C. 360i). Section 519 of the act requires manufacturers, importers, and device user facilities to submit adverse event reports of certain device-related events and reports of certain corrective actions taken. Section 515(i) of the act also directs FDA to either revise the classification of the device into class I or class II or require the device to remain in class III and establish a schedule for the issuance of a rule requiring the submission of PMAs for those devices.

In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA announced the availability of a document setting forth its strategy for implementing the provisions of the SMDA that require FDA to review the classification of preamendments class III devices. Under this plan, the agency divided preamendments class III devices into the following three groups: Group 1 devices are devices that FDA believes raise significant questions of safety and/or effectiveness, but are no longer used or are in very limited use; group 2 devices are devices that FDA believes have a high potential for being reclassified into class II; and group 3 devices are devices that FDA believes are currently in commercial distribution and are not likely candidates for reclassification.

In the **Federal Register** of August 14, 1995 (60 FR 41984 and 41986), FDA published two orders for certain class III devices requiring the submission of safety and effectiveness information in accordance with the preamendments class III strategy for implementing section 515(i) of the act. FDA published two updated orders in the **Federal Register** of June 13, 1997 (62 FR 32352 and 32355). The orders describe in detail the format for submitting the type of information required by section 515(i) of the act so that the information submitted would clearly support reclassification or indicate that a device should be retained in class III. The orders also scheduled the required submissions in groups, at 6–month intervals, beginning with August 14, 1996. The devices proposed in this regulation for reclassification are included in group 3.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in section 513(e) of the act, includes information developed as a result of a re-evaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Re-evaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the re-evaluation is made in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, *supra*, 422 F.2d at 951.) However, regardless of whether data before the agency are past or new data, the ''new information'' upon which reclassification under section 513(3) of the act is based must consist of ''valid scientific evidence'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, and other information that may be protected. (See section 520(c) of the act (21 U.S.C. 360j(c)).)

II. Regulatory History of the Devices

A. Vascular (Arterial) Embolization Device

In the **Federal Register** of February 5, 1980 (45 FR 7937), FDA issued a final rule classifying the arterial embolization device, into class III (§ 870.3300 (21 CFR 870.3300)). The preamble to the proposed rule to classify the device (44 FR 13363, March 9, 1979) included the recommendations of the Cardiovascular Device Classification Panel (the Cardiovascular Panel) regarding the classification of the device. The Cardiovascular Panel recommended that the device be classified into class III and identified the following risks to health associated with the device: Thromboembolization, inadvertent embolization and infarction, vessel perforation, progressive granulomatous inflammation, and infection. FDA agreed with the Cardiovascular Panel's recommendation.

B. Neurovascular (Artificial) Embolization Device

In the **Federal Register** of September 4, 1979 (44 FR 51777), FDA issued a final rule classifying the artificial embolization device into class III (§ 882.5950 (21 CFR 882.5950)). The preamble to the proposed rule to classify the device (43 FR 55730, November 28, 1978) included the recommendations of the Neurological Devices Classification Panel (the Neurological Panel), an FDA advisory committee regarding the classification of the device. The Neurological Panel recommended that the device be classified into class III and identified tissue infarction and tissue toxicity as risks to health associated with use of the device. FDA agreed with the Neurological Panel's recommendation.

III. Device Descriptions

FDA is proposing the following revised device names and identifications based on the agency's review:

FDA is proposing to rename the arterial embolization device as ''vascular embolization device'' and the artificial embolization device as the ''neurovascular embolization device.''

A vascular embolization device is an intravascular implant intended to control hemorrhaging due to aneurysms, certain types of tumors (e.g., nephroma, hepatoma, uterine fibroids), and arteriovenous malformations. This does not include cyanoacrylates and other embolic agents, which act by polymerization or precipitation. Embolization devices used in neurovascular applications are also not

included in this classification. (See § 882.5950.)

A neurovascular embolization device is an intravascular implant intended to permanently occlude blood flow to cerebral aneurysms and cerebral arteriovenous malformations. This does not include cyanoacrylates and other embolic agents, which act by polymerization or precipitation. Embolization devices used in other vascular applications are also not included in this classification. (See § 870.3300.)

The proposed names of vascular embolization device and neurovascular embolization device and the proposed device identifications more accurately reflect the intended uses of the legally marketed arterial and artificial embolization devices, respectively. Postamendments class III vascular and neurovascular embolization devices, such as cyanoacrylates and other embolization devices, which act by polymerization and precipitation, continue to require premarket approval.

IV. Recommendation of the Neurological Panel

At a public meeting on June 12, 1998, the Neurological Panel recommended that the neurovascular (artificial) embolization device be reclassified from class III into class II (Ref. 1). The Neurological Panel believed that class II with the special controls, in addition to the general controls, would reasonably assure the safety and effectiveness of the device. The Neurological Panel also recommended that the special controls for the device be labeling, sterilization, and biocompatibility.

At another public meeting on September 16 and 17, 1999 (Ref. 2), the Neurological Panel made recommendations on FDA's draft guidance document entitled ''Guidance Document for Neurological Embolization Devices.'' The draft guidance document addressed the Neurological Panel's June 12, 1998, special controls recommendations for the device. Based on the Neurological Panel's recommendations and public comments on the draft guidance document, FDA revised the draft guidance document and issued it on November 1, 2000.

While the Panel's recommendation was specifically for the neurovascular (artificial) embolization device, because of the similarity of the vascular (arterial) embolization device to the neurovascular embolization device, in its intended use, design, risks to health, controls to mitigate the risks to health, and benefits, FDA has determined that the Neurological Panel's reclassification recommendation for the neurovascular embolization device is also relevant to the vascular embolization device.

V. Risks to Health

After considering the information in one 515(i) submission that addressed both device classifications (Ref. 3) and two other 515(i) submissions that addressed the neurovascular embolization device (Refs. 4 and 5), the Neurological Panel's 1998 and 1999 recommendations, as well as the published literature and Medical Device Reports, FDA has evaluated the risks to health associated with use of the vascular and the neurovascular embolization devices. FDA believes that the following are risks to health associated with use of both device types: Vessel perforation or rupture, unintended thrombosis, adverse tissue reaction, infection, and hematoma formation. These risks to health are due to a combination of factors relating to the severely diseased, damaged, or malformed blood vessel; clinician experience; and the device.

A. Blood Vessel Perforation or Rupture

Blood vessel perforation or rupture may cause life-threatening hemorrhage. Blood vessel perforation may result from improper use of the delivery catheter, device-induced mechanical injury to the endothelial cells lining the blood vessel, or vasospasm. Blood vessel perforation or rupture may require surgery to correct this damage.

B. Unintended Thrombosis

Unintended thrombosis from implantation of an embolization device may cause distal tissue injury (i.e., ischemia and necrosis), which for the cerebral embolization may cause neurological deficits leading to cranial nerve palsy, visual impairment, stroke, infarct, unintended injury to organs, pulmonary embolization, or death. Incorrect device selection, device misplacement, device migration, device fracture, inadequate visualization of the device, or use of an inappropriate catheter delivery system may cause unintended thrombosis.

C. Adverse Tissue Reaction

Adverse tissue reaction is a risk to health common to all implanted devices. The implantation of embolization devices will elicit a mild inflammatory reaction typical of a normal foreign body response. Incompatible materials or impurities in the materials may increase the severity of a local tissue reaction or cause a systemic tissue reaction.

D. Infection

Infection of the soft tissue and fever are potential risks to health associated with all surgical procedures and implanted devices. Incompatible or impure material composition may irritate the vasculature, which could increase the risk of infection. Improper sterilization or packaging may also increase the risk of infection. Use of a device that is not pyrogen-free may elicit a fever response.

E. Hematoma Formation

Hematoma formation at the delivery catheter entry site, usually groin access to the femoral artery, is the result of internal bleeding.

VI. Summary of the Reasons for the Reclassification

FDA believes that the vascular embolization device and the neurovascular embolization device should be reclassified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

VII. Summary of the Data Upon Which the Reclassification is Based

In addition to the potential risks to health associated with implantation of the vascular and neurovascular embolization devices described in section V of this document, there is reasonable knowledge of the benefits of the devices. Specifically, the vascular and neurovascular embolization devices may prevent life-threatening hemorrhage, reduce surgical morbidity and blood loss, and may reduce or relieve symptoms when surgical resection is not possible.

VIII. Special Controls

FDA believes that the guidance document entitled ''Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices'' (the class II special controls guidance document) in addition to general controls, can address the risks to health described in section V of this document. Because of the similarity of the two devices in intended use, design, risks to health, controls to mitigate the risks to health, and benefits, FDA has determined that the Neurological Panel's special controls recommendation for the neurovascular embolization device is also relevant to the vascular embolization device. Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of this draft class II special

controls guidance document that the agency is proposing to use as the special control for these devices.

The draft guidance document contains specific recommendations with regard to device performance testing and other information in a premarket notification (510(k)) submission. Particular sections of the guidance document address the following topics for both embolization devices: Preclinical testing (including biocompatibility), sterility, animal testing, clinical testing, and labeling. In the table 1 of this document, FDA has identified the risks to health associated with the use of these devices in the first column and the recommended mitigation measures identified in the class II special controls guidance document in the second column. These recommendations will also help ensure that the device has appropriate performance characteristics and labeling for its use. Following the effective date of any final reclassification rule based on this proposal, any firm submitting a 510(k) submission for these embolization devices will need to address the issues covered in the class II special controls guidance document. However, the firm need only show that its device meets the recommendations of the class II special controls guidance document or in some other way provides equivalent assurances of safety and effectiveness.

TABLE 1.—RISKS TO HEALTH AND RECOMMENDED MITIGATION MEASURES

Risk to health	Recommended mitigation measures
Blood vessel perforation or rupture	Preclinical testing, Animal testing, Clinical testing, Labeling
Unintended thrombosis	Preclinical testing, Animal testing, Clinical testing, Labeling
Adverse tissue reaction	Preclinical testing, Animal testing, Clinical testing
Infection	Sterility
Hematoma formation	Animal testing, Clinical testing, Labeling

IX. FDA's Tentative Findings

FDA believes the vascular and the neurovascular embolization devices should be reclassified into class II because special controls, in addition to general controls, can provide reasonable assurance of the safety and effectiveness of the devices and there is sufficient information to establish special controls to provide such assurance. FDA, therefore, is proposing to reclassify these devices into class II and establish the class II special controls guidance document as a special control for the devices.

For the convenience of the reader, FDA is also adding new § 870.1(e) and § 882.1(e) to inform the reader where to find guidance documents referenced in parts 870 and 882.

X. Effective Date

FDA proposes that any final rule that may issue based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

XI. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XII. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve all manufacturers of the device types of the costs of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to this device, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this proposed rule, if finalized, would not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule, if finalized, would not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XIII. Paperwork Reduction Act of 1995

This proposed rule does not contain information collection provisions that are subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

XIV. Submission of Comments

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

XV. References

The following references are on display at the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday:

1. Neurological Devices Panel, transcript, June 12, 1998, pp. 1–124.

2. Neurological Devices Panel, transcript, September 17, 1999, pp. 9–11 and 101–152.

3. 515(i) submission submitted by Target Therapeutics, Inc., Fremont, CA, February 12, 1998.

4. 515(i) submission submitted by Cordis Endovascular Corp., Miami Lakes, FL, February 13, 1998.

5. 515 (i) submission submitted by Cook, Inc., Bloomington, IN, February 28, 1998.

List of Subjects in 21 CFR Parts 870 and 882

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 870 and 882 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 870.1 is amended by adding paragraph (e) to read as follows:

§ 870.1 Scope.

* * * * *

(e) Guidance documents referenced in this part are available on the Internet at *http://www.fda.gov/cdrh/guidance.html*.

3. Section 870.3300 is revised in subpart D to read as follows:

§ 870.3300 Vascular embolization device.

(a) *Identification*. A vascular embolization device is an intravascular implant intended to control hemorrhaging due to aneurysms, certain types of tumors (e.g., nephroma, hepatoma, uterine fibroids), and arteriovenous malformations. This does not include cyanoacrylates and other embolic agents, which act by polymerization or precipitation. Embolization devices used in neurovascular applications are also not included in this classification. (See 21 CFR 882.5950.)

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices.'' For availability of this guidance document, see § 870.1(e).

PART 882—NEUROLOGICAL DEVICES

4. The authority citation for 21 CFR part 882 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 882.5950 is revised to read as follows:

§ 882.5950 Neurovascular embolization device.

(a) *Identification*. A neurovascular embolization device is an intravascular implant intended to permanently occlude blood flow to cerebral aneurysms and cerebral arteriovenous malformations. This does not include cyanoacrylates and other embolic agents, which act by polymerization or precipitation. Embolization devices used in other vascular applications are also not included in this classification, see § 870.3300.

(b) *Classification*. Class II (special controls). The special control for this device is the FDA guidance document entitled ''Class II Special Controls Guidance Document: Vascular Embolization Devices and Neurovascular Embolization Devices.'' For availability of this guidance document, see § 882.1(e).

Dated: February 11, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–3858 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG–156421–03]

RIN 1545–BC81

Student FICA Exception

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide guidance regarding the meaning of ''school, college, or university'' and ''student'' for purposes of the student FICA exception under sections 3121(b)(10) and 3306(c)(10)(B) of the Internal Revenue Code (Code). In addition, this document contains proposed regulations that provide guidance on the meaning of ''school, college, or university'' for purposes of the FICA exception under section 3121(b)(2) for domestic service performed in a local college club, or local chapter of a college fraternity or sorority by a student. This document also provides a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by May 25, 2004. Outlines of topics to be discussed at the public hearing scheduled for June 16, 2004 must be received by May 25, 2004.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–156421–03), room 5703, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–156421–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically, via the IRS Internet site at: *www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John Richards of the Office of Associate Chief Counsel (Tax Exempt and Government Entities), (202) 622–6040; concerning submissions of comments, the hearing and/or to be placed on the building access list to attend the hearing, Treena Garret, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 31 under sections 3121(b)(10) and 3306(c)(10)(B) of the Internal Revenue Code. These sections except from ''employment'' for Federal Insurance Contributions Act (FICA) tax purposes and Federal Unemployment Tax Act (FUTA) purposes, respectively, service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university. In addition, this document contains proposed amendments to 26 CFR part 31 under section 3121(b)(2). This section excepts from employment for FICA purposes domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending cases at a school, college, or university.

Explanation of Provisions

A. Current Law

Section 3121(b)(10) of the Code (the student FICA exception) excepts from the definition of employment for FICA purposes services performed in the employ of a school, college, or university (SCU) (whether or not that organization is exempt from income tax), or an affiliated organization that satisfies section 509(a)(3) of the Code in relation to the SCU (''related section 509(a)(3) organization''), if the service is performed by a student who is enrolled and regularly attending classes at that SCU. Section 3306(c)(10)(B) contains a similar student exception. Thus, the student FICA exception applies to services only if both the ''SCU status'' and ''student status'' requirements are met. This regulation deals with both the SCU status and student status requirements.

To satisfy the SCU status requirement, the employer for whom the employee performs services (the common law employer) must be either a SCU or a related section 509(a)(3) organization. If a student is not employed by a SCU or a related section 509(a)(3) organization, then the student FICA exception is not available. *See e.g.*, Rev. Rul. 69–519

(1969–2 C.B. 185) (holding that students attending an apprenticeship school established pursuant to an agreement between a union and a contractors' association were employees of the participating contractors to whom the students were assigned.) Section 31.3121(b)(10)–2(d) of the Employment Tax Regulations provides that the term ''SCU'' for purposes of the student FICA exception is to be construed in its ''commonly or generally accepted sense.''

To satisfy the student status requirement, the employee must meet three requirements. First, under section 3121(b)(10), the employee must be a student enrolled and regularly attending classes at the SCU employing the student. Second, the employee must be pursuing a course of study at the SCU employing the student. Third, the employee must be ''[a]n employee who performs services in the employ of a [SCU] as an incident to and for the purpose of pursuing a course of study at such [SCU]. * * *'' Reg. § 31.3121(b)(10)–2(c). The IRS's position has been that whether services are incident to and for the purpose of pursuing a course of study depends on two factors: the employee's course workload and the nature of the employee's employment relationship with the employer. *See e.g.*, Rev. Proc. 98–16 (1998–1 C.B. 403); Rev. Rul. 78–17 (1978–1 C.B. 306).

B. Need for Regulations

Treasury and IRS have determined that it is necessary to provide additional clarification of the terms ''SCU'' and ''student who is enrolled and regularly attending classes'' as they are used in section 3121(b)(10). In recent years the question has arisen whether the performance of certain services that are in the nature of on the job training are excepted from employment under the student FICA exception. This issue was presented with respect to medical residents and interns in *State of Minnesota* v. *Apfel*, 151 F.3d 742 (8th Cir. 1998), which concluded that services performed by medical residents and interns are not employment for social security purposes. The question also applies to services performed by employees in other fields, particularly regulated fields, where on the job training is often required to gain licensure. Guidance is needed to address situations where the performance of services and pursuit of the course of study are not separate and distinct activities, but instead are to some extent intermingled.

Section 3121(a) defines ''wages'' as ''all remuneration for employment. * * *'' Under section 3121(b), ''employment'' means ''any service * * * performed * * * by an employee for the person employing him.'' The Social Security Act provides nearly identical definitions of ''wages'' and ''employment.'' 42 U.S.C. sections 409(a)(1)(I); 410(a). ''The very words 'any service * * * performed * * * for his employer,' with the purpose of the Social Security Act in mind, import a breadth of coverage.'' *Social Security Board* v. *Nierotko*, 327 U.S. 358, 365 (1946). The courts have generally found that the terms ''wages'' and ''employment'' as used in both the social security benefits and FICA tax provisions are to be interpreted broadly. *State of New Mexico* v. *Weinberger*, 517 F.2d 989, 993 (10th Cir. 1995); *Mayberry* v. *United States*, 151 F.3d 855, 860 (8th Cir. 1998); *Moorhead* v. *United States*, 774 F.2d 936, 941 (9th Cir. 1985); *Abrahamsen* v. *United States*, 228 F.3d 1360, 1364 (Fed. Cir. 2000). The broad interpretation of these terms results from the underlying purpose of the Social Security Act, namely, ''to provide funds through contributions by employer and employee for the decent support of elderly workmen who have ceased to labor.'' *Nierotko*, 327 U.S. at 364. See also *St. Luke's Hospital* v. *United States*, 333 F.2d 157, 164 (6th Cir. 1964) (''[I]n dealing with the beneficent purposes of the Social Security Act, this court generally favors that interpretation of statutory provisions which calls for coverage rather than exclusion.'').

Wage and employment questions affect both social security benefits entitlement and FICA taxes which fund the social security trust fund. Except in unusual circumstances, the Social Security Act, and the Internal Revenue FICA provisions, are to be read in pari materia. *United States* v. *Cleveland Indians Baseball Co.*, 532 U.S. 200, 213 (2001). Thus, whether certain service is employment affects not just FICA taxation, but also social security benefits eligibility and level of benefits. Moreover, the integrity of the social security system requires symmetry between service that is considered employment for social security benefits purposes and employment for FICA taxation purposes.

Resolution of this issue has significant social security benefits and FICA tax implications. The case of medical residents illustrates the possible effect on individuals and the social security system as a whole of excepting service in the nature of on the job training from employment for social security benefits and FICA tax purposes. The Social Security Administration (SSA) reported to the General Accounting Office (GAO) that ''[b]ecause many residents are married and have children and work as residents for up to 8 years, an exemption from Social Security coverage could have a very significant effect on their potential disability benefits or their family's survivor benefits.'' Moreover, SSA reported that if medical residents were determined to be students for purposes of the student FICA exception, 270,000 medical residents would lose some coverage over the next ten years (2001 through 2010).[1]

This regulation addresses two issues: (1) Whether an organization carrying on educational activities in connection with the performance of services is a SCU within the meaning of section 3121(b)(10), and (2) whether certain employees performing services in the nature of on the job training have the status of a student who is enrolled and regularly attending classes for purposes of section 3121(b)(10).

C. Whether an Organization Carrying on Educational Activities Is a SCU

Organizations providing on the job training typically carry on both noneducational and educational activities. The issue is whether organizations carrying on both noneducational and educational activities are SCUs within the meaning of section 3121(b)(10). For example, organizations such as hospitals typically carry on both educational and noneducational activities. In *United States* v. *Mayo Foundation,* 282 F. Supp. 2d 997 (D. Minn. 2003), the United States argued, consistent with the position it has maintained administratively, that the primary purpose of an organization determines whether the organization is a SCU for purposes of the student FICA exception. The court rejected this argument, finding it inconsistent with the common sense standard. The court stated, ''If the [IRS] had intended the term 'SCU' in § 3121(b)(10) to have the same scope and meaning as 'educational institution' (found in § 170(b)(1)(A)(ii) * * *), it could have clearly and explicitly given the phrase such scope and meaning by cross-referencing those Code provisions and their implementing regulations.'' Although Treasury and IRS disagree with the interpretation of the district court, the Secretary understands and is responding to the court's view by more clearly incorporating the primary purpose standard in regulations.

[1] GAO Report B–284947, Health, Education, and Human Services Division, *Social Security: Coverage For Medical Residents* (August 31, 2000).

This regulation provides that the character of an organization as a SCU or not as a SCU is determined by its primary function. The primary function standard is consistent with the language of section 3121(b)(10) and the existing regulations thereunder, and is consistent with the intended scope of the student FICA exception as reflected in the legislative history accompanying the Social Security Amendments of 1939 and 1950.

Section 170(b)(1)(A) of the Code defines various classes of organizations for charitable deduction purposes. All of the organizations have some combination of charitable, educational, religious and/or cultural purposes. The definitions distinguish them into categories based on various criteria. One such class defined in section 170(b)(1)(A)(ii) is for any ''educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on.''

Section 1.170A–9(b)(1) of the Income Tax Regulations provides:

An educational organization is described in section 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. A recognized university which incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization within the meaning of this subparagraph.

Thus, in order to qualify as an educational organization under section 170(b)(1)(A)(ii), it is not enough that the organization carries on educational activities; instead, the organization's primary function must be to carry on educational activities.

The section 170(b)(1)(A)(ii) standard applies to the organization as a whole, an approach that is consistent with § 31.3121(b)(10)-2(b) of the regulations, which provides that one of ''[t]he statutory tests [is] the character of the *organization* in the employ of which the services are performed as a [SCU] * * *.'' Thus, the character of the organization determines whether it is a SCU, not merely whether the organization carries on some educational activities. Further, section 3121(b) provides that ''the term 'employment' means any service * * * performed * * * by an employee for the *person* employing him,'' and § 31.3121(d)-2 of the regulations provides that ''every *person* is an employer if he employs one or more employees.'' Under section 7701(a)(1), the term ''person'' means any individual, trust, estate, association, or corporation. Thus, the character of the *person* employing the employee—the legal entity recognized for federal tax purposes—determines whether the SCU status requirement is met, not merely the character of a division or function of the employer.

In addition, the primary function standard reaches a result consistent with the ''commonly or generally accepted sense'' standard of the existing regulation (§ 31.3121(b)(10)-2(d)). In common parlance, the term ''hospital'' is used to describe an organization with the primary function of caring for patients. The term ''museum'' is used to describe an organization with the primary function of maintaining a collection and displaying it to the public in a way that will educate them about the collection and related concepts. A hospital or a museum may conduct educational activities, even classes or possibly even certificate or degree programs, but the activities which define them in the public mind are patient care and maintenance and display of a collection. An organization bears the label ''school'' when its primary function is the conduct of classes for an identified set of students leading to the awarding of a credential demonstrating mastery of some subject matter.

Finally, defining the term ''SCU'' to include institutions whose primary function is other than to carry on educational activities could lead to expansion of the student FICA exception beyond what Congress intended. When Congress enacted the student FICA exception in 1939, and amended it in 1950, it contemplated that the exception would be limited in scope. The House Report to the Social Security Amendments of 1939 states the following in describing the purpose of the student FICA and other exceptions:

In order to eliminate the nuisance of inconsequential tax payments the bill excludes certain services performed for fraternal benefit societies and other nonprofit institutions exempt from income tax, and certain other groups. While the earnings of a substantial number of persons are excluded by this recommendation, the total amount of earnings involved is undoubtedly very small * * *. The intent of this amendment is to exclude those persons and those organizations in which the employment is part-time or intermittent and the total amount of earnings is only nominal, and the payment of tax is inconsequential and a nuisance. The benefit rights built up are also inconsequential. Many of those affected, such as students and the secretaries of lodges, will have other employment which will enable them to develop insurance benefits. This amendment, therefore, should simplify the administration for the worker, the employer, and the Government.

H.R. Rep. No. 728, 76th Cong. 1st Sess. (1939), 1939–2 C.B. 538, 543. The Senate Report uses similar language. S. Rep. No. 734, 76th Cong. 1st Sess. 19 (1939), 1939–2 C.B. 565, 570.

The House Report to the Social Security Amendments of 1950 continued to describe the exception as a matter of administrative convenience not meaningfully affecting social security benefits:

The bill would continue to exclude service performed for nominal amounts in the employ of tax-exempt nonprofit organizations,[2] service performed by student nurses and internes [sic],[3] and service performed by students in the employ of colleges and universities. These exclusions simplify administration without depriving any significant number of people of needed protection.

H.R. Rep. No. 1300, 81st Cong. 1st Sess. 12 (1949). The Senate Report contains similar language. S. Rep. No. 1669, 81st Cong. 2d Sess. 15 (1950). Defining ''SCU'' to include organizations whose primary purpose is not to carry on educational activities would create a broad exception contrary to what Congress intended. Accordingly, the term ''SCU'' should not be interpreted so broadly as to include organizations whose primary function is other than to carry on educational activities.

D. Whether Certain Employees Are Students

This regulation clarifies who is a student enrolled and regularly attending classes for purposes of section 3121(b)(10). The existing regulations at § 31.3121(b)(10)-2(c) provide that an employee will have the status of student only if the services are performed ''as an incident to and for the purpose of pursuing a course of study'' at the SCU.

[2] The general exception from employment for services performed for non-profit organizations was repealed in 1983 by Public Law 98–21, section 102(b).

[3] The Social Security Amendments of 1965 repealed the student intern exception under § 3121(b)(13). See discussion *infra*.

Thus, to qualify for the exception, the individual's predominant relationship with the SCU must be as a student, and only secondarily or incidentally as an employee.

Where an individual's employment and educational activities are separate and distinct, the extent and nature of the respective activities determine whether the employment or student aspect of the relationship with the SCU is predominant. See Rev. Proc. 98–16. In the vast majority of cases the service and the course of study are separate and distinct activities; for example, the biology major's service in the cafeteria is unrelated to his course of study. By contrast, some employees' services are arguably part of a course of study; for example, the services of a medical resident are necessary to receive a certificate in a medical specialty. The standards in Rev. Proc. 98–16—whether the employee has at least a half-time course workload, and whether the employee is eligible to receive certain employee benefits—are inadequate to determine student status in such circumstances. Where the services performed by the individual for the SCU are also earning the individual credit toward an educational credential, the determination of whether the employment relationship is the predominant relationship with the SCU must be based on other factors. This regulation is intended to provide standards to determine student status in such cases.

This regulation is intended to further Congress's intent regarding those eligible for the student FICA exception as reflected by the legislative history to the Social Security Amendments of 1939. Consistent with Congress's intent, the student FICA exception covers individuals earning small amounts who are expected to accumulate social security benefits through future employment that will follow the completion of their education. Thus, in the typical case, a student will earn a modest amount while devoting his primary time and attention to classes and study.

This regulation provides clarification in three respects. First, it describes what the individual must be doing to be considered enrolled and regularly attending classes. In order to be a class, the activity must be more than an activity that gives the individual an opportunity to acquire new skills and knowledge. It must involve instructional activities, and be led by a knowledgeable faculty member following an established curriculum for identified students. Classes can include much more than traditional classroom-based instruction, but the faculty leadership, the set curriculum, and the prescribed time frame are essential.

Second, this regulation provides standards for determining whether an employee is pursuing a course of study. The regulation provides that one or more courses conducted by a SCU the completion of which fulfills the requirements to receive an educational credential granted by the SCU is a course of study.

Third, this regulation provides standards for determining whether an employee's services are incident to and for the purpose of pursuing a course of study. The regulation provides in general that whether the employee's services are incident to and for the purpose of pursuing a course of study depends on all the facts and circumstances. This determination is made by comparing the educational aspect of the relationship between the employer and the employee with the service aspect of the relationship. The regulation provides that the employee's course workload is used to measure the scope of the educational aspect of the relationship. A relevant factor is the employee's course workload relative to a full-time course workload. The regulation further provides that where an employee has the status of a career employee, the services performed by the employee are not incident to and for the purpose of pursuing a course of study.

This regulation specifies various aspects of an individual's employment relationship with the SCU which cause conclusively the individual to have the status of a ''career employee.''

This regulation provides that the criteria used to identify an employee as having the status of a career employee are (1) the employee's hours worked, (2) whether the employee is a ''professional employee,'' (3) the employee's terms of employment, and (4) whether the employee is required to be licensed in the field in which the employee is performing services. The hours worked criteria reflects Congressional intent to limit the student FICA exception to services performed by those individuals who are predominantly students. Employees who are working enough hours to be considered full-time employees (40 hours or more per week) have filled the conventional measure of available time with work, and not study. Even if they are capable of balancing a full-time job with a heavy course load, they are earning wages at a level that exceeds Congress's intended scope for the student FICA exception. The IRS's long-standing position is that hours worked is a relevant factor in determining whether an employee has student status. Rev. Rul. 78–17 (1978–1 C.B. 306) (holding that whether an employee has student status is determined by hours worked relative to credits taken); Rev. Rul. 66–285 (1966–2 C.B. 455) (holding that services of an employee employed full-time are not incident to and for the purpose of pursuing a course of study). Rev. Rul. 85–74 (1985–1 C.B. 331), dealing with the student nurse exception, uses an hours worked standard. The student nurse exception and the student FICA exception share the same legislative history. The IRS's use of an hours worked standard was found to be a reasonable interpretation of the legislative history in *Johnson City Medical Center* v. *United States,* 999 F.2d 973 (6th Cir. 1993).

The regulation provides that a ''professional employee'' has the status of a career employee, and thus his services are not incident to a course of study. The standards defining a professional employee for purposes of this regulation closely follow existing Department of Labor standards defining certain professional employees. See 29 U.S.C. 213(a); and 29 CFR 541.3(a)(1), (b), (c), (d). Section 213(a) and the regulations thereunder provide that certain employees are exempt from the minimum wage and overtime laws. This regulation provides that a professional employee for purposes of the student FICA exception is an employee whose primary duty consists of the performance of services requiring knowledge of an advanced type in a field of science or learning, whose work requires the consistent exercise of discretion and judgment in its performance, and whose work is predominantly intellectual and varied in character. The services of employees exhibiting these characteristics are not incident to a course of study.

This regulation provides that an employee's terms of employment may also cause an employee to have the status of a career employee. A list of terms is provided, any one of which causes the employee to have the status of a career employee. On the list are terms of employment that provide for eligibility to receive certain employee benefits typically associated with career employment, such as eligibility to participate in certain types of retirement plans or tuition reduction arrangements. The notion of a career employee standard based on eligibility to receive certain fringe benefits was recommended by the higher education community for purposes of guidance that was issued in Rev. Proc. 98–16, and Treasury and IRS believe it is an appropriate standard to use for purposes

of identifying employees whose services are not incident to and for the purpose of pursuing a course of study. Rev. Proc. 98–16 provides that career employee status precludes application of the safe harbor standard, but leaves the possibility that the employee could have the status of a student based on all the facts and circumstances. In contrast, this regulation provides that an employee considered as having the status of a career employee based on eligibility to receive certain employee benefits does not have the status of a student for purposes of the student FICA exception.

Finally, this regulation provides that an employee who must be licensed by a government entity in order to perform a certain function has the status of a career employee. An employee who is required to be licensed to perform the services must have received sufficient prior instruction and demonstrated sufficient mastery of the activity to receive the license. Furthermore, licensed workers typically earn more than a modest amount for their work to reflect their expertise. As discussed, the legislative history indicates that the student FICA exception is intended to cover individuals earning a small amount of wages prior to entry into meaningful post-education employment. The exception is not intended to cover an individual who has developed enough expertise to be working in a field where he or she is already licensed and has the capacity to earn substantial wages.

The IRS requests comments on the criteria used to identify an employee as having the status of a career employee. In particular, the IRS requests comments on the licensure criterion and whether this criterion should be further refined or clarified.

IRS and Treasury believe that Congress has shown the specific intent to provide social security coverage to individuals who work long hours, serve as highly skilled professionals, and typically share some or all of the terms of employment of career employees, particularly medical residents and interns. The Social Security Amendments of 1939 added section 1426(b)(13) to the Code (later redesignated section 3121(b)(13)), which provided an exception from social security coverage for ''service performed as an intern in the employ of a hospital by an individual who has completed a 4 year course in a medical school chartered or approved pursuant to State law.'' The House Report accompanying the legislation provides:

> Paragraph 13 excepts service performed as a student nurse in the employ of a hospital or a nurse's training school by an individual who is enrolled and is regularly attending classes * * *; and service performed as an interne [sic] (*as distinguished from a resident doctor*) in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered or approved pursuant to State law.

H.R. Rep. No. 728, 76th Cong. 1st Sess. 49 (1939), 1939–2 C.B. 538, 550–51 (emphasis added); see also S. Rep. No. 734, 76th Cong. 1st Sess. 58, 1939–2 C.B. 565, 578. Thus, the services of medical interns were excepted from FICA, but the services of resident doctors were not.

Twenty-five years later, in *St. Luke's Hospital* v. *United States,* 333 F.2d 157 (6th Cir. 1964), the Sixth Circuit confirmed that section 3121(b)(13) of the Code applied to medical interns, but that medical residents were not specifically excepted from social security coverage. St. Luke's claimed a refund of FICA taxes for the years 1953 through 1958 based on the student intern exception under section 3121(b)(13). The refund claims were computed based upon the remuneration paid to medical school graduates in their second or subsequent year of clinical training. The court held that the services of medical residents were not excluded under the medical intern exception.

In 1965, one year after the *St. Luke's* decision, Congress amended the Code to repeal the special exemption for medical interns. The legislative history underlying the Social Security Amendments of 1965 (Public Law 89–97) suggests that Congress intended that medical interns be covered by FICA just as medical residents already were. The House Report states:

> Coverage would also be extended to services performed by medical and dental interns. The coverage of services as an intern would give young doctors an earlier start in building up social security protection and would help many of them to become insured under the program at the time when they need the family survivor and disability protection it provides. This protection is important for doctors of medicine who, like members of other professions, in the early years of their practice, may not otherwise have the means to provide adequate survivorship and disability protection for themselves and their families. Interns would be covered on the same basis as other employees working for the same employers, beginning on January 1, 1966.

H.R. Rep. No. 213, 89th Cong. 1st Sess. 95 (1965).

The Senate Report states:

> Section 3121(b)(13) of the Internal Revenue Code of 1954 excludes from the term ''employment,'' and thus from coverage under the [FICA], services performed as an intern in the employ of a hospital by an individual who has completed a 4-year course in a medical school . . . . Section 311(b)(5) of the bill amends section 3121(b)(13) so as to remove this exclusion. The effect of this amendment is to extend coverage under the [FICA] to such interns unless their services are excluded under provisions other than section 3121(b)(13). Thus, the services of an intern are covered if he is employed by a hospital which is not exempt from income tax as an organization described in section 501(c)(3) of the Code.

S. Rep. No. 404, 89th Cong. 1st Sess. 237–38 (1965). The last sentence makes indirect reference to the exclusion from FICA for services performed for exempt organizations under section 3121(b)(8)(B) of the 1954 Code. That exclusion was repealed by the Social Security Amendments of 1983 (Public Law 98–21). Nothing in the legislative history indicates that Congress believed interns (or residents, who were even further along in their medical careers than interns) were eligible for the student FICA exception.

In addition to revoking the medical intern exception, section 311 of the Social Security Amendments of 1965, entitled, ''Coverage for Doctors of Medicine,'' changed the law in two other ways affecting medical doctors. First, section 1402(c)(5) of the 1954 Code was amended to eliminate the exception for physician services from the definition of ''trade or business,'' thus subjecting these services to self-employment tax. Second, section 3121(b)(6)(C)(iv) of the 1954 Code, which provided an exception from the definition of employment for ''service performed in the employ of the United States if the service is performed by any individual as an employee included under § 5351(2) of title 5, [U.S.C.], (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government),'' was amended by adding, ''other than as a medical or dental intern or a medical or dental resident in training.'' These provisions, taken together, indicate Congress's intent to create a scheme under which all medical doctors are covered under the social security system, whether or not they are still in training, whether or not they are self-employed, or whether or not they work for the federal government.

E. Effect on Rev. Proc. 98–16

Several years ago, representatives of higher education asked the IRS and Treasury for guidance on the application of the student FICA exception. Colleges and universities were particularly interested in guidance relating to students who had on-campus jobs that were completely separate and

distinct from their course work. In response, the IRS issued Rev. Proc. 98–16, which sets forth standards for determining whether services performed by students in the employ of certain institutions of higher education qualify for the exception from FICA tax provided under section 3121(b)(10). The revenue procedure provided answers to many longstanding questions.

The revenue procedure addresses different circumstances than those prompting the need for the clarifications provided in this proposed regulation. It provides a safe harbor that applies where the student's course work and the student's employment are separate activities, and are not intermingled. In clarifying the regulations interpreting section 3121(b)(10), the IRS and Treasury fully intend to retain the safe harbor in the revenue procedure. However, several discrete aspects of the safe harbor need to be updated to align with the proposed regulations. Thus, in conjunction with this notice of proposed rulemaking, the IRS is suspending Rev. Proc. 98–16 and proposing to replace it with a new revenue procedure that is revised in limited ways to align with the proposed regulations. See Notice 2004–12, to be published in I.R.B. 2004–10 (March 8, 2004). Taxpayers may rely on the proposed revenue procedure until final regulations and a final revenue procedure are issued. Also, the public is invited to comment on the proposed revenue procedure.

F. Related Proposed Amendments

Section 3306(c)(10)(B) of the Code excepts from ''employment'' for FUTA tax purposes services performed by a student who is enrolled and regularly attending classes at a SCU. This regulation provides that the standards that apply in determining whether an employer is a SCU and whether an employee is a student for purposes of section 3121(b)(10) also apply for purposes of section 3306(c)(10)(B). In addition, this regulation provides that the standards that apply for purposes of determining whether an employer is a SCU for purposes of section 3121(b)(10) also apply for purposes of section 3121(b)(2) (excluding from employment for FICA purposes domestic services performed for local college clubs, fraternities, and sororities by students who are enrolled and regularly attending classes).

G. Proposed Effective Date

It is proposed that these regulations apply to services performed on or after February 25, 2004.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In addition, because no collection of information is imposed on small entities, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on all aspects of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing is scheduled for June 16, 2004, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments by May 25, 2004 and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies). A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is John Richards of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES

Paragraph 1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 31.3121(b)(2)–1, paragraph (d) is revised to read as follows:

§ 31.3121(b)(2)–1 Domestic service performed by students for certain college organizations.

* * * * *

(d) A *school, college, or university* is described in section 3121(b)(2) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

* * * * *

Par. 3. Section 31.3121(b)(10)–2 is amended by: adding a heading for paragraphs (a) and (b), revising paragraphs (c) and (d), redesignating paragraph (e) as paragraph (g), and adding paragraphs (e) and (f).

The revisions and additions read as follows:

§ 31.3121(b)(10)–2 Services performed by certain students in the employ of a school, college, or university, or of a nonprofit organization auxiliary to a school, college, or university.

(a) *General rule.* (1) * * *

(b) *Statutory tests.* * * *

(c) *School, College, or University.* A *school, college, or university* is described in section 3121(b)(10) if its primary function is the presentation of formal instruction, it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in

attendance at the place where its educational activities are regularly carried on. *See* section 170(b)(1)(A)(ii) and the regulations thereunder.

(d) *Student Status—general rule.* Whether an employee has the status of a student performing the services shall be determined based on the relationship of the employee with the organization for which the services are performed. In order to have the status of a student, the employee must perform services in the employ of a school, college, or university described in paragraph (c) of this section at which the employee is enrolled and regularly attending classes in pursuit of a course of study within the meaning of paragraphs (d)(1) and (2) of this section. In addition, the employee's services must be incident to and for the purpose of pursuing a course of study within the meaning of paragraph (d)(3) of this section at such school, college, or university. An employee who performs services in the employ of an affiliated organization described in paragraph (a)(2) of this section must be enrolled and regularly attending classes at the affiliated school, college, or university within the meaning of paragraph (c) of this section in pursuit of a course of study within the meaning of paragraphs (d)(1) and (2) of this section. In addition, the employee's services must be incident to and for the purpose of pursuing a course of study within the meaning of paragraph (d)(3) of this section at such school, college, or university.

(1) *Enrolled and regularly attending classes.* An employee must be enrolled and regularly attending classes at a school, college, or university within the meaning of paragraph (c) of this section at which the employee is employed to have the status of a student within the meaning of section 3121(b)(10). An employee is enrolled within the meaning of section 3121(b)(10) if the employee is registered for a course or courses creditable toward an educational credential described in paragraph (d)(2) of this section. In addition, the employee must be regularly attending classes to have the status of a student. For purposes of this paragraph (d)(1), a class is an instructional activity led by a knowledgeable faculty member for identified students following an established curriculum. Traditional classroom activities are not the sole means of satisfying this requirement. For example, research activities under the supervision of a faculty advisor necessary to complete the requirements for a Ph.D. degree may constitute classes within the meaning of section 3121(b)(10). The frequency of events such as these determines whether the employee may be considered to be regularly attending classes.

(2) *Course of study.* An employee must be pursuing a course of study in order to have the status of a student. A course of study is one or more courses the completion of which fulfills the requirements necessary to receive an educational credential granted by a school, college, or university within the meaning of paragraph (c) of this section. For purposes of this paragraph, an educational credential is a degree, certificate, or other recognized educational credential granted by an organization described in paragraph (c) of this section. In addition, a course of study is one or more courses at a school, college or university within the meaning of paragraph (c) of this section the completion of which fulfills the requirements necessary for the employee to sit for an examination required to receive certification by a recognized organization in a field.

(3) *Incident to and for the purpose of pursuing a course of study.* An employee's services must be incident to and for the purpose of pursuing a course of study in order for the employee to have the status of a student. Whether an employee's services are incident to and for the purpose of pursuing a course of study shall be determined on the basis of the relationship of such employee with the organization for which such services are performed. The educational aspect of the relationship, as compared to the service aspect of the relationship, must be predominant in order for the employee's services to be incident to and for the purpose of pursuing a course of study. The educational aspect of the relationship between the employer and the employee is established by the employee's course workload. The service aspect of relationship is established by the facts and circumstances related to the employee's employment. In the case of an employee with the status of a career employee within the meaning of paragraph (d)(3)(ii) of this section, the service aspect of the relationship with the employer is predominant. Standards applicable in determining whether an employee's services are considered to be incident to and for the purpose of pursuing a course of study are provided in paragraphs (d)(3)(i) and (ii) of this section.

(i) *Course workload.* The educational aspect of an employee's relationship with the employer is evaluated based on the employee's course workload. Whether an employee's course workload is sufficient in order for the employee's employment to be incident to and for the purpose of pursuing a course of study generally depends on the particular facts and circumstances. A relevant factor in evaluating an employee's course workload is the employee's course workload relative to a full-time course workload at the school, college or university within the meaning of paragraph (c) of this section at which the employee is enrolled and regularly attending classes.

(ii) *Career employee status.* Services of an employee with the status of a career employee are not incident to and for the purpose of pursuing a course of study. An employee has the status of a career employee if the employee is described in paragraph (d)(3)(ii)(A), (B), (C) or (D) of this section.

(A) *Hours worked.* An employee has the status of a career employee if the employee regularly performs services 40 hours or more per week.

(B) *Professional employee.* An employee has the status of a career employee if the employee is a professional employee. A professional employee is an employee—

(*1*) Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

(*2*) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(*3*) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(C) *Terms of employment.* An employee with the status of a career employee includes any employee who is—

(*1*) Eligible to receive vacation, sick leave, or paid holiday benefits;

(*2*) Eligible to participate in any retirement plan described in section 401(a) that is established or maintained by the employer, or would be eligible to participate if age and service requirements were met;

(*3*) Eligible to participate in an arrangement described in section 403(b), or would be eligible to participate if age and service requirements were met;

(*4*) Eligible to participate in a plan described under section 457(a), or

would be eligible to participate if age and service requirements were met;

(*5*) Eligible for reduced tuition (other than qualified tuition reduction under section 117(d)(5) provided to a teaching or research assistant who is a graduate student) because of the individual's employment relationship with the institution;

(*6*) Eligible to receive employee benefits described under sections 79 (life insurance), 127 (qualified educational assistance), 129 (dependent care assistance programs), or 137 (adoption assistance); or

7) Classified by the employer as a career employee.

(D) *Licensure status.* An employee is a career employee if the employee is required to be licensed under state or local law to work in the field in which the employee performs services.

(e) *Examples.* The following examples illustrate the principles of paragraphs (c) and (d) of this section:

Example 1. (i) Employee C is employed by State University T to provide services as a clerk in T's administrative offices, and is enrolled and regularly attending classes at T in pursuit of a B.S. degree in biology. C has a course workload which constitutes a full-time course workload at T. C performs services on average 20 hours per week, but from time to time works 40 hours or more during a week. C receives only hourly wages and no other pay or benefits. C is not required under state or local law to be licensed to perform the services for T.

(ii) In this *example,* C is employed by T, a school, college, or university within the meaning of paragraph (c) of this section. C is enrolled and regularly attending classes at T in pursuit of a course of study. C's hours worked do not cause C to have the status of a career employee, even though C may occasionally work 40 hours or more during a week. C's part-time employment relative to C's full-time course workload indicates that C's services are incident to and for the purpose of pursuing a course of study. C is not a professional employee, and C's terms of employment and licensure status do not cause C to have the status of a career employee within the meaning of paragraph (d)(3)(ii) of this section. Thus, C has the status of a student. Accordingly, C's services are excepted from employment under section 3121(b)(10).

Example 2. (i) Employee D is employed in the accounting department of University U, and is enrolled and regularly attending classes at U in pursuit of an M.B.A. degree. D has a course workload which constitutes a half-time course workload at U. D's work does not require the consistent exercise of discretion and judgment, and is not predominantly intellectual and varied in character. D regularly performs services full-time (40 hours per week), and is eligible to participate in a retirement plan described in section 401(a) maintained by U.

(ii) In this *example,* D is employed by U, a school, college, or university within the meaning of paragraph (c) of this section. In addition, D is enrolled and regularly attending classes at U in pursuit of a course of study. However, D has the status of a career employee because D regularly works 40 hours per week, and is eligible to participate in U's section 401(a) retirement plan. Because D has the status of a career employee within the meaning of paragraph (d)(3)(ii) of this section, D's services are not incident to and for the purpose of pursuing a course of study. Accordingly, D's services are not excepted from employment under section 3121(b)(10).

Example 3. (i) Employee E is employed by University V to provide patient care services at a teaching hospital that is an unincorporated division of V. These services are performed as part of a medical residency program in a medical specialty sponsored by V. The residency program in which E participates is accredited by the Accreditation Council for Graduate Medical Education. Upon completion of the program, E will receive a certificate of completion, and be eligible to sit for an examination required to be certified by a recognized organization in the medical specialty. E regularly performs services more than 40 hours per week. E's patient care services require knowledge of an advanced type in the field of medicine, and are predominantly intellectual and varied in character. Further, although E is subject to supervision, E's services require the consistent exercise of discretion and judgment regarding the treatment of patients. In addition, E receives vacation, sick leave, and paid holiday benefits; and salary deferral benefits under an arrangement described in section 403(b). E is a first-year resident, and thus is not eligible to be licensed to practice medicine under the laws of the state in which E performs services.

(ii) In this *example,* E is employed by V, a school, college, or university within the meaning of paragraph (c) of this section. However, because of E's hours worked, professional employee status, and employee benefits, E has the status of a career employee within the meaning of paragraph (d)(3)(ii) of this section. Thus, E's services are not incident to and for the purpose of pursuing a course of study. Accordingly, E's services are not excepted from employment under section 3121(b)(10).

Example 4. (i) Employee F is employed in the facilities management department of University W. F has a B.S. degree in engineering, and is completing the work experience required to sit for an examination to become a professional engineer eligible for licensure under state or local law. F is not attending classes at W in pursuit of a course of study leading to an educational credential. F regularly performs services 40 hours or more per week. F receives certain employee benefits including vacation, sick leave, and paid holiday benefits. F also receives retirement benefits under an arrangement described in section 457.

(ii) In this *example,* F is employed by W, a school, college, or university within the meaning of paragraph (c) of this section. However, F is not enrolled and regularly attending classes at W in pursuit of a course of study. F's work experience is not a course of study for purposes of paragraph (d)(2) of this section. In addition, because of F's hours worked and employment benefits, F has the status of a career employee within the meaning of paragraph (d)(3)(ii) of this section. Thus, F's services are not incident to and for the purpose of pursuing a course of study. Accordingly, F's services are not excepted from employment under section 3121(b)(10).

Example 5. (i) Employee G is employed by Employer X as an apprentice in a skilled trade. X is a subcontractor providing services in the field in which G wishes to specialize. G is pursuing a certificate in the skilled trade from Community College C. G is performing services for X pursuant to an internship program sponsored by C under which its students gain experience, and receive credit toward a certificate in the trade.

(ii) In this *example,* G is employed by X. X is not a school, college or university within the meaning of paragraph (c) of this section. Thus, the exception from employment under section 3121(b)(10) is not available with respect to G's services for X.

Example 6. (i) Employee H is employed by a cosmetology school Y at which H is enrolled and regularly attending classes in pursuit of a certificate of completion. Y's primary function is to carry on educational activities to prepare its students to work in the field of cosmetology. Prior to issuing a certificate, Y requires that its students gain experience in cosmetology services by performing services for the general public on Y's premises. H performs services less than 40 hours per week. H's work does not require knowledge of an advanced type in a field of science or learning, nor is it predominantly intellectual and varied in character. H receives remuneration in the form of hourly compensation from Y for providing cosmetology services to clients of Y, and does not receive any other compensation or benefits. H is not required to be a licensed cosmetologist in the state in which H performs services while participating in the training program.

(ii) In this *example,* H is employed by Y, a school, college or university within the meaning of paragraph (c) of this section, and is enrolled and regularly attending classes at Y in pursuit of a course of study. In addition, because H works less than 40 hours per week, H is not a professional employee, and H's terms of employment, and licensure status do not indicate that H has the status of a career employee, H is not a career employee within the meaning of paragraph (d)(3)(ii) of this section. Thus, H's services are incident to and for the purpose of pursuing a course of study. Accordingly, H's services are excepted from employment under section 3121(b)(10).

Example 7. (i) Employee J is a teaching assistant at University Z. J is enrolled and regularly attending classes in pursuit of a graduate degree at Z. J has a course workload which constitutes a full-time course workload at Z. J performs services less than 40 hours per week. J's duties include grading quizzes, providing class and laboratory instruction pursuant to a lesson plan developed by the professor, and preparing laboratory equipment for demonstrations. J

receives no employee benefits. J receives a cash stipend and a qualified tuition reduction within the meaning of section 117(d)(5) for the credits earned for being a teaching assistant. J is not required under state or local law to be licensed to perform the activities of a teaching assistant.

(ii) In this *example,* J is employed as a teaching assistant by Z, a school, college, or university within the meaning of paragraph (c), and is enrolled and regularly attending classes at Z in pursuit of a course of study. J's full-time course workload relative to J's employment workload indicates that J's services are incident to and for the purpose of pursuing a course of study. J is not a professional employee because J's work does not require the consistent exercise of discretion and judgment in its performance. In addition, J's terms of employment and licensure status do not cause J to have the status of a career employee within the meaning of paragraph (d)(3)(ii) of this section. Thus, J has the status of a student. Accordingly, J services are excepted from employment under section 3121(b)(10).

(f) *Effective date.* Paragraphs (c), (d) and (e) of this section apply to services performed on or after February 25, 2004.

* * * * *

Par. 4. In § 31.3306(c)(10)–2:

1. Paragraph (c) is revised.

2. Paragraphs (d) and (e) are added.

The revision and addition read as follows:

§ 31.3306(c)(10)–2 Services of student in employ of a school, college, or university.

* * * * *

(c) *General rule.* (1) For purposes of this section, the tests are the character of the organization in the employ of which the services are performed and the status of the employee as a student enrolled and regularly attending classes at the school, college, or university described in paragraph (c)(2) of this section, in the employ of which he performs the services. The type of services performed by the employee, the place where the services are performed, and the amount of remuneration for services performed by the employee are not material.

(2) *School, college, or university.* A *school, college, or university* is described in section 3306(c)(10)(B) if its primary function is the presentation of formal instruction, and it normally maintains a regular faculty and curriculum, and it normally has a regularly enrolled body of students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and the regulations thereunder.

(d) *Student Status—general rule.* Whether an employee has the status of a student within the meaning of section 3306(c)(10)(B) performing the services shall be determined based on the relationship of the employee with the organization for which the services are performed. In order to have the status of a student, the employee must perform services in the employ of a school, college, or university described in paragraph (c)(2) of this section at which the employee is enrolled and regularly attending classes in pursuit of a course of study within the meaning of paragraphs (d)(1) and (2) of this section. In addition, the employee's services must be incident to and for the purpose of pursuing a course of study at such school, college, or university within the meaning of paragraph (d)(3) of this section.

(1) *Enrolled and regularly attending classes.* An employee must be enrolled and regularly attending classes at a school, college, or university within the meaning of paragraph (c)(2) of this section at which the employee is employed to have the status of a student within the meaning of section 3306(c)(10)(B). An employee is enrolled within the meaning of section 3306(c)(10)(B) if the employee is registered for a course or courses creditable toward an educational credential described in paragraph (d)(2) of this section. In addition, the employee must be regularly attending classes to have the status of a student. For purposes of this paragraph (d)(1), a class is a didactic activity in which a faculty member plays a leadership role in furthering the objectives of an established curriculum. Traditional classroom activities are not the sole means of satisfying this requirement. The frequency of events such as these determines whether the employee may be considered to be regularly attending classes.

(2) *Course of study.* An employee must be pursuing a course of study in order to have the status of a student within the meaning of section 3306(c)(10)(B). A course of study is one or more courses the completion of which fulfills the requirements necessary to receive an educational credential granted by a school, college, or university within the meaning of paragraph (c)(2) of this section. For purposes of this paragraph, an educational credential is a degree, certificate, or other recognized educational credential granted by an organization described in paragraph (c)(2) of this section. In addition, a course of study is one or more courses at a school, college or university within the meaning of paragraph (c)(2) of this section the completion of which fulfills the requirements necessary for the employee to sit for an examination required to receive certification by a recognized organization in a field.

(3) *Incident to and for the purpose of pursuing a course of study.* An employee's services must be incident to and for the purpose of pursuing a course of study in order for the employee to have the status of a student within the meaning of section 3306(c)(10)(B). Whether an employee's services are incident to and for the purpose of pursuing a course of study shall be determined on the basis of the relationship of such employee with the organization for which such services are performed. The educational aspect of the relationship, as compared to the service aspect of the relationship, must be predominant in order for the employee's services to be incident to and for the purpose of pursuing a course of study. The educational aspect of the relationship between the employer and the employee is established by the employee's course workload. The service aspect of relationship is established by the facts and circumstances related to the employee's employment. In the case of an employee with the status of a career employee, the service aspect of the relationship with the employer is predominant. Standards applicable in determining whether an employee's services are considered to be incident to and for the purpose of pursuing a course of study are provided in paragraphs (d)(3)(i) and (ii) of this section.

(i) *Course workload.* The educational aspect of an employee's relationship with the employer is evaluated based on the employee's course workload. Whether an employee's course workload is sufficient for the employee's employment to be incident to and for the purpose of pursuing a course of study generally depends on the particular facts and circumstances. A relevant factor in evaluating the employee's course workload is the employee's course workload relative to a full-time course workload at the school, college or university within the meaning of paragraph (c)(2) of this section at which the employee is enrolled and regularly attending classes.

(ii) *Career employee status.* Services of an employee with the status of a career employee are not incident to and for the purpose of pursuing a course of study. An employee has the status of a career employee if the employee is described in paragraph (d)(3)(ii)(A), (B), (C), or (D) of this section.

(A) *Hours worked.* An employee has the status of a career employee if the employee regularly performs services 40 hours or more per week.

(B) *Professional employee.* An employee has the status of a career employee if the employee is a professional employee. A professional employee is an employee—

(1) Whose primary duty consists of the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes.

(2) Whose work requires the consistent exercise of discretion and judgment in its performance; and

(3) Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

(C) *Terms of employment.* An employee with the status of a career employee includes any employee who is—

(1) Eligible to receive vacation, sick leave, or paid holiday benefits;

(2) Eligible to participate in any retirement plan described in section 401(a) that is established or maintained by the employer, or would be eligible to participate if age and service requirements were met;

(3) Eligible to participate in an arrangement described in section 403(b), or would be eligible to participate if age and service requirements were met;

(4) Eligible to participate in a plan described under section 457(a), or would be eligible to participate if age and service requirements were met;

(5) Eligible for reduced tuition (other than qualified tuition reduction under section 117(d)(5) provided to a teaching or research assistant who is a graduate student) because of the individual's employment relationship with the institution;

(6) Eligible to receive employee benefits described under sections 79 (life insurance), 127 (qualified educational assistance), 129 (dependent care assistance programs), or 137 (adoption assistance); or

(7) Classified by the employer as a career employee.

(D) *Licensure status.* An employee is a career employee if the employee is required to be licensed under state or local law to work in the field in which the employee performs services.

(e) *Effective date.* Paragraphs (c) and (d) of this section apply to services performed on or after February 25, 2004.

Mark E. Matthews,

Deputy Commissioner for Service and Enforcement.

[FR Doc. 04–3994 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA295–0439; FRL–7626–6]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the San Diego County Air Pollution Control District portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) emissions from stationary reciprocating internal combustion engines. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by March 26, 2004.

ADDRESSES: Send comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov,* or submit comments at *http://www.regulations.gov.*

You can inspect copies of the submitted SIP revisions, EPA's technical support document (TSD), and public comments at our Region IX office during normal business hours by appointment. You may also see copies of the submitted SIP revisions by appointment at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Dr., San Diego, CA 92123–1096.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121, *canaday.tom@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SDCAPCD	69.4	Stationary Reciprocating Internal Combustion Engines—Reasonably Available Control Technology.	07/30/03	11/04/03

On December 23, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 69.4 into the SIP on January 22, 1997. The San Diego County Air Pollution Control District adopted revisions to the SIP-approved version on November 15, 2000 and CARB submitted them to us on March 14, 2001. While we can act on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rule Revisions?

NO_X contributes to the production of ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Rule 69.4 regulates NO_X emissions from stationary reciprocating internal combustion engines at facilities emitting 50 tons or more per year of NO_X. The proposed revisions require all engines subject to the emission limits of the rule to record specified operating parameters, to have a non-resettable totalizing fuel or hour meter, and to be tested at least once every 24 months. Any existing gaseous-fueled engine rated at 1,000 brake horsepower or greater and operated more than 2,000 hours per year must be tested annually. In addition, an owner or operator of such engines newly installed after the date of this rule revision will be required to continuously monitor operating parameters to ensure compliance with the emission standards of the rule. Operators of large new engines (5,000 brake horsepower or larger), operating 6,000 hours or more per year, will be required to continuously monitor emissions. The revisions also specify the averaging period for determining compliance and provide minor clarifications and updates. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A) and 182(f)), and must not relax existing requirements (*see* sections 110(l) and 193). The San Diego County Air Pollution Control District regulates an ozone nonattainment area (*see* 40 CFR part 81), so Rule 69.4 must fulfill RACT.

Guidance and policy documents that we used to help evaluate enforceability and RACT requirements consistently include the following:

1. ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement), 57 FR 55620, November 25, 1992.
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines, State of California Air Resources Board, November, 2001.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 9, 2004.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 04–4128 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 04–02]

Optional Rider for Proof of Additional NVOCC Financial Responsibility

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking; extension of time.

SUMMARY: Upon consideration of two requests, the Commission has determined to extend the comment period in this matter.

DATES: Comments are now due on February 27, 2004.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, E-mail: *secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1018, Washington, DC 20573–0001, (202) 523–5740, E-mail: *GeneralCounsel@fmc.gov.*

Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing; Federal Maritime Commission, 800 North Capitol Street, NW., Room 970, (202) 523–5787, E-mail: *otibonds@fmc.gov.*

SUPPLEMENTARY INFORMATION: The Commission by Notice of Proposed Rulemaking published January 29, 2004, 69 FR 4271–4273, proposed to amend its regulations governing proof of financial responsibility for ocean transportation intermediaries. The Commission proposes to allow an optional rider for additional coverage to be filed with a licensed non-vessel-operating common carrier's proof of financial responsibility for such carriers serving the U.S. oceanborne trade with the People's Republic of China.

The American Surety Association and The Surety Association of America are seeking a seven-day extension of time to Friday, February 27, 2004, to file comments. In support of this request, the parties advise that they require additional time to complete and submit their comments. The Commission has determined to grant the requests. Comments are now due on Friday, February 27, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–4071 Filed 2–24–04; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 600

[Docket No. 031031272–3272–01; I.D. 102903A]

RIN 0648–AR76

Fisheries of the United States; Essential Fish Habitat

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

ACTION: Advance notice of proposed rulemaking; consideration of revision to Essential Fish Habitat (EFH) guidelines; reopening of the comment period.

SUMMARY: In a document published in the **Federal Register** on December 11, 2003, NMFS requested comments on potential revisions to the EFH guidelines. The comment period for the advance notice of proposed rulemaking (ANPR) closed on January 26, 2004. The intent of this document is to announce the reopening of the public comment period.

DATES: Written comments must be received no later than 5 p.m. eastern standard time on or before April 26, 2004.

ADDRESSES: Written comments must be sent to Rolland A. Schmitten, Director, Office of Habitat Conservation, NOAA National Marine Fisheries Service, F/HC - EFH ANPR, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 427–2570 or by e-mail to *0648–AR76@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: 0648–AR76. The EFH guidelines can be located online at *http://www.nmfs.noaa.gov/habitat/habitatprotection/essentialfishhabitat8.htm* or within the Code of Federal Regulations at 50 CFR 600.805 to 600.930.

FOR FURTHER INFORMATION CONTACT: Karen Abrams at (301) 713–4300 (ext. 149) or David MacDuffee at (301) 713–4300 (ext. 155).

SUPPLEMENTARY INFORMATION: As announced in the **Federal Register** on December 11, 2003 (68 FR 69070), NMFS requested comments on potential revisions to the EFH guidelines. The comment period closed on January 26, 2004. While NMFS received several comments expressing opinions about whether the EFH guidelines should be revised, NMFS was also asked to lengthen the comment period beyond the original 45 days. As one of the functions of the EFH guidelines is to assist the Fishery Management Councils (Councils) in identifying and conserving EFH, and only one Council had the ability to provide substantive comments, NMFS has decided to reopen the comment period to allow the public and the Councils an additional opportunity to comment on the EFH guidelines. The agency believes these additional comments will aid in the evaluation of the EFH guidelines. Comments received between January 26, 2004 and the date of this notice will be given full consideration by NMFS.

Background

In January 2002, NMFS promulgated a final rule (67 FR 2343) that established guidelines (50 CFR 600.805 to 600.930) to assist the Councils and the Secretary of Commerce (Secretary) in the description and identification of EFH in fishery management plans (FMPs), the identification of adverse effects to EFH, and the identification of actions required to conserve and enhance EFH. The final rule also detailed procedures the Secretary (acting though NMFS), other Federal agencies, and the Councils will use to coordinate, consult, or provide recommendations on Federal and state actions that may adversely affect EFH. Such guidelines promulgated through regulation were mandated in the 1996 amendments incorporated into the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1855(b)(1)(A)). The intended effect of the guidelines is to promote the protection, conservation, and enhancement of EFH.

After a 5–year public process, NMFS finalized the EFH guidelines in 2002. Nevertheless, NMFS recognized that a great deal of interest remained from various stakeholders in how to integrate habitat considerations into fishery management. As a result of this interest, NMFS committed to evaluating the

efficacy of the EFH guidelines as they are implemented, to apply the lessons learned from such implementation as appropriate, and to consider changing the regulations if warranted through an appropriate public process.

NMFS recognizes that implementation of the Act's EFH provisions is complex and requires considerable species and habitat information not always equally available across species or geography. In addition, NMFS recognizes that not all habitats exhibit the same characteristics, and that implementation of the EFH guidelines continues to attract public interest from its stakeholders.

Given ongoing interest in EFH and NMFS' commitment to evaluate the efficacy of the EFH guidelines through an appropriate public process, NMFS solicits input from the public regarding (1) whether the EFH guidelines (50 CFR 600.805 to 600.930) should be revised, and (2) if revisions are desired, what parts of the guidelines should be revised, how should they be revised, and why. NMFS will use this information in determining whether to proceed with a revision to the EFH guidelines, and, if so, the issues to be addressed.

This ANPR has been determined to be significant for the purposes of Executive Order 12866.

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

Dated: February 19, 2004.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 04–4149 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 69, No. 37

Wednesday, February 25, 2004

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Ashland Forest Resiliency, Rogue River—Siskiyou National Forest, Jackson County, Oregon

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the provisions of section 102(2) of the National Environmental Policy Act (NEPA) of 1969 (42 USC 4332 (2)), the USDA, Forest Service is analyzing Ashland Forest Resiliency as an authorized hazardous fuels project under the Healthy Forests Restoration Act of 2003. Pursuant to Sections 103 and 104 of the Healthy Forests Restoration Act, the Ashland Ranger District of the Rogue River-Siskiyou National Forest will prepare an Environmental Impact Statement (EIS). The purpose of the EIS is to analyze and disclose the environmental effects associated with a Proposed Action that includes a suite of site specific proposals for implementing several types of hazardous fuel reduction actions designed to restore more fire resilient forests for the federally managed lands within the Upper Bear Analysis Area. This area includes the Ashland Municipal Watershed and is the subject of an integrated assessment of current conditions and recommendations for action (2003 Upper Bear Assessment). Site-specific actions being proposed are designed to ''protect'' human and ecosystem values from large scale, high intensity wildfire. Proposals are designed as comprehensive and landscape-level treatments over several decades.

The activities are proposed within portions of the Ashland Creek, Neil Creek, Hamilton Creek and Wagner Creek sub-watersheds of the Bear Creek watershed, located on lands administered by the Rogue River-Siskiyou National Forest, Ashland Ranger District, Jackson County, Oregon.

This proposal will tier to and be designed under the Final Environmental Impact Statement for the Rogue River National Forest Land and Resource Management Plan (LRMP, 1990), as amended by the Northwest Forest Plan (NWFP)(USDA Forest Service and USDI Bureau of Land Management 1994), which provides guidance for land management activities.

The Ashland Ranger District invites written comments concerning the scope of the analysis in addition to those comments that will be solicited as a result of local public participation activities. The Forest Service will also give notice of the full environmental analysis and decision making process so that interested and affected people are made aware as to how they may participate and contribute to the final decision.

DATES: Issues and comments concerning the scope and analysis of this proposal must be received by April 30, 2004.

ADDRESSES: Submit written comments regarding this proposal to District Ranger, Ashland Ranger District, 645 Washington Street, Ashland, Oregon, 97520; FAX (541) 552–2922 or electronically to *comments__pacific northwest__rogueriver__ ashland@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Direct questions about this proposal and EIS to Chuck Anderson, Interdisciplinary Team Leader, Rogue River—Siskiyou National Forest, phone: (541) 858–2323, FAX: (541) 858–2330, e-mail: *cjanderson02@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Under Ashland Forest Resiliency, only National Forest System lands would be treated. The legal description of the area being considered is T. 39 S., R. 1 E., in sections 17, 19, 20, 21, 25, 27, 28, 29, 30, 31, 32, 33, 34 and 35; T.40 S., R. 1 E., in sections 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 15 and 17; T. 39 S., R 1 W., in sections 24, 25, 26, 34, 35 and 36; and T. 40 S., R. 1 W., section 1 and 2, W.M., Jackson County, Oregon. One of the primary goals for the Ashland Watershed is to ''provide water for domestic supply'' for the City of Ashland (RRNF LRMP page 4–265). Additional primary goals for the Watershed and the associated Upper Bear Analysis Area are ''to protect and enhance conditions for late-successional and old-growth forest ecosystems, which serve as habitat for late-successional and old-growth related species including the northern spotted owl'' (NWEP page C–11).

Purpose and Need for Action

The Need for the Proposed Action is for urgent reduction of large-scale, high intensity wildland fire in the Upper Bear Analysis Area. One hundred years of fire suppression and fuel accumulations in this forest's wildland/urban interface now presents high potential for large-scale, high intensity wildfires that could significantly interrupt the supply of clean water and late-successional and old growth forest ecosystems in this Analysis Area. The Purpose of the Proposed Action is to protect values at risk, reduce crown fire potential and obtain conditions that are more resilient to wildland fires.

For Ashland Forest Resiliency, the Proposed Action is based on a strategy resulting from the 2003 Upper Bear Assessment. It is an integrated package of connected actions designed to attain the stated Purpose and Need, while meeting Forest Plan Standards and Guidelines. There may be a need for Forest Plan amendment to ensure the ability to meet the Purpose and Need concurrent with attainment of Standards and Guidelines. A decision resulting from this NEPA analysis would also supplement the Rogue River-Siskiyou Fire Management Plan for the specific federally managed portions of the Upper Bear Analysis Area.

Proposed Action

The primary treatment proposals and prescriptions include those that would modify fire behavior during a wildland fire event. Although stand treatments cannot alter all variables that influence fire behavior, they can directly or indirectly influence species composition, available fuel, fuel arrangement, fuel moisture, and surface winds. Reasons to enact treatments (vegetation management and fuel reduction) that affect fire behavior can be categorized into two broad groups: (1) Treatments that modify fire behavior to facilitate effective fire suppression, and (2) treatments that modify fire behavior to reduce potential for large scale high intensity wildland fire and/

or subsequent effects to soil, water, and late successional habitat.

Under Ashland Forest Resiliency, a total of approximately 8,150 acres are proposed to be treated. The first phase of the protection strategy for the Analysis Area and included under the Proposed Action is the concept of ''compartmentalization''. This strategy involves the creation of Defensible Fuel Profile Zones (DFPZs) that integrate with existing shaded fuel breaks, to divide the Analysis Area into compartments. These compartments would be managed to eventually achieve the desired conditions with an overall objective of being able to contain any fire start (human or lightning) and subsequent fire within the compartment in which it started. DFPZs are a type of fuel break. The objective of the fuel modification within the DFPZ is to create large areas that are ''crown-fire-resistant''. Active crown fires moving into these areas would drop to the ground and rely less on the suppression forces to be effective as compared to the current shaded fuel break system. Fires may still burn in these areas but intensities and stand and resource damage would be lower than before treatment. This technique is not the same as the shaded fuel break strategy that has been previously implemented in the Ashland Watershed. The DFPZs proposed for Ashland Forest Resiliency are designed to: Reduce wildland fire intensity in treated areas by limiting the amount of area affected by wildland fire; create areas where fire suppression efforts can be conducted more safely and effectively; break up the continuity of fuels over a large landscape; and become anchor lines for further area-wide fuel treatment, such as prescribed burning. To develop DFPZs, surface fuel reduction and understory vegetation clearing would occur over wider expanses than the current shaded fuel breaks. The width of treated areas would generally be ¼ to ½ mile, with variations in the widths depending on vegetation cover, roads, geographic features, strategic location, elevation, and overall potential risk. The completed DFPZs would consist mostly of stands that would maintain a closed canopy (>60% canopy closure of dominant and co-dominant trees). Cutting and disposing of generally smaller diameter trees would primarily accomplish this, although larger trees may also be part of the treatment. This treatment would remove the majority of the existing ladder fuels. Pruning would remove remaining ladder fuels and raise the height-to-live-crown to 20–25 feet to directly affect fire behavior. Reasons for maintaining a mostly closed canopy include: maintain higher fuel moistures; reduce brush and grass growth; reduce maintenance intervals; and maintain future options for vegetation and fuels management. The DFPZs as designed for this compartmentalization strategy would not be uniform even-aged areas, but would encompass a wide variety in ages, sizes, and distribution of trees. The key feature would be the general openness of the understory and discontinuity of ladder fuels and ground fuels, producing a low probability of sustained crown fire. Also included in these DFPZs would be strategically placed safety zones for fire management personnel. Continued maintenance of these areas is an important component to the effectiveness of this strategy. The DFPZs and compartmentalization phase of the Proposed Action are the highest priority in that they would strategically ''compartmentalize'' any fire. Based on current vegetative conditions (as measured by seral stage condition), approximately 2,800 acres would be treated at this time to implement the entire DFPZ strategy.

As part of the overall strategy, priority areas within certain ''compartments'' would be treated using a combination of variable density management treatments and fuel hazard reduction treatments, including prescribed fire. Treatments within the compartments would be aimed at having a ''fire safe'' forest as described in the 2003 Assessment. Efforts would be focused on modifying the existing stand density and current/future surface fuel loads so that: (1) Wildland fires are primarily ground fires (as compared with running crown-fires); (2) fires would generate less than 4 foot flame lengths from ground fire under the 90th percentile of weather conditions; and (3) large woody material would be maintained to levels consistent with Forest Plan objectives.

The second phase would include the treatment of those compartments outside the Ashland Municipal Watershed that serve to protect or reduce the chance of a fire entering the Watershed. Within six designated compartments on National Forest, there are approximately 3,200 acres that are either in late-closed or mid-closed forest seral conditions. In order to attain the approximate desired seral stage distributions, approximately 50% of these acres or 1,600 acres are proposed for treatment with variable density management, including treatment of all slash. The majority of the variable density management treatments would target the mid-closed seral conditions. The remaining 50% (1,600 acres) would receive fuel hazard reduction treatments such as underburning, pruning along roads, hand piling and burning. This would move these critical compartments toward the desired fuel models. Under this phase, no other existing seral stages would receive treatment (outside of DFPZs).

The third phase would be to treat those compartments within and outside the Ashland Municipal Watershed that currently provide late-successional habitat conditions that can be managed to maintain these conditions. Because of their location, there are certain areas where late-successional habitat is most important and higher numbers of late-successional dependant species currently exist. Treatments proposed here focus on reducing the risk to late-successional habitat by treating approximately 600 acres of dense mid seral stands in a way that would break-up contiguous fuels. Proposed treatments would primarily be density management to reduce fire hazard and to encourage healthy forested stands that would grow into late seral stages. Treatments to additionally reduce fire risk include treatment of roadside areas (about 100–150 feet below roads and 50 feet above roads), with variable density management (about 250 acres). Under this phase, no other existing seral stages would receive treatment (outside of DFPZs).

The final phase of proposed vegetation treatments focuses on the Ashland Research Natural Area (RNA). Within the RNA, the conservation of large ponderosa pine, and pine species in general is the primary objective. This diversity of species is the reason the RNA was established. Within approximately 1,300 acres of the RNA, treatments would reduce hazardous fuels along with selective removal of competition to large pine and Douglas fir and/or create conditions that would encourage regeneration of the pine species. Treatments would primarily include variable density management with some small group selection to favor pine, and fuel reduction treatments, most likely underburning. There would also be some slashing of smaller diameter less-favored species and jackpot burning. Additional protection of the RNA and its diversity values would be provided under this strategy with creation of the DFPZs outside of the RNA (200 feet from existing road centerlines when adjacent to the RNA). Prescribed and routine maintenance underburning is proposed after density management treatments as a complimentary method that would encourage more natural regeneration of pines and sustain the pine ecosystem.

Depending on the location of areas being treated, as well as implementation methodology, additional facilities such as helicopter log landings from some density management treatments may be needed. These landings would be integrated into DFPZ and associated with existing roads and designated safety zones. There may also be need for the construction of access roads to the additional landings. Any new road segments are likely to be short spurs, located primarily on ridge top areas, and temporary. As the Proposed Action is fully developed, there may be additional connected activities that pertain to road management and/or watershed restoration.

Fire exclusion is not a goal of this strategy. The use of widland fire for resource benefits is not appropriate at this time due to the large build up of live and dead vegetation resulting from fire suppression. A lightning ignited wildland fire would occur when soil and fuel moistures are low and have a high probability of escaping management suppression resulting in a large-scale, high intensity fire.

There are various tools proposed for use to implement the strategy described above. These tools include variable density management, prescribed fire, and various vegetation modification treatments.

Variable density management involves the selective removal of some trees within a forested stand to increase spacing and accelerate growth in the crowns and root systems of the remaining trees. Density management is used to improve forest health of stands, to open the forest canopy for selected trees, to accelerate growth to maintain desired seral conditions, or to attain late-successional characteristics for biological diversity. Stands proposed to receive this treatment are generally over-dense, with high crown density and ladder fuels. Variable density refers to a non-uniform pattern for remaining trees, which would emulate more natural conditions, as opposed to more uniform residual stocking or a specified basal area or number of trees per acre traditionally utilized in growth and yield forestry on lands allocated to timber production.

A complementary treatment to variable density management includes the application of controlled (or prescribed) fire, termed underburning. Prescribed fire would be used to regulate the existing fuel profile and to create more of a mosaic of fuel loadings and canopy closures. Prescribed burning can result in a range of effects given a diversity of site conditions influencing fire intensity. Flame lengths, fire duration, age of vegetation, species, ladder fuels and condition of overstory vegetation would all determine the degree of overstory mortality. Some overstory mortality is expected.

Vegetation modification includes various methods such as slashing, hand piling of down material (and subsequent burning of piles), pruning trees along high risk areas to reduce ladder fuels, and jackpot, hand pile and burning or chipping of resultant slash material. This method is most appropriate for small areas with high risk. Prescribed fire and vegetation modification methods can be used in combination and/or in conjunction with variable density management. These methods can be used to dispose of slash created as a result of other treatment activities or as initial treatments on current stand conditions. For any activity that results in slash, slash would be treated.

Alternatives

Alternatives to the Proposed Action will include No-Action as required by NEPA. One additional alternative may be considered in detail in accordance with the Healthy Forests Restoration Act.

This notice of intent initiates the scoping process under NEPA, which will guide the development of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by June 2004. The comment period for the draft EIS will be 45 days from the date EPA publishes the Notice of Availability in the **Federal Register**.

At the end of this period, comments submitted to the Forest Service, including names and addresses of those who responded, will be considered part of the public record for this proposal, and as such will be available for public review. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to the Objection Process under the 36 CFR part 218. This Objection Process is a pre-decisional administrative review for the public to seek administrative consideration as provided for under the Healthy Forests Restoration Act (HR–1904); the regulations at 36 CFR 215 do not apply.

Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participiation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in Fall of 2004.

The Forest Service Responsible Official is Scott D. Conroy, Forest Supervisor of the Rogue River-Siskiyou National Forest. The Responsible Official will consider the Final EIS, applicable laws, regulations, policies, and analysis files in making a decision. The Responsible Official will document

the decision and rationale in the Record of Decision.

Dated: February 18, 2004.

Scott D. Conroy,

Forest Supervisor.

[FR Doc. 04–4099 Filed 2–24–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to discuss project development for 2004 and project updates for 2003. Agenda topics will include a presentation on Fred Burr 80 project, report on Forest Plan Revision community groups, public outreach methods, and a public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on February 24, 2004, 6:30 p.m.

ADDRESSES: The meeting will be held at the Ravalli County Administration Building, 215 S. 4th Street, Hamilton, Montana. Send written comments to Jeanne Higgins, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *jmhiggins@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jeanne Higgins, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: February 17, 2004.

David T. Bull,

Forest Supervisor.

[FR Doc. 04–4047 Filed 2–24–04; 8:45 am]

BILLING CODE 3410–11–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: Application for NATO International Competitive Bidding.

Agency Form Number: N/A.

OMB Approval Number: 0694-none.

Type of Request: New collection of information.

Burden: 40 hours.

Average Time Per Response: 1 hour per response.

Number of Respondents: 40 respondents.

Needs and Uses: All U.S. firms desiring to participate in the NATO International Competitive Bidding (ICB) process under the NATO Security Investment Program (NSIP) must be certified as technically, financially and professionally competent. The U.S. Department of Commerce is the agency that provides the Statement of Eligibility that certifies these firms. Any such firm seeking certification is required to submit a completed Form ITA–4023P (or Form BIS–4023P) along with a current annual financial report and a resume of past projects in order to become certified and placed on the Consolidated List of Eligible Bidders. The information provided on the ITA–4023P (or BIS–4023P) form is used to certify the U.S. firm for placement on the bidder's list database.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information 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: February 19, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4074 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–33–P

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: Defense Priorities and Allocation System.

Agency Form Number: N/A.

OMB Approval Number: 0694–0053.

Type of Request: Renewal of an existing collection of information.

Burden: 14,477 hours.

Average Time Per Response: 14 seconds per response.

Number of Respondents: 707,000 respondents.

Needs and Uses: The record keeping requirement is necessary for administration and enforcement of delegated authority under the Defense Production Act of 1950, as amended (50 U.S.C. app. 2061, *et seq.*) and the Selective Service Act of 1948 (50 U.S.C. app. 468). Any person who receives a priority rated order under the implementing DPAS regulation (15 CFR 700) must retain records for at least 3 years.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, Office of the Chief Information 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: February 20, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4143 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–33–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 (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Generic Clearance for MAF & TIGER Update Activities.

Form Number(s): Will vary by activity.

Agency Approval Number: 0607–0809.

Type of Request: Revision of a currently approved collection.

Burden: 360 hours.

Number of Respondents: 10,800.

Avg Hours Per Response: Will vary by activity.

Needs and Uses: The Census Bureau requests approval from the Office of Management and Budget (OMB) for an extension of the generic clearance for a number of activities it plans to conduct to update its Master Address File (MAF) and maintain the linkage between the MAF and the Topologically Integrated Geographic Encoding and Referencing (TIGER) database of address ranges and associated geographic information. The Census Bureau plans to use the MAF for post-Census 2000 evaluations, various pre-2010 census tests, and as a sampling frame for the American Community Survey and our other demographic current surveys. In the past, the Census Bureau has built a new address list for each decennial census. The MAF built during Census 2000 is meant to be kept current thereafter, 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 of 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 generic clearance for the past three years has proved to be very beneficial to the Census Bureau. The generic clearance allowed us to focus our limited resources on actual operational planning and development of procedures. This extension will be especially beneficial over the upcoming three years by allowing us to focus on the other work involved in evaluating Census 2000, testing new procedures for 2010, and keeping the MAF current.

We will follow the protocol of past generic clearances: 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.

All activities described above directly support the Census Bureau's efforts to update the MAF and the TIGER database on a regular basis so that they will be available for use in conducting and evaluating statistical programs the Census Bureau undertakes on a monthly, annual or periodic basis.

Affected Public: Individuals or households; State, local, or Tribal governments.

Frequency: Onetime.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: February 20, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4144 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Information for Self-Certification Under FAQ 6 of the United States—European Union Safe Harbor Privacy Framework

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 35068(2)(A).

DATES: Written comments must be submitted on or before April 26, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork, Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to: Jeff Rohlmeier, U.S. Department of Commerce, International Trade Administration, Room 2003, 14th & Constitution Avenues, NW., Washington, DC 20230; Phone number: (202) 482–1614 and fax number: (202) 482–5522.

SUPPLEMENTARY INFORMATION:

I. Abstract

In response to the European Union Directive on Data Protection that restricts transfers of personal information from Europe to countries whose privacy practices are not deemed ''adequate,'' the U.S. Department of Commerce has developed a ''Safe Harbor'' framework that will allow U.S. organizations to satisfy the European Directives requirements and ensure that personal data flows to the United States are not interrupted. In this process, the Department of Commerce repeatedly consulted with U.S. organizations affected by the European Directive and interested non-government organizations. On July 27, 2000, the European Commission issued its decision in accordance with Article 25.6 of the Directive that the Safe Harbor Privacy Principles provide adequate privacy protection. The Safe Harbor framework bridges the differences between the European Union (EU) and U.S. approaches to privacy protection. The complete set of Safe Harbor documents and additional guidance materials may be found at *http://export.gov/safeharbor.*

Once the Safe Harbor was deemed ''adequate'' by the European Commission on July 27, 2000, the Department of Commerce began working on the requirements that are necessary to put this accord into effect. The European Member States implemented the decision made by the Commission within 90 days. Therefore, the Safe Harbor became operational on November 1, 2000. The Department of Commerce created a list for U.S. organizations to sign up to the Safe

Harbor and provided guidance on the mechanics of signing up to this list. As of January 28, 2004, 448 U.S. organizations have been placed on the Safe Harbor List, located at *http://export.gov/safeharbor.* Organizations that have signed up to this list are deemed ''adequate'' under the Directive and do not have to provide further documentation to European officials. This list will be used by EU organizations to determine whether further information and contracts will be needed for a U.S. organization to receive personally identifiable information. This list is necessary to make the Safe Harbor accord operational, and was a key demand of the Europeans in agreeing that the Principles were providing ''adequate'' privacy protection. The Safe Harbor provides a number of important benefits to U.S. firms. Most importantly, it provides predictability and continuity for U.S. organizations that receive personal information from the European Union. Personally identifiable information is defined as any that can be identified to a specific person, for example an employees name and extension would be considered personally identifiable information. All 15 member countries are bound by the European Commissions finding of ''adequacy''. The Safe Harbor also eliminates the need for prior approval to begin data transfers, or makes approval from the appropriate EU member countries automatic. The Safe Harbor principles offer a simpler and cheaper means of complying with the adequacy requirements of the Directive, which should particularly benefit small and medium enterprises.

The decision to enter the Safe Harbor is entirely voluntary. Organizations that decide to participate in the Safe Harbor must comply with the safe harbors requirements and publicly declare that they do so. To be assured of Safe Harbor benefits, an organization needs to reaffirm its self-certification annually to the Department of Commerce that it agrees to adhere to the safe harbor's requirements, which includes elements such as notice, choice, access, data integrity, security and enforcement. This list will be most regularly used by European Union organizations to determine whether further information and contracts will be needed by a U.S. organization to receive personally identifiable information. It will be used by the European Data Protection Authorities to determine whether a company is providing ''adequate'' protection, and whether a company has requested to cooperate with the Data Protection Authority. This list will be accessed when there is a complaint logged in the EU against a U.S. organization. This will be on a monthly basis. It will be used by the Federal Trade Commission and the Department of Transportation to determine whether a company is part of the Safe Harbor. This will be accessed if a company is practicing ''unfair and deceptive'' practices and has misrepresented itself to the public. It will be used by the Department of Commerce and the European Commission to determine if organizations are signing up to the list. This list is updated on a regular basis.

II. Method of Collection

The self-certification form is provided via the Internet at *http://export.gov/safeharbor* and by mail to requesting U.S. firms.

III. Data

OMB Number: 0625–0239.
Form Number: N/A.
Expiration Date: 5/31/04.
Type of Review: Regular submission.
Affected Public: Business or other for-profit organizations.
Estimated Number of Respondents: 500.
Estimated Time Per Response: 20 minutes—website; 40 minutes—letter.
Estimated Total Annual Burden Hours: 400 hours.
Estimated Total Annual Costs to Public: $20, 000.

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 costs) 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 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: February 19, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4072 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Implementation of Tariff Rate Quota Established Under Title V of the Trade and Development Act of 2000 as Amended by the Trade Act of 2002 for Imports of Certain Worsted Wool Fabric

AGENCY: International Trade Administration, Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 35068 (2)(A)).

DATES: Written comments must be submitted on or before April 26, 2004.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230 or via the Internet at *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Sergio Botero, Trade Development, Room 3119, 14th & Constitution Avenue, NW., Washington, DC 20230; phone number: (202) 482–4058 and fax number: (202) 482–0667.

SUPPLEMENTARY INFORMATION:

I. Abstract

Title V of the Trade and Development Act of 2000 (''the Act'') as amended by the Trade Act of 2002 contains several provisions to assist the wool products industries. These include the establishment of tariff rate quotas (TRQ) for a limited quantity of worsted wool fabrics. The Act requires the President to fairly allocate the TRQ to persons who cut and sew men's and boys' worsted wool suits and suit like jackets and trousers in the United States, and who apply for an allocation based on the amount of suits they produce in the prior year. The Act further requires the President, on an annual basis, to consider requests from the manufacturers of the apparel products listed above, to modify the limitation on the quantity of imports subject to the TRQ. The Act specifies factors to be addressed in considering such requests.

The TRQ was originally effective for goods entered or withdrawn from warehouse for consumption, on or after January 1, 2001, and was to remain in force through 2003. On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act including the extension of the program through 2005. A TRQ allocation will be valid only in the year for which it is issued.

On December 1, 2000, the President issued Proclamation 7383 that, among other things, delegates authority to the Secretary of Commerce to allocate the TRQ; to consider, on an annual basis, requests to modify the limitation on the quantity of the TRQ and to recommend appropriate modifications to the President; and to issue regulations to implement these provisions. On January 22, 2001, the Department of Commerce published regulations establishing procedures for allocation of the tariff rate quotas (66 FR 6459, 15 CFR part 335) and for considering requests for modification of the limitations (66 FR 6459, 15 CFR part 340).

The Department must collect certain information in order to fairly allocate the TRQ to eligible persons and to make informed recommendations to the President on whether or not to modify the limitation on the quantity of the TRQ.

II. Method of Collection

The information collection forms will be provided via the Internet and by mail to requesting firms.

III. Data

OMB Number: 0625–0240.

Form Number: ITA–4139, and ITA–4140P.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 24.

Estimated Time Per Response: 1–24 hours.

Estimated Total Annual Burden Hours: 352 hours.

Estimated Total Annual Costs: $76,200.

The estimated annual cost for this collection is $76,200 ($15,000 for respondents and $61,200 for Federal government).

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 costs) 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 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: February 19, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–4073 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–840]

Carbon and Certain Alloy Steel Wire Rod from Canada; Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review.

SUMMARY: In order to clarify the meaning of the exclusion of the Stelco Group (Stelco, Inc. and Stelwire Ltd.) from the antidumping duty order, the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping duty order on carbon and certain alloy steel wire rod from Canada (steel wire rod) (*see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Certain Alloy Steel Wire Rod from Canada*, 67 FR 65944 (October 29, 2002) (Antidumping Order)) and issuing this notice of preliminary results. We have preliminarily determined that only merchandise both produced and exported by the Stelco Group is excluded from the order.

EFFECTIVE DATE: February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Daniel O'Brien or Constance Handley, at (202) 482–1376 or (202) 482–0631, respectively; AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background:

The Stelco Group received a *de minimis* margin in the investigation and was excluded from the antidumping duty order. Several months after the publication of the antidumping duty order, the Department received requests for clarification regarding the Stelco Group's exclusion from the order. *See Memorandum to the File from Daniel O'Brien, International Trade Compliance Analyst, Regarding Inquiries Concerning Stelco's Exclusion from the Order*, dated February 11, 2004. Specifically, parties have inquired as to whether all products produced by the Stelco Group, or only those both produced and exported by the Stelco Group, are excluded from the antidumping order. These inquiries result from inconsistent language in the order and in our instructions to U.S. Customs and Border Protection (CBP), then known as the U.S. Customs Service, regarding the order. The order states that the Department will instruct CBP to suspend liquidation on:

> all merchandise, with the exception of the merchandise produced by Stelco, entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the **Federal Register**. *Antidumping Order*, 67 FR at 65945.

The corrected instructions to CBP regarding the order[1] read:

> ... [B]ecause the Stelco Group had a *de minimis* margin, it is excluded from the antidumping duty order. The Customs Service should discontinue suspension of liquidation with regard to entries made by Stelco Inc. and Stelwire Ltd., effective October 29, 2002.

Scope of the Review

The merchandise covered by this order is certain hot–rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross–sectional diameter.

Specifically excluded are steel products possessing the above–noted physical characteristics and meeting the

[1] See CBP Message Number 2324204, a correction message to the original instructions regarding the order. The correction was necessary because the original instructions to CBP regarding the order stated only that the Stelco Group had a 0.00 margin without adding that the Stelco Group was, therefore, excluded from the order.

Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross–sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as ''tire cord quality'' or ''tire bead quality'' indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end–use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products subject to this order are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Initiation and Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. As indicated in the Background section, we have received information from CBP and an outside party indicating that the nature of the Stelco Group's exclusion from the order is unclear, because the order could be read to indicate that all products produced by the Stelco Group, whether exported by the Stelco Group or not, are excluded from the order. As explained below, the order was intended to exclude only steel wire rod both produced *and* exported by the Stelco Group. Thus, the new information to the effect that this may not be clear to CBP and outside parties constitutes changed circumstances warranting a review of the order. Therefore, in accordance with section 751(b)(1) of the Act, we are initiating a changed circumstances review based upon the information received from outside parties.

Section 351.221(c)(3)(ii)(2003) of the regulations permits the Department to combine the notice of initiation of a changed circumstances review and the notice of preliminary results in a single notice if the Department concludes that expedited action is warranted. In this instance, because we already have on the record all the information necessary to make a preliminary finding, we find that expedited action is warranted and have combined the notice of initiation and the notice of preliminary results.

We preliminarily find that only merchandise produced and exported by the Stelco Group is excluded from the antidumping duty order. During the investigation, the Department analyzed only sales of merchandise both produced and exported by the Stelco Group.[2] Therefore, the determination that the Stelco Group had not made sales at less than fair value was based on sales with respect to which the Stelco Group was the potential price discriminator. There was no determination regarding sales with respect to which a third party would have been responsible for any price discrimination in setting the price to U. S. customers. Sales of Stelco Group merchandise to unaffiliated Canadian parties who resold merchandise to the United States are not within the ambit of the Stelco Group exclusion. Thus, consistent with the Department's practice, merchandise produced but not exported by the Stelco Group is not excluded from the order. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Polyethylene Terephthalate Film, Sheet, and Strip From India*, 67 FR 34899 (May 16, 2002)

[2] See pages A-12 through A-13 of the public version of Stelco's Response to Section A of the Department's antidumping questionnaire, dated November 30, 2001, which indicates that Stelco did not make any sales to the United States through unaffiliated Canadian companies. These pages have been added to the record of this changed circumstances review. *See Memorandum to the File from Daniel O'Brien, International Trade Compliance Analyst, Regarding Placement of Information from the Investigation on the Record of the Changed Circumstances Review*, dated February 11, 2004.

(excluding from the order only merchandise ''produced and exported'' by a zero margin respondent).

If these preliminary results are adopted in the final results of this changed circumstances review, we will instruct CBP to continue to exclude shipments of subject merchandise produced and exported by the Stelco Group from the order and, for all merchandise produced but not exported by the Stelco Group to collect a cash deposit equal to the rate established for the exporter, or if the exporter does not have its own rate, the ''all others'' rate of 8.11 percent, effective as of the date of the final results of this changed circumstances review. Furthermore, for the period prior to the effective date of the final results of this changed circumstances review, we will instruct CBP to liquidate any entries of merchandise produced by Stelco, regardless of exporter, without regard to antidumping duties.

Public Comment

Any interested party may request a hearing within 30 days of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first working day thereafter. Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice. Rebuttal briefs and rebuttals to written comments, which must be limited to issues raised in such briefs or comments, may be filed not later than 37 days after the date of publication of this notice. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities.

Consistent with section 351.216(e) of the Department's regulations, we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding. We are issuing and publishing this finding and notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.221(c)(3) of the Department's regulations.

Dated: Februaru 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4138 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–888]

Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China: Postponement of Final Antidumping Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Paige Rivas or Sam Zengotitabengoa at (202) 482–0651 or (202) 482–4195, respectively; AD/CVD Enforcement, Office 4, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUMMARY: The Department of Commerce (the Department) is postponing the final determination in the antidumping duty investigation of floor-standing, metal-top ironing tables and certain parts thereof from the People's Republic of China.

SUPPLEMENTARY INFORMATION:

Postponement of Final Determination and Extension of Provisional Measures

On February 3, 2004, the Department published its affirmative preliminary determination of this antidumping duty investigation in the **Federal Register**. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof From the People's Republic of China,* 69 FR 5127 (February 3, 2004). This notice of preliminary determination states that the Department will issue its final determination no later than 75 days after the date on which the Department issued its preliminary determination.

Section 735(a)(2)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.210(b)(2)(ii) provide that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Additionally, the Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for an extension of the provisional measures from a four-month period to not more than six months.

On January 30, 2004, in accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), Shunde Yongjian Housewares Co., Ltd. (Yongjian), a mandatory respondent in this investigation, requested that the Department postpone its final determination. On February 3, 2004, Yongjian requested that the Department fully extend the provisional measures by 60 days in accordance with sections 733(d) of the Act and 19 CFR 351.210(e)(2). Accordingly, pursuant to section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), we are postponing the final determination until no later than 135 days after the publication of the preliminary determination in the **Federal Register** (*i.e.*, until no later than June 13, 2004), because: (1) The preliminary determination is affirmative, and therefore the exporters or producers have standing to request this postponement; and (2) the requesting exporter/producer accounts for a significant proportion of exports of the subject merchandise (*see* Memorandum from Thomas F. Futtner, Acting Office Director, Office 4, to Holly A. Kuga, Acting Deputy Assistant Secreatry, Group II, ''Respondent Selection Memorandum,'' dated September 10, 2003); and, (3) no compelling reasons for denial exist. Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to section 735(a) of the Act and 19 CFR 351.210(g).

Dated: February 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4139 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Notice of Extension of Time Limit of Final Results of New Shipper Review: Honey From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of final results of antidumping duty new shipper review.

SUMMARY: The Department of Commerce is extending the time limit of the final results of the new shipper review of the

antidumping duty order on honey from the People's Republic of China until no later than March 25, 2004. The period of review is February 10, 2001, through November 30, 2002. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended.

EFFECTIVE DATE: February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander at (202) 482–0182 or Dena Aliadinov at (202) 482–3362; Antidumping and Countervailing Duty Enforcement Group III, Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department determines the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the final results up to 150 days after the date on which the preliminary results were issued.

Background

On December 31, 2002, the Department received properly filed requests from Shanghai Xiuwei International Trading Co., Ltd. (''Shanghai Xiuwei'') and Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (''Sichuan Dubao''), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper review of the antidumping duty order on honey from the People's Republic of China (PRC), which has a December anniversary date, and a June semiannual anniversary date. Shanghai Xiuwei identified itself as an exporter of processed honey produced by its supplier, Henan Oriental Bee Products Co., Ltd. (''Henan Oriental''). Sichuan Dubao identified itself as the producer of the processed honey that it exports.

On February 5, 2003, the Department initiated this new shipper review for the period February 10, 2001 through November 30, 2002. *See Honey From the People's Republic of China: Initiation of New Shipper Antidumping Duty Reviews* (68 FR 5868, February 5, 2003). On July 21, 2003, the Department extended the preliminary results of this new shipper review 300 days until November 26, 2003. *See Honey From the People's Republic of China: Extension of Time Limits for Preliminary Results of New Shipper Antidumping Duty Review,* 68 FR 43086 (July 21, 2003). On December 4, 2003, the Department published its preliminary results of this review. *See Notice of Preliminary Results of Antidumping Duty New Shipper Review: Honey From the People's Republic of China,* 68 FR 67832 (December 4, 2003) (*Preliminary Results*). In the preliminary results of this review, we indicated that we were unable to complete our analysis of all factors relevant to the *bona fides* of Shanghai Xiuwei's and Sichuan Dubao's U.S. sales. We described our research and contact efforts in the *Memorandum from Brandon Farlander and Dena Aliadinov to the File,* dated November 26, 2003. We also indicated that additional time was needed to research the appropriate surrogate values to value raw honey.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review by 60 days if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated because of the issues pertaining to the *bona fides* of Shanghai Xiuwei's and Sichuan Dubao's U.S. sales, as well as the issues pertaining to the raw honey surrogate values. Accordingly, the final results of this new shipper review cannot be completed within the statutory time limit of 90 days. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of final results by an additional 30 days. The final results will now be due no later than March 25, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: February 18, 2004.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 04–4141 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–804]

Industrial Nitrocellulose From Brazil: Notice of Initiation of Changed Circumstances Review and Consideration of Revocation of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances review.

SUMMARY: In accordance with 19 CFR 351.216(b), Nitro Quimica Brasileira, a Brazilian exporter of subject merchandise and an interested party in this proceeding, filed a request for a changed circumstances review of the antidumping duty order on industrial nitrocellulose from Brazil, as described below. In response to this request, the Department of Commerce is initiating a changed circumstances review of the antidumping duty order on industrial nitrocellulose from Brazil.

EFFECTIVE DATE: February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Robert James, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4475 or (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** the antidumping duty order on industrial nitrocellulose from Brazil. *See Antidumping Duty Order: Industrial Nitrocellulose From Brazil*, 55 FR 28266 (July 10, 1990). On December 31, 2003, Nitro Quimica Brasileira (Nitro Quimica), a Brazilian exporter of subject merchandise and an interested party in this proceeding, requested that the Department revoke the antidumping duty order on industrial nitrocellulose from Brazil through a changed circumstances review. According to Nito Quimica, revocation is warranted because of ''lack of interest'' on behalf of the U.S. industry. Specifically, Nitro Quimeca asserts that no domestic producer of industrial nitrocellulose currently exists. Nitro Quimica asserts that Hercules Incorporated, the only petitioner in the original investigation and the only U.S. producer at the time in which this order was issued, sold its

nitrocellulose business to Green Tree Chemical Technologies (Green Tree) on June 16, 2001. Nitro Quimica further contends that Green Tree has closed its U.S. production facility on about November 26, 2003. (*See Nitro Quimica December 31, 2003 letter at Attachment 3.*) Nitro Quimica asserts that the effective date of the revocation should be ''retroactive to the date on which Green Tree ceased its U.S. production'' (Nitro Quimica December 31, 2003 letter at page 2).

Scope of the Review

The product covered by this review is industrial nitrocellulose, currently classifiable under HTS subheading 3912.20.00. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive as to the scope of the product coverage.

Industrial nitrocellulose is a dry, white, amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent. Industrial nitrocellulose is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

Initiation of Changed Circumstances Review

Pursuant to section 782(h)(2) of the Tariff Act of 1930, as amended (the Tariff Act), the Department may revoke an antidumping or countervailing duty order based on a review under section 751(b) of the Tariff Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Tariff Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. 19 CFR 351.222(g) provides that the Department will conduct a changed circumstances review under 19 CFR 351.216 and may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product to which the order (or the part of the order to be revoked) pertains have expressed a lack of interest in the relief provided by the order, in whole or in part, or if changed circumstances exist sufficient to warrant revocation.

In this case, the Department finds that the information submitted provides sufficient evidence of changed circumstances to warrant a review. Given Nitro Quimica's assertions, we will consider whether there is interest in continuing the order on the part of the U.S. industry.

Interested parties may submit comments for consideration in the Department's preliminary results. (These comments may include the effective date proposed by Nitro Quimica for revocation of this order.) The due date for filing any such comments is no later than 20 days after publication of this notice. Responses to those comments may be submitted not later than 10 days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances review, in accordance with 19 CFR 351.221(c)(3)(i), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. The Department will also issue its final results of review within 270 days after the date on which the changed circumstances review is initiated, in accordance with 19 CFR 351.216(e), and will publish these results in the **Federal Register**.

While the changed circumstances review is underway, the current requirement for a cash deposit of estimated antidumping duties on all subject merchandise will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: February 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4142 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–475–821]

Stainless Steel Wire Rod From Italy; Preliminary and Final Results of Full Sunset Review of Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary and final results of full sunset review: Stainless Steel Wire Rod from Italy.

SUMMARY: The Department of Commerce (''the Department'') is extending the time limit for its preliminary and final results in the full sunset review of the countervailing duty order on stainless steel wire rod (''SSWR'') from Italy.[1] The Department intends to issue preliminary results of this sunset review on or before February 27, 2004. In addition, the Department intends to issue its final results of this review on or before June 28, 2004 (120 days after the date of publication in the **Federal Register** of the preliminary results).

EFFECTIVE DATE: February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler or Martha V. Douthit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4340 or (202) 482–5050.

Extension of Preliminary and Final Determinations

On August 1, 2003, the Department initiated a sunset review of the countervailing duty order on SSWR from Italy. *See Initiation of Five-Year (Sunset) Reviews,* 68 FR 45219 (August 1, 2003). The Department, in this proceeding, determined that it would conduct a full (240 day) sunset review of this order based on responses from the domestic and respondent interested parties to the notice of initiation. The Department's preliminary results of this review were scheduled for November 19, 2003. However, several issues have arisen regarding the recent revocation of the order with respect to Cogne Acciai Speciali S.r.l. (''CAS'') and its effect on this sunset review. *See Notice of Implementation Under Section 129 of the Uruguay Round Agreements Act: Countervailing Measures Concerning Certain Steel Products From the European Communities,* 68 FR 64858 (November 17, 2003).

Because of the numerous, complex issues in this proceeding, the Department will extend the deadlines. Thus, the Department intends to issue the preliminary results not later than February 27, 2004, and the final results

[1] The Department normally will issue its preliminary results in a full sunset review not later than 110 days after the date of publication in the **Federal Register** of the notice of initiation. However, if the Secretary determines that a full sunset review is extraordinarily complicated under section 751(c)(5)(C) of the Act, the Secretary may extend the period for issuing final results by not more than 90 days. *See* section 751(c)(5)(B) of the Act.

not later than June 28, 2004, in accordance with section 751(c)(5)(B).

Dated: February 19, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–4140 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include discussion of trade priorities and initiatives, the World Trade Organization, PEC subcommittee activity and proposed letters of recommendation. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13316.

DATES: March 17, 2004.

Time: 9:30 a.m. to 11:30 a.m.

ADDRESSES: Room 2247, Rayburn House Office Building, Washington, DC 20515. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than March 3, 2004, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC 20230. Seating is limited and will be on a first come, first served basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC 20230 (Phone: 202–482–1124).

Dated: February 20, 2004.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 04–4124 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 012304A]

Comment Request: National Estuary Restoration Inventory

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The purpose of this document is to invite the public to comment on the recently launched National Estuary Restoration Inventory (NERI), an on-line database of estuary habitat restoration projects that is available to the public for electronic submission and viewing of project information. This document provides background information about the inventory and guidelines for submitting comments. The National Estuary Restoration Inventory contains information about estuary habitat restoration projects implemented across the country. Restoration practitioners may submit eligible projects to the inventory over the Internet via a user-friendly data entry interface. Approved project information will be made available to the public through queries and reports on the NERI web site.

DATES: Written comments (in paper or electronic format) will be accepted upon publication of this document in the **Federal Register** and must be received by March 26, 2004. Comments received by this date will be summarized and may be incorporated into the NERI site at a later phase.

ADDRESSES: Direct all written comments to Nancy Lou, NOAA Damage Assessment and Restoration Center, 7600 Sand Point Way, Seattle, WA 98115; ATTN: NERI Public Comments (or via the Internet at *Nancy.Lou@noaa.gov*). NERI is available at the following URL: *http://neri.noaa.gov/*.

FOR FURTHER INFORMATION CONTACT: Nancy Lou at (206)526–0000 (or via the Internet at *Nancy.Lou@noaa.gov*) or Amy Zimmerling at (301)713–2989 (or via the Internet at *Amy.Zimmerling@noaa.gov*).

SUPPLEMENTARY INFORMATION:

I. Background

The Estuary Restoration Act (ERA), signed into law in November 2000, makes restoring our estuaries a national priority. The ERA promotes the restoration of one million acres of estuarine habitat by 2010 by leveraging limited Federal resources with state and local funding, developing and enhancing monitoring and research capabilities, and encouraging partnerships among public agencies and between the public and private sectors. As part of the ERA, NOAA is required to develop and maintain an inventory of estuary restoration projects.

The purpose of the inventory is to: provide information on monitoring and restoration techniques to advance the science of restoration, track acres of habitat restored toward the one million acre goal of the ERA, and provide information for reports transmitted to Congress. In addition, the inventory may be a resource for restoration practitioners to monitor the progress of their own restoration projects. Project information can also be shared with the restoration community over the NERI web site (see **ADDRESSES**).

Phase 1 developments have been completed for the inventory which went on-line on February 16, 2004. Phase 2 developments will include additional searching capabilities, an interactive mapping application, as well as the incorporation of any viable suggestions from this request for comments.

II. Overview of the Inventory

The National Estuary Restoration Inventory is an on-line database of restoration projects. Restoration practitioners may voluntarily submit eligible restoration projects for entry into the inventory using an on-line submission form. Eligible projects must: (1) aim to provide ecosystem benefits for estuaries and their associated ecosystems, and (2) include monitoring to gauge the success of restoration efforts. Submission is mandatory for projects funded through the Estuary Restoration Act.

Restoration practitioners are notified once their project(s) is (are) accepted into the inventory via e-mail at which time they may log into the inventory and begin entering information for their project(s). The data entry interface contains twelve sections for entering data including general information, project abstract, contacts, geographic location, project benefits, habitat types and acreage restored, restoration techniques, monitoring and success criteria, regional restoration plans, project partners, budget, and project photos. Once updated project information is approved by NERI administrators, the data will be made available on-line through queries and reports. To assist users with entering and querying data, a detailed Help section has been created with descriptions of all inventory fields as well as useful tips for searching the inventory. In addition, users may

contact the NERI administrators with questions, comments, and suggestions via e-mail at *neri@noaa.gov*.

III. Request for Comments

Comments are invited on: (a) the usability of the site for entering, updating, and viewing information on estuary habitat restoration projects; (b) the types of information being tracked, including comments on specific fields and/or suggestions for additional/fewer fields; (c) ways to enhance the quality, utility, and clarity of the information presented; and (d) other suggestions that would make the site more user-friendly.

Comments submitted in response to this notice will be summarized and published as part of the public record. All comments will be reviewed by the NERI development team and addressed either via e-mail response or in a later phase of development. Comments must be received by March 26, 2004.

Dated: February 19, 2004.

Rebecca Lent,

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

[FR Doc. 04–4150 Filed 2–24–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Technical Information Center-DTIC, DoD.

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 S.C. Chapter 35). In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Technical Information Center announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 26, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Technical Information Center (DTIC), Marketing and Registration Division, 8725 John J. Kingman Road, Suite 0944, ATTN: Ms. Elaine Stober, Ft. Belvoir, VA 22060–6218.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call DTIC, Marketing and Registration Division, at (703) 767–8207.

Title; Associated Form; and OMB Number: Customer Satisfaction Survey—Generic Clearance; OMB Number 0704–0403.

Needs and Uses: The information collection requirement is necessary to assess the level of service the Defense Technical Information Center (DTIC) provides to its current customers. The surveys will provide information on the level of overall customer satisfaction, and on customer satisfaction with several attributes of service that impact the level of overall satisfaction. These customer satisfaction surveys are required to implement Executive Order 12862, ''Setting Customer Service Standards.'' Respondents are DTIC registered users who are components of the Department of Defense, military services, other Federal Government Agencies, U.S. Government contractors, university involved in Federally funded research, and participants. The information obtained by these surveys will be used to assist agency senior management in determining agency business policies and processes that should be selected for examination, modification, and reengineering from the customer's perspective. These surveys will also provide statistical and demographic basis for the design of follow-on surveys. Future surveys will be used to assist monitoring of changes in the level of customer satisfaction over time.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 132.

Number of Respondents: 790.

Responses Per Respondent: 1.

Average Burden Per Response: 10 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of these surveys is to assess the level of service the Defense Technical Information Center (DTIC) provides to its current customers. The proposed collection of information will be conducted annually. Less frequent collection or no collection of information would result in the inability to effectively measure customer satisfaction and improve products and services based on feedback. The surveys will provide information on the level of overall customer satisfaction, and on customer satisfaction with several attributes of service which impact the level of overall satisfaction. The objectives of the survey are to help DTIC (1) gauge the level of satisfaction among both its general and Top 200 users, and (2) identify possible areas for improving our products and services. The surveys are designed to assist in evaluating the following knowledge objectives:

- To improve customer retention;
- To determine the perceived quality of products, service and customer care;
- To indicate trends in products, services and customer care;
- To benchmark our customer satisfaction results with other Federal government agencies.

Dated: February 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–4039 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction act of 1995, the Defense Finance and Accounting Service announced the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the

burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 26, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Kansas City, Financial Services Division (DFAS–AAD/KC), ATTN: Ms. LaTenna Weiss, 1500 East 95th Street, Kansas City, MO 64197–0030.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call, Ms. LaTenna Weiss, 816–926–2745.

Title, Associated Form, and OMB Number: Statement of Claimant Requesting Recertified Check, DD Form 2660; OMB Number 0730–0002.

Needs and Uses: In accordance with TFM Volume 1, Part 4, Section 7060.20 and DoD 7000.14–R, Volume 5, there is a requirement that a payee identify himself/herself and certify as to what happened to the original check issued by the government (non-receipt, loss, destruction, theft, etc.). This collection will be used to identify rightful reissuance of government checks to individuals or businesses outside the Department of Defense.

Affected Public: Individuals or businesses or other for-profit.

Annual Burden Hours: 9,042 hours.

Number of Respondents: 108,500.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Statement of Claimant Requesting Recertified Check is used to ascertain pertinent information needed by the Department of Defense in order to reissue checks to payees, if the checks have not been negotiated to financial institutions within one (1) year of the date of issuance, when an original check has been lost, not received, damaged, stolen, etc. The form will be completed by the payee who was issued the original check. The information provided on this form will be used in determining whether a check may be reissued to the named payee.

Dated: February 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–4040 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 26, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service, ATTN: Lynne Anderson, 1931 Jefferson Davis Highway, CM#3–Second Floor (Room 228), Arlington, VA 22240–5291.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Lynne Anderson at (703) 607–3700 or Connie Martin at (317) 510–2298.

Title, Associated Form, and OMB Number: Customer Satisfaction Surveys—Generic Clearance; OMB Number 0730–0003.

Needs and Uses: The information collection requirement is necessary to determine the kind and quality of services DFAS customers want and expect, as well as their satisfaction with DFAS's existing services.

Affected Public: Individuals or Households, Business or other for profit, Not-for-profit institutions, Federal government, and State, Local or Tribal Governments.

Annual Burden Hours: Estimated 2,000.

Number of Respondents: Estimated 15,000.

Responses Per Respondent: 1.

Average Burden Per Response: 8 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

DFAS will conduct a variety of activities to include, but not necessarily limited to customer satisfaction surveys, transaction based telephone interviews, Interactive Voice Response Systems (IVRS) telephonic surveys, etc. If the customer feedback activities were not conducted, DFAS would not only be in violation of E.O. 12862, but would also not have the knowledge necessary to provide the best service possible and provide unfiltered feedback from the customer for our process improvement activities. The information collected provides information about customer perceptions and can help identify agency operations that need quality improvement, provide early detection of process or systems problems, and focus attention on areas where customer service and functional training or changes in existing operations will improve service delivery.

Dated: February 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–4041 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by April 26, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Defense Finance and Accounting Service—Denver, DFAS–DE/POSA, ATTN: Mr. Dan Wagle, 6760 East Irvington Place, Denver CO 80279–3000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Mr. Dan Wagle, 303–676–3372.

Title, Associated Form, and OMB Number: Request for Information Regarding Deceased Debtor, DD Form 2840, OMB Number 0730–0015.

Needs and Uses: This form is used to obtain information on deceased debtors form probate courts. Probate courts review their records to see if an estate was established. They provide the name and address of the executor or lawyer handling the estate. From the information obtained, we submit a claim against the estate for the amount due the United States.

Affected Public: Clerks of Probate Courts.

Annual Burden Hours: 250 hours.

Number of Respondents: 3,000.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: When we are notified a debtor is deceased.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Defense Finance and Accounting Service maintains updated debt accounts and initiates debt collection action for separated military members, out-of-service civilian employees, and other individuals not on an active federal government payroll system. When notice is received that an individual debtor is deceased, an effort is made to ascertain whether the decedent left an estate by contacting clerks of probate courts. If it's determined that an estate was established, attempts are made to collect the debt from the estate. If no estate appears to have been established the debt is written off as uncollectible.

Dated: February 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 04–4042 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Closed Meeting

AGENCY: Defense Intelligence Agency, Joint Military Intelligence College, DoD.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of subsection (d) of Section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military College Board of Visitors was held as follows:

DATES: Tuesday, 6 January 2004, 0800 to 1700; and Wednesday, 7 January 2004, 0800 to 1200.

ADDRESSES: Joint Military College, Washington, DC 20340–5100.

FOR FURTHER INFORMATION CONTACT: Mr. A. Denis Clift, President, DIA Joint Military College, Washington, DC 20340–5100, (202) 231–3344.

SUPPLEMENTARY INFORMATION: The entire meeting was devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore was closed. The Board discussed several current critical intelligence issues and advised the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military College.

Dated: February 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 04–4043 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice of amend systems of records.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on March 26, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the Federal Register and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: February 18, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

S253.31 DLA–G

SYSTEM NAME:

Patent Licensews and Assignments (February 22, 1993, 58 FR 10854).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S100.72'.

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 2386, Copyrights, patents, designs, etc.; acquisition; 10 U.S.C. 2515, Office of Technology Transition; 35 U.S.C. 202, Disposition of rights; Defense Federal Acquisition Regulation Supplement Subpart 227.70 Infringement Claims, Licenses, and Assignments; DoD Regulation 3200.12–R–4, Domestic Technology Transfer Program.'

PURPOSE(S):

Delete entry and replace with 'Data is maintained for the acquisition and administration of patent license and assignment agreements.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or locked cabinets. The electronic records systems employ user identification and password or smart card technology protocols.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records submitted to the office of General Counsel, HQ are destroyed 26 years after file is closed. Records maintained by Offices of General Counsel of DLA's field activities are destroyed 7 years after closure.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete 'Patent' from first line.

* * * * *

S100.72

SYSTEM NAME:

Patent Licenses and Assignments.

SYSTEM LOCATION:

Office of the General Counsel, HQ DLA, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221, and the offices of counsel of the DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals and firms, which have granted patent licenses or assignments to DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files including patent license and assignment agreements and accounting records indicating basis for Government payment of royalties during life of agreements.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2386, Copyrights, patents, designs, etc.; acquisition; 10 U.S.C. 2515, Office of Technology Transition; 35 U.S.C. 202, Disposition of rights; Defense Federal Acquisition Regulation Supplement Subpart 227.70, Infringement Claims, Licenses, and Assignments; DoD Regulation 3200.12–R–4, Domestic Technology Transfer Program.

PURPOSE(S):

Data is maintained for the acquisition and administration of patent license and assignment agreements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(5) as follows:

Information may be referred to other Government agencies or to non-Government personnel (including contractors or prospective contractors) having an identified interest in the potential or actual infringement of particular patents.

The DoD 'Blanket Routine Uses' set forth at the beginning DLA's compilation of systems of records notice apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records maintained in paper and computerized form.

RETRIEVABILITY:

Filed by name of individual or firm granting rights.

SAFEGUARDS:

Access is limited to those individuals who require the records for the performance of their official duties. Paper records are maintained in buildings with controlled or monitored access. During non-duty hours, records are secured in locked or guarded buildings, locked offices, or locked cabinets. The electronic records systems employ user identification and password or smart card technology protocols.

RETENTION AND DISPOSAL:

Records submitted to the office of General Counsel, HQ are destroyed 26 years after file is closed. Records maintained by Offices of General counsel of DLA's field activities are destroyed 7 years after closure.

SYSTEM MANAGER(S) AND ADDRESS:

Office of General Counsel, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221. or to the Privacy Act Officer of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

DLA Counsel's investigation of published and unpublished records and files both within and without the government, consultation with government and non-government personnel, information from other government agencies and information submitted by Government officials or other persons having a direct interest in the subject matter of the file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–4044 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5

U.S.C. 552a), as amended. The alteration to S322.50 DMDC adds a routine use to permit the release of records to Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official DoD business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

DATES: This action will be effective without further notice on March 26, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on February 13, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: February 17, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.50. DMDC

SYSTEM NAME:

Defense Eligibility Records (December 14, 2001, 66 FR 64814).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official DoD business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.'

* * * * *

S322.50 DMDC

SYSTEM NAME:

Defense Eligibility Records.

SYSTEM LOCATION:

PRIMARY LOCATION:

Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

BACK-UP LOCATION:

Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

Biometrics data is maintained at the Department of Defense Biometrics Fusion Center, 1600 Aviation Way, Bridgeport, WV 26330–9476.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Armed Forces and reserve personnel and their family members; retired Armed Forces personnel and their family members; 100 percent disabled veterans and their dependents or survivors; surviving family members of deceased active duty or retired personnel; active duty and retired Coast Guard personnel and their family members; active duty and retired Public Health Service personnel (Commissioned Corps) and their family members; active duty and retired National Oceanic and Atmospheric Administration employees (Commissioned Corps) and their family members; and State Department employees employed in a foreign country and their family members; civilian employees of the Department of Defense; contractors; and any other individuals entitled to care under the health care program or to other DoD benefits and privileges; providers and potential providers of health care; and any individual who submits a health care claim.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer files containing beneficiary's name, Service or Social Security Number, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, disability documentation, Medicare eligibility and enrollment data, index fingerprints and photographs of beneficiaries, blood test results, dental care eligibility codes and dental x-rays.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23 (Internal Security); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identification of deceased members; to record the issuance of DoD badges and identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services; Department of Veterans Affairs; Department of Commerce; Department of Transportation for the conduct of health care studies, for the planning and allocation of medical facilities and providers, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes Social Security Number, name, age, sex, residence and demographic parameters of each Department's enrollees and family members.

To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-

related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

To each of the fifty states and the District of Columbia for the purpose of conducting an on-going computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

To provide dental care providers assurance of treatment eligibility.

To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official DoD business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

The DoD 'Blanket Routine Uses' published at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

RETRIEVABILITY:

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures (*e.g.*, fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, DSS–B, 8725 John J. Kingman Road, Stop 6220, 2533 Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Individuals, personnel pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, Department of Commerce, the National Oceanic and Atmospheric Administration, Department of Commerce, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–4045 Filed 2–24–04; 8:45 am]

BILLING CODE 5001–06–M

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 March 26, 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: February 19, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: New.

Title: National Assessment of Educational Progress 2004–2007 System Clearance.

Frequency: One-time.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs, Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 906,322.

Burden Hours: 231,800.

Abstract: This clearance request covers all pilot, field, and full scale assessment and survey activities of the National Assessment of Educational Progress. Students are assessed and surveyed in the 4th, 8th and 12th grades as well as some of their teachers and school administrators.

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 2429. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her e-mail address *Kathy Axt@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. 04–4046 Filed 2–24–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–145–C]

Application To Export Electric Energy; Powerex Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Powerex Corp. (Powerex), formerly the British Columbia Power Exchange Corporation, has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before March 26, 2004.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Imports/Exports (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On May 30, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) issued an Order (FE Order No. EA–145) authorizing Powerex to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company. That two-year authorization expired on May 30, 1999. On April 15, 1999, Powerex filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term. On June 18, 1999, DOE issued FE Order No. EA–145–A granting that request. That two-year authorization expired on June 18, 2001. On June 19, 2001, Powerex filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term. On August 13, 2001, DOE issued FE Order No. EA–145–B granting that request. That two-year authorization expired on August 13, 2003. On July 31, 2003, Powerex filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional five-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–145. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–145 proceeding.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Powerex request to export to Mexico should be clearly marked with Docket EA–145–C. Additional copies are to be filed directly with Mr. Douglas Little, Vice President, Trade Policy & Development, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8, and Ms. Erika Rosin, Contracts Manager, Powerex Corp., 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page, select ''Regulatory Programs,'' then ''Electricity Regulation,'' and then ''Pending Proceedings'' from the options menus.

Issued in Washington, DC, on February 18, 2004.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Imports/Exports, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 04–4115 Filed 2–24–04; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–64–000]

Trunkline Gas Company, LLC; Notice of Filing

February 19, 2004.

Take notice that on February 12, 2004, Trunkline Gas Company, LLC (Trunkline Gas), P.O. Box 4967, Houston, Texas 77210–4967, filed in the captioned docket an application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's rules and regulations. Trunkline Gas requests authorization to construct, own, operate and maintain certain natural gas transmission facilities to provide transportation services. The application is on file with the Commission and open for public inspection. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field 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.

Trunkline Gas proposes to construct 22.8 miles of 30-inch Diameter pipeline by looping a portion of the LNG Lateral originating at the interconnection with the liquefied natural gas import terminal of Trunkline LNG Company, LLC (Trunkline LNG) in Calcasieu, Louisiana, and terminating at Gate 203 A of Trunkline Gas's existing Line 200–2, also in Calcasieu. The proposed facilities also include four new pipeline interconnections, modifications of two existing pipeline interconnections, and replacement of the existing orifice meters at Trunkline LNG Terminal with three ultrasonic meter runs. Trunkline Gas has entered into a Firm Transportation Service Agreement with BG LNG Services, Inc. (BGLS) to provide transportation service up to 1,500 Mdt/day of regasified LNG pursuant to Rate Schedule FT, for a term of 19 years. Trunkline Gas proposes to place the project in service by July 1, 2005.

Any questions regarding the application are to be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056–5306.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission may issue a preliminary determination on non-environmental issues prior to the completion of its review of the environmental aspects of the project. This preliminary determination typically considers such issues as the need for the project and its economic effect on existing customers of the applicant, on other pipelines in the area, and on landowners and communities. For example, the Commission considers the extent to which the applicant may need to exercise eminent domain to obtain rights-of-way for the proposed project and balances that against the non-environmental benefits to be provided by the project. Therefore, if a person has comments on community and landowner impacts from this proposal, it is important either to file comments or to intervene as early in the process as possible.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: March 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–390 Filed 2–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–587–008, et al.]

New York Electric & Gas Corporation, et al.; Electric Rate and Corporate Filings

February 18, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. New York State Electric & Gas Corporation

[Docket No. ER03–587–008]

Take notice that on February 13, 2004, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to the Commission's April 28,

2003 Order in Docket No. ER03–587–000, FERC Rate Schedule 20 between NYSEG and Pennsylvania Electric Company consistent with Order No. 614, FERC Stats. & Regs., Para. 31,096 (2000).

Comment Date: March 5, 2004.

2. Pacific Gas and Electric Company

[Docket No. ER04–13–002]

Take notice that on February 2, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing a refund report in response to and compliance with the Commission's December 2, 2003 Order on Service Agreements and Establishing Hearing and Settlement Judge Procedures in Docket No. ER04–13–000.

PG&E states that copies have been served upon GWF Energy LLC, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: March 4, 2004.

3. White Pine Copper Refinery, Inc.

[Docket No. ER04–262–001]

Take notice that on February 13, 2004, White Pine Copper Refinery, Inc. (White Pine) tendered for filing revisions to its tariff, FERC Electric Tariff, Original Volume No. 1, to include Market Behavior Rules pursuant to the Commission's Orders in Docket No. ER04–262–000, and in Docket Nos. EL01–118–000 and EL01–118–001.

Comment Date: March 5, 2004.

4. Jersey Central Power & Light Company

[Docket No. ER04–366–001]

Take notice that on February 12, 2004, Jersey Central Power & Light Company (JCP&L) tendered for filing a revised Original Sheet No. 1 to its proposed Market-Based Rate Power Sales Tariff (the Tariff), which was submitted on December 31, 2003. JCP&L has asked to have the revised Original Sheet No. 1 be substituted for that submitted on December 31, 2003 and to have the Tariff, as so modified, be permitted to become effective as of December 17, 2003.

Comment Date: February 27, 2004.

5. The Connecticut Light and Power Company

[Docket No. ER04–408–001]

Take notice that on February 13, 2004, Northeast Utilities Service Company (NUSCO), on behalf of its affiliate, The Connecticut Light and Power Company (CL&P), filed the executed Substitute Original Service Agreement No. 104 (the Service Agreement) by and between CL&P and Lake Road Trust (Lake Road) under Northeast Utilities System Companies' Open Access Transmission Tariff No. 10 to replace Original Service Agreement No. 104 filed on January 16, 2004. NUSCO requests an effective date of December 31, 2003 for the Service Agreement, and requests any waivers of the Commission's regulations that may be necessary to permit such an effective date.

NUSCO states that a copy of this filing has been sent to Lake Road.

Comment Date: February 23, 2004.

6. MidAmerican Energy Company

[Docket No. ER04–497–001]

Take notice that on February 11, 2004, MidAmerican Energy Company (MidAmerican) tendered for filing an amendment to its filing of January 20, 2004, regarding proposed variations in the *pro forma* Large Generator Interconnection Procedures and Large Generator Interconnection Agreement based on existing regional reliability standards applicable to the Mid-Continent Area Power Pool of which MidAmerican is a member.

Comment Date: March 3, 2004.

7. Southern Company Services, Inc.

[Docket No. ER04–554–000]

Take notice that on February 13, 2004, Southern Company Services, Inc., acting on behalf of Georgia Power Company (GPC), filed with the Federal Energy Regulatory Commission a Notice of Cancellation of the Interconnection Agreement between Athens Development Company, L.L.C. and GPC designated as Service Agreement No. 461 under Southern Companies' Open Access Transmission Tariff, Fourth Revised Volume No. 5. An effective date of February 13, 2004 has been requested.

Comment Date: March 5, 2004.

8. Automated Power Exchange, Inc.

[Docket No. ER04–556–000]

Take notice that on February 13, 2004, Automated Power Exchange, Inc. (APX) tendered for filing seven (7) Notices of Termination to terminate its electricity exchange tariffs on file with the Commission effective April 15, 2004.

APX states that it has served a copy of the filing on all Participants in APX's electricity exchange markets.

Comment Date: March 5, 2004.

9. Lowell Power LLC

[Docket No. ER04–557–000]

Take notice that on February 13, 2004, Lowell Power LLC (Lowell Power) submitted for filing to the Commission a Notice of Succession adopting all applicable rate schedules, service agreements, tariffs and supplements thereto previously filed with the Commission by UAE Lowell Power LLC.

Comment Date: March 5, 2004.

10. Virginia Electric and Power Company

[Docket No. ER04–558–000]

Take notice that on February 13, 2004, Virginia Electric and Power Company, doing business as Dominion North Carolina Power, tendered for filing a letter of agreement between North Carolina Municipal Power Agency Number 3 (Power Agency) and Dominion North Carolina Power requested that the Commission make this filing effective on April 13, 2004, sixty days after the date of this filing.

Dominion North Carolina Power states that copies of the filing were served upon the Power Agency, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: March 5, 2004.

11. ISG Sparrows Point LLC

[Docket No. ER04–559–000]

Take notice that on February 13, 2004, ISG Sparrows Point LLC tendered for filing a Notice of Succession stating that ISG Sparrows Point LLC has adopted and succeeded to the rate schedules filed by ISG Sparrows Point Inc. In addition, ISG Sparrows Point LLC filed revised rate schedules.

Comment Date: March 5, 2004.

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. E4–387 Filed 2–24–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM02–4–002, PL02–1–002, RM03–6–001]

Critical Energy Infrastructure Information; Notice Soliciting Public Comment

February 13, 2004.

1. On July 23, 2003, the Federal Energy Regulatory Commission (the Commission) issued two final rules—Order Nos. 630–A and 643—involving critical energy infrastructure information (CEII).[1] Order No. 630–A, the order on rehearing of Order No. 630, which was issued on February 21, 2003,[2] provided further instruction on filing, handling, and processing requests for CEII found in Commission records. Order No. 643 was a companion rule that addressed then-existing requirements that companies make certain information publicly available that the Commission itself treated as non-public under newly-issued Order No. 630. The intent of Order No. 643 was to revise requirements that applied to the companies' release of CEII to be consistent with the way in which the Commission was treating that same information. No one sought rehearing of Order No. 643, and no one appealed either rule.

2. In each of the orders, the Commission noted that the two rules ''represent[ed] the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism.'' Order No. 630–A, 68 FR 46456 at P 18; Order No. 643, 68 FR 52089 at P 25. At the same time, the Commission committed to solicit public comment after six months in order to identify any potential problems with the treatment of CEII under the two orders. *Id.* This notice provides an opportunity for those with experience under Order Nos. 630, 630–A, and 643 to comment on their experiences under those orders. Such comments are due within 30 days of the date of issuance of this notice.

Background

3. The final rule issued in Order No. 630 was the result of over a year of consideration and discussion at the Commission. The effort began shortly after the attacks of September 11, 2001 with the issuance of a policy statement in PL02–1–000 (the Policy Statement), which discussed the recent removal of certain previously-public records from public access through the Public Reference Room, the Commission's document retrieval system, and the Internet. *See* Statement of Policy on Treatment of Previously Public Documents, 66 FR 52917 (Oct. 18, 2001), 97 FERC ¶ 61,130 (2001). The documents affected by the Policy Statement were documents including oversized maps that detailed the specifications of facilities licensed or certified by the Commission. The Policy Statement advised the public to request such information pursuant to the Freedom of Information Act (FOIA) process that is detailed in 5 U.S.C. 552 and in the Commission's regulations at 18 CFR 388.108.

4. Within a few months, the Commission issued a notice of inquiry (the NOI) as the next step in the process. In this same issuance, the Commission provided guidance to those filing information that might warrant non-public treatment under the Policy Statement. *See* Notice of Inquiry and Guidance for Filings in the Interim, 67 FR 3129 (Jan. 23, 2002), FERC Stats. & Regs. ¶ 35,542 (2002). The NOI labeled the information the Commission was seeking to protect as ''critical energy infrastructure information, or CEII,'' but asked for public comment on how to define the scope of the term. In addition, the NOI invited comment on the legal authority to protect CEII (including applicability of FOIA exemptions), requester verification and access issues, use of non-disclosure agreements, and the process for requesting CEII.

5. In September 2002, the Commission issued a notice of proposed rulemaking regarding CEII (the NOPR). 67 FR 57994 (Sept. 13, 2002); FERC Stats. & Regs. ¶ 32,564 (2002). The NOPR proposed an expanded definition of CEII to include detailed information about proposed facilities as well as those already licensed or certificated. In addition, it proposed a new process that would enable the Commission to restrict general public access to CEII while at the same time permitting those with a need for the information to obtain it in a timely manner. To that end, the NOPR proposed a supplement to the FOIA request process that would enable requesters to get access to CEII that was otherwise exempt from mandatory disclosure under the FOIA. Under the proposed process, requesters would have to provide limited personal information about themselves and their need for the information. This information would be considered in determining whether or not to grant the request. In addition, release would generally be contingent upon the requester agreeing to abide by the terms of an appropriate non-disclosure agreement.

6. On February 21, 2003, the Commission issued Order No. 630, the final rule on CEII. The final rule defined CEII to include information about proposed facilities, and to exclude information that simply identified the location of the infrastructure. In addition, the Commission's related definition of ''critical infrastructure'' was broad enough to cover virtually all facilities within its jurisdiction. The Commission declined to limit protection to ''high risk'' projects or facilities, opting instead to include virtually all facilities and components, including computer systems that control or form part of the energy infrastructure.

7. After receiving a request for rehearing on Order No. 630, the Commission issued Order No. 630–A on July 23, 2003, denying the request for rehearing, but amending the rule in several respects. Specifically, the order on rehearing made several minor procedural changes and clarifications, added a reference in the regulation regarding the filing of non-Internet public (NIP) information, a term first described in Order No. 630, and added a commitment to review the effectiveness of the new process after six months. This notice is intended to facilitate such a review.

8. As a separate but related matter, shortly after the Commission issued Order No. 630, it issued a notice of proposed rulemaking in RM03–6 that identified portions of the Commission's regulations that might require companies to disclose information that would be deemed CEII under the standards set forth in Order No. 630. *See* 68 FR 18538, (Apr. 21, 2003), FERC Stats. & Regs. ¶ 32,569 (2003). The goal

[1] Critical Energy Infrastructure Information, Order No. 630–A, 68 FR 46456 (Aug. 6, 2003), FERC Stats. & Regs. ¶ 31,147 (2003); Amendments to Conform Regulations with Order No. 630, Order No. 643, 68 FR 52089 (Sept. 2, 2003), FERC Stats. & Regs. ¶ 31,149 (2003).

[2] Critical Energy Infrastructure Information, Order No. 630, 68 FR 9857 (Mar. 3, 2003), FERC Stats. & Regs. ¶ 31,140 (2003).

in RM03–6 was to identify and implement any regulatory changes necessary to reconcile regulations requiring companies' disclosure of information with the standards and procedures in Order No. 630 for handling CEII that is submitted to or created by the Commission. In that way, the Commission attempted to ensure that protection of CEII was consistent whether the information was being sought through the Commission or through the company.

9. On July 23, 2003, the Commission issued Order No. 643, Amendments to Conform Regulations with Order No. 630 (Critical Energy Infrastructure Information Final Rule), 68 FR 52089 (Sept. 2, 2003), FERC Stats. & Regs. ¶ 31,149 (2003). The provisions in Order No. 643 were not intended to require that companies withhold CEII, rather they were intended to eliminate existing requirements to disclose information that may qualify for CEII treatment by the Commission. Order No. 643 explicitly stated that ''[t]here is nothing in these revisions that affects one entity's ability to reach appropriate arrangements for sharing CEII and the Commission in fact encourages such arrangements.'' 68 FR 52089 at P 16. The final rule made necessary revisions to provisions in 18 CFR Parts 4, 16, 141 and 157, and made the same commitment as in Order No. 630–A to review the effectiveness of the changes after six months. This notice is intended to facilitate the required ''public comment to determine whether submitters or requesters of CEII are experiencing any problems with the new processes.'' *Id.* at P 25.

Experience To Date

Order Nos. 630, 630–A, and 643 became effective on April 2, 2003, September 5, 2003, and October 23, 2003, respectively. Since April 2003, the Commission has received many filings where the submitters have requested non-public treatment of documents as containing CEII. At the same time, the Commission's staff has designated certain internally generated documents as CEII. Nevertheless, the Commission has received no complaints that any participant in a Commission proceeding could not get access to a document in order to participate meaningfully in the proceeding. Likewise, the Commission has received no complaints from other members of the public with a demonstrated need for a document containing CEII.[3] As the Commission indicated in Order No. 630, it intended to process requests for CEII as expeditiously as possible. That goal, in large part, as set out below, has been accomplished.[4]

10. Staff follows several steps in processing requests for CEII. Once a request is received, the appropriate staff searches for the document requested and provides the document to legal staff with a recommendation regarding whether or not the information qualifies as CEII. In cases where the requested document was submitted to the Commission with a request for CEII treatment, the Associate General Counsel for General Law notifies the submitter that the Commission has received a request for the document, and gives the submitter a period of at least five days in which to comment both on release to the particular requester and the non-public nature of the document itself. Each time a document is requested, the submitter receives a notice and opportunity to comment on release to that particular requester. With all requests, Commission staff reviews the document to determine whether it qualifies as CEII, verifies the requester's identity and need for the information requested, and seeks to obtain an appropriate non-disclosure agreement from the requester. Where the submitter of the document provides information regarding the request or requester, the staff factors such information into its recommendation to the CEII Coordinator. When the request involves a Commission-generated document, the CEII Coordinator releases the document to the requester at the time the decision to release is made. In cases where the document has been submitted to the Commission, the CEII Coordinator renders a decision on release, but release of the document is delayed by at least five days to give the submitter notice prior to release of the document. Because of the required notice and comment period and the notice prior to release, it usually takes staff more time to process requests for documents submitted to the Commission than those that are internally generated.

11. As of January 23, 2004, the Commission had received 126 requests for CEII filed under the procedures laid out in Section 388.113 of the Commission's regulations. *See* 18 CFR 388.113. These requests encompassed 2,230 documents. As of February 4, 2004, the Commission has granted or otherwise closed out 119 of these requests.[5] None of the remaining requests has exceeded the suggested time limits for responding to such requests. The Commission has denied only seven requests, either in whole or in part. In three instances, the Commission denied the request in whole or in part because the information was subject to the attorney-client, attorney work product or deliberative process privileges. The Commission generally does not intend to release such information, regardless of whether or not it falls within the definition of CEII. The Commission denied four other requests because the requester did not agree to the terms of an appropriate non-disclosure agreement. In addition to formal requests for CEII under 18 CFR 388.113, Commission staff also received 171 direct requests from owners or operators of facilities for 282 documents containing CEII relating to their own facilities. Staff satisfied those requests, generally within a few days of receipt.

12. As noted, Order Nos. 630–A and 643 committed to examine the functioning of the new rules after six months, and specified that the Commission would seek public comments regarding the processes at that time. This notice invites the public to comment on any problems they have experienced under the new procedures, or to suggest ways to improve the processes.

The Commission orders:

Comments regarding the processes established in Order Nos. 630, 630–A, and 643 should be filed with the Office of the Secretary within 30 days of the issuance of this order.

By direction of the Commission.

Magalie R. Salas,

Secretary.

[FR Doc. 04–4096 Filed 2–24–04; 8:45 am]

BILLING CODE 6717–01–P

[3] Commission action on CEII requests is delegated to the CEII Coordinator, whose decisions are subject to rehearing. No one has filed a request for rehearing of any of the decisions rendered to date.

[4] In the early months of processing CEII requests, the Commission experienced some technical difficulties, in particular with respect to the reproduction of Form No. 715. Those difficulties, which have now been resolved, caused some delay in responding to the initial requests for that form.

[5] In thirteen instances, the requested information was not CEII, and could be made public. In twelve other cases, the requesters and submitters dealt directly with each other, and the requests were subsequently withdrawn.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7626–5]

Great Lakes Legacy Act—Request for Projects

AGENCY: United States Environmental Protection Agency—Great Lakes National Program Office.

ACTION: Funding availability.

SUMMARY: The U.S. Environmental Protection Agency (USEPA) Great Lakes National Program Office (GLNPO) is requesting proposals for projects, for up to $10,000,000, addressing contaminated sediment problems in Great Lakes Areas of Concern located wholly or partially in the United States (U.S. AOCs) as outlined in the Great Lakes Legacy Act of 2002 (the Legacy Act).

DATES: The deadline for all Project proposals is 5 p.m. Central Standard Time, March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Cieniawski, (312) 353–9184, *cieniawski.scott@epa.gov* or Marc Tuchman, (312) 353–1369, *tuchman.marc@epa.gov.*

SUPPLEMENTARY INFORMATION: The Request for Projects (RFP) is available on the Internet at *http://www.epa.gov/glla.*

The purpose of this request is to solicit ideas for projects that would help to implement the Great Lakes Legacy Act. In order to receive funding under the Legacy Act, projects must be located in one of the 31 U.S. Great Lakes AOCs. Top priority will be given to projects that are geared toward on-the-ground remediation (*i.e.*, actual implementation of a remedial option) of contaminated sediments within a U.S. AOC. Remediation projects would include, but are not limited to, remedial options such as: Dredging, capping, monitored natural recovery, treatment technologies, or a combination of remedial alternatives for contaminated sediment.

The next priority level would be given to projects that seek to move a contaminated sediment site toward remediation. These projects could include: Site characterizations, site assessments, source identification/source control, monitoring, remedial alternatives evaluations and short-term/long-term effects analyses.

Please note that this Legacy Act RFP is a departure from GLNPO's annual funding guidance process. The funding guidance proposals for Great Lakes sediment grant projects are being solicited under a separate request for proposal process scheduled for release in January 2004.

Additionally, the Legacy Act program is not a grants program. The process for selecting Legacy Act projects is not a grants competition, but it is based on the development of a negotiated Project Agreement (PA) between USEPA and the non-federal sponsor. USEPA will consider projects based on the extent to which they meet the required components of the Legacy Act and this RFP.

The non-federal share of the cost of a project shall be at least 35% of the total project costs and 100% of cost of operation and maintenance of the project. It is the responsibility of the non-federal sponsor to secure the non-federal share of project costs. The non-federal share may include the value of in-kind services contributed by the non-federal sponsor, and may include funds or in-kind services provided pursuant to an administrative order on consent or a judicial consent decree. The non-federal share of the cost of a project may not include any funds paid pursuant to, or the value of any in-kind service performed under, a unilateral administrative order or court order.

GLNPO will review Legacy Act project proposals as they are received. GLNPO intends to enter into PA discussions with project applicants that meet the required components outlined in the RFP. With a limited amount of funds available in FY04, it is expected that the initial projects that result in a PA will be funded with FY04 funds, to the extent they are available. Other projects that result in a PA will be dependent upon funding, if any, received for the Act in FY05. If necessary, GLNPO will consider, but is not required to release, an additional solicitation for projects to be funded from FY05 appropriations.

Funding (through project agreements) is available pursuant to section 118(c) of the Federal Water Pollution Control Act (33 U.S.C. 1268(c)). States, tribes, industry, non-governmental organizations, and other stakeholders are eligible to apply.

Dated: January 29, 2004.

Gary V. Gulezian,

Director, Great Lakes National Program Office.

[FR Doc. 04–4126 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0381; FRL–7338–5]

Benfluralin; Availability of Risk Assessments (Interim Process)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996. These risk assessments are the human health and environmental fate and effects risk assessments and related documents for benfluralin. Benfluralin is a dinitroaniline herbicide registered for use on lettuce; animal feed crops; non-bearing fruits; and berries; commercial and residential turf; and ornamentals. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure that pesticide decisions are transparent and based on the best available information.

DATES: Comments, identified by the docket identification (ID) number OPP–2003–0381, must be received on or before April 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diane Isbell, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8154; e-mail address: *isbell.diane@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders may be interested in obtaining the risk assessments for benfluralin, including environmental, human health, and agricultural advocates; the chemical industry;

pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0381. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on 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.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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 these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. 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 in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0381. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0381. 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 Unit I.C.2. 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0381.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0381. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

B. 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. 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 electronically 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 listed under **FOR FURTHER INFORMATION CONTACT**.

C. 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 copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's interim public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for benfluralin, available in the individual pesticide docket. Benfluralin is a dinitroaniline herbicide registered for use on lettuce; animal feed crops; non-bearing fruits and berries; commercial and residential turf; and ornamentals. Like other REDs for pesticides developed through the interim process, the benfluralin RED will be made available to the public for comment.

EPA and the United States Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the organophosphate pilot process to the public participation process that will be used for non-organophosphates, such as benfluralin, EPA and the USDA have adopted an interim public participation process. For the past 3 years, EPA has been using this interim process in reviewing many non-organophosphate pesticides completing tolerance reassessment and reregistration. The interim public participation process ensures public access to the Agency's risk assessments while also allowing EPA to meet its reregistration commitments. It takes into account that the risk assessment development work on these pesticides is substantially complete, and that related risk issues are not extremely complex. The interim public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. The USDA may hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA participates in USDA's meetings and conference calls with the public. This feedback is used to complete the risk management decisions and the RED. EPA conducts a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under the interim process may be made available for another public comment period, depending on the complexity of the decision and the level of stakeholder interest.

Included in the public version of the official record are the Agency's risk assessments and related documents for benfluralin. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The benfluralin risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: February 17, 2004.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–3939 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0348; FRL–7339–7]

Propanil; Availability of Reregistration Eligibility Decision Document for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces availability and starts a 60–day public comment period on the Reregistration Eligibility Decision (RED) document for the herbicide propanil *N*-(3,4-dichlorophenyl)propanamide. The Agency has completed its review of the available data and public comments received related to the risk assessments for propanil, and based on its review, EPA has identified risk mitigation measures that the Agency believes are necessary to address the human health and environmental risks associated with the current use of propanil.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0348, must be received on or before April 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0001; telephone number: (703) 306–0327; fax number: (703) 308–8041; e-mail address: *rodia.carmen@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may; however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) or the Federal Food, Drug and Cosmetic Act (FFDCA); environmental, human health, and agricultural advocates; pesticide users; and members of the public interested in the use of pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0348. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 22202–4501. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. To access RED documents and RED fact sheets electronically, go directly to the Office of Pesticide Program's Home Page at *http://www.epa.gov/pesticides/reregistration/status.htm*.

An electronic version of the official public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://cascade.epa.gov/RightSite/dk_public_home.htm* 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 ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA Dockets. EPA's policy is that copyrighted material will not be placed in EPA Dockets 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 Dockets. 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 Dockets. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA Dockets.

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 Dockets 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 Dockets. 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 Dockets. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA Dockets. Where practical, physical objects will be photographed, and the photograph will be placed in EPA Dockets along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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 these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. 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 in this unit, 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 if additional information is needed regarding the substance of your comment. The Agency'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 Dockets. 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 Dockets to submit comments electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://cascade.epa.gov/RightSite/dk_public_home.htm*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0348. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0348. In contrast to EPA Dockets, 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 Dockets, 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 Dockets.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0001, Attention: Docket ID Number OPP–2003–0348.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, 22202–4501, Attention: Docket ID Number OPP–2003–0348. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA Dockets or by e-mail. 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 electronically 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 Dockets. 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 Dockets without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date and **Federal Register** citation.

II. Background

A. What Action is the Agency Taking?

The Agency has issued a RED for the herbicide propanil. Under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1988, EPA is conducting an accelerated reregistration program to reevaluate existing pesticides to make sure they meet current scientific and regulatory standards. The data base to support the reregistration of propanil is substantially complete and the pesticide's risks have been mitigated so that it will not pose unreasonable risks to people or the environment when used according to its approved labeling.

In addition, EPA is reevaluating existing pesticides and reassessing tolerances under the Food Quality Protection Act (FQPA) of 1996. The RED also presents the Agency's tolerance reassessment decision for propanil, which includes the consideration of risk to infants and children for any potential dietary, drinking water, dermal, inhalation or oral exposures. The Agency's June 2002 tolerance reassessment decision for propanil was based on the data required for reregistration, the current guidelines for conducting acceptable studies to generate such data, and published scientific literature. Propanil has been found to meet the FQPA safety standard.

The Agency has found that the current uses of propanil on rice and turf are eligible for reregistration, provided the changes specified in the RED are made to the labels. The small grain use has been voluntarily cancelled.

All registrants of pesticide products containing the active ingredient propanil will be sent a copy of the RED, and must respond to the labeling requirements and product-specific data requirements (if applicable) within 8 months of receipt.

The reregistration program is being conducted under Congressionally mandated time frames, and EPA recognizes both the need to make timely reregistration decisions and to involve the public. Therefore, EPA is issuing this RED with a 60-day comment period. Although the 60-day public comment period does not affect the registrant's response due date, it is intended to provide an opportunity for public input and a mechanism for initiating any necessary amendments to the RED. If any comment significantly affects the RED, the Agency will amend the RED by publishing the amendment in the **Federal Register**.

B. What is the Agency's Authority for Taking this Action?

The legal authority for this RED falls under FIFRA, as amended in 1988 and 1996. Section 4(g)(2)(A) of FIFRA directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine

whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product-specific data on individual end-use products, and either reregistering products or taking ''other appropriate regulatory action.''

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: February 17, 2004.

Peter Caulkins,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E4–388 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0228; FRL–7344–7]

Acequinocyl; Notice of Filing Pesticide Petitions to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2003–0228, must be received on or before March 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Marilyn Mautz, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6785; e-mail address: *mautz.marilyn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2003–0228. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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 these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. 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 in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2003–0228. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0228. 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 Unit I.C.2. 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0228.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2003–0228. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. 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. 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 electronically 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of these petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petitions is printed below as required by FFDCA section 408(d)(3). The summary of the petitions was prepared by the petitioner and represents the view of the petitioner. The petitions summaries announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the

pesticide chemical residues or an explanation of why no such method is needed.

Arvesta Corporation

PP 2F6440 and 3F6595

EPA has received pesticide petitions (2F6440 and 3F6595) from Arvesta Corporation, 100 First Street, Suite 1700, San Francisco, CA 94105 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for the combined residues of acequinocyl (3-dodecyl-1,4-dihydro-1,4-dioxo-2-naphthyl acetate) and its metabolite 2-dodecyl-3-hydroxy-1,4-naphthoquinone expressed as acequinocyl equivalents in or on the raw agricultural commodities as follows:

PP 2F6440. Fruit, pome group at 0.4 parts per million (ppm); apple, wet pomace at 1.0 ppm; fruit, citrus, group at 0.3 ppm; orange, oil at 30 ppm; almond and pistachio at 0.01 ppm; almond, hulls at 1.5 ppm; cattle, meat, and kidney at 0.01 ppm; cattle, liver, and fat at 0.02 ppm; and milk at 0.01 ppm.

PP 3F6595. Strawberries at 0.4 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The nature of the residues of acequinocyl in plants is adequately understood based on three crops: Apples, oranges, and eggplant. The major residue in all plant metabolism studies is acequinocyl. A minor but significant metabolite is acequinocyl-OH (2-dodecyl-3-hydroxy-1,4-naphthoquinone). The proposed tolerance expression is the parent, acequinocyl and its hydroxy metabolite, acequinocyl-OH.

2. *Analytical method*. The analytical methods to quantitate residues of acequinocyl and acequinocyl-OH in/on fruit crops, almond nutmeats, and hulls utilize high pressure liquid chromatography (HPLC) using mass spectrometric/molecular size (MS/MS) detection. The analytical method to quantitate acequinocyl and acequinocyl-OH in various animal tissues and milk utilizes the same principles as in the crop method. After cleanup the purified extract is submitted for HPLC analysis using MS/MS detection. The target limit of quantitation (LOQ) for all matrices is 0.01 ppm.

3. *Magnitude of residues*. The proposed use of acequinocyl calls for a maximum application rate of 2 applications at 0.3 lb active ingredient per acre per application, with a 21–day interval between applications. The pre-harvest interval is 14 days for pome fruit, 7 days for citrus, almond, and pistachio and 1–day for strawberries.

i. *Pome fruit*. The maximum residues expressed as acequinocyl equivalents were 0.23 ppm in apple and 0.05 in pear. The results of the apple processing study indicated that acequinocyl residues do not concentrate in apple juice but do concentrate in wet apple pomace with a concentration factor of 3.5.

ii. *Citrus*. The maximum residues expressed as acequinocyl equivalents were 0.18 ppm in oranges, 0.08 ppm in grapefruit and 0.11 ppm in lemons. The results of the orange processing study indicated that acequinocyl residues do not concentrate in orange juice or dry pulp but do concentrate in the orange oil with a concentration factor of 165.

iii. *Almonds*. All residues in nutmeat were <0.01 ppm (LOQ). The maximum residues expressed as acequinocyl equivalents in hulls was 1.3 ppm.

iv. *Strawberry*. The maximum residues expressed as acequinocyl equivalents in/on strawberry fruit were 0.36 ppm.

The crop field trial data are adequate to support the proposed tolerances of 0.4 ppm for pome fruit, 0.3 ppm for citrus, 0.01 ppm for almond and pistachio, 1.5 ppm for almond hulls, 1.0 ppm for apple wet pomace, 30 ppm for orange oil and 0.4 ppm for strawberry fruit.

B. Toxicological Profile

1. *Acute toxicity*. Acequinocyl technical has low acute, dermal and inhalation toxicity in laboratory animals. The oral lethal dose $(LD)_{50}$ (male and female) in the rat and mouse was >5,000 milligrams/kilogram (mg/kg). The dermal LD_{50} (male and female) was >2,000 mg/kg. The inhalation lethal concentration $(LC)_{50}$ was reported as >0.84 milligram/Liter (mg/L). In the eye and dermal irritation studies, acequinocyl technical was not an eye or skin irritant to rabbits and was not a skin sensitizer in guinea pigs.

2. *Genotoxicity*. Acequinocyl was found to be negative in the Ames reverse mutation, mouse lymphoma, Chinese hamster lung (CHL) chromosome aberration and mouse micronucleus assays.

3. *Reproductive and developmental toxicity*—i. *Rat teratology*. Acequinocyl technical was administered by oral gavage to pregnant Sprague Dawley rats at dose levels of 0, 50, 150, 500, or 750 mg/kg/day. Common signs in the descendants included vaginal discharge, pallor, pale eyes, hypoactivity, piloerection, slow or irregular breathing, intra-uterine hemorrhage, and blood stained stomach and/or intestinal contents. Maternal no observed effect level (NOEL) = 150 mg/kg/day based on these signs. Developmental NOEL = 500 mg/kg/day based on increase in certain skeletal variants that may be attributed to the observed maternal toxicity.

ii. *Rabbit teratology*. Groups of New Zealand white rabbits received acequinocyl technical by gavage at doses of 0, 30, 60, or 120 mg/kg/day. Maternal NOEL = 60 mg/kg/day based on reduction in maternal body weight and 5 females were sacrificed at 120 mg/kg/day. Fetal NOEL = 60 mg/kg/day due to skeletal variations in the thoraco-lumbar ribs.

iii. *Rat reproduction study*. Acequinocyl technical was fed to 2-generations of male and female Sprague Dawley rats at dietary concentrations of 0, 100, 800, or 1,500 ppm (0, 7.3, 59, or 111 mg/kg/day for males and 0, 8.7, 69, or 134 mg/kg/day for females). Systemic and pup NOEL = 100 ppm (7.3 and 8.7 mg/kg/day).

iv. *Systemic*. Hemorrhage and swollen body parts were seen at 800 and 1,500 ppm in F1 males. At 800 and 1,500 ppm, treatment-related clinical signs, hemorrhagic effects, subcutaneous bleeding on body parts and/or cranium and/or brain were seen in the F1 pups. At 800 and 1,500 ppm toxicity seen in F2 pups included subcutaneous bleeding on body parts and/or cranium and/or brain at weaning.

4. *Subchronic toxicity*—i. *Rat feeding study*. Fischer rats received acequinocyl technical at dietary concentrations of 0, 100, 400, 1,600, or 3,200 ppm (0, 7.57, 30.4, 120, 253 mg/kg/day for males and 0, 8.27, 32.2, 129, 286 mg/kg/day for females respectively) for 13 consecutive weeks. Treatment-related yellow brown urine in all animals of both sexes at 400 ppm suggested the presence of the metabolite of the test material. Macroscopic examination on the surviving animals revealed no treatment-related abnormalities. At 3,200 and 1,600 ppm, macroscopic and microscopic examination of the mortalities revealed hemorrhaging of muscle and other organs. NOEL = 400 ppm (30.4 mg/kg/day for males and 32.2 mg/kg/day for females).

ii. *Mouse feeding study*. Groups of CD–1 (ICR) BR mice received acequinocyl technical by oral route at concentrations of 0, 100, 500, 1,000, or

1,500 ppm (0, 16, 81, 151, 295 mg/kg/day for males and 0, 21, 100, 231, 342 mg/kg/day for females respectively) for 13 weeks. At 100 ppm, there were hepatic histopathological lesions and an increase in relative liver weight. A clear NOEL for both sexes was not determined.

iii. *Dog feeding study*. Acequinocyl technical was administered via gelatin capsule to male and female Beagle dogs at dose levels of 0, 40, 160, 640, or 1,000 mg/kg/day once a day 7 days a week for 13 weeks. At 40, 160, and 640 mg/kg/day colored feces was observed in both sexes. At 160 and 640 mg/kg/day, treatment-related decrease in body weight gain in males and an increase platelet count for females was observed. Macroscopic and microscopic examinations on the surviving animals revealed no treatment-related abnormalities. A clear NOEL was not determined.

iv. *A 28-day dermal toxicity*. Groups of Sprague Dawley rats received daily dermal applications of acequinocyl technical at doses of 0, 40, 200, or 1,000 mg/kg/day for 6 hours/day for 28 days followed by a 14-day treatment free period only in the high dose group. There were no macroscopic findings. Red staining occurred on the back of the animals and was only seen in the morning after dosing. There was no evidence of systemic toxicity. NOEL = 1,000 mg/kg/day.

5. *Chronic toxicity*—i. *Dog feeding study*. Beagle dogs were dosed by capsule at 0, 5, 20, 80, or 320 mg/kg/day for 1-year with acequinocyl technical. Minor disturbances in platelet counts were observed in both sexes at 80 and 320 mg/kg/day. There were no treatment-related macroscopic histopathological findings. Colored feces and/or abnormally stained sawdust were observed for all treatment groups. Varying degrees of discoloration of the urine was observed for animals receiving 20 mg/kg/day or more. The discoloration was considered to be attributable to a colored metabolite of the test substance. NOEL = 20 mg/kg/day.

ii. *Rat feeding/oncogenicity study*. Groups of F344 rats received acequinocyl technical at dietary levels of 0, 50, 200, 800, or 1,600 ppm (0, 2.25, 9.02, 36.4, 74.0 mg/kg/day for males and 0, 2.92, 11.6, 46.3, 93.6 mg/kg/day for females respectively) for 2 years. NOEL = 200 ppm (9.02 and 11.6 mg/kg/day for males and females respectively). Corneal abnormalities and hypertrophy of the eye were observed in 800 ppm and 1,600 ppm males and 1,600 ppm females respectively. At 800 ppm and 1,600 ppm, prothrombin time (PT) was observed to be longer in males and shorter in females and activated partial thromboplastin time (APTT) longer in females. Reddish brown urine was observed in both males and females respectively. There was no incidence of tumors.

iii. *Mouse oncogenicity study*. Acequinocyl technical was administered in the diet of Crl:CD–1(ICR)BR mice at 0, 20, 50, 150, or 500 ppm for 80 weeks. NOEL = 20 ppm (lowest dose tested (LDT) equal to 2.7 and 3.5 mg/kg/day in males and females respectively), based on brown pigmented cells. At 50 and 500 ppm in both sexes, there was an increase incidence of fatty hepatocytes. Other associated findings were increased liver weight, slight increase in pale livers, or pale areas within livers. Glomerular amyloidosis was statistically increased in the 150 and 500 ppm males. Yellow brown urine was consistently found in both sexes at high dose. There was no increase in the incidence of tumors.

6. *Animal metabolism*. Sprague Dawley rats were dosed orally with acequinocyl labeled 14C-phenyl or 14C-dodecyl. Both labels were used in the single low dose (10 mg/kg) study. The high dose (500 mg/kg) and 14-day repeat dose studies (10 mg/kg/day) were conducted with 14C-phenyl acequinocyl only. Excretion was rapid, with most of the dose in the feces. Less than 15% of the radioactivity was found in the urine. Absorption was about 25–42% based on the bile duct cannulation studies, which found 20–33% of the administered dose in bile, plus 5–9% in urine plus cage wash. Acequinocyl was not detected in urine and was only a minor component (1–2%) in the feces. The major fecal metabolite (12–36%) was the 2-hydroxy-3-dodecyl-1,4-naphthalenedione (acequinocyl-OH or designated R1). Subsequent oxidation of the dodecyl chain yielded butanoic and hexanoic acids, the only measurable identified urinary metabolites. 2-(1,2-dioxotetradecyl)-benzoic acid comprised 19–40% of the radioactivity in the feces. There were no remarkable differences in metabolite disposition due to gender and no effect of pre-dosing for 2 weeks. The large dose slowed transit time and reduced absorption.

7. *Metabolite toxicology*. The toxicity of acequinocyl-OH is concurrently evaluated during toxicity testing because this metabolite is both a plant and animal metabolite and is formed in the course of toxicity tests and is considered not of toxicological concern.

8. *Endocrine disruption*. A standard battery of toxicity tests have been conducted on acequinocyl. No effects were seen to indicate that acequinocyl has an effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*. Acute and chronic risk assessments were conducted to assess dietary exposures from acequinocyl in food using dietary exposure evaluation model (DEEM) and the following input parameters: Tolerance level residues (including a residue value of 0.3 ppm for citrus dry pulp); consumption data from the United States Department of Agriculture (USDA) 1994–1998 Continuing Survey of Food Intakes by Individuals (CSFII); 100% crop treated for all commodities; default processing factors for all commodities; acute toxicological endpoint of 30.4 mg/kg body weight (bwt) no observed adverse effect level (NOAEL); 0.304 mg/kg bwt acute reference dose (RfD) from the 90-day rat subchronic study; chronic toxicological endpoint of 2.7 mg/kg bwt NOAEL; 0.027 mg/kg bwt (chronic RfD) from the chronic mouse study.

i. *Food*. Acute dietary food exposure estimates to acequinocyl were less than 100% of acute RfD for the total U.S. population at 2.21%, females 13–50 years at 1.43%, all infants (<1 year) at 4.81%, children 1 to 6 years at 6.33%. The most highly exposed population was children 1 to 3 years at 8.18%. The chronic dietary food exposure estimates to acequinocyl are less than 100% of chronic RfD for the total U.S. population at 5.6%, females 13–50 years at 3.0%, all infants (<1 year) at 12.4%. The most highly exposed population was children 1 to 6 years at 21.2%.

ii. *Drinking water*. The available environmental fate data indicate that acequinocyl does not persist in the environment nor does it have the ability to leach into ground water resources. Acequinocyl degrades rapidly in the environment. Aqueous photolysis T1/2: 14 minutes, soil photolysis T1/2: 2 days, aerobic soil metabolism (4 soils) T1/2: <3 days, aerobic aquatic metabolism T1/2: 0.39 day in water and sediment, hydrolysis T1/2: pH4 = 74 days, pH7 = 2.2 days, pH9 = 1.3 hours. Acequinocyl shows low soil mobility. Based on First Index Reservoir Screening Tool (FIRST) and screening concentration in ground water (SCI-GROW) models, for acute exposures, the drinking water estimated concentration (DWEC) of acequinocyl is estimated to be 1.561 parts per billion (ppb) for surface water and 0.006 ppb for ground water. The acute DWEC of 1.561 ppb is the peak day FIRST concentration. The DWEC for chronic exposures is estimated to be 0.024 ppb for surface water and 0.006 ppb for ground water. The chronic DWEC of

0.024 ppb is the annual average FIRST concentration. To determine drinking water exposure, drinking water levels of comparison (DWLOCs) were calculated and used as a point of comparison against the model estimates of the pesticide concentration in drinking water. For acequinocyl, the acute and chronic DWLOC values were greater than the estimated concentration DWEC in surface water and ground water for each population group. Therefore, exposures to acequinocyl in drinking water do not pose a significant human health risk.

2. *Non-dietary exposure*. There are no residential uses for acequinocyl.

D. Cumulative Effects

There is no information available to indicate that toxic effects produced by acequinocyl are cumulative with those of any other compound.

E. Safety Determination

1. *U.S. population*. The acute dietary food exposure to acequinocyl was estimated at 2.21% of acute RfD for the total U.S. population. The calculated DWLOCs ranged from 2,791 to 10,405 ppb for all the population subgroups. The surface water and ground water DWECs for acequinocyl were estimated to be 1.561 ppb and 0.006 ppb, respectively. Since the acute DWECs are less than the DWLOCs for all population subgroups, the acute aggregate risk estimates are below the level of concern. The chronic dietary food exposure to acequinocyl was estimated at 5.6% of chronic RfD for total U.S. population. The calculated DWLOCs ranged from 213 to 892 ppb for all the population subgroups. The surface water and ground water DWECs for acequinocyl were estimated to be 0.024 ppb and 0.006 ppb, respectively. Since the chronic DWECs are less than the DWLOCs for all population subgroups, the chronic aggregate risk estimates are below the level of concern.

2. *Infants and children*. The acute dietary food exposure to acequinocyl was estimated at 4.81% of acute RfD for all infants (<1 year), 6.33% of acute RfD for children 1 to 6 and 8.18% of acute RfD for children 1 to 2 (most highly exposed). The calculated DWLOCs ranged from 2,791 to 10,405 ppb for all the population subgroups. The surface water and ground water DWECs for acequinocyl were estimated to be 1.561 ppb and 0.006 ppb, respectively. Since the acute DWECs are less than the DWLOCs for all population subgroups including infants, the acute aggregate risk estimates are below the level of concern. The chronic dietary food exposure to acequinocyl was estimated at 12.4% of chronic RfD for all infants (<1 year), and 21.2% of chronic RfD for children 1 to 6 (most highly exposed). The calculated DWLOCs ranged from 213 to 892 ppb for all the population subgroups. The surface water and ground water DWECs for acequinocyl were estimated to be 0.024 ppb and 0.006 ppb, respectively. Since the chronic DWECs are less than the DWLOCs for all population subgroups including infants, the chronic aggregate risk estimates are below the level of concern.

F. International Tolerances

To date, no Codex, Canadian or Mexican tolerances exists for acequinocyl.

[FR Doc. 04–3936 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0030; FRL–7344–6]

Novaluron; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0030, must be received on or before March 26, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Daniel C. Kenny, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7546; e-mail address: *kenny.dan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0030. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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 these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. 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 in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0030. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0030. 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 Unit I.C.2. 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0030.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0030. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. 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. 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 electronically 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 listed under **FOR FURTHER INFORMATION CONTACT.**

E. 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 copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Makhteshim-Agan of North America, Inc.

PP 2F6430

EPA has received a pesticide petition (2F6430) from Makhteshim-Agan of North America, Inc. (MANA), 551 Fifth Avenue, Suite 1100, New York, NY 10176 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of novaluron in or on the raw agricultural commodity pome fruits (excluding pears) at 1.0 parts per million (ppm), apple pomace at 6.0 ppm, pears at 2 ppm, cottonseed at 0.3 ppm, cotton gin by-products at 17 ppm, tuberous and corm vegetables (Crop Subgroup 1–C) at 0.05 ppm, cattle meat at 0.3 ppm, cattle meat-by-products at 6.0 ppm, cattle fat at 6.0 ppm, cattle liver at 0.4 ppm, cattle kidney at 0.4 ppm, and milk at 0.4 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue of novaluron in plants is adequately understood based on acceptable apple, cabbage, cotton, and potato metabolism studies. These plant metabolism studies have demonstrated that novaluron does not metabolize and is non-systemic (does not translocate within the plant). The results observed in the plant and livestock metabolism studies show similar metabolic pathways. The residue of concern, which should be regulated, is the parent compound, novaluron, only.

2. *Analytical method.* An adequate analytical method, gas chromatography/electron capture detector (GC/ECD), is available for enforcing tolerances of novaluron residues in or on plant and animal commodities. The amount of novaluron in most crop matrices is determined using GC with ECD. GC is also used to determine residues of novaluron in milk, bovine fat, kidney, liver, and meat.

3. *Magnitude of residues*—i. *Pome fruits.* Field residue trials were conducted on pome fruits (total of 23 trials on apples including a processing study, and 10 trials on pears), in several locations in the U.S. and Canada (2000–2002). In view of the proposed use directions (maximum seasonal rate of 1 lb active ingredient per acre, up to 4 applications, pre-harvest-interval of 14 days), the maximum novaluron residue found on apples was 0.876 ppm, which is below the proposed tolerance of 1.0 ppm for pome fruit (excluding pears). The highest residues measured on pears following 6 applications at a seasonal rate of 2 lb active ingredient per acre were 1.9 ppm, which is below the proposed tolerance of 2 ppm. Residues in juice from apple processing were below 0.05 ppm, demonstrating that there was no concentration in juice and therefore no need for proposing a tolerance. The proposed tolerance for apple pomace of 6 ppm is supported by using the highest average residues measured in the field (0.774 ppm) multiplied by the established concentration factor of 7.2 from the available apple processing study.

ii. *Cotton.* Seventeen residue trials were conducted in the U.S. over a 2-year period (2000–2002). The novaluron residues in cottonseed ranged from less than 0.05 to 0.23 ppm, and in cotton gin by-products the residues ranged from 3.5 ppm to 14.8 ppm, following the proposed use directions. Therefore, tolerances of 0.3 ppm for cottonseed and 17 ppm for cotton gin by-products are being requested.

iii. *Tuberous and corm vegetable subgroup (Crop Subgroup 1–C).* A series of potato residue trials in support of the tuberous and corm vegetable subgroup was conducted over a 2-year period (1999–2000) in Europe (Germany, France, Spain, and Italy). Treatments were made twice at 0.022 lb active ingredient per acre with the last application 21 days before harvest, in addition to residue decline studies with sampling dates of 0, 3, 7, 14, and 21 days after the last application. No residues were detected above 0.01 ppm limit of quantitation (LOQ), even at sampling dates right after the last application. Data from field trials conducted in Oregon and Pennsylvania (2002), using an exaggerated rate of 0.25 lb active ingredient per acre at 21 and 7 days before harvest, also indicate that no measurable residues were detected (LOQ = 0.05 ppm). Therefore, the generated data set is in full support of the proposed tolerance of 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity.* In an acute oral toxicity study in rats, novaluron had a lethal dose $(LD)_{50}$ >5,000 mg/kg. A dermal toxicity study in rats resulted in an LD_{50} greater than 2,000 mg/kg. The lethal concentration $(LC)_{50}$ for acute

inhalation in rats was greater than 5.15 milligrams/Liter (mg/L). In rabbits, novaluron is not a skin irritant but it is a mild eye irritant. Novaluron is not a sensitizer in guinea pigs.

2. *Genotoxcity*. The mutagenic potential of novaluron was investigated in several *in vivo* and *in vitro* studies. Results in two Ames assays, an *in vivo* mouse micronucleus assay, an *in vitro* unscheduled DNA synthesis (UDS) assay, an *in vitro* cell mutation assay, and an *in vitro* human lymphocyte clastogenicity test were negative. Novaluron is therefore considered to have no potential to induce mutagenicity.

3. *Reproductive and developmental toxicity*—i. A 2-generation rat reproduction study was conducted with dose levels of 1,000, 4,000, and 12,000 ppm (74.2, 297.5, 894.9 mg/kg/day, and 84, 336.7, 1009.8 mg/kg/day for males and females, respectively). There were no effects on fertility or pregnancy at any dose. The no observed adverse effect level (NOAEL) was determined to be 12,000 ppm (894.9 and 1009.8 mg/kg/day for males and females, respectively).

ii. *Teratology studies were conducted in the rat and rabbit*. No treatment-related mortalities were observed in either study. No effect on survival, development or growth of fetuses was noted in either species in either study. The maternal and fetal NOAEL was determined to be 1,000 mg/kg/day (highest dose tested (HDT)) in the rat study. In the rabbit study the maternal and fetal NOAEL was 1,000 mg/kg/day. The fetal effect in the rabbit study was weight gain at 1,000 mg/kg/day. These two studies demonstrate that novaluron was not teratogenic in either rats or rabbits based on the study results.

4. *Subchronic toxicity*. Rats, mice, and dogs all show the same toxicologic response. Generally, novaluron induces small increases in methemoglobin; red cells are sequestered; and, compensatory hematopoiesis occurs. The severity of these changes is well within the physiological capacity of the animals and is judged not adverse.

Rats treated topically with novaluron in a 28-day study at 0, 75, 400, and 1,000 mg/kg/day did not show signs of systemic toxicity. Small treatment-related increases in methemoglobin were seen in both sexes at 1,000 mg/kg/day and in females at 400 mg/kg/day. The highest methemoglobin value seen in females was 1.28% compared with 0.86% in controls. Organ weights, macroscopic and microscopic examination of organs and tissues did not reveal any treatment-related changes.

i. *Two 13-week rat studies were conducted*. In one study, doses were administered at 50, 100, 200, 400 ppm (3.52, 6.93, 13.83, 27.77 mg/kg/day and 4.38, 8.64, 17.54, and 34.39 mg/kg/day for males and females, respectively). The NOAEL was 400 ppm, the HDT (27.77 and 34.39 mg/kg/day for males and females, respectively). In the second 13-week rat study, doses were administered at 50, 100, 10,000, and 20,000 ppm (4.2, 8.3, 818.5, 1666.9 mg/kg/day and 4.7, 8.9, 871, 1820.6 mg/kg/day for males and females, respectively). The NOAEL was determined to be 8.3 mg/kg/day. The lowest observed adverse effect level (LOAEL) of 818.5 mg/kg/day, is based on histopathological parameters in the spleen.

ii. A 13-week mouse study was conducted with dose levels of 30, 100, 1,000, 10,000 ppm (4.2, 12.8, 135.9, 1391.9 mg/kg/day and 4.7, 15.2, 135.6, 1493.1 mg/kg/day, for males and females, respectively). The NOAEL was determined to be 100 ppm (12.8 and 15.2 mg/kg/day, male and females, respectively). The LOAEL was 1,000 ppm (135.9 and 135.6 mg/kg/day, males and females, respectively) based on increased body weight gain, low erythrocyte counts, and secondary splenic changes. There were no clinical treatment-related signs noted.

iii. *Two 13-week dog studies were conducted*. One study resulted in an NOAEL of 100 mg/kg/day and a LOAEL of 300 mg/kg/day based on low erythrocyte counts and secondary splenic and liver changes. No clinical treatment-related signs were noted. Another study, was conducted using only one dose level of 10 mg/kg/day. There were no clinical or histopathological treatment-related signs and the NOAEL was determined to be 10 mg/kg/day.

5. *Chronic toxicity*—i. Chronic toxicity and oncogenicity was evaluated in the rat, mouse and dog. The rat chronic toxicity and oncogenicity was conducted with dose levels of 25, 700, 20,000 ppm (1.25, 35, 1,000 mg/kg/day). The no observed effect level (NOEL) was 25 ppm (1.25 mg/kg/day) based on methemoglobin. There was no evidence of carcinogenicity in this study. A mouse chronic toxicity study was conducted with dose levels of 30, 450, 7,000 ppm (4.5, 67.5, 1,050 mg/kg/day). The NOEL was 30 ppm (4.5 mg/kg/day) based on methemoglobin. There was also no evidence of carcinogenicity in this study. Chronic toxicity was investigated in dogs using dose levels of 10, 100, 1,000 mg/kg/day. The NOEL of 100 mg/kg/day was based on methemoglobin.

ii. A reference dose (RfD) of 0.083 mg/kg/day has been established for novaluron. The RfD is based on a subchronic rat study with a NOAEL of 8.3 mg/kg/day, based on histopathological parameters in the spleen. An uncertainty factor (UF) of 100 is used.

iii. The proposed classification of novaluron is Group E (not likely human carcinogen) due to results of oncogenicity studies that show no evidence of carcinogenicity.

6. *Animal metabolism*. Metabolism studies in rats and goats were conducted with the parent material labeled in both the difluorophenyl and chlorophenyl moieties.

Rats absorb little novaluron when it is administered orally. More than 90% of the dietary administered chlorophenyl $^{14}C(U)$ novaluron is recovered in the feces. When the diflurophenyl ring of the molecule is labeled, the recovered ^{14}C activity in the feces is lower but still above 75%. The difference is thought to reflect intestinal metabolism by microbial flora and the higher absorption of the diflurophenyl metabolites.

The parent molecule as well as its degradates are absorbed from the gastrointestinal tract (GI). All parent material is metabolized either upon initial entry into the systemic circulation or, if sequestered to the fat, upon its depuration back to the systemic circulation. There is no intact novaluron found in the urine. Novaluron's high octanol-water partition coefficient is responsible for its preferential movement to fat. The half-life in fat calculated from the rat metabolism study is approximately 55 hours.

Two groups of metabolites are formed after oral administration of novaluron. One group is typified by the aniline metabolite 3-chloro-4-(1,1,2-trifluoro-2-trifluoromethoxyethoxy) aniline, referred to as 3–TFA. The other group of metabolites is typified by 2,6-difluorobenzoic acid is from the diflurophenyl moiety of the molecule. Nearly all the metabolites are formed at a level of 1% or less of the applied dose. They are rapidly excreted.

The metabolism in goats mimics that seen in rats.

7. *Metabolite toxicology*. Makhteshim-Agan of North America Inc., has determined that there are no metabolites of toxicological concern and therefore, no metabolites need to be included in the tolerance expression and require regulation.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of novaluron have been conducted.

However, inspection of in-life data from toxicology studies does not indicate that novaluron is an endocrine disruptor. Specifically, endocrine organ weights (e.g., thyroid, testes, ovaries, pituitary from the 2-generation study) were not adversely affected by novaluron. Milestones of sexual development were not affected by novaluron; and, reproduction was not adversely affected. Based on these observations, there is no evidence to suggest that novaluron has an adverse effect on the endocrine system.

C. Aggregate Exposure

Dietary exposure. Tolerances are proposed for residues of novaluron in or on pome fruit (excluding pears), apple pomace, pears, cottonseed, cotton gin by-products, tuberous, and corm vegetables, cattle meat, fat, liver, kidney, meat by-products, and milk. For the purpose of assessing the potential dietary exposure for these proposed tolerances, an exposure assessment was conducted using Exponent's Dietary Exposure Evaluation Model (DEEM) software, consumption data derived from the 1994–1998 United States Department of Agriculture (USDA) Continuing Surveys of Food Intake by Individuals (CSFII), residue levels at proposed tolerance levels, and projected percent crop treated for cotton and pome fruit at market maturity, and assuming 100% crop treated for potatoes.

1. *Food*—i. *Acute dietary exposure*. No acute dietary assessments were conducted since no toxicological endpoint attributable to a single exposure was identified in the available toxicology studies, including the rat and rabbit developmental studies.

ii. *Chronic dietary exposure*. The appropriate RfD value for novaluron is 0.083 mg/kg/day, based upon the NOAEL of 8.3 mg/kg/day from the 13-week oral rat study and an UF of 100. The chronic dietary exposure estimate for the overall U.S. population is 1.5% of the RfD of 0.083 mg/kg/day. Children 1 to 2 years old, the most exposed population subgroup, utilize 7.6% of the RfD. The chronic exposure estimates for the overall U.S. population and 32 population subgroups, including infants and children, were less than 8% of the RfD. Based on these exposure estimates, Makhteshim-Agan of North America, Inc., concludes that there is reasonable certainty of no harm for the use of novaluron on pome fruit, cotton, tuberous, and corm vegetables.

2. *Drinking water*. A comparison of the calculated drinking water level of concern (DWLOC) value to the drinking water estimated concentration (DWEC) is made. If the DWLOC exceeds the DWEC value then there is reasonable certainty that no harm will result from the short-term or the intermediate-term aggregate exposure. There are no monitoring data for novaluron, so the Food Quality Protection Act (FQPA) Index Reservoir Screening Tool (FIRST) model was used to estimate a surface water residue. Estimated DWLOC values are 767 parts per billion (ppb) for children (1 to 2 years old), 2,470 ppb for adult females, and 2,861 ppb for the U.S. population. Since the calculated DWLOC values for the U.S. population and all its subgroups considerably exceed the modeled DWEC of 0.14 ppb in surface water, Makhteskim-Agan of North America Inc., concludes that there is reasonable certainty that no harm will result from aggregate (food and water) exposure to novaluron residues.

D. Cumulative Effects

To Makhteskim-Agan of North America's Inc., knowledge, there are currently no available data or other reliable information indicating that any toxic effects produced by novaluron would be cumulative with those of other chemical compounds; thus only the potential risks of novaluron have been considered in this assessment of its aggregate exposure.

E. Safety Determination

1. *U.S. population*. No acute dietary assessment was conducted because there is no toxicological endpoint attributable to a single exposure. A conservative chronic exposure analysis was conducted, using tolerance level residues, with adjustments for percent crop treated at product maturity (cotton and pome fruits), and no adjustment for potatoes (100% treated). The chronic novaluron exposure is low, accounting for 0.8% to 7.6% of the RfD, depending on the population subgroup. The chronic exposure for the U.S. population is 0.001243 mg/kg/day, which uses 1.5% of the RfD. The most sensitive population subgroup, children 1 to 2 years old, has a chronic exposure of 0.006339 mg/kg/day, which utilizes only 7.6% of the RfD. Based on the lack of acute toxicity and the chronic exposure analyses, Makhteskim-Agan of North America Inc., concludes that there is reasonable certainty that no harm will result from acute and chronic exposure to novaluron.

2. *Infants and children*—i. *General*. Data from rat and rabbit developmental toxicity studies and a 2-generation rat reproduction study have been used to assess the potential for increased sensitivity of infants and children. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to reproductive and other effects on adults and offspring from prenatal and postnatal exposure to the pesticide. FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children to account for prenatal and postnatal toxicity and the completeness of the data base. Makhteskim-Agan of North America Inc., concludes that the toxicology data base for novaluron regarding potential prenatal and postnatal effects in children is complete according to existing Agency data requirements and does not indicate any developmental or reproductive concerns.

ii. *Developmental toxicity studies*. In the rat developmental study, the maternal NOAEL was determined to be 1,000 mg/kg/day based on slight increase in body weight gain and food consumption and the fetal NOAEL was determined to be 1,000 mg/kg/day, the HDT. There was no effect on survival, development or growth of the fetuses. There were no developmental effects noted in the rabbit study, even at the limit dose level (1,000 mg/kg/day), however, slight maternal toxicity (body weight effects) was observed at the limit dose level.

iii. *Reproductive toxicity studies*. There was no evidence of adverse effects on reproductive capability, fertility or pregnancy, observed at any dose level in the rat 2-generation reproductive study. However, there was increased bodyweight and spleen weight, and hemosiderosis of the spleen at the high dose. The NOAEL was 894.9 in males and 1009.8 mg/kg/day in females, the HDT.

iv. *Conclusion*. Based on the absence of fetal effects and pup toxicity in any of the reference studies, Makhteskim-Agan of North America Inc., concludes that reliable data support the use of the standard 100-fold UF, and that an additional UF is not needed to protect the safety of infants and children. In addition, the RfD is based on a NOAEL of 8.3 mg/kg/day (from a 13-week rat study), which is already more than 120-fold lower than the NOAEL in the rabbit developmental toxicity study. Thus, the proposed RfD of 0.083 mg/kg/day is considered to be appropriate for assessing potential risks to infants and children and an additional FQPA safety factor is not warranted. As noted previously, the aggregate chronic exposure assessment utilizes less than 8% of the RfD for the entire U.S.

population and various population subgroups, including the most sensitive subgroup, children 1 to 2 years old. Therefore, Makhteskim-Agan of North America Inc., concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to novaluron residues.

F. International Tolerances

There are no Canadian, Mexican, or Codex maximum residue limits established for novaluron. Therefore, international harmonization is not an issue at this time.

[FR Doc. 04–3937 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0025; FRL–7345–5]

Gamma-Cyhalothrin; Notice of Filing a Pesticide Petition to Establish a Tolerance for a Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket identification (ID) number OPP–2004–0025, must be received on or before March 26, 2004

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: William G. Sproat, Jr., Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8587; e-mail address: *sproat.william@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0025. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA's Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID 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 these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. 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 in this unit, 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. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0025. 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 e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0025. 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 Unit I.C.2. 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: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0025.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, Attention: Docket ID Number OPP–2004–0025. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. 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. 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 electronically 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 listed under **FOR FURTHER INFORMATION CONTACT**.

E. 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 copies of 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 the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: February 12, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner's summary of the pesticide petition is printed below as required by FFDCA section 408(d)(3). The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the

pesticide chemical residues or an explanation of why no such method is needed.

Pytech Chemicals GmbH

PP 4F6812

EPA has received a pesticide petition (4F6812) from Pytech Chemicals GmbH, 9330 Zionsville Road, Indianapolis, IN 46268 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by adding gamma-cyhalothrin ((S)-α-cyano-3-phenoxybenzyl (Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoripropenyl)-2,2-dimethylcyclopropanecarboxylate) to the tolerance expression of lambda-cyhalothrin, ((S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,1-dimethylcyclopropanecarboxylate and (R)-alpha-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate). Gamma-cyhalothrin is the isolated active isomer of lambda-cyhalothrin. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Gamma-cyhalothrin relies on the metabolism data conducted on lambda-cyhalothrin, which has been thoroughly tested and is adequately understood.

2. *Analytical method*. An adequate analytical method is available for enforcement purposes.

3. *Magnitude of residues*. Gamma-cyhalothrin, the isolated active isomer, will be applied at half the application rates of lambda-cyhalothrin. Comparison studies of gamma-cyhalothrin versus lambda-cyhalothrin used on the representative crops of tomatoes, sweet corn, broccoli, and cottonseed prove that the established tolerances for lambda-cyhalothrin will be sufficient to cover the potential residues of gamma-cyhalothrin.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral lethal dose $(LD)_{50}$ was >50 milligrams/kilogram body weight (mg/kg bwt) in male rats and 55 mg/kg bwt in female rats, acute dermal LD_{50} was >1,500 mg/kg bwt in male rats and 1,643 mg/kg bwt in female rats and the 4-hour lethal concentration $(LC)_{50}$ for male rats was 40.2 milligrams/meter (mg/m^3) and, for female rats, 28.2 mg/m^3.

2. *Genotoxicity*. The following genotoxicity tests were all negative: *Salmonella*, *E.coli* reverse mutation assay, mouse bone marrow micronucleus test, *in vitro* chromosomal aberration in rat lymphocytes, and mouse lymphoma forward mutation assay.

3. *Reproductive and developmental toxicity*. A developmental toxicity study in rats given gavage doses of 0, 0.1, 0.5, and 2 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental no observed adverse effect level (NOAEL) is greater than 2 mg/kg/day, the highest dose tested (HDT). The maternal NOAEL and lowest observed adverse effect level (LOAEL) are established at 0.5 and 2 mg/kg/day, respectively, based on reduced body weight, body weight gain, and feed consumption.

4. *Subchronic toxicity*. A 90-day feeding study in rats fed doses of 0, 2.5, 10, 50, and 100 parts per million (ppm) with a NOAEL of 50 ppm and a LOAEL of 100 ppm based on mortality, decreased feed consumption, decreased body weights, and increased relative liver and kidney weight at 100 ppm.

5. *Chronic toxicity*. Gamma-cyhalothrin, and lambda-cyhalothrin are contained within the chemical cyhalothrin. Cyhalothrin consists of four isomers, lambda-cyhalothrin consists of two of these isomers and gamma-cyhalothrin is the single active isomer contained in both. The chronic studies were conducted on cyhalothrin.

6. *Metabolite toxicology*. The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, it is concluded that there is no need to discuss metabolite toxicity.

7. *Endocrine disruption*. No studies have been conducted to investigate the potential of gamma-cyhalothrin to induce estrogenic or other endocrine effects. However, no evidence of such effects has been noted in the battery of toxicity studies which have been conducted on cyhalothrin/lambda-cyhalothrin, and there is no reason to suspect that any such effects would be likely.

C. Aggregate Exposure

The Agency has conducted an extensive assessment of the aggregate exposure. Results are reported in the **Federal Register** of September 27, 2002 (FR 67 60902) (FRL–7200–1).

D. Cumulative Effects

For purposes of this request, it has been assumed that cyhalothrin (i.e., gamma-cyhalothrin, and lambda-cyhalothrin) does not have a common mechanism of toxicity with other substances.

E. Safety Determination

The Agency has conducted an extensive assessment of the aggregate exposure. Results are reported in the **Federal Register** of September 27, 2002.

F. International Tolerances

There are Codex maximum residue levels established or pending for residues of cyhalothrin, as the sum of all isomers, in or on the following crops and commodities.

Crop	MRL (mg/kg)
Apricots	0.2
Cabbage, head	0.2
Cherries	0.2
Cotton seed	0.02
Cottonseed, oil	0.02
Oil seed (including rapeseed oil)	0.02
Peaches	0.2
Plums	0.1
Pome fruit	0.1
Potatoes	0.02
Tree nuts (shelled and unshelled)	0.05

Canadian maximum residue levels of 0.1 ppm for pome fruit, stone fruit, and canola are established in Canada for lambda-cyhalothrin based on the ''negligible'' residue clause of Canadian Food and Drug Act Regulations (B.15.002(1)).

[FR Doc. 04–3938 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7626–9]

Generic Ecological Assessment Endpoints

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability.

SUMMARY: This notice announces the availability of a final report titled,

Generic Ecological Assessment Endpoints (EPA/630/P–02–004F), which was prepared by a U.S. Environmental Protection Agency Risk Assessment Forum Technical Panel.

DATES: This document will be available on or about February 25, 2004.

ADDRESSES: The document will be made available electronically through the RAF web site (*http://cfpub.epa.gov/ncea/raf/recordisplay.cfm?deid=55131.*) A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP), P.O. Box 42419, Cincinnati, OH 45242; telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695. Please provide your name, your mailing address, the title and the EPA number of the requested publication.

FOR FURTHER INFORMATION CONTACT: The Technical Information Staff, National Center for Environmental Assessment/Washington Office (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Telephone: 202–564–3261; fax: 202–565–0050; e-mail: *nceadc.comment@epa.gov.*

SUPPLEMENTARY INFORMATION: Ecological risk assessment is a process for evaluating the likelihood that adverse ecological effects may occur or are occurring as a result of exposure to one or more stressors. A critical early step in conducting an ecological risk assessment is deciding which aspects of the environment will be selected for evaluation. This step is often challenging because of the remarkable diversity of species, ecological communities, and ecological functions from which to choose and because of statutory ambiguity regarding what is to be protected.

The purpose of this document is to build on existing EPA guidance and experience to assist those who are involved in ecological risk assessments in carrying out this step, which in the parlance of ecological risk assessment is termed ''selecting assessment endpoints.'' The document describes a set of endpoints, known as generic ecological assessment endpoints (GEAEs), that can be considered and adapted for specific ecological risk assessments. The document is intended to enhance the application of ecological risk assessment at EPA, thereby improving the scientific basis for ecological risk management decisions. However, the document is not a regulation, nor is it intended to substitute for federal regulations. It describes general principles and is not prescriptive. Rather, it is intended to be a useful starting point that is flexible enough to be applied to many different types of ecological risk assessments. Risk assessors and risk managers at EPA are the primary audience; the document also may be useful to others outside the Agency.

Dated: February 19, 2004.

P. W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 04–4129 Filed 2–24–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; New Routine Uses

AGENCY: Farm Credit Administration.

ACTION: Notice of new routine uses; request for comments.

SUMMARY: The Farm Credit Administration (FCA) proposes to revise an existing system of records titled ''Inspector General Investigative Files,'' FCA–18, last published in 1992, maintained by FCA's Office of Inspector General (OIG). Two new routine uses are being added to comply with an effort by the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE) to conduct qualitative assessment reviews of investigative operations and for the purpose of reporting to the President and Congress on the activities of the OIG.

DATES: Any interested persons may submit written comments on this proposal by April 5, 2004. It will become effective without further notice on April 5, 2004 unless comments received on or before that date result in a contrary determination.

ADDRESSES: Comments should be submitted to the Counsel to the Inspector General, Office of the Inspector General, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. You may send comments by e-mail to *deane@fca.gov*. Copies of all comments we received will be available for review by interested parties at FCA headquarters.

FOR FURTHER INFORMATION CONTACT: Elizabeth M. Dean, Counsel to the Inspector General, Office of the Inspector General, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090, (703) 883–4036, TTY (703) 883–4359.

SUPPLEMENTARY INFORMATION: This publication satisfies the Privacy Act requirement that agencies publish an amended system of records notice in the **Federal Register** when there is a revision, change, or addition to the system of records. FCA's Office of Inspector General (OIG) has determined to amend FCA–18 to permit disclosure of records for the purpose of assessment reviews. The Homeland Security Act of 2002 (Pub. L. 107–296, Nov. 25, 2002) requires certain Inspectors General to ''establish an external review process for ensuring that adequate internal safeguards and management procedures continue to exist within each Office * * *''

The PCIE and the ECIE are establishing peer review processes that are designed to provide qualitative measurement against the Inspector General (IG) community standards to ensure that adequate internal safeguards and management procedures are maintained, foster high-quality investigations and investigative processes, ensure that the highest level of professionalism is maintained, and promote consistency in investigative standards and practices within the IG community. The FCA OIG has committed to undergoing qualitative assessment reviews of its investigations. Proposed routine use (12) will allow disclosure of information to authorized officials within the PCIE, the ECIE, the Department of Justice and the Federal Bureau of Investigation, as necessary, for the purpose of conducting qualitative assessment reviews of the OIG's investigative operations.

Proposed routine use (13) will allow the disclosure of information to the PCIE and the ECIE for their preparation of reports to the President and Congress on the activities of the Inspectors General.

As required by 5 U.S.C. 552a(r) of the Privacy Act, we have notified the Office of Management and Budget, the Committee on Government Reform of the House of Representatives, and the Committee on Governmental Affairs of the Senate of the new routine uses. The notice is published in its entirety below.

FCA–18

SYSTEM NAME:

Inspector General Investigative Files—FCA.

SYSTEM CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of the Inspector General (OIG), Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Subjects of OIG investigations relating to the programs and operations of the Farm Credit Administration. Subject individuals include, but are not limited to, current and former employees; current and former agents or employees of contractors or subcontractors, as well as current and former contractors and subcontractors in their personal capacity, where applicable; and other individuals whose actions affect the FCA, its programs or operations. Businesses, proprietorships, and corporations are not covered by this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to the investigation; internal staff memoranda; copies of subpoenas issued during the investigation, affidavits, statements from witnesses, transcripts of testimony taken in the investigation, and accompanying exhibits; documents, records, or copies obtained during the investigation; interview notes, documents and records relating to the investigation; opening reports, information or data relating to alleged or suspected criminal, civil, or administrative violations or similar wrongdoing by subject individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act Amendments of 1988, Pub. L. 100–504, amending the Inspector General Act of 1978, Pub. L. 95–452, 5 U.S.C. app. 3.

PURPOSE(S):

To document the conduct and outcome of investigations; to report results of investigations to other components of the FCA or other agencies and authorities for their use in evaluating their programs and imposition of criminal, civil, or administrative sanctions; to report the results of investigations to other agencies or other regulatory bodies for an action deemed appropriate, and for retaining sufficient information to fulfill reporting requirements; and to maintain records related to the activities of the Office of the Inspector General.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See the ''General Statement of Routine Uses.''

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12), to consumer reporting agencies as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3), in accordance with section 3711(f) of title 31.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The OIG Investigative Files consist of paper records maintained in file folders, cassette tapes of interviews and data maintained on computer diskettes. The folders, diskettes and cassette tapes are stored in file cabinets in the OIG.

RETRIEVABILITY:

The records are retrieved by the name of the subject of the investigation or by a unique control number assigned to each investigation.

SAFEGUARDS:

Records are maintained in lockable file cabinets in lockable rooms. Access is restricted to individuals whose duties require access to the records. File cabinets and rooms are locked during non-duty hours.

RETENTION AND DISPOSAL:

As prescribed in General Records Schedule 22, item 1b, OIG Investigative Files are destroyed 10 years after a case is closed. Cases that are unusually significant for documenting major violations of criminal law or ethical standards are offered to the National Archives for permanent retention.

SYSTEM MANAGER AND ADDRESS:

Inspector General, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

NOTIFICATION PROCEDURE:

Direct all inquiries about this system of records to: Privacy Act Officer, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

RECORD ACCESS PROCEDURES:

Same as above.

CONTESTING RECORD PROCEDURE:

Same as above.

RECORD SOURCES CATEGORIES:

Employees or other individuals on whom the record is maintained, non-target witnesses, FCA and non-FCA records, to the extent necessary to carry out OIG investigations authorized by 5 U.S.C. app.3.

SYSTEM(S) EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a(j)(2), records in this system are exempt from the provisions of 5 U.S.C. 552(a), except subsections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i), and corresponding provisions of 12 CFR 603.355, to the extent a record in the system of records was compiled for criminal law enforcement purposes.

Pursuant to 5 U.S.C. 552a(k)(2), the system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f), and the corresponding provisions of 12 CFR 603.355, to the extent the system of records consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2). *See* 12 CFR 603.355, as amended.

FCA–18

(12) A record may be disclosed to any official charged with the responsibility to conduct qualitative assessment reviews of internal safeguards and management procedures employed in investigative operations. This disclosure category includes members of the President's Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency, and officials and administrative staff within their investigative chain of command, as well as authorized officials of the Department of Justice and the Federal Bureau of Investigation.

(13) A record may be disclosed, as a routine use, to members of the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency for the preparation of reports to the President and Congress on the activities of the Inspectors General.

Dated: February 19, 2004.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 04–4049 Filed 2–24–04; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

A. Royal Shipping Line Inc. dba American, Royal Shipping Line, 6800 N. Shepherd, Houston, TX 77091. *Officer:* Michael Bashir Sarakbi, Vice President (Qualifying Individual).

Whisky Shippers and Movers, Inc., 461 East 99th Street, Brooklyn, NY 11236. *Officers:* Karron McSween, President (Qualifying Individual), Gregory Modesto, Vice President.

Filipinas Cargo Express, 1601 Daisy Tree Lane, Ceres, CA 95307. *Officers:* Edgar Cruda, Managing Partner (Qualifying Individual), Rey Tagaloguin, President.

Caricom Shipping, Inc., 5107 North Point Blvd., Sparrows Point, MD 21219. *Officers:* Lavonne Warner, Secretary (Qualifying Individual), Ansel Hall, President.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

BTL Group, Inc. dba E-World Cargo Inc., 7910 South 3500 East Bldg. B, Salt Lake City, UT 84121. *Officers:* Frank J. Gonzalez, Vice President (Qualifying Individual), Bret Miller, President.

W Logistics LLC dba W World Logistics, 169 Parsonage Road, Edison, NJ 08837. *Officer:* Ravi Mayor, President (Qualifying Individual).

Trans-America Express, 2575 Pointe Coupee, Chino Hills, CA 91709, *Officer:* Sulan Zhang, President (Qualifying Individual).

UT Freight Forwarders Ltd., 161–15 Rockaway Blvd., Jamaica, NY 11434. *Officers:* Shawn Mak, Asst. Vice President (Qualifying Individual), John Hwang, President.

Power T International Inc., 9102 Westpark Drive, Houston, TX 77063. *Officers:* Richard Tsai, President (Qualifying Individual), Lina Tsai, Manager.

Wastaki Freight International Inc., 9820 Atlantic Drive, Miramar, FL 33025. *Officers:* Patrick Walters, President (Qualifying Individual), Faith Walters, Vice President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Caribou International Incorporated, 2334 Loyanne Drive, Spring, TX 77373. *Officer:* Brian John Mensi, President (Qualifying Individual).

Harbor Trading Company, 4200 Creekside Avenue, Toledo, OH 43612. *Officers:* Teresa J. Ervin, Asst. Vice President (Qualifying Individual), Michael J. Langenhurst, President.

Famex International Shipping Inc., 120 Sylvan Avenue, Suite 5, Englewood Cliffs, NJ 07632. *Officers:* Fadi Kabbara, President (Qualifying Individual), Rola Kabbara, Vice President.

CBS Marine LC, 4850 NE 5th Avenue, #119, Boca Raton, FL 33431. *Officer:* Vadims Tjutins, Director (Qualifying Individual).

Dated: February 20, 2004.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–4202 Filed 2–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 4469F.
Name: A.C.M. Export Corporation.
Address: 12866 Reeveston, Houston, TX 77029.
Date Revoked: February 4, 2004.
Reason: Failed to maintain a valid bond.

License Number: 4530F.
Name: ACD Cargo, Inc.
Address: 1521 NW 82nd Avenue, Miami, FL 33126.
Date Revoked: January 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015893N.
Name: Altamar Shipping Services, Inc.
Address: 2212 East 5th Avenue, Tampa, FL 33605.
Date Revoked: January 27, 2004.
Reason: Failed to maintain a valid bond.

License Number: 015247N.
Name: Amerindias, Inc.
Address: 5220 NW 72nd Avenue, Bay A/3, Miami, FL 33166.
Date Revoked: January 23, 2004.
Reason: Failed to maintain a valid bond.

License Number: 014946N.
Name: Crane Cargo System, Inc.
Address: 8160 NW 71st Street, Suite 119–120, Miami, FL 33166.
Date Revoked: January 29, 2004.
Reason: Failed to maintain a valid bond.

License Number: 1718F.
Name: Inexco Corp. dba International Express.
Address: 220 East Grand Avenue, Suite N, San Francisco, CA 94080.
Date Revoked: January 14, 2004.
Reason: Failed to maintain a valid bond.

License Number: 1120NF.
Name: Inter-Continental Corp. dba Taurus Marine Line.
Address: 7964 NW 14th Street, Miami, FL 33126.
Date Revoked: January 23, 2004.
Reason: Failed to maintain valid bonds.

License Number: 71F.
Name: Karl Schroff & Associates, Inc.
Address: Bldg., C2NW A.I.O.P., Hook Creek Blvd. & 145th Avenue, Valley Stream, NY 11581.
Date Revoked: January 31, 2004.
Reason: Failed to maintain a valid bond.

License Number: 8449N.
Name: Mercury Container Service, Inc.
Address: 1201 Corbin Street, Elizabeth, NJ 07201.
Date Revoked: January 23, 2004.
Reason: Surrendered license voluntarily.

License Number: 16940N.
Name: PLS International LP dba PLS Lines.
Address: 2060 Pennsylvania Avenue, Monaca, PA 15061.
Date Revoked: October 29, 2003.
Reason: Failed to maintain a valid bond.

License Number: 2132F.
Name: Seaflet, Inc.
Address: 5475 NW 72nd Avenue, Miami, FL 33166.
Date Revoked: December 5, 2003.
Reason: Failed to maintain a valid bond.

License Number: 1199F.
Name: Suarez Shipping Services, Inc.
Address: 5413 NW 72nd Avenue, Miami, FL 33126.
Date Revoked: December 25, 2003.
Reason: Failed to maintain a valid bond.

License Number: 013266N.
Name: Trans-Aero-Mar, Inc.
Address: 1203 NW, 93rd Ct., Miami, FL 33172.
Date Revoked: January 19, 2004.
Reason: Failed to maintain a valid bond.

License Number: 4642F.
Name: Varko International, Corp.
Address: 7700 NW 73rd Ct., Medley, FL 33166.

Date Revoked: January 27, 2004.

Reason: Failed to maintain a valid bond.

License Number: 502F.

Name: William Riddle dba Carson M. Simon Co.

Address: 209–211 Chestnut Street, Philadelphia, PA 19106.

Date Revoked: January 23, 2004.

Reason: Failed to maintain a valid bond.

License Number: 016491NF.

Name: World International Cargo Transfer USA, Inc.

Address: 15832 S. Broadway Avenue, Suite D, Gardena, CA 90248.

Date Revoked: January 23, 2004.

Reason: Failed to maintain valid bonds.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–4201 Filed 2–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
016914NF	Air Sea Cargo Network, Inc., 33511 Western Avenue, Union City, CA 94587.	January 1, 2004.
015893N	Altamar Shipping Services, Inc., 2212½ E. 5th Avenue, Tampa, FL 33505.	January 28, 2004.
016254N	China United Transport, Inc., 17101 Gale Avenue, City of Industry, CA 91745.	January 14, 2004.
015871N	Continental Shipping Line, Inc., 274 Madison Avenue, Suite 1404, New York, NY 10016.	February 3, 2004.
017642N	Direct Shipping, Corp., dba Direct Shipping Line, 1371 South Santa Fe Avenue, Compton, CA 90221.	November 5, 2003.
3134F	Enterprise Forwarders, Inc., 2350 NW 93rd Avenue, Miami, FL 33172.	December 12, 2003.
17310N	J.M.C. Transport Corporation, 9133, South La Cienega Blvd., Suite 120, Inglewood, CA 90301.	December 4, 2003.
1199N	Suarez Shipping Services, Inc., 5413 NW 72nd Avenue, Miami, FL 33126.	December 25, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 04–4200 Filed 2–24–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 10, 2004.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Gregory T. Darga, Verona, Wisconsin, Jack D. Heding, Hillsboro, Wisconsin, Robert L. Hart, Elroy, Wisconsin, and Richard G. Busch, Gays Mills, Wisconsin; to acquire additional voting shares of Royal Bancshares, Inc., Elroy, Wisconsin, and thereby indirectly acquire additional voting shares of Royal Bank, Elroy, Wisconsin.

2. John E. Gorman, Hinsdale, Illinois, and Gary L. Svec, Naperville, Illinois; to acquire additional voting shares of Strategic Capital Bancorp, Inc., Champaign, Illinois, and thereby indirectly acquire additional voting shares of Strategic Capital Bank, Champaign, Illinois.

Board of Governors of the Federal Reserve System, February 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–373 Filed 2–24–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also

includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 19, 2004.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Webster Financial Corporation, Waterbury, Connecticut; to become a bank holding company by acquiring 100 percent of the voting shares of Webster Bank, Waterbury, Connecticut, upon its conversion to a national bank.

In connection with this application, Applicant to acquire Webster D & P Holdings, Inc., Waterbury, Connecticut, and thereby indirectly acquire 73.6 percent of Duff & Phelps, LLC and Duff & Phelps Securities, LLC, both of Chicago, Illinois, and thereby engage in financial advisory and agency transaction activities, pursuant to sections 225.28(b)(6)(iii), 225.28(b)(7)(i) and 225.28(b)(7)(iii) of Regulation Y.

B. Federal Reserve Bank of Cleveland (Nadine W. Wallman, Assistant Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. National City Corporation, Cleveland, Ohio; to merge with Provident Financial Group, Inc., Cincinnati, Ohio, and thereby indirectly acquire Provident Bank, Cincinnati, Ohio.

In connection with this application, Applicant to acquire 100 percent of Provident Investment Advisors, Inc., Cincinnati, Ohio, and thereby engage in financing and investment advisory activities, pursuant to section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, February 19, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E4–372 Filed 2–24–04; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of Meeting of the Advisory Committee on Blood Safety and Availability

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of meeting.

SUMMARY: The Advisory Committee on Blood Safety and Availability will meet to examine the question; what is the optimal practice of medicine in the donor room setting. The meeting will be entirely open to the public.

DATES: The Advisory Committee on Blood Safety and Availability will meet on Wednesday, April 7 and Thursday, April 8, 2004 from 8 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the Grand Hyatt Washington Hotel, 1000 H Street, NW., Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Jerry A. Holmberg, Executive Secretary, Advisory Committee on Blood Safety and Availability, Department of Health and Human Services, Office of Public Health and Science, 1101 Wootton Parkway, Suite 250, Rockville, MD 20852, (301) 443–2331, FAX (301) 443–4788, e-mail *jholmberg@osophs.dhhs.gov.*

SUPPLEMENTARY INFORMATION: Public comment will be solicited at the meeting. Public comment will be limited to five minutes per speaker. Those who wish to have printed material distributed to Advisory Committee members should submit thirty (30) copies to the Executive Secretary prior to close of business March 31, 2004. Those who wish to utilize electronic data projection in their presentation to the Committee must submit their material to the Executive Secretary prior to close of business March 31, 2004. In addition, anyone planning to comment is encouraged to contact the Executive Secretary at her/his earliest convenience.

Dated: February 18, 2004.

Jerry A. Holmberg,

Executive Secretary, Advisory Committee on Blood Safety and Availability.

[FR Doc. 04–4038 Filed 2–24–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date: March 4, 2004 9 a.m.–3 p.m., March 5, 2004 10 a.m.–3 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 505A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the Committee will review letters to the HHS Secretary on claims attachments and privacy. A presentation on health statistics for the 21st century is also planned with subsequent discussion. In the afternoon there will be a discussion of recommendations, reports and letters that the Committee is working on in selected areas including quality, and racial and ethnic data. On the second day the Committee will hear updates and status reports from the Department on several topics including HHS Data Council activities, responses to NCVHS reports and recommendations, clinical data standards adoption, the Consumer Health Informatics Initiative, and the HIPAA privacy rule implementation. In the afternoon the Committee will discuss its 6th annual report to Congress on HIPAA implementation. There will also be reports from the Subcommittees and discussion of agendas for future Committee meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS website (URL below) when available.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/,* where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: February 12, 2004.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 04–4168 Filed 2–24–04; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration; Delegation of Authority

Notice is hereby given that I have delegated to the Administrator, Health Resources and Services Administration (HRSA), title III, Section 307, ''International Cooperation,'' of the Public Health Service (PHS) Act, (42 U.S.C. 242*l*), as amended, as it pertains to the functions assigned to HRSA for international cooperation, to issue reports to Congress. This authority may be redelegated.

Previous delegations and redelegations made to officials within the Department of Health and Human Services for authorities under Section 307 of the PHS Act continue in effect.

This delegation shall be exercised under the Department's existing delegation and policy on regulations. I have ratified any actions taken by the HRSA Administrator or other HRSA officials which involved the exercise of this authority prior to the effective date of this delegation.

This delegation was effective on the date of signature.

Dated: February 19, 2004

Tommy G. Thompson,

Secretary, Department of Health and Human Services.

[FR Doc. 04–4167 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–1S–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: ''National Children's Study Pilot: Primary Care Practice-Based Research Networks (PBRNs).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)), AHRQ invites the public to comment on this proposed information collection.

This proposed information collection was previously published in the **Federal Register** on December 16, 2003 and allowed 60 Days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 Days for public comment.

DATES: Comments on this notice must be received by March 26, 2004.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

''National Children's Study pilot project to determine feasibility of NCS data collection in Primary Care Practices.''

The project is being conducted in response to a modification of an AHRQ RFP entitled ''Resource Center for Primary Care Practice-Based Research Networks (PBRNs)'' (issued under Contract 290–02–0008).

In January 2003 AHRQ requested that the PBRN Resource Center assess the potential for PBRNs to participate in the National Children's Study (NCS).

In 2000, Congress passed the Children's Health Act, authorizing an unprecedented study of the impact of the environment on children's health.

The goal of the NCS is to identify sufficient numbers of women of childbearing age to enroll 100,000 pregnant women into the NCS early in gestation, and then to enroll and follow their children through 21 years of age.

A key design issue for the NCS is the manner in which participants will be recruited and enrolled into the study. Previous research states that a well-established relationship between the researcher and the subject, convenient study location and active community ties bolster recruitment success and the likelihood of a parent to enroll their child in longitudinal studies. PBRNs consist mainly of non-academic, community-based primary care practices with well-established relationships with their subject population. PBRNs therefore offer a potentially valuable resource for identifying, enrolling, and following women and children for the NCS.

Recognizing this, AHRQ requested that the Resource Center participate in the design of a pilot study of PBRNs' ability to participate in the NCS. The proposed NC pilot study will test the ability of PBRNs to collect, process, and manage data similar to that which is expected to be collected and processed in the NCS.

This pilot study will allow the Resource Center to determine the factors that enable or hinder the collection of such data at primary care practices, as well as make an overall determination of the feasibility of PBRN practices' participation in the NCS.

The pilot study will collect data using several instruments and will involve multiple individuals at the clinic: (1) A trained interviewer will administer a questionnaire on medical and nutritional history; (2) the same trained interviewer will conduct a developmental assessment of each child; (3) a nurse or physician's assistant will collect vital signs and a urine specimen; (4) a physician will conduct a brief physical exam; and (5) study participants will complete self-administered questionnaires about the experience of participating in the study. The pilot study will evaluate the feasibility of having PBRNs participate in the NCS using several indicators:

The ability of practices to use self-administered questionnaires to collect and manage the medical and dietary history data of pregnant women and of children ages 1 and 5;

The ability of practices to effectively collect and manage data from a physical examination of study subjects (including health status and urine collection);

The ability of practices to facilitate a developmental assessment of children conducted at age one and age five;

The amount of burden data collection places on practices;

The characteristics of successful and unsuccessful practices in the study;

The ease of data collection across different patient populations and data collection modes and;

To make the necessary determinations, assessments and surveys will be conducted with PBRN practice patients as well as with a small number of patients who ordinarily receive care elsewhere, and PBRN staff will also be surveyed.

Methods of Collection

The data will be collected from 36 practices per respondent category, meaning 36 practices will collect data on pregnant women, 36 practices will collect data on children aged 1 and 5. It is expected that some practices will collect data on more than one respondent group. Each practice will recruit 14 patients per respondent group using convenience sampling procedures. A total of 504 pregnant

women and 504 children and their parents (half will be 1 year old and half will be 5 years old) will be involved in the data collection. Because a small proportion (20%) of patients will be asked to vising another practice participating in the pilot study in order to test the ability of practices to collect and manage data on non-member patients, the NCS will require some providers to collect data on some patients they do not normally care for.

The method of data collection for the patient assessment includes self-administered questionnaires, physical examination, and collection of a urine sample.

The practice will contact potential participants through a mailing and a phone call. Non-respondents will not be contacted again.

ESTIMATED ANNUAL RESPONDENT BURDEN

Data collection	Number of respondents	Estimated time per respondent in hours	Estimated total burden hours	Average hourly wage rate	Labor rates
Pregnant woman: Data collected at their current practice.	432	3.5	1,512	$17.18 (*see footnotes)	$25,976.00
Pregnant woman: Data collected at a practice other than usual source of care.	108	4.5	486	17.18 (*see footnotes)	8,350.00
Parent of a 1 year old or 5 year old: Data collected at their current practice.	432	3.5	1,512	17.18 (*see footnotes)	25,976.00
Parent of a 1 year old or 5 year old: Data collected at a practice other than usual source of care.	108	4.5	486	17.18 (*see footnotes)	8,350.00
1 year old or 5 year old: Data collected at their usual practice.	432	3.5	1,512	0	0.00
1year old or 5 year old: Data collected at their usual practice.	108	4.5	486	0	0.00
Total	1620	24	5994		68,652.00

Footnotes: *based on the average hourly wage across private and public sector jobs in the United States, National Compensation Survey, July 2002. U.S. Bureau of Labor Statistics.

Estimated Costs to the Federal Government

The total cost to the government for activities directly related to this data collection is estimated to be $780,411 for the pilot study.

Request for Comments

In accordance with the above cited legislation, comments on the AHRQ information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility;

(b) the accuracy of the AHRQ's estimate of burden (including hours and cost) of the proposed collection of information;

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. all comments will become a matter of public record.

Dated: February 17, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–4098 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nominations of Topics for Evidence-based Practice Centers

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Nominations of topics for evidence reports and technology assessments.

SUMMARY: AHRQ invites nominations of topics for evidence reports and technology assessments relating to the prevention, diagnosis, treatment and management of common diseases and clinical conditions, as well as, topics relating to the organization and financing of health care. Previous evidence reports can be found at *http://www.ahrq.gov/clinic/epcix.htm*

DATES: Topic nominations should be submitted by April 16, 2004, in order to be considered for this fiscal year. In addition to timely responses to this request for nominations, AHRQ also accepts topic nominations on an ongoing basis for consideration for future years. AHRQ will not reply to individual responses, but will consider all nominations during the selection process.

ADDRESSES: Topics nominations should be submitted to Kenneth Fink, MD, MGA, MPH, Director, Evidence-based Practice Centers (EPC) Program, Center for Outcomes and Evidence, AHRQ, 540 Gaither Road, Rockville, MD 20850. Electronic submissions are preferred. They may be sent to Dr. Fink at *epc@ahrq.gov.*

FOR FURTHER INFORMATION CONTACT: Kenneth Fink, MD, MGA, MPH, Center for Outcomes and Evidence, AHRQ, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1617; Fax: (301) 427–1640; E-mail: *epc@ahrq.gov.*

Arrangement for Public Inspection: All nominations will be available for public inspections at the Center for Outcomes and Evidence, telephone (301) 427–1600, weekdays between 8:30 a.m. and 5 p.m. (Eastern time).

SUPPLEMENTARY INFORMATION:

1. Background

Under Title IX of the Public Health Service Act (42 U.S.C. 299a–299c–7) as amended by Public Law 106–129 (1999), AHRQ is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHRQ accomplishes these goals through scientific research and through the promotion of improvements in clinical

practice and health systems practices, including the prevention of diseases and other health conditions.

2. Purpose

The purpose of this **Federal Register** notice is to encourage participation and collaboration of professional societies, health systems, payors, and providers, with AHRQ as it carries out its mission to promote the practice of evidence-based health care. AHRQ serves as the science partner with private-sector and public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to expedite the translation of evidence-based research findings into improved health care services. In this context, AHRQ awards task order contracts to its Evidence-based Practice Centers (EPCs) to undertake scientific analysis and evidence syntheses on topics of high-priority to its public and private healthcare partners and the health care community generally. The EPCs produce science synthesis—evidence reports and technology assessments—that provide to public and private organizations the foundation for developing and implementing their own practice guidelines, performance measures, educational programs, and other strategies to improve the quality of health care and decision-making related to the effectiveness and appropriateness of specific health care technologies and services.

The evidence reports and technology assessments also may be used to inform coverage and reimbursement policies. As the body of scientific studies related to organization and financing of health care grows, systematic review and analysis of these studies, in addition to clinical and behavioral research, can provide health system organizations with a scientific foundation for developing or improving system-wide policies and practices. Thus, EPC reports may address and evaluate topics such as risk adjustment methodologies, market performance measures, provider payment mechanisms, and insurance purchasing tools, as well as measurement or evaluation of provider integration of new scientific findings regarding health care and delivery innovations.

3. Evidence-based Practice Centers (EPCs)

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand for information by health care providers, insurers, purchasers, health-related societies, and patient advocacy organizations. Such topics may include the prevention, diagnosis and/or treatment of particular clinical and behavioral conditions, use of alternative or complementary therapies, and appropriate use of commonly provided services, procedures, or technologies. Topics also may include issues related to the organization and financing of care. AHRQ widely disseminates the EPC evidence reports and technology assessments, both electronically and in print. The EPC evidence reports and technology assessments do not make clinical recommendations or recommendations of reimbursement and coverage policies.

4. Role/Responsibilities of Partners

Nominators of topics selected for development of an EPC evidence report or technology assessment assume the role of Partners of AHRQ and the EPCs. Partners have defined roles and responsibilities. AHRQ places high value on these relationships, and plans to review Partners' past performance of these responsibilities, at such time, as AHRQ is considering whether to accept additional topics nominated by an organization in subsequent years. Specifically, Partners are expected to serve as resources to EPCs as they develop the evidence reports and technology assessments related to the nominated topic; serve as external peer reviewers of relevant draft evidence reports and assessments; and commit to (a) timely translation of the EPC reports and assessments into their own quality improvement tools (*e.g.,* clinical practice guidelines, performance measures), educational programs, and reimbursement policies; and (b) dissemination of these derivative products of their membership. AHRQ also is interested in members' use of these derivative products and the products' impact on enhanced health care. AHRQ will look to the Partners to provide these use and impact data on products that are based on EPC evidence reports and technology assessments.

AHRQ will review topic nominations and supporting information including the need and the nominators' commitment to partnership roles described above; seeking additional information as appropriate to determine final topics. AHRQ is very interested in receiving topic nominations from professional societies and organizations comprised of members of minority populations, as well as nomination of topics that have significant impact on the health status of women, children, ethnic and racial populations.

5. Topic Nomination and Selection Process

The processes that AHRQ employs to select topics nominated for analyses by the EPCs is described below. Section A addresses AHRQ's nomination process and selection criteria for clinical and behavioral topics. Section B addresses AHRQ's nomination process and selection criteria for organization and financing topics.

A. Clinical and Behavioral Topics

1. *Nomination Process for Clinical and Behavioral Topics.* Nominations of clinical and behavioral topics for AHRQ evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technology. Potential topics should be carefully defined and circumscribed so that the relevant published literature and other databases can be searched, evidence systematically reviewed, supplemental analyses performed, draft reports and assessments circulated for external peer review, and final evidence reports or technology assessments produced within a timely and reasonably responsive manner. Some reports and assessments can be completed within six months, if there is a small volume of literature to be systematically reviewed and analyzed. Other evidence reports and technology assessments may require up to 12 months for completion due to complexity of the topic, the volume of literature to be searched, abstracted, and analyzed, or completion of the external peer review process. Topics selected will not duplicate current and widely available syntheses, unless, new evidence is available that suggests the need for revisions or updates. For each topic, the nominating organization must provide the following information:

a. Rationale and supporting evidence on the clinical relevance and importance of the topic;

b. Plans for rapid translation of the evidence reports and technology assessments into clinical guidelines, performance measures, educational programs, or other strategies for strengthening the quality of health care services, or plans to inform development of reimbursement or coverage policies;

c. Plans for dissemination of these derivative products, *e.g.,* to membership; and

d. Process by which the nominating organization will measure the use of these products, *e.g.,* by their members,

and impact of such use. Specifically, nomination information should include:

• Defined condition and target population.

• Incidence or prevalence, and indication of the disease burden (*e.g.,* mortality, morbidity, functional impairment) in the U.S. general population or in subpopulations (*e.g.,* Medicare and Medicaid populations). For prevalence, the number of cases in the U.S. and the number of affected persons per 1,000 persons in the general U.S. population should be provided. For incidence, the number of new cases per 100,000 a year should be provided.

• Costs associated with the clinical or behavioral condition, including average reimbursed amounts for diagnosis and therapeutic interventions (*e.g.,* average U.S. costs and number of persons who receive care for diagnosis or treatment in a year, citing ICD9–CM and CPT codes, if possible).

• Impact potential of the evidence report or technology assessment to decrease health care costs or to improve health status or clinical outcomes.

• Availability of scientific data and bibliographies of studies on the topic.

• References to significant differences in practice patterns and/or results; alternative therapies and controversies.

• Plans of the nominating organization to incorporate the report into its managerial or policy decision making (*e.g.,* rapid translation of the report or assessment into derivative products such as clinical practice guidelines or other quality improvement tools, or to inform reimbursement or coverage about a particular technology or service).

• Plans of the nominating organization for disseminating derivative products *e.g.,* to its membership.

• Process by which the nominating organization will measure use of the derivative products, and measure the impact of such use, on clinical practice.

2. *Selection Criteria for Clinical Topics.* Factors that will be considered in the selection of clinical topics for AHRQ evidence report and technology assessment topics include:

a. High incidence or prevalence in the general population and in special populations, including women, racial and ethnic minorities, pediatric and elderly populations, and those of low socioeconomic status;

b. Significance for the needs of the Medicare, Medicaid and other Federal health programs;

c. High costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs;

d. Controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies;

e. Impact potential for informing and improving patient or provider decision making;

f. impact potential for reducing clinically significant variations in the prevention, diagnosis, treatment, or management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved;

g. Availability of scientific data to support the systematic review and analysis of the topic;

h. Submission of nominating organization's plan to incorporate the report into its managerial or policy decision making, as defined above; and

i. Submission of nominating organization's plan to disseminate derivative products, and plan to measure use of these products, and the resultant impact of these products on clinical practice.

B. Organization and Financing Topics

1. Nomination Process for Organization and Financing Topics. Nominations of organization and financing topics for AHRQ evidence reports should focus on specific aspects of health care organization and finance. Topics should be carefully defined and circumscribed so that relevant databases may be searched, the evidence systematially reviewed, supplemented analyses performed, draft reports circulated for external peer review, and final evidence reports produced in a timely and reasonable manner. Reports can be completed within six months if there is a small volume of literature for systematic review and analysis. Some evidence reports may require up to 12 months to completion due to the complexity to the topic and the volume of literature to be searched, abstracted, analyzed. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that suggests the need for revisions or updates. For each topic, nominations should provide:

a. Rationale and supporting evidence on the importance and relevance of the topic including:

• Defined organizational/financial arrangement or structure impacting quality, outcomes, cost, access or use.

• Three to five focused questions to be answered.

• If appropriate, description of how the organizational/financial arrangement or structure is particularly relevant to delivery of care for specific vulnerable populations (*e.g.,* children, persons with chronic disease) or certain communities (*e.g.,* rural markets).

• Costs potentially affected by the organizational/financial arrangement, to the extent they can be quantified.

• Impact potential of the evidence report to decrease health care costs or to improve health status or outcomes.

• Availability of scientific and/or administrative data and bibliographies of studies on the topic.

• References to significant variation in delivery and financing patterns and/or results, and related controversies.

b. Plans for use of the evidence report and indicate how the report could be used by public and private decisions makers including:

• Nominator's plan for use of an evidence report on the topic.

• Nominator's plan for measuring the impact of the report on practice.

2. Selection Criteria for Organization and Financing Topics. Factors that will be considered in the selection of topics related to the organization and financing of care include the following:

a. Uncertainty about the impact of the subject organizational or financing strategy;

b. Potential for the subject organizational or financing strategy or the proposed research synthesis to significantly impact aggregate health care costs;

c. Policy-relevance to Medicare, Medicaid, and/or other Federal and State health programs;

d. Relevance to vulnerable populations, including racial and ethnic minorities, and particular communities, such as rural markets;

e. Availability of scientific data to support systematic review and analysis of the topic;

f. Plans of the nominating organization to incorporate the report into its managerial or policy decision making; and

g. Plans by the nominating organization to measure the impact of the report on practice.

Dated: February 17, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–4097 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 18, 2004, from 8 a.m. to 5 p.m. and on March 19, 2004, from 8 a.m. to 3 p.m.

Location: Holiday Inn, Gaithersburg, Two Montgomery Ave., Gaithersburg, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014519516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 18, 2004, the committee will hear presentations, discuss, and provide recommendations on clinical trials for licensing hepatitis B immune globulin as treatment to prevent hepatitis B virus (HBV) liver disease following liver transplantation in HBV+ recipients. The committee will also hear updates on the following topics: (1) Summary of meeting of the Public Health Service Advisory Committee on Blood Safety and Availability; (2) summary of the meeting of the Transmissible Spongiform Encephalopathies Advisory Committee Meeting; (3) current thinking on draft guidance for nucleic acid testing (NAT) for human immunodeficiency virus (HIV) and hepatitis C virus (HCV): Testing, product disposition, and donor deferral and re-entry; (4) current thinking on guidance for use of NAT on pooled and individual samples from donors of whole blood and blood components to adequately and appropriately reduce the risk of transmission of HIV–1 and HCV; and (5) current thinking on variances to address the specificity issues of Ortho HBsAg 3.0 assays. In the afternoon, the committee will hear presentations, discuss, and provide recommendations on supplemental testing for HIV and HCV. On March 19, 2004, the committee will hear presentations, discuss, and provide recommendations on platelet apheresis quality control: A statistical quality control model, and hear presentations relevant to the site visit report on the review of the research programs of the Laboratory of Hepatitis and Emerging Bacterial Agents and the Laboratory of Bacterial, Parasitic, and Unconventional Agents.

Procedure: On March 18, 2004, from 8 a.m. to 5 p.m. and on March 19, 2004, from 8 a.m. to 2:15 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by February 27, 2004. Oral presentations from the public will be scheduled between approximately 9:30 a.m. and 10 a.m., 3:45 p.m. and 4:15 p.m. on March 18, 2004; and between approximately 9:30 a.m. and 10 a.m. on March 19, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before February 27, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On March 19, 2004, from 2:15 p.m. to 3 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The committee will discuss the reports of the review of individual research programs in the Division of Emerging and Transfusion Transmitted Diseases, Office of Blood Research and Review, Center for Biologics Evaluation and Research.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood at 301–827–3514 or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 19, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–4033 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on March 17 and 18, 2004, from 9 a.m. to 5 p.m.

Location: Hilton Washington D.C. North/Gaithersburg, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Geretta Wood, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8320, ext. 143, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512625. Please call the Information Line for up-to-date information on this meeting.

Agenda: On March 17, 2004, the committee will discuss, make recommendations, and vote on a premarket approval application for a Total Artificial Heart indicated for bridge to transplant usage in cardiac transplant-eligible candidates at risk of imminent death from non-reversible biventricular failure and replaces the patient's native ventricles and valves. The device is intended for use inside the hospital. On March 18, 2004, FDA will present to the committee the history, current medical practice, and regulatory background regarding Aortic Anastomotic Devices. The committee

will discuss and make recommendations regarding the type of data and study required to effectively evaluate performance of Aortic Anastomotic Devices for marketing, recognizing the significant public health impact on cardiac disease they represent. Background information for the day's topics, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material for the March 17, 2004, session will be posted on March 16, 2004; material for the March 18, 2004, session will be posted on March 17, 2004.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 8, 2004. On March 17, 2004, oral presentations from the public will be scheduled for approximately 30 minutes at both the beginning and near the end of committee deliberations. On March 18, 2004, oral presentations from the public will be scheduled from approximately 10 a.m. to 12:30 p.m. and for approximately 30 minutes near the end of the deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 8, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 19, 2004.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 04–4034 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0568]

Draft Guidance for Industry and FDA Staff on Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance for industry and FDA staff entitled ''Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices.'' It was developed as a special control to support the reclassification of the vascular embolization device and the neurovascular embolization device from class III (premarket approval) into class II (special controls). The draft guidance is not final nor is it in effect at this time. We are also announcing the withdrawal of the 1994 draft guidance document entitled ''Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model,'' dated September 12, 1994.

DATES: Submit written or electronic comments on the draft guidance by May 25, 2004.

ADDRESSES: Submit written requests for single copies of the draft guidance on a 3.5″ diskette to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Peter L. Hudson, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry and FDA staff entitled ''Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices.''

On June 12, 1998, the Neurological Devices Panel (the Panel) considered the information in three submissions of safety and effectiveness under section 515(i) for the neurovascular embolization device, and recommended that this device be reclassified from class III into class II.

While the Panel's recommendation was specifically for the neurovascular embolization device, because of the similarity of the vascular (arterial) embolization device to the neurovascular (artificial) embolization device, with regard to its intended use, design, risks to health, and measures to mitigate the risks to health, FDA determined that the Panel reclassification recommendation for the neurovascular embolization device is relevant to the vascular embolization device.

We are withdrawing the guidance document entitled ''Guidance on Biocompatibility Requirements for Long Term Neurological Implants: Part 3—Implant Model'' because it contains outdated information. Archived copies of Center for Devices and Radiological Health (CDRH) guidance documents that have been withdrawn are available from the Division of Small Manufacturers, International, and Consumer Assistance (see **ADDRESSES**).

Elsewhere in this issue of the **Federal Register**, FDA is proposing to reclassify the vascular embolization device and the neurovascular embolization device into class II. The currently available guidance document entitled ''Guidance for Neurological Embolization Devices'' dated November 1, 2000, was revised as a draft class II special controls guidance document to support the reclassification of these device types. If finalized, the ''Class II Special Controls Guidance Document: Vascular and Neurovascular Embolization Devices'' will supersede the November 1, 2000, guidance document and will serve as the special control for these devices.

Following the effective date of any final reclassification rule based on this proposal, any firm submitting a premarket notification (510(k)) for a vascular embolization device or a neurovascular embolization device will need to address the issues covered in the special controls guidance document. However, the firm need only show that its device meets the recommendations of the guidance document or in some

other way provides equivalent assurances of safety and effectiveness.

II. Significance of Guidance

This draft guidance document is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on vascular and neurovascular embolization devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Paperwork Reduction Act of 1995

This draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (the PRA). The collections of information addressed in the draft guidance document have been approved by OMB in accordance with the PRA under the regulations governing 510(k) submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance document have been approved by OMB under the PRA, OMB control number 0910–0485.

IV. Comments

You may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. You may submit a single copy of an electronic comment (see **ADDRESSES**). Submit two copies of any mailed comments, but individuals may submit one copy. You should identify your comment with the docket number found in brackets in the heading of this document. You may see any comments FDA receives in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Electronic Access

To receive a copy of the draft guidance by fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1234) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance document may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** notices, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

Dated: February 11, 2004.

Beverly Chernaik Rothstein,

Acting Deputy Director for Policy and Regulations, Center for Devices and Radiological Health.

[FR Doc. 04–3859 Filed 2–24–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program Deferment Request Forms and Associated Reporting Requirements (OMB No. 0915–0179)—Extension.

The National Health Service Corps (NHSC) Scholarship Program was established to assure an adequate supply of trained primary care health professionals to the neediest communities in the Health Professional Shortage Areas (HPSAs) of the United States. Under the program, allopathic physicians, osteopathic physicians, dentists, nurse practitioners, nurse midwives, physician assistants, and, if needed by the NHSC program, students of other health professionals are offered the opportunity to enter into a contractual agreement with the Secretary under which the Public Health Service agrees to pay the total school tuition, required fees and a stipend for living expenses. In exchange, the scholarship recipient agrees to provide full-time clinical services at a site in a federally designated HPSA.

Once the scholars have met their academic requirements, the law requires that individuals receiving a degree from a school of medicine, osteopathic medicine or dentistry be allowed to defer their service obligation for a maximum of 3 years to complete approved internship, residency or other advanced clinical training. The Deferment Request Form provides the information necessary for considering the period and type of training for which deferment of the service obligation will be approved.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total hour burden
Deferment Request Forms	600	1	1	600
Letters of Intent and Request	100	1	1	100
Total	700			700

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human

Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 18, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–4035 Filed 2–24–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: The National Health Service Corps (NHSC) Scholarship Program In-School Worksheets (OMB No. 0915–0250)—Extension

The National Health Service Corps (NHSC) Scholarship Program was established to help alleviate the geographical and specialty maldistribution of physicians and other health practitioners in the United States. Under this program, health professional students are offered scholarships in return for services in a federally-designated Health Professional Shortage Area (HPSA). If awarded an NHSC Scholarship, the Program requires the schools and the awardees to review and complete data collection worksheets for each year that the student is a NHSC Scholar.

The *Data Sheet* requests that the NHSC Scholar review the form for the accuracy of information such as, social security number, contact information, current curriculum, and date of graduation. If the information is inaccurate, the scholar makes the necessary changes directly on the form. If the inaccurate information pertains to the curriculum or date of graduation, the scholar will make changes directly on the form and include written notification from the school.

The *Verification Sheet* is sent to the school along with a list of the NHSC scholars that are enrolled for the current academic year. The schools verify and/or correct the enrollment status of each of the scholars on the list.

The *Contact Sheet* requests contact information for pertinent school officials. This information is used by the NHSC Scholarship Program for future contacts with the schools. The estimated burden is as follows:

Form name	Number of respondents	Responses per respondent	Hours per response (in minutes)	Total burden hours
Scholar Data Sheet	800	1	10	134
Verification Sheet	300	1	10	50
Contact Sheet	550	1	10	92
Total	1,350			276

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–4036 Filed 2–24–04; 8:45 am]

BILLING CODE 4165–15–P

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 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, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: The Organ Procurement and Transplantation Network—New

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain record keeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. OMB requires review and approval of certain information collection requirements associated with the Final Rule that were not included in previous clearance requests. This is a request for approval of record keeping and reporting requirements associated with the processes for filing appeals in the case where applicants are rejected for membership or designation. To date, no appeals have been filed, and any forthcoming burden requirements for this process will be minimal. In the event of an appeal, the estimate of burden for this process consists of preparing a letter requesting

reconsideration and compiling supporting documentation.

The estimated annual response burden is as follows:

Section	Number of respondents	Responses per respondent	Total responses	Burden hour per respondent	Total burden hour
42 CFR 121.3(b)(4) Appeal for OPTN membership	2	1	2	3	6
42 CFR 121.9(d) Appeal for designation	2	1	2	6	12
Total	4		4		18

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 17, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–4037 Filed 2–24–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging and Centers for Medicare and Medicaid Services; Neuroimaging in the Diagnosis of Alzheimer's Disease and Dementia

The National Institute on Aging (NIA) and the Centers for Medicare and Medicaid Services (CMS) are announcing an informational meeting on the scientific evidence for the use of neuroimaging techniques (position emission tomography (PET), single photon emission tomography (SPECT), and magnetic resonance imaging (MRI) in the diagnosis of Alzheimer's disease and other dementias. Questions to be addressed will include whether imaging aids early diagnosis, whether such early diagnosis improves patient-oriented outcomes, and the cost-effectiveness of the use of imaging procedures. The meeting will take place April 5, 2004, in Bethesda, MD, at a location TBA.

All interested parties are invited to attend this meeting.

For further information about the meeting contact: Dr. Susan Molchan at 301–496–9350, e-mail *molchans@mail.nih.gov.* For information on hotel accommodations, please contact Ms. Joyce Campbell, *campbejo@nia.nih.gov.*

Dated: February 20, 2004.

Richard J. Hodes,

Director, National Institute on Aging, National Institutes of Health.

[FR Doc. 04–4161 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: March 15, 2004.

Open: 8:30 a.m. to 10:15 a.m.

Agenda: Joint Session of NCI, Board of Scientific Advisory and BSC Subcommittees.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles III 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abby B. Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852. (301) 496–7628.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees, Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4079 Filed 2–14–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the National Cancer Institute Board of Scientific Advisors.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Board of Scientific Advisors.

Date: March 15–16, 2004.

Time: March 15, 2004, 8:30 a.m. to 10:15 a.m.

Agenda: Joint meeting of the NCI Board of Scientific Advisors and NCI Board of Scientific Counselors; report of the Director, NCI; legislative update, and ethics overview.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Time: March 15, 2004, 10:15 a.m. to 6 p.m.

Agenda: Ongoing and new business; reports of Program Review Group(s); and budget presentation; reports of Special Initiatives; RFA and RFP concept reviews; and scientific presentations.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Time: March 16, 2004, 8:30 a.m. to 1 p.m.

Agenda: Report of Special Initiatives; RFA and RFP concept reviews; and scientific presentations.

Place: National Cancer Institute, Building 31, C Wing, 6 Floor, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Contact Person: Paulette S. Gray, PhD, Acting Director, Deputy Director, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Rm. 8001, Bethesda, MD 20892, 301–496–5147.

This meeting is being published less than 15 days prior to the meeting due date to the scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/bsa.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4080 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), title 5 U.S.C., as amended because the premature disclosure of information and the discussions would be likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: March 31, 2004.

Closed: 9 a.m. to 3 p.m.

Agenda: The Panel will discuss prepublication manuscripts from the cancer survivorship series of meetings during 2003–2004.

Place: NOVA Research Corporation, 4600 East-West Highway, Bethesda, MD 20814.

Contact Person: Maureen O. Wilson, Ph.D., Executive Secretary, National Cancer Institute, NIH, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892. (301) 496–1148.

Any interested person may file written comments with the committee by forwarding the comments to the contact person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/pcp/pcp.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS).

Dated: February 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4162 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel; FLAIR.

Date: March 10–11, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Bratin K. Saha, PhD, Scientific Review Administrator, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Bethesda, MD 20892, (301) 402–0371, *sahab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4163 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 2—Basic Sciences.

Date: March 15, 2004.

Open: 8:30 a.m. to 10:15 a.m.

Agenda: Joint Session of NCI, Board of Scientific Advisors and BSC subcommittees.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 12:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles IV, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Florence E. Farber, PhD, Health Scientific Administrator, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892. (301) 496-7628; *ff6p@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statements to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 92.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4164 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Efficacy of Interventions Promoting Entry into Biomedical Research Careers.

Date: March 15–16, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Shiva P. Singh, PhD, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–12C, Bethesda, MD 20892. 301–594–2772. *singhs@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS.)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4077 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the MARC Review Subcommittee A, February 26, 2004, 8 a.m. to February 27, 2004, 5 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD, 20814 which was published in the **Federal Register** on February 5, 2004, 69 FR 5558.

The meeting will be held on February 26, 2004, at the Holiday Inn Select Bethesda from 8 a.m. to 5 p.m. The meeting is closed to the public.

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4078 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarrranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Molecular Mechanisms of Fetal Growth Restriction.

Date: March 17, 2004.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Bldg Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS.)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4081 Filed 2–23–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group, Population Sciences Subcommittee.

Date: March 11–12, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carla T. Walls, PhD., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898 *wallsc@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4082 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study Advisory Committee.

Date: March 4–5, 2004.

Time: March 4, 2004, 8 a.m. to 5 p.m.

Agenda: Goals and objectives of this meeting will include a review of activities from the December 2003 meeting and discussions regarding the changing role of the Working Groups.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Versaille I, Bethesda, MD 20814.

Time: March 5, 2004, 8:30 a.m. to 4 p.m.

Agenda: For additional information please visit the NCS Web site at *www.nationalchildrensstudy.gov.*

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Versaille I, Bethesda, MD 20814.

Contact Person: Jan Leahey, Executive Secretary, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 4B09A, Bethesda, MD 20892, (301) 496–6593, *ncs@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4083 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Regulation of Estradiol Production of Prostaglandin F2a.

Date: March 19, 2004.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, Ph.D., Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892, (301) 435–6884, *ranhandj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health. HHS)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4084 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Osteoporosis and Vascular Calcification in ESRD.

Date: March 4, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Lakshmanan Sankaran, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7799; *Is38z@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive Kidney Diseases Special Emphasis Panel, Small Grants in Digestive Diseases and Nutrition.

Date: March 31–April 1, 2004.

Time: 5 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7637; *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Trials in Type 2 Diabetes.

Date: April 1, 2004.

Time: 12 p.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Maxine A. Lesniak, PhM, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–7792; *lesniakm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Mechanisms of Upper Gut and Airway Interaction & Pathobiology of the Enteric System.

Date: April 6, 2004.

Time: 7:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8886; *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Regulation of Intestinal Transport and Mechanisms of Intestinal-Microbial Interactions.

Date: April 7, 2004.

Time: 7:45 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Hwy, Arlington, VA 22202.

Contact Person: Michael W. Edwards, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452. (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS.)

Dated: February 18, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4085 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Environmental Justice (EJ): Partnerships for Communications.

Date: March 15–18, 2004.

Time: 7 p.m., March 15, 2004, to 5 p.m., March 18, 2004.

Agenda: To review and evaluate grant applications.

Place: Wyndham Garden Hotel-Durham/RTP, 4620 S Miami Blvd., Durham, NC 27703.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 99.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 19, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–4165 Filed 2–24–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2308–03]

Information Regarding the H–1B Numerical Limitation for Fiscal Year 2004

AGENCY: Bureau of Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice explains how the Department of Homeland Security (DHS), Bureau of Citizenship and Immigration Services (CIS) will process H–1B petitions for new employment for the remainder of Fiscal Year (FY) 2004 now that it is clear that the demand for H–1B workers will exceed the statutory numerical limit (the cap) for H–1B petitions for FY 2004. This notice is published so that the public will understand the procedure for processing H–1B petitions now that the cap is reached, as this procedure may affect the hiring decisions of some prospective H–1B petitioners. These procedures are intended to minimize confusion and burden to employers who use the H–1B program.

DATES: This notice is effective February 25, 2004.

FOR FURTHER INFORMATION CONTACT: Kevin J. Cummings, Business and Trade Services Branch/Program and Regulation Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., ULLB 3rd Floor, Washington, DC 20536, telephone (202) 305–3175.

SUPPLEMENTARY INFORMATION:

Who Is an H–1B Nonimmigrant?

An H–1B nonimmigrant is an alien employed in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for admission into the United States.

What Is the Cap or Numerical Limitation on the H–1B Nonimmigrant Classification?

Section 214(g) of the Immigration and Nationality Act (Act) provides that the total number of aliens who may be issued H–1B visas or otherwise granted H–1B status during FY 2004 may not exceed 65,000. In accordance with the Free Trade Agreements (FTA) for Chile and Singapore, as approved by Congress in Public Laws 108–77 and 108–78, respectively, a total of 1,400 of the 65,000 H–1B numbers are reserved for H–1B1 nonimmigrants from Chile and 5,400 of the 65,000 numbers are reserved for H–1B1 nonimmigrants from Singapore. This effectively reduces the overall number of H–1B numbers that may be used prior to September 30, 2004, to 58,200. Under the FTA legislation, however, any unused H–1B1 numbers set aside for aliens from Chile and Singapore will be made available between October 1, 2004, and November 15, 2004. There now appears to be a sufficient number of H–1B petitions pending at the CIS Service Centers to reach the adjusted cap for FY 2004. Therefore, as of February 18, 2004, and until April 1, 2004, the CIS will return any petitions requesting an employment start date prior to October 1, 2004.

What Is the Effect of This Notice?

This notice explains the CIS procedure for processing H–1B petitions for new employment, which are subject to the H–1B cap, and filed by employers seeking to employ H–1B aliens on or before September 30, 2004.

Does This Procedure Apply to All H–1B Petitions Filed for FY 2004?

No. The procedure described in this notice relates only to H–1B petitions filed for beneficiaries who are subject to the numerical limitations and will be engaged in ''new employment,'' to commence on or before September 30, 2004. A petition for new employment includes a petition where the alien beneficiary is outside the United States when the H–1B petition is approved or where the alien is already in the United States in another status and is seeking H–1B status, either through a change of nonimmigrant status from within the United States or a notice to the Consulate of the eligibility for the new status.

Petitions for beneficiaries exempt from the H–1B numerical limitations, amended petitions, and petitions for extension of stay are not affected by this procedure because these petitions do not count against the cap. Likewise, petitions for aliens in the United States who already hold H–1B status, *i.e.*, petitions filed on behalf of an H–1B alien by a new or additional employer, are also not affected by this procedure. This procedure does not relate to petitions filed before October 1, 2004, for employment to commence on or after October 1, 2004.

What Is the CIS Procedure for Processing H–1B Petitions for New Employment During the Remainder of FY 2004?

This notice informs the public that there are a sufficient number of H–1B petitions pending at CIS Service Centers to reach the cap of 58,200 for FY 2004. As of February 18, 2004, the CIS will not accept for adjudication any H–1B petition for new employment containing a request for a work start date prior to October 1, 2004. Petitions filed after February 17, 2004, will be returned (along with the filing fee and, if applicable, the premium processing fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). In accordance with existing regulations, such petitioners may refile those petitions with a new starting date of October 1, 2004, or later.

CIS has established how many H–1B petitions are pending and will likely count towards the FY2004 statutory limit. CIS will adjudicate all petitions in the pipeline. CIS will adjudicate cases in the order in which they are received. CIS is not suspending premium processing and normal rules applicable to those cases still apply.

How Should a Petitioner Notify CIS That It Wishes To Withdraw a Petition?

If a petitioner wishes to withdraw a pending H–1B petition or an approved H–1B petition for new employment, the petitioner should send a withdrawal request to the CIS Service Center where the petition is pending or was filed and approved. The request should be signed by the petitioner or an authorized representative and include the filing receipt number and the names of both the petitioner and beneficiary.

Does This Process Apply to H–1B Petitions Filed for Employment to Commence on or After October 1, 2004?

No. Those petitions are not affected by the procedures described in this notice and will be adjudicated in the normal fashion, regardless of whether they are filed after this year's cap is reached. Petitioners are reminded that, pursuant to 8 CFR part 214.2(h)(9)(i)(B), petitions for H–1B classification may not be filed or approved more than six months prior to the requested employment start date. Therefore, petitions filing for work to commence on October 1, 2004, should not be filed prior to April 1, 2004. H–1B petitions filed for employment to commence on or after October 1, 2004, will be counted, if otherwise chargeable against the annual H–1B cap, against the FY 2005 numerical cap.

How Will CIS Treat H–1B Petitions That Are Revoked for Any Reason Other Than Fraud or Willful Misrepresentation?

For purposes of the annual numerical limitation, if an H–1B petition was approved in a prior fiscal year (*e.g.* FY2000, 2001, 2002, 2003) but revoked in FY2004, that revocation *will have no effect* on the FY2004 cap and the number *will not be restored* to the total number of H–1B new petition approvals available for the remainder of FY2004.

However, if an H–1B petition was approved in FY2004 (and the approval was counted against the FY2004 cap), and the H–1B petition subsequently is revoked during FY2004 for any reason other than fraud or willful misrepresentation (*e.g.* the petitioner goes out of business), that number *will be restored* to the total number of H–1B petition approvals available for the remainder of FY2004. If the same H–1B petition is revoked for any reason other than fraud or willful misrepresentation after the end of FY2004, CIS *will not restore* the number to the FY2004 cap.

How Will CIS Process H–1B Petitions That Are Revoked for Fraud or Willful Misrepresentation?

Section 108 of the American Competitiveness in the Twenty-first Century Act of 2000, Pub. L. 106–313 (''AC21''), sets forth the procedure when an H–1B petition is revoked on the basis of fraud or willful misrepresentation. Under AC21, one number shall be restored to the total number of H–1B petition approvals available for the fiscal year during which an H–1B petition is revoked on the basis of fraud or misrepresentation, regardless of the fiscal year in which the petition was approved.

How Will CIS Process H–1B Petitions That Were Originally Denied but Subsequently Ordered Approved by the Administrative Appeals Office or by a Federal Court?

CIS has considered cases currently on appeal in its determination of cases that could count towards the statutory cap. CIS will process approved petitions in the order that they were originally filed with CIS or the former INS.

Will CIS Refund a Filing Fee if a Petition Is Withdrawn or Revoked?

No, CIS will not refund the $130 filing fee when a petition is revoked or withdrawn. The provisions contained in 8 CFR 103.2(a)(1) preclude the refunding of filing fees on Form I–129 petitions in these situations. The CIS will refund a filing fee only if the refund request is based on CIS error or if the petition is filed subsequent to February 17, 2004. It should be noted that H–1B cap cases filed under the premium processing program are subject to the conditions contained in this notice.

William Yates,

Acting Director, Bureau of Citizenship and Immigration Services.

[FR Doc. 04–4089 Filed 2–20–04; 11:16 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to 36 CFR 51.23, public notice is hereby given that the National Park Service proposes to extend the following expiring concession contract for a period of up to 3 years until September 30, 2006.

SUPPLEMENTARY INFORMATION: The listed concession authorization expired on September 30, 2003. The National Park Service has determined that the proposed extension is necessary in order to avoid interruption of visitor services and has taken all reasonable and appropriate steps to consider alternatives to avoid such interruption. This extension will allow the National Park Service to complete and issue a prospectus leading to the competitive selection of a concessioner for new long-term concession contracts covering these operations.

Conc ID No.	Concessioner name	Park
LAME004	Lake Mead Ferry Service, Inc.	Lake Mead National Recreation Area.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC, 20240, Telephone 202/513–7156.

Dated: January 27, 2004.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 04–4136 Filed 2–24–04; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Pursuant to the terms of existing concession contracts, public notice is hereby given that the National Park Service has requested a continuation of visitor services for the following expiring concession contract for a period of 1 year, or until such time as a new contract is awarded, whichever occurs first.

SUPPLEMENTARY INFORMATION: The listed concession authorization expired on September 30, 2003. Under the provisions of current concession contracts and pending the development and public solicitation of a prospectus for a new concession contract, the National Park Service authorizes continuation of visitor services for a period not-to-exceed 1 year, or until such time as a new contract is awarded, whichever occurs first, under the terms and conditions of the current concession contract, as amended. The continuation of operations does not

affect any rights with respect to selection for award of a new concession contract.

Concession contract No.	Concessioner name	Park
CC–YOSE001	Ansel Adams Gallery	Yosemite National Park.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Cynthia Orlando, Concession Program Manager, National Park Service, Washington, DC 20240, Telephone 202/513–7156.

Dated: January 20, 2004.

Richard G. Ring,

Associate Director, Administration, Business Practices and Workforce Development.

[FR Doc. 04–4224 Filed 2–24–04; 8:45 am]

BILLING CODE 4312–53–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Finding of No Significant Impact for Proposed Field Evaluation of Innovative Capping Technologies for Contaminated Sediment Remediation, Anacostia River, Washington, DC

ACTION: Notice of availability of Decision Notice (DN) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, National Park Service (NPS) guidance and requirements, the NPS prepared an environmental assessment (EA) evaluating environmental impacts potentially resulting from implementation of a demonstration project of innovative capping techniques for contaminated sediment remediation. This EA presented a pilot project recommended by the Anacostia Watershed Toxics Alliance and coordinated with the Environmental Protection Agency for evaluating innovative capping techniques, which involve placement of a covering or cap of material over river bottom areas that contain known contaminated sediments to physically and chemically isolate them from the aquatic environment. The EA was made available for a 30-day public review period that ended on October 24, 2003. It was also discussed in meetings open to the public. The NPS conducted the EA as part of its decision making process for its issuance of a special use permit to authorize this proposed action to occur on the bed of the Anacostia River, which it administers. After the comment period, NPS selected Alternative 2: Implement the Demonstration Project, and on November 25, 2003 it issued a FONSI.

In Alternative 2, researchers would use caps made from alternative materials that can degrade or control sediment-bound contaminants more efficiently than sand alone. This approach of ''active capping,'' could significantly improve the effectiveness of capping as a remedial approach and has great potential to reduce costs and durations of cleanups across the country. A grid of capping cells will be established of approximately 200 by 300 feet at a site in the Anacostia River near the General Services Administration Southeast Federal Center, Washington, DC. The installation of the demonstration project would occur over a two-month period and the capping material would be studied over a two-year period. The cap material would be placed in a manner that would provide the necessary layer thickness while minimizing re-suspension of the contaminated sediment and dispersal of the capping materials.

The Anacostia River offers an opportunity for the proposed demonstration under realistic, well-documented, *in-situ* conditions at contaminated sediment sites. The demonstration will advance the ongoing federal restoration of the Anacostia River and it will also provide better technical understanding of controlling factors, guidance for proper remedy selection and approaches, and broader scientific, regulatory and public acceptance of innovative approaches. The results of the proposed study would be available to the public.

SUPPLEMENTARY INFORMATION: Requests for copies of the NPS' DN/FONSI/EA, or for any additional information, should be directed to Mr. Michael Wilderman, National Capital Parks-East, 1900 Anacostia Drive, SE., Washington, DC 20020, Telephone: (202) 690–5165.

Dated: January 28, 2004.

Terry R. Carlstrom,

Regional Director, National Park Service, National Capital Region.

[FR Doc. 04–4133 Filed 2–24–04; 8:45 am]

BILLING CODE 4310–71–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Finding of No Significant Impact for Proposed Actions To Manage Flight Obstructions To Preserve Safety at Andrews Air Force Base, Affecting Suitland Parkway

ACTION: Notice of availability of Decision Notice (DN) and Finding of No Significant Impact (FONSI).

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations, and NPS guidance, the United States Air Force (USAF) and the National Park Service (NPS) prepared an environmental assessment (EA) for the management of flight obstructions to preserve safety at Andrews Air Force Base (AAFB), which is an action affecting Suitland Parkway, in Prince George's County, Maryland. Suitland Parkway is administered by the NPS. The EA contained analysis developed in consideration of comments received as a result of a public scoping meeting held on February 6, 2001. The USAF is the lead agency for this project and prepared an EA with assistance from the NPS and advertised its availability for public review on December 26, 2002. The NPS is a cooperating agency and published a **Federal Register** notice of availability on January 16, 2003. The NPS 30-day public review period initiated by the FR notice ended on February 17, 2003. After the comment period, NPS selected Alternative 2: Vegetation Management, and issued a FONSI on May 13, 2003.

Alternative 2 would bring the runways into compliance with airspace clearance requirements established to ensure safe operation of the runways by trimming, removing, and replacing trees within the Suitland Parkway corridor that are tall enough to penetrate the approach/departure surfaces at the adjacent AAFB. These obstructions are considered by the USAF to be an adverse effect on safe flight operations at AAFB and the selected alternative would improve safety for aircraft using AAFB. The USAF also selected this alternative for action.

Suitland Parkway is listed on the National Register of Historic Places (NRHP). The NPS and USAF, in consultation with the Maryland State Historic Preservation Office (SHPO), determined the undertaking has the potential to have an adverse effect on cultural landscape characteristics contributing to Suitland Parkway's listing on the NRHP. In order to meet their responsibilities pursuant to Section 106 of the National Historic Preservation Act, prior to making decisions on the EA, the NPS, USAF, and SHPO entered a Memorandum of Agreement (MOA) that directs the preparation and implementation of a Supplemental Implementation Plan (SIP) providing specific details for work to be carried out on Suitland Parkway. The Maryland Department of Natural Resources (MDNR) signed in concurrence with this MOA. The MOA was provided to the Advisory Council on Historic Preservation (ACHP), and its acknowledgment of the filing of the MOA completed the requirements of Section 106 of the National Historic Preservation Act and the Council's regulations.

The NPS and USAF are in the process of preparing the SIP. Vegetation management will convert the naturally growing deciduous forest adjoining both sides of Suitland Parkway to other native vegetation dominated by low-growing deciduous and evergreen shrubs and low trees. The removal of trees would be mitigated by replanting, especially adjacent to the roadway, to expedite the restoration of the natural character and screening qualities of the trees.

SUPPLEMENTARY INFORMATION: Requests for copies of the NPS, DN/FONSI/EA, or for any additional information, should be directed to Mr. Michael Wilderman, National Capital Parks-East, 1900 Anacostia Drive, SE., Washington, DC 20020, Telephone: (202) 690–5165.

Dated: January 28, 2004.

Terry R. Carlstrom,

Regional Director, National Park Service, National Capital Region.

[FR Doc. 04–4132 Filed 2–24–04; 8:45 am]

BILLING CODE 4310–71–P

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement\Fire Management Plan, Point Reyes National Seashore, Marin County, CA; Notice of Availability

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91–190, 42 U.S.C. 4321–4347, January 1, 1970, as amended), and the Council on Environmental Quality Regulations (40 CFR part 1500–1508), the National Park Service, Department of the Interior, has prepared a Draft Environmental Impact Statement identifying and evaluating three alternatives for a Fire Management Plan for Point Reyes National Seashore, in northern California. Potential impacts and mitigating measures are described for each alternative. The alternative selected after this conservation planning and environmental impact analysis process will serve as a blueprint for fire management actions for Point Reyes National Seashore over the next 10–15 years.

This Point Reyes Fire Management Plan (FMP) and Draft Environmental Impact Statement (DEIS) identifies and analyzes two action alternatives, and a no action alternative, for a revised Fire Management Plan for Point National Seashore (PRNS) and the north district of Golden Gate National Recreation Area (administered by PRNS). Revisions to the current plan are needed to meet public and firefighter safety, natural and cultural resource management, and wildland urban interface objectives of the park. The action alternatives vary in the emphasis they place on fire management goals developed by the park. The current program has been effective in fire suppression and conducting limited fuel reduction in strategic areas, but has not been able to fully accomplish resource management, fuel reduction, and prescribed fire goals.

The planning area for the Fire Management Plan (FMP) includes NPS lands located approximately 40 miles northwest of San Francisco in Marin County, California. These lands include the 70,046-acre Point Reyes National Seashore, comprised primarily of beaches, coastal headlands, extensive freshwater and estuarine wetlands, marine terraces, and forests; as well as 18,000 acres of the Northern District of Golden Gate National Recreation Area (GGNRA), primarily supporting annual grasslands, coastal scrub, and Douglas-fir and coast redwood forests.

Point Reyes National Seashore was created on September 13, 1962, to ''save and preserve for purposes of public recreation, benefit, and inspiration, a portion of the diminishing seashore of the United States that remains undeveloped'' (Pub. L. 87–657). The park is a coastal sanctuary with an exceptionally diverse variety of habitat types—roughly 20% of California's plant species and 45% of North America's bird species have been recorded within its boundaries. The Seashore contains numerous sites indicating Native American occupancy, as well as cultural resources from early periods of European settlement. To preserve the historic ranching legacy of the area, approximately 30 ranches and dairies within Seashore boundaries are under permit agreements with the Federal government.

In the past, wildland fire occurred naturally in the park as an important ecosystem process that kept forest fuels and vegetation structure within the natural range of variability. Logging and fire suppression activities have lead to increased fuel loads and changes in vegetation community structure. This has increased the risk of large, high-intensity wildland fire within the park, threatening the park's developed zones, natural and cultural resources, and neighboring landowners and communities.

Alternatives: Alternative A (No Action)—Continued Fuel Reduction for Public Safety and Limited Resource Enhancement. Alternative A represents the current fire management program which uses a limited range of fire management strategies—including prescribed fire, mechanical treatment, and suppression of all wildland fires, including natural ignitions. Alternative A would continue the existing program described in the 1993 Fire Management Plan including mechanical treatments of hazardous fuels of up to 500 acres per year, primarily mowing in grasslands. Up to 500 acres per year would be treated by prescribed burning, primarily for fuel reduction in grasslands and for Scotch and French broom control. Total treatments per year would not exceed 1,000 acres. Research projects already in progress on reducing Scotch broom and velvet grass through prescribed burning would continue under this alternative.

Alternative B—Expanded Hazardous Fuel Reduction and Additional Natural Resource Enhancement. Alternative B calls for a substantial increase over present levels in the reduction of hazardous fuels through prescribed burning and mechanical treatments (up to a combined total of 2,000 acres treated per year).

Efforts would be concentrated where unplanned ignitions would be most likely to occur (*e.g.*, road corridors), and where defensible space could most effectively contain unplanned ignitions and protect lives and property (*e.g.*, around structures and strategically along the park interface zone). Natural resource enhancement would occur as a secondary benefit only. For example, prescribed burning to reduce fuels may have the secondary resource benefit of

controlling a flammable, invasive non-native plant.

Alternative C (Preferred Alternative)—Increased Natural Resource Enhancement and Expanded Hazardous Fuel Reduction. In addition to reduction of hazardous fuels, Alternative C would use fire management actions to markedly increase efforts to enhance natural resources. Project objectives could include increasing the abundance and distribution of T&E species, reducing infestations of invasive, non-native plants and increasing native plant cover. Prescribed burning would be used to protect or enhance cultural resources, such as reducing vegetation in areas identified as important historic viewsheds. Alternative C permits the highest number of acres treated annually for hazardous fuels reduction concentrating on high priority areas (*e.g.*, along road corridors, around structures, and in strategic areas to create fuel breaks). Up to 3,500 acres could be treated per year using prescribed fire and mechanical treatments. Under this alternative, research efforts would be expanded to determine the effects of fire on natural resources of concern (*e.g.*, rare and non-native species) and to determine the effectiveness of various treatments for fuel reduction. Research results would be used adaptively to guide the fire management program in maximizing benefits to natural resources, while protecting lives and property. This overall approach also has been deemed to be the ''environmentally preferred'' alternative.

Some actions, including the continuation of the Wildland Urban Interface Initiative Program, maintenance of fire roads and trails, vegetation clearing around buildings, suppression of unplanned ignitions, public information and education, the construction of a new fire cache for equipment storage and the continuation of the current fire monitoring program, would be carried out under all three alternatives.

Planning Background: The beginning of public scoping was announced on January 29, 2000, at a public meeting of the Point Reyes National Seashore Citizens Advisory Commission with a presentation on the overall EIS/FMP planning process. On February 3, 2000, a ''Scoping Notice'' for the Fire Management Plan was published in the **Federal Register** by the NPS. In a series of internal and public scoping meetings input on fire management issues of concern and range of alternatives was solicited from the public, Federal, State and local agencies, and NPS resource specialists. Briefings continued for local fire management and protection agencies during the FMP preparation. Scoping comments were solicited through March 28, 2000.

Comments: The FMP/DEIS will be sent directly to those who request it in writing received by regular mail or e-mail. Copies and compact discs of the document will be available at park headquarters and at local and regional libraries. The complete document will be posted on the park's Web site at *http://www.nps.gov/pore/pphtml/documents.html.* Written comments must be postmarked (or transmitted by e-mail) no later than 60 days from the date of EPA's notice of filing published in the **Federal Register**—as soon as this has been determined, the close of the comment period will be posted on the park's Web site. All comments should be addressed to the Superintendent and mailed to Point Reyes National Seashore, 1 Bear Valley Road, Point Reyes Station, CA 94956 (Attn: Fire Management Plan); e-mail should be sent to *ann_nelson@nps.gov* (in the subject line, type: Fire Management Plan).

In order to facilitate public review and comment on the FMP/DEIS, the Superintendent will schedule public meetings in the local area, which at this time are anticipated to occur in winter/spring, 2004. Point Reyes National Seashore staff will provide a presentation on the FMP/DEIS at the meetings and receive oral and written comments. Participants are encouraged to review the document prior to attending a meeting. As with the previous public scoping meeting for the FMP, confirmed details on location and times for these comment opportunities will be widely advertised in the local and regional media, on the park's Web site, and via direct mailings to agencies, organizations and interested members of the public.

All comments are maintained in the administrative record and will be available for public review at park headquarters. If individuals submitting comments request that their name and/or address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. As always, NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and anonymous comments may not be considered.

Decision Process: It is anticipated that the Final Environmental Impact Statement and Fire Management Plan would be completed in late 2004. The availability of the Final EIS/FMP will be published in the **Federal Register**, and also announced via local and regional press and Web site postings. Not sooner than 30 days after EPA's notice of filing of the Final EIS/FMP, a Record of Decision may be approved. As a delegated EIS, the official responsible for approval is the Regional Director of the Pacific West Region of the National Park Service. After approval, the official responsible for implementation of the FMP is the Superintendent, Point Reyes National Seashore.

Dated: January 27, 2004.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 04–4135 Filed 2–24–04; 8:45 am]

BILLING CODE 4312–FW–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Draft Environmental Impact Statement for Tuskegee Airmen National Historic Site

SUMMARY: The National Park Service will prepare an Environmental Impact Statement on the General Management Plan for Tuskegee Airmen National Historic Site. This notice is being published in accordance with 40 CFR 1506.6. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the National Historic Site. This General Management Plan/Environmental Impact Statement is being prepared in response to the requirements of the National Historic Site's enabling legislation, Pub. L. 105–355, the National Parks and Recreation Act of 1978, Pub. L. 95–625, and in accord with Director's Order Number 2, the planning directive for National Park Service units.

The National Park Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Tuskegee Airmen National Historic Site. Representatives of the National Park Service will be available to discuss issues, resource concerns, and the planning process at each of the public meetings. Suggestions and ideas for managing the cultural and natural resources and visitor experiences at the park are encouraged. Anonymous comments will not be considered. 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. However, individual respondents may request that we withhold their names and addresses from the public record, and we will honor such requests to the extent allowed by law. If you wish to withhold your name and/or address, you must state that request prominently at the beginning of your comment.

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by contacting the park Site Manager. This information will also be published on the General Management Plan Web site (*http://www.nps.gov/tuai*) for Tuskegee Airmen National Historic Site.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the National Park Service: Site Manager, Tuskegee Airmen National Historic Site, 1616 Chief Anderson Drive, P.O. Box 830918, Tuskegee Institute, AL 36088, Telephone: 334–724–0922, e-mail: *Tuin_Superintendent@nps.gov.*

FOR FURTHER INFORMATION CONTACT: Site Manager, Tuskegee Airmen National Historic Site, 1616 Chief Anderson Drive, P.O. Box 830918, Tuskegee Institute, AL 36088, Telephone: 334–724–0922, e-mail: *Tuin_Superintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Before 1940, African Americans were barred from flying for the U.S. military. Civil rights organizations and the black press exerted pressure that resulted in the formation of an all African-American pursuit squadron based in Tuskegee, Alabama in 1941. They became known as the Tuskegee Airmen. The Tuskegee Airmen overcame segregation and prejudice to become one of the most highly respected fighter groups of World War II. They proved conclusively that African Americans could fly and maintain sophisticated combat aircraft. The Tuskegee Airmen's achievements, together with the men and women who supported them, paved the way for full integration of the U.S. military. The Tuskegee Airmen National Historic Site at Moton Field in Tuskegee, Alabama, was established on November 6, 1998, with the signing of Public Law 105–355. The park was created to commemorate and interpret the heroic actions of the Tuskegee Airmen during World War II.

A General Management Plan and Environmental Impact Statement would provide the park with guidance and direction to manage natural and cultural resources and to provide a quality visitor experience. This will be the National Historic Site's first General Management Plan. The plan will establish management prescriptions, carrying capacities, and appropriate types and levels of development and recreational use for all areas of the park. Resource protection, visitor experiences and community relationships will be improved through completion and implementation of the General Management Plan.

Public documents associated with the planning effort, including all newsletters, will be posted on the Internet through the park's Web site at *http://www.nps.gov/tuai.*

The Draft and Final General Management Plan and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by Federal, State, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this Environmental Impact Statement is Patricia A. Hooks, Acting Regional Director, Southeast Region, National Park Service, 100 Alabama Street, SW., 1924 Building, Atlanta, Georgia 30303.

Dated: January 6, 2004.

Patricia A. Hooks,

Acting Regional Director, Southeast Region.

[FR Doc. 04–4134 Filed 2–24–04; 8:45 am]

BILLING CODE 4310–E7–P

DEPARTMENT OF THE INTERIOR

National Park Service

Selma to Montgomery National Historic Trail Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Selma to Montgomery National Historic Trail Advisory Council will be held Tuesday, March 30, 2004, at 9 a.m. until 3:30 p.m., at the Selma Convention Center in Selma, Alabama.

The Selma to Montgomery National Historic Trail Advisory Council was established pursuant to Public Law 100–192, establishing the Selma to Montgomery National Historic Trail. This Council was established to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, and administrative matters.

The matters to be discussed include:

(A) History and background of the historic trail;

(B) Roles and responsibilities of the Advisory Council;

(C) Update of current trail activities;

(D) Review of the Comprehensive Management Plan;

(E) Plans for the 40th anniversary of the Voting Rights March.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited and persons will be accommodated on first come, first serve basis. Anyone may file a written statement with Catherine F. Light, Trail Superintendent, concerning the matters to be discussed.

Persons wishing further information concerning this meeting may contact Catherine F. Light, Trail Superintendent, Selma to Montgomery National Historic Trail, at 334–727–6390 (phone), 334–727–4597 (fax), or mail 1212 Old Montgomery Road, Tuskegee Institute, Alabama 36088.

Catherine F. Light,

Selma to Montgomery National Historic Trail, Superintendent.

[FR Doc. 04–4131 Filed 2–24–04; 8:45 am]

BILLING CODE 4310–04–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–459]

Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2003 Review

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of hearing.

EFFECTIVE DATE: February 19, 2004.

SUMMARY: Following receipt on February 13, 2004 of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–459, *Advice Concerning Possible Modifications to the U.S. Generalized System of Preferences, 2003 Review.*

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Cynthia B. Foreso (202–205–3348 or *foreso@usitc.gov*) or Eric Land (202–205–3349 or *land@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC 20436.

For information on legal aspects of the investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091 or *wgearhart@usitc.gov*). General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Background: As requested by the USTR, in accordance with sections 503(a)(1)(A), 503(e), and 131(a) of the Trade Act of 1974 (1974 Act), and under section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the elimination of U.S. import duties for all beneficiary countries under the GSP for HTS subheadings 8708.92.50 and 8714.92.10. In providing its advice on these articles, the USTR asked that the Commission assume that the benefits of the GSP would not apply to imports that would be excluded from receiving such benefits by virtue of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act.

As requested under section 332(g) of the Tariff Act of 1930, the Commission will provide advice as to the probable economic effect on U.S. industries producing like or directly competitive articles and on consumers of the removal from eligibility for duty free treatment under the GSP of HTS subheadings 2917.12.10, 3901.10.00 (pt.), 3901.20.00 (pt.), 3907.60.0010, and 3920.62.00.

As requested under section 332(g) of the Tariff Act of 1930 and in accordance with section 503(d)(1)(A) of the 1974 Act, the Commission will provide advice on whether any industry in the United States is likely to be adversely affected by a waiver of the competitive need limits specified in section 503(c)(2)(A) of the 1974 Act for Argentina for HTS subheading 4107.11.80; for Thailand for HTS subheading 7615.19.30; and for Indonesia for HTS subheading 8525.40.80.

With respect to the competitive need limit in section 503(c)(2)(A)(i)(I) of the 1974 Act, the Commission, as requested, will use the dollar value limit of $110,000,000.

As requested by the USTR, the Commission will seek to provide its advice not later than May 13, 2004.

Public Hearing: A public hearing in connection with this investigation is scheduled to begin at 9:30 a.m. on March 31, 2004, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the public hearing should be filed with the Secretary, no later than 5:15 p.m., March 4, 2004 in accordance with the requirements in the ''Submissions'' section below. In the event that, as of the close of business on March 4, 2004, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary (202–205–2000) after March 4, 2004, to determine whether the hearing will be held.

Statements and Briefs: In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements or briefs concerning the investigation in accordance with the requirements in the ''Submissions'' section below. Any prehearing briefs or statements should be filed not later than 5:15 p.m., March 5. 2004; the deadline for filing post-hearing briefs or statements is 5:15 p.m., April 2, 2004.

Submissions: All written submissions including requests to appear at the hearing, statements, and briefs, should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. All written submissions must conform with the provisions of section 201.8 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.8); any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the *Commission's Rules of Practice and Procedure* (19 CFR 201.6). Section 201.8 of the rules require that a signed original (or a copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential information must be deleted. Section 201.6 of the rules require that the cover of the document and the individual pages clearly be marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the confidential business information be clearly identified by means of brackets.

The Commission may include confidential business information submitted in the course of this investigation in the report to the USTR. All written submissions, except for confidential business information, will be made available for inspection by interested parties. In the public version of the report, however, the Commission will not publish confidential business information in a manner that could reveal the operations of the firm supplying the information.

The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8)(*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Persons with questions regarding electronic filing should contact the Secretary (202–205–2000 or *edis@usitc.gov.)*

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.
Issued: February 19. 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–4112 Filed 2–24–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Rights Division; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Compliant Form, Coordination and Review Section, Civil Rights Division.

The Department of Justice (DOJ), Civil Rights Division (CRT), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 26, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, Department of Justice 1425 New York Avenue, NW, Washington, DC 20005.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

• 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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Compliant Form, Coordination and Review Section, Civil Rights Division

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: none. Civil Rights Division.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. The information collected from the respondents is used to investigate the alleged discrimination, to seek whether a referral is necessary, and to provide information needed to initiate investigation of the complaint.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents is 1,400. It will take the average respondent approximately 30 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 700 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: February 19, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–4032 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: Records of Acquisition and Disposition, Collectors of Firearms.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until April 26, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott Thomasson, Chief, Firearms Enforcement Branch, Room 7400, 650 Massachusetts Avenue, NW., Washington, DC 20226.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Records of Acquisition and Disposition, Collectors of Firearms.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. The record keeping requirement is for the purpose of facilitating ATF's authority to inquire into the disposition of any firearm in the course of a criminal investigation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that it take 3 hours per year for line by line entry and that approximately 172,250 licensees will participate.

(6) *An estimate of the total public burden (hours) associated with the collection:* There are an estimated 516,750 annual total burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: February 18, 2004.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 04–4166 Filed 2–24–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 01–10]

Branex, Incorporated; Revocation of Registration

On December 28, 2000, the then-Deputy Administrator of the Drug

Enforcement Administration (DEA), issued an Order to Show Cause and Immediate Suspension of Registration to Branex, Incorporated (Respondent). The Respondent was notified of a preliminary finding that pursuant to evidence set forth therein, it was responsible for, *inter alia,* the diversion of large quantities of pseudoephedrine into other than legitimate channels. In addition to the parties presenting evidence at a subsequent administrative hearing, the then-Administrator also ruled on an interlocutory appeal brought by Government counsel regarding the applicability of the Jencks Act to DEA administrative proceedings. The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues her final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Order to Show Cause—Immediate Suspension Registration alleged, in substance, the following:

1. List I chemicals are legitimate chemicals that also may be used in the illicit manufacture of a controlled substance in violation of the Controlled Substances Act, 21 U.S.C. 802(34), 21 CFR 1310.02(a). Ephedrine and pseudoephedrine are list I chemicals which are commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance.

2. Mr. Frank Marquez is the owner and president of the Respondent. Respondent is a wholesale distributor of sundry items and over-the-counter medical preparations in the West Florida area. On November 10, 1997, Respondent submitted an application for registration as a distributor of the listed chemicals pseudoephedrine, ephedrine and phenylpropanolamine. In February 1998, DEA conducted a pre-registration inspection at which Mr. Marquez was provided a copy of DEA regulations related to the handling of listed chemicals. Mr. Marquez was advised of the suspicious transaction reporting requirements, and he volunteered that he would not engage in cash transactions. The Respondent's application for registration to distribute list I chemicals was approved on February 19, 1998.

3. Between July 23 and September 30, 1999, Respondent ordered approximately 2,592,000 tablets of pseudoephedrine from one manufacturer. In October 1999, Respondent attempted to obtain an additional 3–4 million tablets of pseudoephedrine from two other manufacturers. These amounts of pseudoephedrine are excessive for the short time periods between Respondent's registration with DEA and October 1999.

4. On September 14 and 15, 1999, law enforcement agencies seized approximately 11,300 bottles of pseudoephedrine from clandestine laboratories in California. The lot numbers of the tablets seized matched the lot numbers for tablets purchased by Respondent.

5. On October 15, 1999, DEA agents seized 4000 bottles of pseudoephedrine from a clandestine laboratory in Los Angeles, California. The Respondent had previously purchased 5,760 bottles of pseudoephedrine bearing the same lot number found on the bottles of pseudoephedrine seized in the clandestine laboratory.

6. On July 31, 2000, DEA investigators served an Administrative Inspection Warrant at the Respondent's registered premises. Pursuant to the warrant, required records of purchases and sales of listed chemicals were acquired. An inventory of the listed chemical product on hand was also taken on that date. More then 41 million dosage units of pseudoephedrine were on hand.

7. A subsequent review of purchase records revealed that during the period February 1998 to July 2000, Respondent purchased over 1.3 million bottles of the listed chemical pseudoephedrine from six different suppliers, including three manufacturers and three distributors. The DEA chemical registrations of two of the Respondent's earlier suppliers were revoked or suspended on public interest grounds for distribution activity related to the diversion of pseudoephedrine.

8. During September 2000, Respondent made three sales of 50 case lots of pseudoephedrine to a customer who paid cash and picked up the product from Respondent's location. Respondent failed to report this sale to DEA as a suspicious transaction.

9. During the month of October 2000, an audit of these records was conducted by DEA. An opening inventory of ''zero'' was assigned for the audit period beginning on February 19, 1998. The physical count of July 31, 2000, (388,699 bottles) was used as the closing inventory. A review of the purchase records indicated that Respondent received 1,354,164 bottles of pseudoephedrine. A review of sales records indicated that Respondent sold 867,084 bottles. The audit concluded that Respondent was unable to account for 98,371 bottles of pseudoephedrine.

10. The unaccounted for 98,371 bottles of pseudoephedrine product contained over nine million 60 mg. tablets. Such a quantity of pseudoephedrine is sufficient to illegally manufacture 350 to 400 kilograms of methamphetamine.

Based on his preliminary findings, and pursuant to 21 U.S.C. 824(d), 21 CFR 1309.44(a), as well as the authority granted under 21 CFR 0.100, the then-Deputy Administrator ordered the immediate suspension of the Respondent's DEA Certificate of Registration, 002330BNY, as a distributor of list I chemicals, effective immediately. The suspension was to remain in effect until a final determination was reached in these proceedings. By letter dated January 24, 2001, the Respondent, through its legal counsel, timely filed a request for a hearing on the issues raised by the Order to Show Cause—Immediate Suspension of Registration, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner (Judge Bittner).

Following pre-hearing procedures, a hearing was held in Arlington, Virginia on July 19 and 20, 23 through 25, and August 7 through 10, and 28 and 29, 2001. At the hearing, both parties called witnesses to testify and introduced documentary evidence. During the July 20 portion of the proceeding, and in response to a request by Respondent's counsel for certain evidentiary items from the Government, Judge Bittner ruled that the Jencks Act, Title 18 U.S.C. 3500, applies to DEA administrative proceedings; and further ruled, that following the direct examination of Government witnesses and upon timely request by Respondent, the Government is required to supply not only statements made and adopted by Government witnesses that apply to their direct testimony, but also pertinent testimony of such witnesses in prior DEA administrative proceedings.

On July 23, 2001, counsel for the Government filed Government Motion in Opposition to Preliminary Ruling Regarding Respondent Request for Documents as Jencks Act Material (18 U.S.C. 3500) in the Form of Witnesses' Previous Testimony and Affidavits in All Prior DEA Administrative Hearings and Motion for Written Ruling in Anticipation of Interlocutory Appeal. By memorandum dated July 30, 2001, Judge Bittner issued a Memorandum to Counsel and Rulings on Motions, granting the Government's Motion for Written Ruling, and further certified the issue for interlocutory appeal pursuant to 21 CFR 1316.62. On August 3, 2001, the then-Acting Administrator received the Government's Interlocutory Appeal of the Ruling of the Administrative Law Judge Regarding the Applicability of the Jencks Act (18 U.S.C. 3500) to DEA Administrative Proceedings Pursuant to

Title 21 CFR Part 1316, Subpart D. The then-Administrator also accepted on behalf of the Respondent a response in opposition to the Government's interlocutory appeal.

In light of arguments raised by the referenced interlocutory appeal regarding the applicability of the Jencks Act to DEA administrative proceedings, and the likelihood that the matter will again be raised in the future DEA proceedings, the Acting Deputy Administrator has incorporated in the instant final order the then-Administrator's ruling on the interlocutory appeal. The Acting Deputy Administrator further adopts herein that then-Administrator's August 16, 2001, Order, summarized as follows:

The Jencks Act, 18 U.S.C. 3500, provides in pertinent part that:

(a) In any criminal prosecution brought by the United States, no statement or report in the possession of the United States which was made by a government witness or a prospective Government witness (other than the defendant) shall be the subject of subpoena, discovery, or inspection until said witness has testified on direct examination in the trial of the case.

(b) After a witness called by the United States has testified on direct examination, the court shall, on motion of the defendant, order the United States to produce any statement (as hereinafter defined) of the witness in the possession of the United States which relates to the subject matter as to which the witness has testified. If the entire contents of any such statement relate to the subject matter of the testimony of the witness, the court shall order it to be delivered directly to the defendant for his examination and use.

(c) The term ''statement'', as used in subsections (b), (c), and (d) of this section in relation to any witness called by the United States, means—

(1) A written statement made by said witness and signed or otherwise adopted or approved by him;

(2) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement made by said witness and recorded contemporaneously with the making of such oral statement; or

(3) a statement, however taken or recorded, or a transcription thereof, if any, made by said witness to a grand jury.

In support of the argument regarding the applicability of the Jencks Act to DEA administrative proceedings, Judge Bittner and the Respondent relied upon the court ruling *Harvey Aluminum* v. *National Labor Relations Board,* 335 F.2d 749 (9th Cir. 1964) (Harvey). Prior to the decision in that case, the National Labor Relations Board (NLRB), pursuant to the decision in *NLRB* v. *Adhesive Products Corp.,* 258 F.2d 403 (2d Cir. 1958), had modified its regulations governing administrative hearings before the NLRB in an attempt to apply the principle announced in *Jencks* v. *United States,* 353 U.S. 657 (1957) (*Jencks* decision). However, the *Harvey* court found the NLRB's attempt insufficient. In response to the NLRB's arguments that the Jencks Act could not be applied in full measure to its proceedings, the *Harvey* court stated:

> The rule applies to proceedings of the Board because ''the laws under which these agencies operate prescribe the fundamentals of fair play. Their proceedings must satisfy the pertinent demands of due process.'' Whether the compulsion of the rule is constitutional or statutory, the Board may not avoid it by adopting regulations inconsistent with its requirements.

Harvey, 335 F.2d at 753. (Citations omitted).

The *Harvey* court concluded that the NLRB's regulation did not meet the Constitutional requirements of due process.

Subsequent to the *Harvey* decision, however, the Supreme Court of the United States found in the context of a criminal trial that violations of the Jencks Act did not rise to the level of denial of due process. ''[A]part from trials conducted in violation of express constitutional mandates, a constitutionally unfair trial takes place only where the barriers and safeguards are so relaxed or forgotten * * * that the proceeding is more a spectacle * * * or trial by ordeal * * * than a disciplined contest.'' *United States* v. *Augenblick,* 393 U.S. 348, 356 (1969) (citations omitted). With regard to the *Jencks* decision and the Jencks Act, the *Augenblick* Court stated: ''Indeed our *Jencks* decision and the Jencks Act were not cast in constitutional terms. They state rules of evidence governing trials before federal tribunals * * *'' Id. at 356. See also *United States* v. *James Barrett,* 178 F.3d 34, 54 (1st Cir. 1999), *cert. denied sub nom. Barrett* v. *U.S.,* 528 U.S. 1176 (2000); *Humberto Martin* v. *United States,* 109 F.3d 1177, 1178 (7th Cir. 1996); *United States* v. *Joseph Thomas, Sr.,* 97 F.3d 1499, 1502 (D.C. Cir. 1996); *United States* v. *Lam Kwong-Wah,* 924 F.2d 298, 310 (DC Cir. 1991); *John K. Lincoln* v. *Franklin Y.K. Sunn,* 807 F.2d 805, 816 (9th Cir. 1987), *cert. denied,* 498 U.S. 907 (1990); *Martin* v. *Maggio,* 711 F.2d 1273, 1283 (5th Cir. 1983), *cert. denied sub nom. Martin* v. *Louisiana,* 449 U.S. 998 (1980); *Sperling* v. *Unites States,* 692 F.2d 223, 227 (2d Cir. 1982). *See also Palermo* v. *United States,* 360 U.S. 343, 345 (1959) (stating with regard to the *Jencks* decision that the Court was ''[e]xercising our power, in the absence of statutory provision, to prescribe procedures for the administration of justice in the federal courts.'').

The Acting Deputy Administrator adopts the finding of the then-Administrator that from the cited authority, it is clear that the Jencks Act is a statutory rule of evidence governing federal trials, and that due process does not require its application. In light of the Supreme Court's decisions in *Augenblick* and *Palermo,* the then-Administrator discounted subsequent lower court decision applying the Jencks Act to agency administrative proceedings on a due process basis.

The then-Administrator concluded that a number of courts, including the United States Supreme Court, have expressly recognized that, by their plain language and intent, the *Jencks* decision and the Jencks Act apply only to federal criminal trials. *See Palermo* v. *United States,* 360 U.S. at 347–8 (''[In passing the Jencks Act] Congress had determined to exercise its power to define the rules that should govern in this particular area in the trial of criminal cases * * *''); *Lincoln* v. *Sunn,* 807 F.2d at 816; *Martin* v. *Maggio,* 711 F.2d at 1283; *Jeffery L. Silverman* v. *Commodity Futures Trading Commission,* 549 F.2d 28, 34 (7th Cir. 1977); *L.G. Balfour Co.* v. *Federal Trade Commission,* 442 F.2d 1, 25 n.8 (7th Cir. 1971)(''It is clear the Jencks Act does not bind the Commission. That statute, enacted to restrict the impact of the *Jencks case,* is by its very terms peculiarly concerned with and applicable to criminal judicial proceedings.'').

In footnote nine of its decision, the *Harvey* court suggest another possible basis for the application of the Jencks Act to NLRB proceedings. The court found that 29 U.S.C.A. 160(b) required that NLRB proceedings ''shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the federal district courts of the United States * * *'' The court then noted that ''[p]roduction of statements of the Jencks type would be required in a civil action in federal district court * * *'' *Harvey,* 335 F.2d at 758 n.9. The *Harveys* court thus recognized that by statute, the federal rules of evidence were made applicable to NLRB proceedings. The then-Administrator concluded that this situation was not applicable to the instant proceedings.

In the Matter of Rosalind Cropper, M.D., 66 FR 41,040 (DEA 2001), the

then-Acting Administrator of DEA noted that the Federal Rules of Evidence (FRE) do not directly apply to DEA administrative proceedings. *Id.* at 41,041. The then-Acting Administrator of DEA noted that the Federal Rules of Evidence (FRE) do not directly apply to DEA administrative proceedings. *Id.* at 41,041. The then-Acting Administrator further noted that unless modified by agency rules, evidence is admitted in administrative proceedings in accordance with 5 U.S.C. 556(d) of the Administrative Procedure Act (APA). *Id.*

The then-Administrator reiterated that the Jencks Act is a rule of evidence governing criminal trials in federal courts. *Augenblick,* 393 U.S. at 356; *Palermo,* 360 U.S. at 345, 347–8; *Lincoln* v. *Sunn,* 807 F.2d at 816; *Martin* v. *Maggio,* 711 F.2d at 1283; *Silverman* v. *CFTC,* 549 F.2d at 34; *L.G. Balfour Co.* v. *Federal Trade Commission,* 442 F.2d at 25 n.8. The then-Administrator found the reasoning in *Cropper* applied with equal force to the instant case. As decided in *Cropper,* evidence is admitted in DEA administrative proceedings in accordance with section 556 of the APA, as modified by agency regulations. Neither the APA, the provisions of 21 CFR 1316.59 which govern the submission and receipt of evidence in these proceedings, nor any of the other regulations governing DEA administrative proceedings found at 21 CFR Part 1316, Subpart D, appear to contain any provision applying the *Jencks* decision or the Jencks Act to DEA administrative proceedings. The then-Administrator noted further that he was unaware of any published DEA final order that applied the Jencks Act to these proceedings.

In light of the cited authority and the plain language of the Jencks Act, the then-Administrator found that by its terms, the Jencks Act is not applicable and has not been made applicable to DEA administrative proceedings. The then-Administrator further found that there is no constitutional requirement that the Jencks Act be made applicable to DEA administrative proceedings. Accordingly, the then-Administrator concluded that pursuant to applicable law and regulations governing DEA administrative proceedings, neither the principles of the *Jencks* decision nor the Jencks Act are applicable to these proceedings. The then-Administrator further concluded that the Federal Advisory Committee Act, 5 U.S.C. Appendix, does not apply to DEA administrative proceedings, as 5 U.S.C. 556(d) and 21 CFR 1316.46(a) control the availability of transcripts of such proceedings.

Following the then-Administrator's ruling on the interlocutory appeal, and at the conclusion of the administrative hearing, both parties filed Proposed Findings of Fact, Conclusion of Law, and Argument. On December 4, 2002, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge (Opinion and Recommended Ruling) recommending that the Respondent's registration as a distributor of list I chemicals be revoked. Both the Government and the Respondent filed Exceptions to the Administrative Law Judge's Opinion and Recommended Ruling. Thereafter on January 21, 2003, Judge Bittner transmitted the record of these proceedings to the then-Deputy Administrator for a final decision.

The Acting Deputy Administrator finds that list I chemicals are those that may be used in the manufacture of a controlled substance in violation of the Controlled Substances Act. 21 U.S.C. 802(34); 21 CFR 1310.02(a). Pseudoephedrine and ephedrine are list I chemicals commonly used to illegally manufacture methamphetamine, a Schedule II controlled substance. Phenylpropanolamine, also a list I chemical, is a legitimately manufactured and distributed product used to provide relief of the symptoms resulting from irritation of the sinus, nasal and upper respiratory tract tissues, and is also used for weight control. Phenylpropanolamine is also a precursor chemical used in the illicit manufacture of methamphetamine and amphetamine. Methamphetamine is an extremely potent central nervous system stimulant, and its abuse is a growing problem in the United States.

A ''regulated person'' is one who manufactures, distributes, imports, or exports *inter alia* a listed chemical. 21 U.S.C. 802(38). A ''regulated transaction'' is *inter alia,* a distribution, receipt, sale, importation, or exportation of a threshold amount of a listed chemical. 21 U.S.C. 802(39). The Acting Deputy Administrator finds all parties mentioned herein to be regulated persons, and all transactions mentioned herein to be regulated transactions, unless otherwise noted.

The Acting Deputy Administrator finds that the Respondent was founded in 1982, in Tampa, Florida as a wholesale distributor servicing independent grocery and convenience stores, as well as establishments operating vending machines. The Respondent's president, Frank Marquez (Mr. Marquez), has been with the company since its inception. At the time of the hearing, the Respondent had approximately seventeen employees on its payroll.

Mr. Marquez testified that he is a member of the American Wholesale Market Association and the National Candy Association. The Respondent, through the person of its president, is also director of the Vending Association of Florida (an organization comprised of approximately one hundred members), and director and vice president of the Florida Candy and Tobacco Wholesaler Association. The Respondent supplies its customers, merchandise from major domestic suppliers of candy and confectionary, meat, salty snacks, fruit juices and beverages, tobacco products, sundries and over-the counter medications.

As noted above, on November 10, 1997, Respondent submitted an application for DEA registration as a distributor of the listed I chemicals. On or around February 14, 1998, diversion investigators from DEA's Tampa District Office (the Tampa District Office) conducted an on-site pre-registration inspection of the Respondent's proposed registered location. As part of that inspection, investigators provided Mr. Marquez with a copy of DEA regulations and reference materials commonly referred to as the ''Red Sheet'' and the ''Green Sheet.'' These documents direct an applicants' attention to matters involving the diversion of ephedrine, pseudoephedrine and phenylpropanolamine to the illicit production of emphetamine and methamphetamine. The ''red'' and ''green'' notices further direct an applicants' attention to the requirement of a DEA registrant to report ''suspicious orders'' of list I chemical products. Following the inspection, DEA Diversion Investigator Miguel Soler recommended that the Respondent's application for registration be approved, and on February 19, 1998, DEA issued to the Respondent a DEA Certificate of Registration to distribute the list I chemical products listed on its registration application.

In her Opinion and Recommended Ruling, Judge Bittner found, that following the issuance of its DEA Certificate of Registration, the Respondent engaged in three different types of distribution businesses: (1) Selling pseudoephedrine in bottles and multi-dose blister packs to distributors and retailers; (2) supplying customers who stock vending machines with a variety of products, including, among others, sodas, over-the-counter medications, shavers, snacks, and toiletry items; and (3) through its subsidiary All Gourmet, selling high-

end chocolates, mints, and jellies to specialty retailers such as gift shops and firms that make gift baskets.

Mr. Marquez testified that in 1999 and 2000, candy and snack products accounted for about approximately 90 to 92 percent of the Respondent's business and that during that two-year period, Respondent's aggregate sales were $29 or $30 million. As of the date of Mr. Marquez's testimony at the administrative hearing, the value of Respondent's inventory of all products that it carried was approximately $2 million.

The Respondent presented further evidence that it services approximately 550 independent grocery stores, and that over the two years preceding the hearing in this matter, approximately 250 to 300 of those stores changed ownership, went out of business or changed names. Mr. Marquez testified that in March or April 1999, he decided to sell 60-count, 60 milligram pseudoephedrine to retail stores. A customer list dated June 29, 2001, and admitted into evidence revealed that in addition to customers in Florida, the Respondent had 265 pseudoephedrine customers in various parts of the United States including Michigan, Tennessee, Washington, New Jersey, Illinois, Oklahoma, and Texas, as well as six additional states.

Mr. Marquez testified that he hired two salesmen, Habeke Tekelewold (Mr. Tekelewold) and Mustafa Ahmad (Mr. Ahmad) who were responsible generally for coordinating the Respondent's sale of pseudoephedrine products to its various customers, and determining the suitability of those customers. Mr. Marquez assigned to Mr. Tekelewold the task of ensuring that customers were properly licensed, and checking individual stores to further ensure that Respondent's products were properly shelved. Mr. Marquez further testified that the Respondent also required every potential customer to execute an agreement which, among other things, required customers to ''comply with all applicable DEA regulations, including reporting suspicious inquiries immediately to both DEA and Neil Laboratories, Incorporated.'' At the time of the hearing, Neil Laboratories, a DEA-registered manufacturer/distributor, was a supplier of list I chemical products to the Respondent.

Mr. Marquez further testified that the Respondent employed specialized procedures for retail customers that wished to purchase over-the-counter drug products, including list I chemicals: a requirement of written purchase orders for all purchases of listed chemical products and the use of credit applications. Mr. Tekelewold testified that the Respondent also confirmed the identities of prospective retail customers by telephone, and following such contact, the Respondent would request copies of available business licenses. Upon receipt of those licenses, Respondent's personnel would conduct on-site visits.

Mr. Marquez also testified to specialized procedures for customers that wished to purchase list I chemical products for resale: The Respondent would obtain a copy of the prospective customers' DEA registration and a copy of the principal's driver's license. That information would be sent to the Tampa District Office, along with a request for review and reply. Investigator Soler testified that on at least one occasion, the Respondent notified DEA of a suspicious customer, and DEA subsequently issued an advisory to the Respondent not to sell list I chemicals to that customer, to which the Respondent complied.

In her Opinion and Recommended Ruling, Judge Bittner referenced testimony by Mr. Marquez that in February or March 2000, Respondent reduced its retail sale of pseudoephedrine products to 144 bottles per month; however, it appeared that some the 144-bottle cases contained 120-count bottles. Mr. Marquez further testified that toward the middle of 2000, he purchased approximately 776 cases of 120-count bottles and 785 cases of 100-count bottles of pseudoephedrine from Over-The-Counter Distribution Company (OTC Distribution), a list I chemical distributor located in Dallas, Texas, because the opportunity arose to buy in that quantity and Respondent had some difficulty obtaining enough pseudoephedrine to meet demand.

Mr. Tekelewold testified that Respondent imposed a standard fee for $110 for overnight shipping of a case of pseudoephedrine and charged $50 for regular shipping, which would take approximately two or three days. Mr. Marques, testified however, that shipping for receipt the next day would cost $60 or $70 and shipping for receipt two days later would cost $45 or $50. Further evidence was presented that the choice of shipping arrangements was contingent upon how quickly the customer wanted to receive the product.

Mr. Tekelewold further testified that for two years, he owned five gasoline stations in Florida, all of which he sold in 1999. According to Mr. Tekelewold, those gas stations sold candy, snacks, cold drinks, beer, cigarettes, and over-the-counter medication such as Sudafed, Tylenol, and Alka-Seltzer, in addition to gasoline. Mr. Tekelewold added that he sold these other products because :''[y]ou cannot survive only by selling gas * * *''

In addition, Mr. Tekelewold testified that he did not handle non-pseudoephedrine products for any of Respondent's customers except the gasoline stations he owned. Nevertheless, Judge Bittner noted, and the Acting Deputy Administrator concurs, that notwithstanding Mr. Tekelewold's testimony that some of Respondent's pseudoephedrine customers purchase other products from Respondent, there was no evidence to this effect in the record.The Respondent maintains a catalogue of its products, and those products are organized by product codes. For example Code 290 is ''HBA (Health and Beauty Aid)—headache.'' Code 301 is listed as ''HBA nasal care.'' Pseudoephedrine products distributed by the Respondent are not listed in the Health and Beauty Aids section of the catalogue. Rather, the product is listed under Code 699—Grocery and General Merchandise. Mr. Marquez testified that he listed pseudoephedrine in this manner as a control measure to prevent every single customer from asking for these type of products.

The Government presented evidence regarding DEA's issuance or warning letters to DEA-registered handlers of listed chemicals. DEA warning letters generally advise chemical registrants that their chemical product has been discovered at clandestine laboratory settings and how the registrants' distribution patterns may have contributed to the diversion of these products to the illicit manufacture of methamphetamine. These warning letters are issued by agency's Office of Diversion Control under its precursor chemical control program.

Kevin Lee, a program analyst form the Office of Diversion Control testified on behalf of the Government. Mr. Lee testified that there are three situations where DEA warning letters are issued: where there is a clandestine laboratory seizure; at clandestine laboratory dump sites, where discarded bottles and related packaging are discovered; and in situations involving precursor trafficking.

As of the date of the hearing in this matter, DEA had never issued a warning letter to the Respondent. However, Mr. Lee reviewed a compilation of the Respondent's receipt and purchase of list I chemical products from five entities that manufactured and/or distributed list I chemicals. With respect to these entities, DEA had issued approximately 114 warning letters

regarding the diversion of listed chemicals.

Further evidence was presented that the Respondent purchased from OTC Distribution 28,368 bottles of pseudoephedrine products with the same lot number as that which was the subject of a warning letter dated November 15, 2000, to Adams Laboratories, Incorporated (Adams). Adams, a manufacturer of list I chemicals, had previously sold the product to OTC Distribution. DEA sent additional warning letters to Adams on January 25 and February 5, 2001. By letter dated February 19, 2001, Adams directed its customer Wildcat Wholesale Distribution not to sell Adams' list I chemical products to certain named distributors, including the Respondent.

DEA further presented the testimony of the manager of the Precursor Compliance Program for the California Bureau of Narcotic Enforcement (BNE), who testified that California has the largest number of clandestine laboratory seizures in the United States and methamphetamine is ''the number one drug problem in the state.'' The government witness testified that in 1986, California established a clandestine lab enforcement and precursor program to counter illegal methamphetamine production in the state. To that end, California has also established a warning letter program similar to DEA's whereby letters are issued to listed chemical distributors notifying these firms that their list I chemical products had been discovered as clandestine laboratory setting.

The government witness further testified that in 2000, the State of California issued warning letters to two of the Respondent's list I chemical suppliers as a result of their product being found at a clandestine setting in the city of San Jose. It was subsequently determined that lot numbers of some of the chemical products found at that location were the same as those of product shipped to the Respondent and other distributors.

In or around May 2000, the Tampa District Office learned that the Respondent had received large quantities of pseudoephedrine from various suppliers, including more than twenty-four million tablets from OTC Distribution. In response to this information, on July 31, 2000, diversion investigators from the Tampa District Office served an administrative inspection warrant on Mr. Marquez, authorizing the seizure of the Respondent's records of the sale and receipt of pseudoephedrine from July 31, 1998 to the date of the warrant.

By all accounts, Mr. Marquez was cooperative in providing the requested records to DEA investigators and taking an inventory of the number of pseudoephedrine bottles his company had on hand. That inventory was conducted as part of a DEA audit of the Respondent's handling of list I chemicals over the then-two year period (1998 to 2000) of the Respondent's registration with DEA. Diversion Investigator Solar also compiled a listing of all sales of pseudoephedrine by the Respondent. Specifically, Investigator Solar created a document which chronicled the names of the listed chemical products purchased by the Respondent, date of purchase, name of company that sold the product to the Respondent, lot number, the number of cases, number of bottles per case, and the number of pseudoephedrine tablets. Investigator Solar then turned over Respondent's invoices and other documentation to the National Drug Intelligence Center (NDIC) for completion of the audit. NDIC in turn, prepared a spreadsheet of all of the Respondent's transaction from the registrant's invoices, and also compiled a listing of the Respondent's purchases of pseudoephedrine.

For the inventory, DEA investigators used an opening date of February 19, 1998, with an opening balance of zero. When a zero balance is used as part of an accountability audit, it operates as an assumption that a registrant does not have any of the audited products on hand as of the beginning date of the audit period. A zero opening inventory will also result in audit figures that understate any shortages or overages that may be uncovered. For example, if a registrant has list I chemical products on hand when an audit is initiated, but investigators instead decide that a zero balance will be used, those products on hand will not be considered a part of the audit for which the registrant is accountable. Therefore, for audit purposes, a zero opening inventory typically works in favor of the registrant.

On July 31, 2000, DEA investigators performed a physical count of pseudoephedrine bottles on hand which totaled 388,699 bottles. This total was used as the closing inventory. Further review of Respondent's purchase records revealed that the firm received 1,354,164 bottles of pseudoephedrine, and its sales records revealed the sale of 867,084 bottles of pseudoephedrine between the opening of business on February 19, 1998 and July 31, 2000. The audit concluded that the Respondent was unable to account for 98,381 bottles of pseudoephedrine.

During the December 29, 2000, execution of Order of Immediate Suspension, DEA investigators seized quantities of pseudoephedrine products which originated primarily from OTC Distribution. A DEA inventory of those products revealed that Respondent had on had 776 cases (144 bottles each) of 120-count bottles, as well as 785 cases (144 bottles each) of 100-count bottles of pseudoephedrine.

Mr. Marquez testified that following the execution of the Order of Immediate Suspension, he along with the Respondent's Operations Manager and Warehouse Manager respectively undertook a physical recount of Respondent's inventory of pseudoephedrine. The recount revealed that Respondent had 775 cases plus 139 bottles (120-count), and 786 cases of 100-count bottles on hand. These numbers were in keeping with the Respondent's computerized inventory. While the recount totals apparently did not include additional bottle quantities of pseudoephedrine that Mr. Marquez subsequently testified were under seal, on June 9, 2001, the Respondent contracted with RGIS (RGIS) Inventory Specialist, a firm that specializes in inventories. The inventory conducted by RGIS revealed that Respondent had on hand 776 cases (144 bottles each) of 120-count bottles of pseudoephedrine, 785 cases plus 139 bottles of 100-count pseudoephedrine, as well as 88 cases of product known as ''Action Blister.''

The Government also presented evidence regarding visits by DEA investigators to various customers of the Respondent that conducted business in Florida and other parts of the United States. One such visit was initiated after Mr. Marquez sought from DEA information on a potential customer, Abdin International Tobacco (Abdin), Abdin, a DEA-registered list I chemical distributor located in vicinity of Orlando, Florida, sought to purchase pseudoephedrine from the Respondent in or around early 2000. DEA's investigation revealed that Abdin sold list I chemical products primarily to convenience stores.

Investigator Solar verified Abdin's registration status with DEA and so informed Mr. Marquez. Shortly thereafter on May 16, 2000, Respondent sold to Abdin 100 cases of pseudoephedrine (144 bottles of 120 sixty milligram tablets) for $116,000. On June 1, 2000, the Respondent sold another 100 cases of pseudoephedrine (144 bottles of 120 sixty milligram tablets) to Abdin for $104,400, which was paid by bank draft. On September 21, 2000, the Respondent sold an additional 50 cases of pseudoephedrine

(144 bottles (120-count) of sixty milligram tablets) to Abdin. This particular order was picked up by Abdin's owner who in turn paid $50,040 in cash for the order.

Investigator Soler testified that the above transactions were suspicious. He based his conclusion on the quantity of product, which Investigator Soler found to be ''very large,'' that Mr. Abdin picked up the product from the Respondent's facility, and that one of the orders was paid for in cash. There is no evidence in the record that the Respondent ever reported any of these transactions to DEA as suspicious.

During his testimony, Mr. Marquez conceded that the owner of Abdin paid cash for fifty cases of pseudoephedrine on September 21, 2000. Mr. Marquez explained, however, that the merchandise was supposed to be paid for with a cashier's check, but Abdin's owner arrived at Respondent's facility early open morning representing that he had not had time to go to the bank. Mr. Marquez testified that he was further informed by Mr. Abdin that the latter had cash from his sales the previous day to cover the purchase, and as a result, Mr. Marquez accepted the cash payment.

Judge Bittner concluded that ABdin's cash payment to the Respondent of more than $50,000 for the fifty cases of pseudoephedrine on September 21, 2000 was suspicious and should have been reported to DEA. The Acting Deputy Administrator concurs with Judge Bittner's finding with respect to this particular transaction, as well as her finding that the suspicious nature of the transaction was not necessarily related to the owner of Abdin picking up the order from Respondent's warehouse.

DEA Diversion Investigator Arthur Fierman-Rentas of the Tampa District Office testified that on May 29, 2001, he visited five convenience stores in the Tampa area which according to Respondent's invoices, purchased pseudoephedrine from the Respondent at various periods between 1999 and 2000. According to Investigator Fierman-Rentas, none of the five stores had any list I chemical products on display as of the date of his visit.

One of the establishments visited by Investigator Fierman-Rentas was Ali's West Indian African and American (Ali's) which purportedly purchased thirty-nine cases of pseudoephedrine from the Respondent between 1999 and 2000. Investigator Fierman-Tentas testified that upon his arrival at that location, Ali's former premises were occupied by an establishment with the business name Third World Grocers. The clerk present at the location informed investigator Fierman-Rentas that Ali's had gone out of business three years earlier. The clerk further stated that he had never heard of the Respondent, his store had no record of transactions involving listed chemicals, and stocked no listed chemical products. Nevertheless, evidence adduced at the hearing revealed that Respondent maintained a file folder for Ali's which contained an address sheet, a Department of Revenue certificate, and at least one order form dated February 14, 2000. The order form bore the customer's name, address and information that 576 bottles of pseudoephedrine were ordered at a price of $2,016 plus $50 shipping.

Investigator Fierman-Rentas also visited Main Grocery, a Tampa area grocery-convenience store, which purportedly purchased forty-one cases of pseudoephedrine from the Respondent between 1999 and 2000. The owner of Main Grocery told Investigator Fierman-Rentas that he had owned the store since March 2001, had never heard of Respondent, and had no invoices from Respondent available. It appears from the record that the Respondent had discontinued its sale of pseudoephedrine to Main Grocery prior to its change of ownership.

DEA's investigation further disclosed that during 1999 and 2000, the Respondent sold forty-five cases of pseudoephedrine in Super Food Supermarket, a convenience store located in Tampa. Investigator Fierman-Rentas testified however, that the location Respondent listed for Super Food Supermarket was occupied by an establishment with the business name, Y & S Supermarket. The individual present informed DEA investigators that he had owned the store since February 10, 1999, but he had no invoices from Respondent available, and did not know if Respondent had sold pseudoephedrine to the store.

Investigator Fierman-Rentas also testified to his visit of Flamingo Food Mart. The store manager was not present at the time of the inspection, but the clerk at that location agreed to assist the investigator by telephoning the store manager. When subsequently contacted, the store's manager informed DEA personnel that he had never heard of Respondent, did not have any invoices of transactions with the Respondent and did not sell list I chemicals. Investigator Fierman-Rentas also asked the clerk at Rainbow Food Place Number 2 to telephone the store manager, who was not present at the time of the inspection. That store's manager subsequently informed Investigator Fierman-Rentas that his bookkeeper had all his invoices and he could not remember whether or not the store had bought list I chemical products from Respondent. A subsequent visit to Rainbow Food Place Number I yielded similar results, where the clerk informed Investigator Fierman-Rentas that the owners of the store had been killed the previous year, that there were no invoices of transactions involving the Respondent, and that he had never heard of Respondent.

Senior Diversion Investigator Ira Wald, also of the Tampa District Office testified that on May 24, 2001, he visited seven additional stores in Florida that according to Respondent's records, were customers for pseudoephedrine products: Georgia discount Store, Cedar Market, Quick Trip Number 1, and Stop 1 in St. Petersburg, Quick Trip Number 2 in Largo, Munchee's No. 101 in Clearwater, and Munchee's No. 102 in Dunedin.

DEA's investigation revealed that the Respondent supplied Georgia Discount Store with forty-three cases of pseudoephedrine between 1999 and 2000. While at the location for that customer, Investigator Wald spoke to a clerk, who said that he had heard of Respondent but had no records. Although the sign on the store read ''Georgia Meat Market,'' Respondent's invoices listed the name of the store as ''Georgia Discount Store.'' While list I products displayed on the shelves of the store were of the brand-name variety containing thirty-milligrams of pseudoephedrine per dosage unit, there were no products with lot numbers corresponding to those on Respondent's invoices for this customer. Additional testimony from a witness for the Respondent revealed that this customer specialized in the sale of meat products.

DEA's investigation revealed that between 1999 and 2000, the Respondent supplied Cedar Market, a grocery store, with thirty-nine cases of pseudoephedrine. According to Investigator Wald, the manager of that location claimed that he had not heard of Respondent, there were no invoices, and there was no pseudoephedrine or other list I chemical products on display.

DEA's investigation revealed that between 1999 and 2000, the Respondent supplied Quick Trip Number 1, a gas station, with forty-one cases of pseudoephedrine. Investigator Wald found the pseudoephedrine product ''Mini-Thins'' in stock, but the lot numbers did not correspond to those on Respondent's invoices. The clerk present did not have any invoices and had not heard of Respondent.

With respect to Quick Trip Number 2, a convenience store, DEA's investigation

revealed that between 1999 and 2000, the Respondent supplied this establishment with forty-one cases of pseudoephedrine. A review of the record regarding this customer, as well as a review of Respondent's sale of pseudoephedrine to Munchee's 101 (to which the Respondent supplied thirty-five cases of pseudoephedrine between 1999 and 2000), revealed that there were no list I chemical products on display, the respective clerks had never heard of Respondent and did not have invoices of any transactions involving the Respondent. Likewise, according to Investigator Wald, Munchee's No. 102, a convenience and grocery store that was supplied thirty-nine cases of pseudoephedrine by the Respondent between 1999 and 2000, had no list I products in stock. The clerk at Munchee's 102 informed DEA personnel that he was not the manager, had not bought merchandise from, or ever heard of Respondent, and did not have any invoices for its products.

With respect to Stop 1, a grocery store, DEA's investigation revealed that between 1999 and 2000, the Respondent supplied this establishment with thirty-seven cases of pseudoephedrine. Investigator Wald testified that Stop 1 carried a brand name product containing pseudoephedrine, but the clerk had never heard of Respondent and did not maintain invoices for its products.

DEA Diversion Investigator Deborah George of the agency's Orlando, Florida office, testified to her visits to the following Orlando-area customers of the Respondent on June 1, 2001: Jules Gifts, Inc., La Belle Creole, and S & A Gift Shop in Orlando, and Publix Supermarket, Fresh Supermarket & Gifts, Bargain Zone Grocery, and Little Bargain Zone #2 in Kissimmee. At the time of her visits, Investigator George did not identify herself as a DEA investigator or speak to owners or managers, but looked in the stores to see whether Respondent's listed chemical products were on the shelf.

Investigator George testified that a review of the Respondent's records revealed a customer known as Jules Gifts; however, a subsequent check of that location revealed that the business was a residence. Mr. Marquez acknowledged that the address listed on Jules Gifts' Florida Department of Revenue registration was the owner's residence, but that Mr. Tekelewold assured him that he had been to the store and made sure that the product was going to a real retail business. Mr. Marquez also acknowledged that there was no document in the customer file indicating a different shipping address and that a United Parcel Service record of shipment that Respondent offered into evidence showed the residential address as the location where pseudoephedrine products were eventually shipped.

Investigator George testified to her visit to the location of a customer listed in the Respondent's records as La Belle Creole. It was later determined that La Belle Creole was a restaurant named Havana's #2. Investigator George did not go into the restaurant. Mr. Tekelewold testified that La Belle Creole was a grocery store and a customer of the Respondent until July 2000.

Investigator George testified that the address listed for S&A Gift Shop was inside a Sheraton hotel, and that she did not see any of Respondent's products in the shop. Mr. Tekelewold testified that the gift shop had been a Respondent customer until July or August 2000. Investigator George further testified that she did not see any of Respondent's listed chemical products in the Publix Supermarket, Little Bargain Zone #2, or Fresh Supermarket & Gifts, although she did see listed chemical products from other vendors at these locations. At Bargain Zone Grocery, Investigator George saw one display of individual packages of Max grand pseudoephedrine with six tablets in each package. Investigator George testified that she drove past Sonia's Deli & Grocery in Kissimmee, but did not enter the premises. Investigator George further testified that she did not visit various other Respondent customers at six additional locations because of information that persons associated with those establishments were under indictment.

As part of its investigation of the Respondent's distribution practices, DEA also sought information about the company's shipment of pseudoephedrine products to customers in the State of New Jersey. To that end, on June 7, 2001, Diversion Investigators Suckcha Tharp and Andrew Breiner of DEA's Newark, New Jersey field office visited the Middle Eastern Market, the Al-Madena Deli, and the Neighborhood Supermarket, all in Paterson, New Jersey. These visits were initiated to corroborate information in the Respondent's invoices that these entities had been Respondent's customers between March and July 1999. The following day, the investigators visited the Getty Deli and the S&M Golden Mini-Mart, also in Paterson, for the same purpose. The owners of the Middle East Food Market and Al-Madena Deli told the investigators that they had acquired the stores after 1999, but had never purchased any of Respondent's products. The manager of the Neighborhood Supermarket said that his family had owned the store since 1982, but had never purchased any of Respondent's products.

Similarly, the owners of the Golden Mini-Market and the Getty Deli both told the investigators that they had owned their respective stores for five years, but had never purchased any products from Respondent and did not have any in the store. A salesclerk of the Big Apple Meat Corporation further informed the investigators that the store had not purchased any products from Respondent in the year and a half that he had worked there. The investigators did not see any list I chemical products at any of the visited stores.

Despite the above evidence suggesting that the Respondent had not engaged in regulated transactions with the above New Jersey-area customers, Mr. Marquez testified, and Respondent's records confirmed, that Respondent sold to six convenience stores in Paterson: Middle East Food Market, Al-Madena Grocery, Getty Deli, Big Apple Market, S&M Golden Mini-Market, and Neighborhood Supermarket, along with the Four Corner Store in Passaic, New Jersey. Specifically, the Respondent's invoices indicated that it sold 576 100-count bottles of 60-milligram pseudoephedrine (Revive brand product) to Middle East Food Market in April, May, and July 1999; four boxes of Revive 60 milligram to Al-Madena Grocery Deli in April, May, and July 1999; four boxes of Revive 60 milligram to Getty Deli in April, May, and July 1999; four boxes of Revive 60 milligram to Big Apple Meat Corporation in March, May, and July 1999; four boxes of Revive 60 milligram to S&M Golden Mini Market in March, May, and July 1999; and four boxes of Revive 60 milligram to Neighborhood Supermarket in March and May 1999. Mr. Ahmad also obtained written statements from three of Respondent's Paterson customers in which the customers stated in essence, that despite previous information provided to DEA investigators, they had in fact purchased list I chemical products from the Respondent at various times.

Evidence was also presented at the administrative hearing regarding the Respondent's sale of list I chemical products to customers in the State of Michigan. Diversion Investigator Barbara Dobric of DEA's Detroit office, testified that in late May and early June 2001 she along with Diversion Group Supervisor Jim Geldhof visited twenty-three retail customers of Respondent in the metropolitan Detroit area to ascertain whether they had purchased

pseudoephedrine from Respondent. Among the retail establishments visited by DEA investigators were Dollar City Plus, a dollar store, and Duke's Oil, a gas station in Detroit. These retailers informed DEA that they had never dealt with Respondent because they ordered only from distributors in Michigan.

DEA investigators learned from another purported customer, Woodward and Harmon Mini Mart in Highland Park, that the store had been at the same location for four years, but had never dealt with Respondent and did not sell list I chemical products. While at the location of yet another purported customer, Dollar Value in Redford, the owner told Investigator Dobric that he did not know if he had ever bought from Respondent and he had no invoices that would refresh his recollection. Investigator Dobric testified that the owners of two additional establishments did not have invoices of any purchases of list I chemicals, and therefore, could not remember whether or not they had purchased these products from the Respondent. One customer, a gasoline station located in Oak Park, informed Investigator Dobric that it had purchased product from Respondent and provided her with copies of invoices.

Investigator Dobric also testified that DEA's inspections of ten additional customers of the Respondent, comprised primarily of gasoline stations, mini mart/convenience stores, and tobacco shops, revealed that they had in fact purchased list I chemical products from the Respondent, but could produce no invoices. Five other customers informed Investigator Dobric that their establishments had undergone name and/or ownership changes, and therefore could not provide information about prior owners. One establishment, the Tobacco and Cigar Shop, was vacant.

The Government also presented evidence that sought to compare the Respondent's marketing of its bottled pseudoephedrine products and the marketing and distribution of Sudafed and other list I chemical products by nationally recognized pharmaceutical companies. As part of its evidentiary presentation, the Government introduced into evidence a declaration dated October 18, 2000, from Susan O'Connor, Pfizer's product manager for Sudafed for the two years prior to August 2000. Evidence presented during the hearing showed that since approximately 1997, Sudafed had been sold only in blister packages; prior to that time it was also sold in bottles. Ms. O'Connor stated that until 1997, Sudafed was available as a 60-mg. tablet, but the product was discontinued because of low demand for it.

Ms. O'Connor testified that Pfizer sold the 30-milligram strength product in packages of 24, 48, or 96 tablets, and delayed-released formulations of 120 milligrams in packages of ten and twenty caplets and of 240 milligrams in packages of five and ten caplets. She further stated that according to data from Information Resources, Incorporated, 258,260,252 Sudafed 30-milligram tablets, 39,551,717 Sudafed 120-milligram delayed-release caplets, and 6,594,430 Sudafed 240-milligram delayed-release caplets were sold at retail in the period August 1999 through April 2000. According to her estimates, Pfizer sends approximately eighty-percent of its shipments directly to retailers and sends the remaining shipments to various wholesalers. Among Pfizer's major customers are drug chains, grocery chains, and mass merchandisers such as Wal-Mart, Target, Walgreen's, etc., and that non-retailer shipments are to ''reputable wholesalers.''

With respect to comparisons between Pfizer's sale of pseudoephedrine products, and those of Pfizer's known competitors, Ms. O'Connor stated that she first heard of OTC Distributors from DEA and that, according to information provided to her by DEA, OTC Distributors sold approximately 92,162,540 60-mg. pseudoephedrine tablets between August 1999 and April 2000. According to Ms. O'Connor, ''[i]f a new brand had sales of that amount of pseudoephedrine in grocery chains or other known retail outlets, I am sure that I would have been aware of the brand's existence, since that volume of sales would represent competition for Sudafed.''

The Government also presented testimony from Kara Pollard, product manager for Sudafed at Pfizer, who testified that as of the date of her testimony, the total annual factory dollar sales for Sudafed 30-milligrams were approximately $50 million and the total sales for the entire Sudafed line would be about $190 million. Ms. Pollard also testified that year-to-date sales for 2001 had increased about seventeen percent over the same period the prior year due to a recall of products containing phenylpropanolamine. Ms. Pollard further testified that the average retail price varies among the more than twenty-four Sudafed products according to the package configuration and the type of retailer. Ms. Pollard characterized chains such as Wal-Mart as ''self-distributing,'' i.e., retail chains that buy product directly from manufacturers and store it in their own warehouses. It was Ms. Pollard's conclusion that sales to convenience stores are not a significant percentage of Pfizer's pseudoephedrine sales.

The Government also introduced into evidence a declaration from Irene Day, project manager for over-the-counter cough and cold medications at L. Perrigo Company (Perrigo). Ms. Day testified that Perrigo is the largest manufacturer of over-the-counter pharmaceutical products for the store brand market, that one of its products is a nasal decongestant which contains as its sole active ingredient thirty milligrams of pseudoephedrine and that Perrigo does not manufacture a single-active-pseudoephedrine product that contains sixty milligrams of pseudoephedrine. Ms. Day also testified that Perrigo sells its pseudoephedrine products in blister packs containing 24, 48, or 906 tablets, and that because these packages each contain less than three grams of base pseudoephedrine, they meet the safe harbor provision of the Methamphetamine Control Act of 1996. Ms. Day further testified that for the period August 1999 through April 2000, Perrigo sold a total of 299,329,130 tablets of thirty-milligram single-active pseudoephedrine, that approximately fifty percent of Perrigo's shipments go to its retail customers' distribution centers, that most of the remainder go to drug or food wholesalers, and that Perrigo ships to a few small retail customers directly.

The Government also presented an expert witness in the area of statistical analysis of convenience stores and their sale of pseudoephedrine. Jonathan Robbin, a consultant in marketing information systems and databases, tesified on behalf of the Government as an expert in statistical anaysis and quantitative marketing research. With respect to the expert statistical analysis offered by Mr. Robbin, the Deputy Administrator adopts the following Findings of Act, as set forth in Judge Bittner's Opinion and Recommended Ruling:

Mr. Robbin analyzed data from the United States Economic Census, which, among other things, includes information on the kinds of goods that different types of retail stores sell. The Economic Census is undertaken by the United States Department of Commerce every five years, and elicits from every business establishment in the United States information that includes, among other things, the business's operations, size, gross income, organization, and number of employees. Businesses are required to respond to the Economic Census and Mr. Robbin testified that the response rate is about ninety percent. The Census Bureau processes the data

collected in the census and publishes various reports reflecting that data. The Census Bureau makes aggregate data, tabulated by various criteria, available and also performs tabulations for specific purposes.

Mr. Robbin further analyzed data from the Syndicated Research Study by Mediamark Research, Inc. (Mediamark), which analyzes consumer buying behavior, information from Information Resources International, which tracks data from the bar scanners of retail stores, and a report from the National Association of Convenience Stores (NACS). The NACS membership consists primarily of large convenience store chains, but its survey included nonmember stores that receive Convenience Store News, a trade publication that is distributed without charge to stores in the industry. Mr. Robbin also reviewed invoices reflecting Respondent's sale of pseudoephedrine to various customers. Mr. Robbin testified that the objective of his study was ''to be able to say with some certainty whether or not [pseudoephedrine] was being distributed in a manner that was congruent with normal marketing practice and meaningful from a commercial point of view. * * *''

Mr. Robbin defined ''convenience store'' as ''a store that sells goods to be consumed on the premises or to be consumed shortly after they are bought,'' and includes nearly 30,000 convenience stores in the United States that do not have gasoline pumps and another 70,000 that have them. Mr. Robbin testified that the average convenience store occupies about 1350 square feet, has revenues of between $600,000 and $800,000 per year, and employs from two to five people. Mr. Robbin further testified that ninety percent of a convenience store's customers come from within a ten mile radius, and half of them come from within three miles of the store. Mr. Robbin also noted that convenience stores do not have large stockrooms and therefore do not carry a large inventory of diverse products.

Mr. Robbin used various data ''to establish a reasonable expectation'' of how much pseudoephedrine a convenience store would sell; calculated ''a reasonable dollar volume of sales to consumers of decongestant tablets containing pseudoephedrine,'' given how much of this product Respondent sold to certain convenience stores in Florida; and then contrasted how much a store would reasonably be expected to sell with the quantities that Respondent's customers purchased from it.

Mr. Robbin testified that data from the 1997 Economic Census showed that drugstores, supermarkets, and discount stores accounted for 92.3 percent of all sales of non-prescription medications, and convenience stores with and without gasoline pumps accounted for about 1.75 percent and less than one percent, respectively, of sales of these products. The National Association of Convenience Stores reported that beauty and health care products comprised 1.31 percent of in-store sales in convenience stores in 1999.

In the Economic Census, Merchandise Line (ML) 160 consists of all health and beauty aids, including both prescription and non-prescription drugs, vitamins, and minerals. Merchandise Line 162 is a subset of ML 160, and includes a variety of over-the-counter items such as headache remedies, eye drops, allergy remedies, and cough drops, as well as decongestants such as pseudoephedrine. The products in ML 162 represent 6.5 percent of the dollar sales of ML 160. Mr. Robbin testified that the Economic Census form for convenience stores attached to gasoline stations does not include ML 162, presumably because few such retailers sell over-the-counter medications, so he imputed what convenience stores' sales of ML 162 would be from the data relating to ML 160; Mr. Robbin concluded that 0.4 percent of sales by convenience stores with gasoline pumps are of non-prescription drugs. Mr. Robbin further testified that about 10,000 convenience stores without gasoline pumps sell non-prescription medicines, and about 23,000 of the convenience stores with gasoline pumps sell these products. Mr. Robbin testified that the Census Bureau had not observed any sales of ML 162 by any florist, novelty and gift store, or liquor store.

Mr. Robbin analyzed data from Mediamark to compare the percentage of consumers who purchase non-prescription drugs from drugstores, department stores, grocery stores, and discount stores, to the percentage of consumers who purchase these items from convenience stores. Specifically, Mr. Robbin used Sudafed as a surrogate for Respondent's product to indicate how many consumers of pseudoephedrine purchased it at a convenience store rather than at one of the more traditional retailers. Mr. Robbin concluded that seven million households, or 4.92 percent of all purchasers of non-prescription drugs from drug, department, grocery, or discount stores, had purchased Sudafed in 2000, and that 4.35 percent of all purchasers who bought over-the-counter medications at a convenience store bought Sudafed. Mr. Robbins further concluded that 0.21 percent of adults who shopped at convenience stores purchased Sudafed. Mr. Robbin analyzed data from Information Resources, Incorporated as to monthly sales of Sudafed and determined that Sudafed represented 1.14 percent of the sales of ML 162. Mr. Robbin then estimated that equal amounts of generic store brands and of two competitive brands of pseudoephedrine, Contac and Actifed, were also sold, so that overall sales of pseudoephedrine represent 4.56 percent of the sales of items in ML 162. Mr. Robbin however qualified this estimate in that he thought it overstated the amount of pseudoephedrine sold.

Mr. Robbin further testified to a formula that he employed to determine the retail price of goods by dividing the wholesale price by one minus the gross margin, and that in-store margins for the convenience store industry were 31.2 percent in 1998 and 30 percent in 1999. Thus, the expected retail price would be the wholesale price divided by .7. Mr. Robbin then reviewed various data with respect to sales of pseudoephedrine, including invoices for 212 of Respondent's Florida customers, and he estimated that the monthly sales of pseudoephedrine by various types of retailers in 1999, as summarized by the following table:

Kind of Business	Pseudoephedrine Sales
Supermarkets, grocery stores	$618
convenience stores	27
specialty food stores	34
pharmacies, drug and proprietary stores	663
cosmetics, beauty supplies and perfume stores	21
other health and personal care stores	208
department stores	1,921
electronic shopping and mail order stores	3,376
gasoline stations with convenience stores	32

Mr. Robbin assigned each of Respondent's customers to a retail category (e.g., grocery store, convenience store, convenience store with gasoline pump). These classifications were assigned based on the name of the customer (if the name included ''grocery store,'' he assumed the customer was a grocery store), photographs that the Government provided of some stores, and information from sources of commercial addresses. Mr. Robbin testified that probably half of the customers of Respondent that he listed as grocery

stores (which would be expected to sell more pseudoephedrine than convenience stores do) were in fact convenience stores.

Mr. Robbin then estimated for each customer how much pseudoephedrine it would be expected to sell per month based on the estimates described above, and calculated how much it did sell based on how much it purchased from Respondent and assuming that the store marked up the product thirty percent and sold all that it purchased. For example, Mr. Robbin noted that BP Super Stop, presumably a convenience store that sold gasoline, purchased $22,428 of pseudoephedrine from Respondent over a fourteen-month period, or $1,602 per month. With a thirty percent markup, retail pseudoephedrine sales would have amounted to $2,289, but Mr. Robbin's analysis of Economic Census and other data predicted that this customer would have had pseudoephedrine sales of $32.41 per month, for an index of actual to expected sales of 70.6.

Mr. Robbin testified that he calculated Z statistics, standard deviates measured in terms of standard deviations; according to Mr. Robbin, ''it tells us in standard deviant units how far we are from the average.'' More simply, Mr. Robbin testified that he ';* * * would not expect a convenience store to sell this amount of pseudoephedrine under any circumstances in the normal sale of these goods through the channels that the Census and other sources tell us these goods are sold.''

Mr. Robbin noted that Americans consume, on average. 147 cold pills per person per year, so that a bottle of Respondent's pseudoephedrine product would be almost a year's supply for the average consumer. According to Mr. Robbin, ''[i]t is inconceivable that people will come in and out of these stores and regularly month to month [buy] a year's supply of the drug. * * *''

With respect to Respondent's grocery store customers, Mr. Robbin testified that the index of actual to expected sales was considerably lower, most ranging from 2.4 to 4.3, but sill more than two standard deviations to the mean. Mr. Robbin testified that 1.96 standard deviations of the mean in the two-tailed test of significance would encompass 95 percent of all cases under the normal curve, and that three standard deviations would encompass 99 percent of cases.

Mr. Robbin emphasized that the Economic Census represents one hundred percent of the data, not samples, and that aggregate data has a lower variance than would a database of individual establishments. Because Mr. Robbin did not have access to the variance of individual stores, he asked the Census Bureau for a tabulation of individual records. Mr. Robbin testified that the Census Bureau tabulation ''gave me condifence * * * in making the statement that these data are reflecting reality.'' Mr. Robbin stated in his report:

> In summary, most of the stores to which [Respondent] has supplied pseudoephedrine products have a very small or no likelihood of selling them over the counter to consumers seeking remedies for nasal congestion from allergies, colds or other conditions. This conclusion is strongly supported by data from the United States 1997 Economic Census and current observations of two independent marketing information companies, Mediamark Research, Inc., and Information Resources International.
>
> Mr. Robbin further testified that his finding is that the goods that [Respondent] has provided to these stores are not following the normal channel of distribution for goods of this kind, that they are going to a nontraditional market that is not known to sell any substantial or meaningful quantities of these goods, and that there is no logical explanation in common marketing practice to explain this phenomenon.

Mr. Marquez testified that he disagreed with Mr. Robbin's analysis. According to Mr. Marquez, small independent convenience stores do not provide data to researchers, the owners of such stores may well fail to fill out the Economic Census forms or fill them out inaccurately, and as a result, there are no statistics on what these stores sell. Mr. Marquez further testified that the smallest quantity of any product Respondent would sell to a store would be $800 to $3,000 per week, and that a retail establishment would not carry a product that did not produce more revenue than $27 per month. Mr. Marquez further testified that he believed that Respondent's customers were capable of selling pseudoephedrine under the conditions that Respondent had established, and that ''we checked the stores and made sure they were selling the product.''

Mr. Marquez further testified that he did not question why a convenience store would be purchasing so much pseudoephedrine every month ''because they wouldn't be buying it if they wouldn't be selling it.'' Asked on cross-examination who he thought would buy a bottle of 120-count 60-milligram pseudoephedrine for $9.95 or $19.95, Mr. Marquez responded, ''I've seen it, you know, when I go the 7–11 or places. It's mostly blue collar workers, people that work out on the street or work out in the hot sun, and they've got problems breathing, or it's too humid and people need that kind of medication.'' Mr. Marquez testified that it was ''[n]ot at all'' unusual for Respondent to sell 576 bottles of 60-count 60-milligram pseudoephedrine to retail stores. Mr. Marquez concluded that he did not believe that most Sudafed and pseudoephedrine products are not sold in convenience stores, and that the information in the NACS State of the Industry Report came from national chain stores, not small family-owned convenience stores.

As noted above, and pursuant to 21 U.S.C. 824(d), the then-Deputy Administrator issued an immediate suspension of the Respondent's DEA Certificate of Registration. While the above cited evidence provides ample grounds for an immediate suspension pursuant to section 824(D), these grounds also provide the basis for the revocation of the Respondent's DEA Certificate of Registration. *See Yemen Wholesale Tobacco and Candy Supply, Inc.,* 67 FR 9997, 9998 (2002).

Pursuant to 21 U.S.C. 824(a), the Acting Deputy Administrator may revoke a registration to distribute list I chemicals upon a finding that the registrant has committed such acts as would render such registration under section 823 inconsistent with the public interest as determined under that section. Pursuant to 21 U.S.C. 823(h), the following factors are considered in determining the public interest:

(1) Maintenance of effective controls against diversion of listed chemicals into other than legitimate channels;

(2) Compliance with applicable Federal, State, and local law;

(3) Any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law;

(4) Any past experience in the manufacture and distribution of chemicals; and

(5) Such other factors as are relevant to and consistent with the public health and safety.

As with the public interest analysis for practitioners and pharmacies pursuant to subsection (f) of section 823, these factors are to be considered in the disjunctive; the Acting Deputy Administrator may rely on any one or combination of factors, and may give each factor the weight she deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See, e.g., Energy Outlet,* 64 FR 14269 (1999). *See also Henry J. Schwartz, Jr., M.D.* 54 FR 16422 (1989).

As an initial argument, the Government asserted that Respondent's conduct in distributing listed chemical products to convenience stores under

the management of Mr. Marquez are sufficiently apparent to make out a violation under 21 U.S.C. 841(c)(2). The Government further outlined the primary requirement of section 841(c)(2) that must be proven by a preponderance of evidence: the knowing or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance. In support of a finding under the above provision, the Government argued that the Respondent's main business was purportedly the distribution of candy and snacks, yet, in 2000, the company purchased large quantities of pseudoephedrine ''in anticipation of an unavailability or allocation of listed chemical product.'' The Respondent argued in response that there are no statutory restrictions under the Controlled Substances Act with respect to ''attempts'' to obtain list I chemical products, and the Government has failed in its burden of proof in establishing what constitutes ''excessive'' ordering.

The Government also argued that the ''traditional'' market serves legitimate need with 30 mg. pseudoephedrine products packaged in blister packs and sold predominantly at pharmacy chains, supermarkets and discount stores. This, the Government contrasted with what it characterized as the ''non-traditional'' market where ''products are packaged in 60 mg. large count bottles and are sold in convenience stores or other places where such products are not usually sold.'' The Government concluded that small convenience stores are a source for diversion of listed chemical products. Conversely, the Respondent argued, *inter alia,* that the occurrence of diversion cannot, standing alone, rise to the level of a revocation action since ''all persons in the regulated trade are susceptible to diversion and, at various times, have fallen victim to it.''

The Government further argued that in keeping with the holding in *United States* v. *Prather,* 205 F.3d 1265 (11th Cir. 2000), where the defendant was convicted of, among other things, distributing pseudoephedrine knowing of having reasonable cause to believe that it would be used to manufacture a controlled substance, the Respondent as the defendant in *Prather,* had ''reasonable cause to believe'' that its listed chemical products would be used to manufacture a controlled substance.

In recent DEA decisions, the agency has found that gas stations and convenience stores (which the Government argues are part of the ''non-traditional'' market) constitute sources for the diversion of listed chemical products (*See, e.g., Sinbad Distributing,* 67 FR 10232, 10233 (2002); *Xtreme Enterprises, Inc.,* 67 FR 76195 (2002); *K.V.M. Enterprises,* 67 FR 70968 (2002)). However, in deference to my predecessor's ruling in *Mediplas Innovations* (67 FR 41256 (2002) (''Mediplas'')), a finding regarding convenience stores a conduits for the diversion of listed chemicals does not necessarily translate to a finding regarding the existence of the so-called ''traditional'' versus the ''non-traditional'' markets for products containing ephedrine and pseudoephedrine. Rather, in *Mediplas,* the then-Deputy Administrator found that there was little probative value to such evidence, and the probative weight of evidence regarding traditional and non-traditional markets ''is minimal without some form of further extrinsic evidence to support these arguments.'' *Id.* at 41264. The Acting Deputy Administrator notes further, my predecessor's conclusion that a registrant's sale of large quantities of list I chemicals do not, in and of themselves, demonstrate that the chemicals may be diverted. *Id.*

In the instant proceeding however, the Acting Deputy Administrator finds that the Government has met the test outlined in *Mediplas,* and established through extrinsic evidence the typical market for listed chemical products. In keeping with this finding, the Acting Deputy Administrator concurs with Judge Bittner's conclusion that the Government met the *Mediplas* evidentiary requirement by showing that Respondent sold pseudoephedrine to customers that did not have a reasonable expectation of being able to resell the product to a legitimate customer base. Specifically, the Government presented a relevant comparison analysis involving the marketing and sale of bottled pseudoephedrine products to a relatively small market by OTC Distribution (a supplier of listed chemicals to the Respondent) versus that of nationally recognized pharmaceutical manufacturers and distributors of those products (i.e., Pfizer and the L. Perrigo, Company). The Acting Deputy Administrator also finds telling, the testimony of Pfizer and Perrigo representatives that neither were aware of OTC Distribution as a possible competitor.

More persuasive however, was the testimony and documentary evidence prepared by the Government expert in statistical analysis, Jonathan Robbin. In arriving at a finding regarding Mr. Robbin's testimony, the Acting Deputy Administrator has given due consideration to the Respondent's contentions that Mr. Robbin's report, among other things, contained selective sales data regarding Sudafed products, did not properly assess the breadth of the market for Sudafed products, and that convenience stores and grocery stores can serve the same needs as large grocery stores in the absence of large chain establishments.

Notwithstanding these arguments, the Acting Deputy Administrator nevertheless finds compelling Mr. Robbin's conclusion of the unlikelihood that convenience stores would sell more than $27.00 worth of pseudoephedrine per month to consumers purchasing decongestant products, as purportedly sold by Respondent's customers. The Acting Deputy Administrator further credits Mr. Robbin's finding regarding the inconceivability of customers purchasing a year's supply of list I chemical products from convenience stores and related establishments on a monthly basis.

The Acting Deputy Administrator also finds persuasive the conclusion of Mr. Robbin that pseudoephedrine products supplied by the Respondent to its customers did not follow the normal channel of distribution for goods of this kind. This finding is given further credence when one considers the quantities of pseudoephedrine the Respondent sold to its convenience store customers and the exorbitant price some of these customers were willing to pay the Respondent for those products. The Acting Deputy Administrator finds that the compelling nature of Mr. Robbin's market study cast doubt on the legitimacy of the Respondent's regulated transactions with a substantial segment of its customers, and brings some context to matters relating to the diversion of the Respondent's listed chemical products.

On a related note, the Acting Deputy Administrator finds that Mr. Marquez was made aware through the DEA pre-registration process that pseudoephedrine is subject to diversion. Nevertheless, despite the variety of non-list I products purportedly sold by the Respondent, the purchase of goods by its customers were limited to pseudoephedrine. Notwithstanding Mr. Marquez's testimony that it was not unusual to sell 576 bottles of 60-count, 60 milligram pseudoephedrine to retail stores (at a retail price as high as of twenty dollars a bottle), and in light of market analysis of the Government expert regarding the expected sale of these products, the Acting Deputy Administrator finds that there is justified concern over the Respondent's sale of large quantities of listed chemicals to its customers. Therefore,

the Acting Deputy Administrator concurs with the finding of Judge Bittner that the Respondent had reason to believe that the pseudoephedrine it sold, particularly in the quantities sold to its convenience store customers, was likely to be diverted. *See, MDI Pharmaceuticals,* 68 FR 4233 (2003).

With respect to the factors enumerated under 21 U.S.C. 823(h), and in addition to the analysis outlined above, the Acting Deputy Administrator finds that factor one, maintenance of effective controls against diversion, is further applicable to the Respondent's sale of pseudoephedrine products to Abdin. For purposes of 21 U.S.C. 830(b)(1), an uncommon method of payment, such as cash, renders the sales of pseudoephedrine suspicious. *United States* v. *Grab Bag Distributing, et al.,* 189 F. Supp. 2d 1072 (2002); *United States* v. *Akhtar,* 95 F. Supp. 2d 668 (S.D. Tex. 1999) (a defendant admitted that four ephedrine transactions were unusual because they were made in cash and because they were for progressively larger quantities of ephedrine). Such transactions are required to be reported to DEA pursuant to 21 CFR 1310.05(a)(1) (2000). As noted in Judge Bittner's Opinion and Recommended Ruling, Mr. Abdin paid more than $50,000 in cash for fifty cases of pseudoephedrine purchased from the Respondent on September 21, 2000. The Acting Deputy Administrator therefore adopts Judge Bittner's conclusion that this cash payment made the transaction suspicious, and as a result, Respondent should have reported the same to DEA.

With respect to statements of customers regarding their purported purchase of pseudoephedrine from the Respondent, Judge Bittner found the evidence generally insufficient to support the revocation of Respondent's DEA Certificate of Registration under factor one. Specifically, Judge Bittner found that because a period of at least nine months had passed since Respondent sold list I chemicals to these establishments, and the fact that these establishments were under no obligation to maintain records of their dealings with the Respondent, evidence of their failure to account for listed chemical purchases did not support a revocation action involving the Respondent's DEA registration. Judge Bittner found however, that one exception in this regard was the Respondent's shipment of pseudoephedrine to Jules Gifts, Incorporated, an Orlando-based gift shop situated at a residential address, and such shipment supported a finding that the Respondent's continued registration would not be in the public interest.

In keeping with Judge Bittner's finding regarding the overall insufficiency of the customer statements, the Acting Deputy Administrator further notes that many of DEA's interviews were of store clerks (as opposed to store owners), new owners of business establishments with no apparent knowledge of any actions by previous owners, or shop owners who simply could not recall whether there existed a business relationship between their establishment and the Respondent. Moreover, several Michigan area customers informed DEA investigators of their business relationship with the Respondent but could produce no invoices. Therefore, to the extent that these factors were present, evidence regarding customer verifications by DEA investigators were not considered under factor one by the Acting Deputy Administrator in rendering here final decision. Nevertheless, the Acting Deputy Administrator finds that customer verifications of eight other customers are applicable under factor five as outlined below.

With regard to factor two, compliance with applicable Federal, State an local law, the Government argues, in part, that an accountability audit of Respondent's handling of listed chemical products between the date of its registration and July 31, 2000, disclosed a shortage of approximately 98,381 bottles of pseudoephedrine. However, in its Proposed Findings of Fact and Conclusions of Law and Argument, the Respondent argued that the audit contained ''substantial arithmetic errors.'' The Respondent argued in essence that in preparing its audit, the Government did not provide a correct accounting of information contained within Respondent's sales invoices and the Government-prepared summaries of those invoices.

As one example, the Respondent noted that a Government exhibit which consists of sales invoices, as well as a summary sheet for a customer of the Respondent list sales transactions for November 11, 1999, December 15, 1999 and February 21, 2000 as 288 bottles. The Respondent argued however that that actual invoice for these transactions yielded a count of 576 bottles, not 288 bottles as listed on the Government prepared summary. The Respondent used this, as well as other examples to assert that the Government's audit as not reliable.

In her Opinion and Recommended Ruling, and following here review of invoices in evidence for the Respondent's Florida customers, Judge Bittner agreed with the Respondent that there were ''numerous apparent mistakes in the [Government's] compilation.'' In support of her finding, Judge Bittner appended to her opinion a separate compilation of the purchases of pseudoephedrine by the Respondent's Florida customers. Under the ''Comments'' heading of the Appendix, Judge Bittner noted several instances where the compilation of Respondent's purchases prepared by DEA indicates the purchase of 288 bottles, when it appeared from the invoice that purchases were for 576 bottles. As a result of the apparent conflict between the Government prepared summaries, and the information contained on the face of the actual invoices, Judge Bittner concluded that ''the record does not establish the extent of a shortage, if any, and therefore [the Government audit is unreliable].''

On December 19,2002, counsel of the Government filed Exceptions to the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law, and Decision of the Administrative Law Judge. In its Exceptions, the Government argues in relevant part, that the audit and computation were conducted by NDIC directly from invoices acquired from Respondent. The Government argued that Investigator Soler took custody of the Respondent's records and sales files and that Government exhibits memorializing sales to specific retailers were prepared by Investigator Soler. The Government further argued that the compilation prepared by Investigator Soler did not include every one of Respondent's customers, and did not form the basis of the audit.

As a general rule, recordkeeping discrepancies involving list I chemicals constitute violations of 21 U.S.C. 830(a) and 842(a)(10) and 21 CFR 1310.03 and 1310.06. *Mediplas* at 41263. The Government asserts that the Respondent violated record keeping provisions by its failure to account for listed chemicals, and thus a finding in support of the revocation of Respondent DEA registration should be made under factor two.

The Acting Deputy Administrator has conducted an extensive review of all relevant evidence regarding the audit, including Government exhibits and the testimony of Investigator Solar. From that interview, it is clear that information on the face of several of the DEA-prepared compilations is not consistent with the actual invoices of Respondent's purchases that the compilations purport to represent. What

is unclear from the record however is whether these incongruous records (the compilations and invoices) were used together in conducting the audit or whether the compilations were excluded from consideration.

What is particularly problematic in determining what credence, if any, should be given to the audit results, is the insufficiency of evidence regarding the methodology used in conducting the audit. The lack of specifics in this regard leaves the matter of the compilations and their impact on the audit results, an open question. Notwithstanding the assertion by the Government that summaries prepared by a DEA investigator did not form the basis of the audit, there is no testimony to that effect in the record. Yet, the Government witness testified to the compilations as part of the DEA's investigation of the Respondent. Under these circumstances, the Acting Deputy Administrator finds the record incomplete with respect to the manner in which the audit was conducted, and unclear as to whether the in consistent information contained within the DEA-prepared compilations played any part in the audit results. Accordingly, the Acting Deputy Administrator adopts the finding of Judge Bittner that the Government-prepared accountability audit and computation are unreliable, and thus, inapplicable to a finding under the factor two analysis enunciated above.

The Acting Deputy Administrator agrees with counsel for the Government that factor two is relevant to the Respondent's failure to report to DEA that a regulated transaction with Abdin included an uncommon method of payment, as required by 21 CFR 1310.05(a)(1). *Aqui Enterprises,* 67 FR 12576 (2002).

With regard to factor three, any prior conviction record under Federal or State laws relating to controlled substances or to chemicals controlled under Federal or State law, there is no evidence in the record that the Respondent or its owners have been convicted of any offenses as contemplated by this provision.

With respect to factor four, past experience in the manufacture and distribution of chemicals, the Acting Deputy Administrator has combined the evidence pertaining to this factor with those contained under factor two, controls against diversion and compliance with applicable law. *See, Service Pharmacy, Inc.,* 61 FR 10791, 10795 (1996).

With regard to factor five, such other factors relevant to and consistent with the public safety, the Acting Deputy Administrator incorporates the matters above into this factor, and finds factor five relevant to a finding that the Respondent's continued registration with DEA would be inconsistent with the public interest.

The Acting Deputy Administrator also finds factor five relevant to customer statements regarding their purported purchase of pseudoephedrine from the Respondent. As noted above, Judge Bittner found that evidence regarding most of these statements was generally insufficient to support the revocation of the Respondent's DEA Certificate of Registration. The Respondent added that the actions or inactions of the Respondent's customers to fulfill the Government's investigative demands cannot be the basis for revocation of the Respondent's registration.

The Acting Deputy Administrator agrees with the Respondent's assessment that its customers were under no obligation to assist DEA investigators or produce records of regulated transactions with the Respondent. However, the Acting Deputy Administrator also recognizes the importance of the DEA investigative process, particularly as it relates to verification of customers who purchase list I chemicals from DEA-registered distributors. These regulatory inspections serve a vital role in protecting the public health and safety, and are of particular importance in helping to stem the diversion of listed chemical products. The importance of the DEA investigative process, and specifically the verification of customer information, has been highlighted in prior DEA rulings; the agency has made findings under factor five where DEA investigative personnel were unable to corroborate customer information of handlers of list I chemicals. *Shani Distributors,* 68 FR 62324 (2003); *CHM Wholesale Co.*, 67 FR 9985 (2002); *See Aqui Enterprises, supra,* at 12578.

In the instant matter, it appears that the investigative process was, to some degree, compromised because of the inability of DEA personnel to verify the Respondent's sale of pseudoephedrine to various customers. The inability to verify these transactions may have been attributed to a number of factors, including, but not limited to, Respondent's poor record keeping, its distribution to customers that could not later account for the product, and/or distribution to customers that were not candid with DEA investigators about their business relationships with the Respondent or their receipt of listed chemicals.

Nevertheless, the Acting Deputy Administrator is deeply concerned with the circumstances surrounding the consistent denials by several of the Respondent's customers when questioned about their purchase of pseudoephedrine from the Respondent. The Acting Deputy Administrator finds it somewhat inconceivable, and beyond mere coincidence that several of these customers with apparent longtime business ties to the Respondent (having purportedly purchased large quantities of pseudoephedrine from the Respondent) would, in practically uniform fashion, become totally unfamiliar with such a significant business relationship. If, on the other hand these denials are to be believed, then further doubt is cast upon the Respondent's ability to responsibly handle listed chemicals because of the apparent inability to adequately track the distribution of these products. What is certain here, is the record is unclear as to the disposition of large quantities of pseudoephedrine products that were purportedly sold to business entities in Florida, New Jersey and Michigan.

For example, with respect to Ali's West Indian African and American located in the Tampa area, DEA personnel were informed in May 2001 that Ali's had discontinued business three years prior, and Third World Grocers had been operating at that location during that same period. The record in this proceeding indicates that the Respondent shipped bottles of pseudoephedrine to this establishment in 1999 and 2000. Further review of the Respondent's invoices does not reflect shipments of pseudoephedrine to Third World Grocers or anyone associated with this concern. It appears that these products were shipped to Ali's during a period when the store changed ownership. However, there is no evidence in the record regarding the disposition of large quantities of pseudoephedrine that were shipped to the former business address of Ali's.

The same circumstances were present with regard to the Respondent's sale of pseudoephedrine products to Superfood Super Market, another Tampa area customer. Invoices of the Respondent reveal the sale of pseudoephedrine to Superfood Super Market, however, the location where these products were delivered was occupied by a business concern by the name of Y &S Supermarket. When questioned by a DEA investigator, the owner of Y & S claimed to have never heard of the Respondent and that his store did not sell list I products. Of greater concern however, is the record in this matter does not shed any light on the disposition of large quantities of pseudoephedrine that were purportedly shipped to this location.

Similarly, with respect to the sale of pseudoephedrine to Cedar Market, the Respondent's records reveal that the customer purchased caseload quantities of pseudoephedrine from the Respondent in 1999 and 2000, but according to a DEA investigator the store's management had not heard of the Respondent. The Acting Deputy Administrator also finds curious, the Respondent's sale of forty-three cases of pseudoephedrine to Georgia Meat Market, an establishment that specialized in the sale of meat products, and the fact that the Respondent's invoices identified these transactions as having been made to a discount store.

With regard to Respondent's New Jersey customer, Getty Deli, the Acting Deputy Administrator finds disturbing, evidence in the record of the Respondent's apparent distribution of listed chemicals to this customer, which is totally at odds with the recollection of Getty's owner who in a written statement, denied ever purchasing or selling any products of the Respondent. In Michigan, and despite distribution records to the contrary, DEA investigators conducting verifications of Respondent's customers were told by the owners of Dollar City Plus, a dollar store, Duke's Oil, a Detroit-area gas station, and Harmon Mini Mart in Highland Park, that they had never dealt with the Respondent or only ordered from distributors in Michigan.

While not asserting any wrongdoing on the part of any of the above-referenced business establishments, the Acting Deputy Administrator remains concerned about the circumstances surrounding DEA's unsuccessful attempts at conducting customer verifications. The consistent, across-the-board denials by these firms of any business ties to the Respondent left DEA personnel in an untenable situation and rendered them unable to establish the validity of the distributions of a highly abused product. Consequently, DEA's inability to corroborate the Respondent's records of regulated transactions raise questions not only to the accuracy of the Respondent's distribution records and the legitimacy of its customer base, but most significant, raise further questions about the ultimate disposition of the listed chemical products purportedly distributed to those customers. Therefore, with respect to the eight customers referenced above, the Acting Deputy Administrator finds that DEA's inability to verify the distribution of list I chemicals to these establishments is relevant under factor five.

As noted above, the Government filed exceptions to the Opinion and Recommended Ruling of Judge Bittner. The Acting Deputy Administrator has addressed in this final order each of the matters raised in the Government's exceptions, specifically, arguments raised with respect to the interlocutory appeal, the results of the DEA accountability audit of Respondent's handling of pseudoephedrine products, and evidence of DEA site visits to purported customers of the Respondent. Therefore, those matters will not be revisited here.

On December 23, 2002, the Respondent also filed exceptions to Judge Bittner's recommended ruling. In its exceptions, the Respondent argued in relevant part, that ''its post-hearing submission * * * fully and completely provides a basis for the conclusions that [Respondent's] continued registration is not inconsistent with the public interest.'' While not addressing any specific matter raised by the Opinion and Recommended Ruling of the Administrative Law Judge, the Respondent asserts generally that the evidence in this proceeding does not support the revocation of its DEA Certificate of Registration. By not providing counter-arguments to any specific factual finding, legal conclusion or recommendation of the Administrative Law Judge, the Acting Deputy Administrator is limited in giving any consideration to the Respondent's generally stated exceptions. As a result, the Respondent's exceptions to the Opinion and Recommended Ruling are not sufficient to impact the ruling in this matter.

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in her by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration, 002330BNY, previously issued to Branex, Incorporated, be, and it hereby is, revoked. the Acting Deputy Administrator further orders that any pending applications for renewal or modification of said registration be, and they hereby are, denied. This order is effective March 26, 2004.

Dated: February 10, 2004.

Michele M. Leonhart,

Acting Deputy Administrator.

[FR Doc. 04–4127 Filed 2–24–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 2003, and published in the **Federal Register** on February 6, 2003 (68 FR 6183), Houba, Inc., 16235 State Road 17, Culver, Indiana 46511, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of two basic classes of Schedule II controlled substances, oxycodone (9143) and hydrocodone (9193).

Two registered manufacturers of bulk controlled substances filed comments and objections in response to the Notice in a timely manner. Both objectors filed comments and objections with respect to oxycodone and hydrocodone. By Notice dated May 23, 2003 and published in the **Federal Register** on June 11, 2003 (68 FR 35006), the DEA acknowledge the receipt of the comments and objections, and its intent to investigate and resolve the issues raised.

Both objectors argue that Houba, Inc. (hereafter referred to as Houba) cannot prove its registration as a bulk manufacturer of opiates is in the public interest, that Houba is in a precarious financial state which could have a negative impact on its ability to fulfill its activity as a bulk manufacturers, that Houba does not have adequate experience as a manufacturer, that Houba will not promote technical advances, that Houba's registration is not required to produce an adequate and uninterrupted supply of oxycodone and hydrocodone, that there is sufficient competition with the present bulk manufacturers, and that Houba's registration will add to the risk of diversion both domestically and internationally. Additionally, the first objector argues that Houba's parent company can control Houba's management and operations and the parent company has a history of non-compliance with Federal laws and regulations. Both objectors request that DEA issue an Order to Show Cause, pursuant to 21 CFR 1301.37(a) by one objector and pursuant to 21 CFR 1301.44(a) and 1301.48(a) by the other objector, as to why the agency should not deny Houba's application for re-registration on the ground that Houba has not demonstrated that its application is in the public interest. (Title 21 CFR 1301.48 was deleted and currently is re-codified under 21 CFR 1301.37 in 1997.)

One of the objectors is apparently under the belief that if an order to show cause were issued to revoke Houba's renewal applications for the two bulk narcotic controlled substances at issue, then Houba would bear the burden of proof to show that granting such renewal applications would be in the public interest pursuant to 21 U.S.C. 823(a). Houba would have the burden of proof if the applications were initial applications pursuant to 21 CFR 1301.44(a) and section 823(a). Since Houba already is registered to bulk manufacture oxycodone and hydrocodone, DEA bears the burden of proof to revoke Houba's DEA registrations pursuant to 21 CFR 1301.44(e) and 21 U.S.C. 824(a).

With respect to the objectors' contentions that Houba is in a precarious financial state, the DEA has reviewed the information submitted as well as conducted independent investigation. The DEA has determined that while Houba's parent company has had and continues to have documented financial difficulty, Houba is a corporation in and of itself. There is insufficient evidence at this time to revoke the registration of a subsidiary corporation based on the financial standing of the parent company.

Houba currently has a pending application to import raw opium (9600), poppy straw (9650) and poppy straw concentrate (9670) pursuant to 21 U.S.C. 958(a). Pursuant to 21 U.S.C. 958(i) and 21 CFR 1301.34(a), three bulk manufacturers filed objections and requested a hearing to contest Houba's pending import application. At this time, this hearing is still pending. *Houba, Inc.,* Docket No. 02–6. One of the issues will be Houba's current financial status and whether its alleged financial problems would impact on its ability to utilize its import registration and otherwise comply with its duties under the Controlled Substances Act and the Act's implementing regulations. DEA may reassess Houba's manufacturing registrations after the proceedings on Houba's import application are completed. At this point, however, there does not appear to be sufficient grounds to revoke Houba's bulk manufacturing registration.

Moreover, if the financial conditions do make it impossible for Houba to utilize its bulk manufacturing registration, DEA anticipates that Houba would notify DEA, under 21 CFR 1301.52, that it is out of business either altogether or with respect to the controlled substances at issue. But at this point in time, DEA does not have evidence that Houba is renewing its registrations merely to have a ''shelf'' registration.

With respect to the objectors' contentions that Houba lacks manufacturing experience and will not promote technical advances, Houba has been registered with the DEA as a bulk manufacturer since 2002. Houba has provided DEA with confidential information regarding its intent to pursue technological advancement.

With respect to the remaining contentions submitted by both objectors: that there already exists an adequate and uninterrupted supply of oxycodone and hydrocodone, that there is sufficient competition with present bulk manufacturers, and that Houba's registration will add to the risk of diversion both domestically and internationally, the arguments of the objectors were considered. Pursuant to 21 CFR 1301.33(b), DEA is not: required to limit the number of manufacturers in any basic class to a number less than that consistent with maintenance of effective controls against diversion solely because a smaller number is capable of producing an adequate and uninterrupted supply. DEA previously registered Houba to manufacture these two bulk controlled substances and in so doing made the determination that Houba's registration would comply with section 1301.33(b) without resulting in an excessive supply of these controlled substances domestically or excessive cultivation abroad.

One of the objectors noted that DEA lowered the aggregate production quota for oxycodone in response to the domestic diversion of this Schedule II narcotic (67 FR 59313). The objector argues that DEA, consistent with this action, should issue an order to show cause to revoke Houba's registration to bulk manufacture oxycodone. DEA does have the discretion to limit the granting of Schedule II bulk manufacturers and Schedule II bulk importers under the circumstances, but DEA is not compelled by section 823(a)(1) or 21 U.S.C. 958(d). Notwithstanding the lowering of the quota, DEA does not see the need to commence to revoke existing registrations at this time.

Indeed, DEA may not have the statutory authority to revoke an existing Schedule II bulk manufacture registration under 21 U.S.C. 824(a)(4) solely on the basis of limiting the bulk manufacture of these controlled substances ''to a number of establishments which can produce an adequate and uninterrupted supply of these substances under adequately competitive conditions for legitimate medical, scientific, research, and industrial purposes.'' (quoting from section 823(a)(1)). Section 824(a)(4) permits DEA to revoke a registration when the registrant ''has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section * * *'' (Emphasis supplied). ''[S]uch acts'' may be, however, limited to the individual acts of the particular registrant as set forth in 21 U.S.C. 824(a)(2)–(6). A registrant cannot commit ''such acts'' by lawfully manufacturing and distributing controlled substances under its registration. Thus, there is some considerable question whether DEA could seek a revocation of a registration for a bulk manufacturer of Schedule II controlled substances based solely on the micro-economic competition issue in section 823(a)(1). (This micro-economic issue, however, could be considered if DEA had other grounds to revoke a bulk manufacturing registration pursuant to 824(a)(4) and 823(a)(2)–(6). In any event, it is not necessary for DEA to reach this statutory construction issue at this time, since there are not sufficient grounds under Sections 824(a)(4) and 823(2)–(6) to issue an order to show cause to revoke Houba's bulk manufacturing registrations.

DEA is confident that the registration of Houba will not impede DEA's statutory obligation to guard against the diversion of controlled substances.

With regard to the first objector's contention that Houba has a history of non-compliance with Federal statutes and regulations, DEA finds that with a single exception, the comments offered pertained to Houba's parent company and not to Houba itself. The remaining circumstance involved the Foods and Drug Administration and was not related to violations of the CSA. Additionally, DEA has investigated Houba on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's compliance with state and local laws, and a review of the company's background and history. The results of these investigations have led DEA to conclude that at this time, Houba is in compliance with the CSA and that its continued registration is consistent with the public interest.

After reviewing all the evidence, including the comments filed, DEA has determined, pursuant to 21 U.S.C. 823(a), that the registration of Houba as

a bulk manufacturer of oxycodone and hydrocodone is consistent with the public interest at this time. Therefore, pursuant to 21 U.S.C. 823(a) and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basis classes of controlled substances listed is granted.

Dated: February 10, 2004.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 04–4029 Filed 2–24–04; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,222]

Bechtel Jacobs Company, LLC, Piketon, Ohio; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Secretary of Labor's motion for a voluntary remand for further investigation in *Paper, Allied-Industrial, Chemical and Energy International Union, Local 5–689* v. *Elaine Chao, U.S. Secretary of Labor*, No. 03–00356.

The Department's initial determination regarding Bechtel Jacobs Company, LLC (hereafter ''Bechtel Jacobs'') was issued on July 1, 2002 and published in the **Federal Register** on July 18, 2002 (67 FR 47400). The determination was based on the finding that the workers did not produce an article within the meaning of section 222 of the Trade Act of 1974. The workers provided environmental management and site restoration services.

By letter dated August 15, 2002, the petitioner requested administrative reconsideration for Trade Adjustment Assistance (TAA). The reconsideration determination was issued on March 18, 2003 and published in the **Federal Register** on April 7, 2003 (67 FR 16837). The determination was based on the findings that the workers did not produce an article within the meaning of section 222 of the Trade Act and that the workers were not service providers in direct support of a Trade Adjustment Assistance (TAA) certified firm.

The remand investigation revealed that Bechtel Jacobs has a contract to provide on site services with a TAA certified facility (United States Enrichment Corporation (USEC), Piketon, Ohio, TA–W–41,285). The USEC, Piketon, Ohio facility was certified for TAA on June 27, 2002.

Conclusion

After careful review of the additional facts obtained on the current remand, I conclude that the worker group provided services at USEC, Piketon, Ohio, the worker group is co-located with a trade-certified firm, and there is a contract between the subject firm and the trade-certified firm. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Bechtel Jacobs Company, LLC, Piketon, Ohio, who became totally or partially separated from employment on or after March 14, 2001, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–385 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,145]

The Boeing Company, Commercial Aircraft Division, Puget Sound, Washington And Spokane, Washington, Portalnd, Oregon and Wichita, Kansas; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 2, 2004 in response to a worker petition filed by the Aerospace Machinists Industrial Local 751 on behalf of workers at the above locations of The Boeing Company, Commercial Aircraft Division.

The petitioning group of workers is covered by an earlier petition filed on January 29, 2004 (TA–W–54,114) that is the subject of an ongoing investigation for which a determination has not yet been issued. Further investigation in this case would duplicate efforts and serve no purpose; therefore the investigation under this petition has been terminated.

Signed at Washington, DC, this 5th day of February 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–386 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,912]

Boise Cascade Corporation, Yakima, Washington; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of December 3, 2003, the Western Council of Industrial Workers, Local Union 2739, requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance, applicable to workers of the subject firm.

The negative determination was signed on October 20, 2003. The Notice of determination was published in the **Federal Register** on November 6, 2003 (68 FR 62833).

The petitioner asserts that the worker separations at the subject firm are the result of increased imports. The petitioner further asserts that the Department of Labor's interpretation of submitted documents was erroneous.

The Department has reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–384 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,309]

Candle Corporation, El Segundo, California; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Candle Corporation, El Segundo, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,309; Candle Corporation
El Segundo, California (February 10, 2004)

Signed at Washington, DC, this 17th day of February, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–383 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistant

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separation began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 8, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 8, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed in Washington, DC this 17th day of February, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 02/02/2004 and 02/06/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,129	KEMET Electronics Corp. (Comp)	Simpsonville, SC	02/02/2004	01/30/2004
54,130	Kvaerner Oilfield Products (Comp)	Houston, TX	02/02/2004	01/20/2004
54,131	AMCC (Wkrs)	Fort Collins, CO	02/02/2004	01/26/2004
54,132	National Textiles (Wkrs)	Eden, NC	02/02/2004	01/20/2004
54,133	Peavey Electronics (Wkrs)	Meridian, MS	02/02/2004	01/16/2004
54,134	Woodstock Percussion (Wkrs)	Shokan, NY	02/02/2004	01/20/2004
54,135	WiniterQuest, LLC (Comp)	Grand Junction, CO	02/02/2004	01/21/2004
54,136	El Financiers (CA)	Los Angeles, CA	02/02/2004	01/22/2004
54,137	Dan River, Inc. (Wkrs)	Juliette, GA	02/02/2004	01/20/2004
54,138	Liberty Textiles (Wkrs)	Eden, NC	02/02/2004	01/21/2004
54,139	Cosco Industries (Comp)	Manistee, MI	02/02/2004	01/19/2004
54,140	Ashton Photo (Wkrs)	Salem, OR	02/02/2004	01/26/2004
54,141	Tyco Healthcare Kendall (USWA)	Argyle, NY	02/02/2004	01/20/2004
54,142	Tyson Foods, Inc. (UFCW)	Manchester, NH	02/02/2004	01/23/2004
54,143	Elizabeth Weaving, Inc. (Comp)	Groveer, NC	02/02/2004	01/21/2004
54,144	Universal Aerospace Co. (Comp)	Arlington, VA	02/02/2004	01/16/2004
54,145	Boeing Commercial Aircraft (IAM)	Chicago, IL	02/02/2004	01/21/2004
54,146	L.S. Starrett Co. (Comp)	Alum Bank, PA	02/03/2004	02/02/2004
54,147	Metso Minerals Industries (Comp)	Colo. Springs, CO	02/03/2004	02/02/2004
54,148	Bombardier Learjet (IAM)	Whichita, KS	02/03/2004	01/28/2004
54,149	Schott Scientific Glass (USWA)	Parkersburg, WV	02/03/2004	02/02/2004
54,150	B.J. Cutting (Comp)	Hazleton, PA	02/03/2004	01/05/2004
54,151	Haworth, Inc.—Comforto (Comp)	Lincolnton, NC	02/03/2004	01/29/2004
54,152	Kwikset (Comp)	Bristow, OK	02/03/2004	01/30/2004
54,153	Myron Corp. (NJ)	Maywood, NJ	02/03/2004	02/02/2004
54,154	EPM—Performance Solutions Division (Comp).	Austin, TX	02/03/2004	01/29/2004
54,155	Wyeth Nutritional (VT)	Georgia, VT	02/03/2004	02/02/2004
54,156	Rocky Shoes and Boots (Comp)	Nelsonville, OH	02/04/2004	01/30/2004
54,157	Marco Apparel—Margrove, Inc. (Comp)	Walnut Grove, MS	02/04/2004	02/03/2004
54,158	Bestt Liebco Corporation (Comp)	Fond du Lac, WI	02/04/2004	02/03/2004
54,159	Advanced Modeling and Consulting, Inc. (Comp).	Fairview, PA	02/04/2004	02/03/2004
54,160	Stanley Brothers LLC (State)	Lincoln, ME	02/04/2004	01/28/2004

APPENDIX—Continued

[Petitions Instituted Between 02/02/2004 and 02/06/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,161	Loftin-Black Furniture (State)	Thomasville, NC	02/04/2004	01/23/2004
54,162	International Computer Consulting Group (Comp).	San Diego, CA	02/04/2004	01/07/2004
54,163	Manpower, Inc. (State)	Roswell, NM	02/04/2004	01/15/2004
54,164	Maida Development Company (Comp)	Hampton, VA	02/04/2004	01/28/2004
54,165	Goodman Equipment Corp. (Wkrs)	Bedford Park, IL	02/04/2004	02/03/2004
54,166	Harriet and Henderson Yarns, Inc. (State)	Fort Payne, AL	02/04/2004	01/23/2004
54,167	Its/Quest—MCI (Wkrs)	Roswell, NM	02/05/2004	01/26/2004
54,168	Handgards (Comp)	El Paso, TX	02/05/2004	01/28/2004
54,169	IBM (Wkrs)	Essex Junction, VT	02/05/2004	01/30/2004
54,170	Hunter Corporation (Comp)	Portage, IN	02/05/2004	01/30/2004
54,171	Chromalox, Inc. (Comp)	Vernon, AL	02/05/2004	07/23/2003
54,172	WCI Steel, Inc. (Comp)	Warren, OH	02/05/2004	01/30/2004
54,173	Lauri, Inc. (Comp)	Avon, ME	02/05/2004	01/26/2004
54,174	Nexpak (AZ)	Tucson, AZ	02/05/2004	01/29/2004
54,175	Andrew Corporation (NJ)	Warren, NJ	02/05/2004	01/30/2004
54,176	Malamute Enterprises, Inc. (Comp)	Homer, AK	02/06/2004	01/29/2004
54,177	AmCast Automotive (UAW)	Richmond, IN	02/06/2004	12/17/2003
54,178	Drexel Heritage Furniture Industries (Wkrs)	Marion, NC	02/06/2004	01/30/2004
54,179	Sea Gull Lighting Products (Wkrs)	Phildelphia, PA	02/06/2004	01/28/2004
54,180	Michael's of Carolina (Wkrs)	Nichols, SC	02/06/2004	01/02/2004
54,181	Oxford Industries (Comp)	Gaffney, SC	02/06/2004	02/04/2004
54,182	Flexsys America, L.P. (USWA)	Nitro, WV	02/06/2004	02/04/2004
54,183	Northland Cranberries, Inc. (Wkrs)	Jackson, WI	02/06/2004	02/04/2004
54,184	Tropical Sportswear Int'l corp. (FL)	Tampa, FL	02/06/2004	01/15/2004
54,185	CMD3d (ME)	Saco, ME	02/06/2004	01/21/2004
54,186	Scholler, Inc. (Comp)	Southhampton, PA	02/06/2004	02/04/2004
54,187	ABB, Inc. (UAW)	Warminster, PA	02/06/2004	02/02/2004
54,188	Ispat Inland, Inc. (Comp)	Chicago, IL	02/06/2004	02/03/2003
54,189	Bloomsburg Mills,	Bloomsburg, PA	02/06/2004	02/03/2004
54,190	ISA Breeders, Inc. (Comp)	Ithaca, NY	02/06/2004	02/04/2004
54,191	Hewlett Packard Co. (Wkrs)	Atlanta, GA	02/06/2004	02/04/2004
54,192	NCR Corporation (Wkrs)	San Diego, CA	02/06/2004	01/16/2004
54,193	Gates Corporation (Comp)	Denver, CO	02/06/2004	02/04/1004
54,194	DANA (Wkrs)	Manchester, MO	02/06/2004	01/30/2004
54,195	Tyco Valves and Controls (GMP)	Prophetstown, IL	02/06/2004	02/04/2004
54,196	Shape Global Technology (Comp)	Sanford, ME	02/06/2004	02/04/2004
54,197	Electric Motor Repair Center (Comp)	Shelby, NC	02/06/2004	01/30/2004

[FR Doc. 04–4091 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,161]

Loftin Black Furniture, Thomasville, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 4, 2004, in response to petition filed on behalf of workers at Loftin Black Furniture, Thomasville, North Carolina.

The petition regarding the investigation was signed by only one worker and has therefore been deemed invalid. A valid petition must be signed by three workers, their duly authorized representative, or a State official. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 6th day of February, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–379 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,102]

Lucent Technologies, Lisle, Illinois; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 29, 2004, in response to a petition filed on behalf of workers at Lucent Technologies, Lisle, Illinois.

The Department issued a negative determination applicable to the petitioning group of workers on January 8, 2004 (TA–W–53,704). No new information was provided that would result in a reversal of the Department's previous determination. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 10th day of February, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–380 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,163]

Manpower, Inc., Roswell, New Mexico; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 4, 2004, in response to a worker petition filed by one worker on behalf of workers of Manpower Inc., Roswell, New Mexico.

To be valid, petitions must be filed by three workers, their duly authorized representative, or a State agency. The petition regarding the investigation has therefore been deemed invalid. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 6th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–378 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–53,537]

Pacific Rim Log Scaling Bureau, Lacey, Washington; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of December 26, 2003, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance, applicable to workers of the subject firm. The Department's negative determination was signed on December 11, 2003. The Notice of Determination was published in the **Federal Register** on January 16, 2004 (69 FR 2662).

The Department reviewed the request for reconsideration and has determined that the petitioner has provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 13th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–382 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment and Training Administration

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than March 8, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance at the address shown below, not later than March 8, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC. 20210.

Signed at Washington, DC. this 17th day of February 2004.

Timothy Suillivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED BETWEEN 01/20/2004 AND 01/30/2004

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,036	PolyOne, Inc. (NJ)	Burlington, NJ	01/20/2004	01/13/2004
54,037	Micro Med Machining (Wkrs)	Miramar, FL	01/20/2004	01/12/2004
54,038	Network Associates (Wkrs)	Oakbrook, Terr., IL	01/20/2004	01/15/2004
54,039	Ehlert Tool Company (WI)	New Berlin, WI	01/20/2004	01/16/2004
54,040	Wohlert Special Products, Inc. (MI)	Sault Ste Marie, MI	01/20/2004	01/14/2004
54,041A	Epson America, Inc. (Wrks)	Carson, CA	01/20/2004	01/12/2004
54,041	Epson America, Inc. (Wkrs)	Long Beach, CA	01/20/2004	01/12/2004
54,042	R. Sabee Co., LLC (Wkrs)	Appleton, WI	01/20/2004	01/16/2004
54,043	Ramseur Interlock Knitting (Comp)	Ramseur, NC	01/20/2004	01/15/2004
54,044	Temple Inland Forest Products Corp. (Comp)	Shippenville, PA	01/20/2004	01/08/2004
54,045	United States Steel Corp. (Wkrs)	Gary, IN	01/20/2004	01/16/2004
54,046	Best Manufacturing Group LLC (Comp)	Estill, SC	01/20/2004	01/15/2004
54,047	Siemens Energy and Automation (Comp)	Springhouse, PA	01/20/2004	01/19/2004
54,048	West Point Stevens (Comp)	LaGrange, GA	01/20/2004	01/15/2004
54,049	Ingersoll-Rand/Blaw-Knox (UAW)	Mattoon, IL	01/20/2004	01/15/2004
54,050	A.O. Smith (Comp)	LaVergne, TN	01/21/2004	01/19/2004
54,051	Ferriot, Inc. (USWA)	Akron, OH	01/21/2004	01/20/2004
54,052	Ellis Hosiery Mills, Inc. (Comp)	Hickory, NC	01/21/2004	01/20/2004

APPENDIX.—PETITIONS INSTITUTED BETWEEN 01/20/2004 AND 01/30/2004—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,053	Quality Fabricating, Inc. (Wkrs)	N. Huntingdon, PA	01/21/2004	01/12/2004
54,054	Lincoln County Manufacturing (Comp)	Fayetteville, TN	01/21/2004	01/14/2004
54,055	Entek International (Wkrs)	Lebanon, OR	01/21/2004	01/16/2004
54,056	Stanley Services (Wkrs)	Smithfield, NC	01/22/2004	01/23/2004
54,057	Agilent Technologies (Wkrs)	Englewood, CO	01/22/2004	01/15/2004
54,058	Winalta, Inc. (Wkrs)	Linton, IN	01/22/2004	01/14/2004
54,059	Nortel Networks (Comp)	Santa Clara, CA	01/22/2004	01/21/2004
54,060	MI Home Products (Wkrs)	Elizabeth, PA	01/22/2004	01/02/2004
54,061	Eastern Pulp and Paper (PACE)	Lincoln, ME	01/22/2004	01/20/2004
54,062	Whitener Hosiery and Finishing Co., Inc. (Comp)	Hickory, NC	01/22/2004	01/21/2004
54,063	Texas Instruments, Inc. (Comp)	Attleboro, MA	01/22/2004	01/16/2004
54,064	RMG Foundry (Comp)	Mishawaka, IN	01/22/2004	01/19/2004
54,065	Bremner, Inc. (Wkrs)	Ripon, WI	01/22/2004	01/21/2004
54,066	Auburn Foundry (Comp)	Auburn, IN	01/23/2004	01/14/2004
54,067	Eaton Corporation (UAW)	Marshall, MI	01/23/2004	01/20/2004
54,068	American Lock Company (Comp)	Crete, IL	01/23/2004	01/22/2004
54,069	Phelps Dodge Industries (Comp)	El Paso, TX	01/23/2004	01/21/2004
54,070	Magruder Color Co., Inc. (Comp)	Bridgeview, IL	01/23/2004	01/22/2004
54,071	BGE, Ltd. (Comp)	Niles, IL	01/23/2004	01/16/2004
54,072	Singer Hosiery Mills, Inc. (Comp)	Thomasville, NC	01/23/2004	01/22/2004
54,073	Crews Mfg./Uptex K.C. Holdings (Wkrs)	The Rock, GA	01/23/2004	01/20/2004
54,074	Earthlink (Wkrs)	Harrisburg, PA	01/26/2004	01/21/2004
54,075	Unilever Home & Personal Care (Wkrs)	Cartersville, GA	01/26/2004	01/15/2004
54,076	Oxford Drapery Inc. (Comp)	Timmonsville, SC	01/26/2004	01/12/2004
54,077	Twin City Leather Co., Inc. (Union)	Gloversville, NY	01/26/2004	01/12/2004
54,078	Sappi Fine Paper (Wkrs)	Cloquet, MN	01/26/2004	01/12/2004
54,079	Kaddis Mfg. Corp.(Wkrs)	Parsons, TN	01/26/2004	01/15/2004
54,080	Accenture LLP (Wkrs)	Oaks, PA	01/26/2004	01/13/2004
54,081	The Toro Company (Comp)	Oxford, MS	01/26/2004	01/12/2004
54,082	Foundatin Construction Co., Inc. (Comp)	Jackson, MS	01/26/2004	01/12/2004
54,083	Facemate Corp. (Wkrs)	Greenwood, SC	01/26/2004	01/14/2004
54,084	Ropak Atlantic Inc. (Comp)	Dayton, NJ	01/26/2004	01/16/2004
54,085	Franklin Industries (Wkrs)	Franklin, PA	01/27/2004	01/15/2004
54,086	Loislaw, Inc. (Wkrs)	Van Buren, AR	01/27/2004	01/13/2004
54,087	Honeywell—System Sensor (Wkrs)	El Paso, TX	01/27/2004	01/13/2004
54,088	Parsons Diamond Products, Inc. (Comp)	W. Hartford, CT	01/27/2004	01/12/2004
54,089	Sun Microsystems (Wkrs)	San Jose, CA	01/27/2004	01/14/2004
54,090	Plaid Clothing (Union)	Erlanger, KY	01/28/2004	01/27/2004
54,091	Luzenac America, Inc. (Comp)	Windsor, VT	01/28/2004	01/26/2004
54,092	Gerber Plumbing Fixtures LLC (Union)	Gadsden, AL	01/28/2004	01/22/2004
54,093	Valenite (Comp)	Gainesville, TX	01/28/2004	01/20/2004
54,094	Solvay Solexis (Wkrs)	Orange, TX	01/28/2004	01/22/2004
54,095	Kerr McGee Chemical (State)	Henderson, NV	01/28/2004	01/12/2004
54,096	Aelco Foundry (Wkrs)	Milwaukee, WI	01/29/2004	01/28/2004
54,097	JII Promotions (PACE)	Coshocton, OH	01/29/2004	01/13/2004
54,098	Cibola (Wkrs)	Hickory, NC	01/29/2004	01/22/2004
54,099	FCI USA, Inc. (Comp)	Emigsville, PA	01/29/2004	01/27/2004
54,100	Federal Mogul (MI)	Grand Haven, MI	01/29/2004	01/23/2004
54,101	M.F. Maghee Log Homes (Comp)	Yamhill, OR	01/29/2004	01/10/2004
54,102	Lucent Technologies (Wkrs)	Lisle, IL	01/29/2004	01/14/2004
54,103	Kulicke and Soffa Industries, Inc. (Wkrs)	Willow Grove, PA	01/29/2004	01/23/2004
54,104	Samuel Lawrence Furniture (UBC)	Phoenix, AZ	01/29/2004	01/15/2004
54,105	Creative Pultrusion (Comp)	Roswell, NM	01/29/2004	01/14/2004
54,106	Susan Mills, Inc. (Comp)	Hillside, NJ	01/29/2004	01/20/2004
54,107	Manpower, Inc. (Comp)	Roswell, NM	01/29/2004	01/15/2004
54,108	S.A.S.I. Corp d/b/a Bridal Originals (Comp)	Sparta, IL	01/29/2004	01/08/2004
54,109	Lakeshore Diversified Products (MI)	Spring Lake, MI	01/29/2004	01/23/2004
54,110	Atlantic Metals Corp. (Comp)	Philadelphia, PA	01/29/2004	01/23/2004
54,111	PCD Camcar Textron (Wkrs)	Rockford, IL	01/29/2004	01/23/2004
54,112	Allvac—A Division of ATI, Inc. (Wkrs)	Monroe, NC	01/29/2004	01/23/2004
54,113	Dormer Tools (Comp)	Asheville, NC	01/29/2004	01/16/2004
54,114	Boeing Commercial Aircraft (IAM)	Chicago, IL	01/29/2004	01/21/2004
54,115	California Amplifier (Wkrs)	Oxnard, CA	01/30/2004	01/27/2004
54,116	Remington Products Co. (Comp)	Bridgeport, CT	01/30/2004	01/14/2004
54,117	Milliken Plant (Wkrs)	Saluda, SC	01/30/2004	01/28/2004
54,118	Regal Plastics Co. (UAW)	Owosso, MI	01/30/2004	01/16/2004
54,119	Micro Warehouse, Inc. (Wkrs)	Lakewood, NJ	01/30/2004	01/21/2004
54,120	Packard-Hughes Interconnect d/b/a Delphi (Wkrs)	Foley, AL	01/30/2004	01/28/2004
54,121	Coach (Wkrs)	Carlstadt, NJ	01/30/2004	01/22/2004
54,122	Magnetika, Inc. (Comp)	Lakewood, NJ	01/30/2004	01/16/2004
54,123	Bard Endoscopic Technologies (Comp)	Mentor, OH	01/30/2004	01/27/2004

APPENDIX.—PETITIONS INSTITUTED BETWEEN 01/20/2004 AND 01/30/2004—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,124	J.A. DeDouch Co. (Wkrs)	Oak Park, IL	01/30/2004	01/28/2004
54,125	GHH Rand (Comp)	Davidson, NC	01/30/2004	01/28/2004
54,126	American Fast Print Ltd (Comp)	Greenville, SC	01/30/2004	01/28/2004
54,127	Mid Atlantic of West Virginia, Inc. (Comp)	Ellenboro, WV	01/30/2004	01/26/2004
54,128	Precision Disc (UAW)	Knoxville, TN	01/30/2004	01/27/2004

[FR Doc. 04–4092 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,186]

Scholler, Inc., Southampton, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on February 6, 2004, in response to a petition filed by a company official on behalf of workers at Scholler, Inc., Southampton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 11th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–377 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–54,072]

Singer Hosiery Mill, Inc., Thomasville, North Carolina; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on January 23, 2004, in response to a worker petition filed by a company official on behalf of workers at Singer Hosiery Mills, Inc., Thomasville, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 11th day of February, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–381 Filed 2–24–04; 8:45 am]

BILLING CODE 4510–13–P

NUCLEAR REGULATORY COMMISSION

State of Utah: NRC Staff Draft Assessment of a Proposed Amendment to Agreement Between the Nuclear Regulatory Commission and the State of Utah

AGENCY: Nuclear Regulatory Commission.

ACTION: Third notice of a proposed amendment to the agreement with the State of Utah; request for comment.

SUMMARY: By letter dated January 2, 2003, Governor Michael O. Leavitt of Utah requested that the U.S. Nuclear Regulatory Commission (NRC) enter into an amendment to the Agreement with Utah (the Agreement) as authorized by section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed amendment to the Agreement, the Commission would relinquish, and Utah would assume, an additional portion of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed amendment to the Agreement for public comment. NRC is also publishing the summary of a draft assessment by the NRC staff of the portion of the regulatory program Utah would assume. Comments are requested on the proposed amendment to the Agreement and the staff's draft assessment, which finds the program to be adequate to protect public health and safety and compatible with NRC's program for regulation of 11e.(2) byproduct material.

The proposed amendment to the Agreement would release (exempt) persons who possess or use certain radioactive materials in Utah from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires March 15, 2004. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following phrase ''Utah Amendment'' in the subject line of your comments. Comments will be made available to the public in their entirety. Personal information will not be removed from your comments.

Mail comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001.

E-mail comments to: *NRCREP@nrc.gov*.

Fax comments to: Chief, Rules and Directives Branch, at (301) 415–5144.

Publicly available documents related to this notice, including public comments received, may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. The PDR reproduction contractor will copy documents for a fee.

Publicly available documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Documents available in ADAMS include: the request for an amended Agreement by the Governor of Utah including all information and documentation submitted in support of the request (ML030280380); NRC comments on the request (ML031810623), Utah's response to NRC comments (ML032060090); Utah's additional clarification (ML033640565), and the full text of the NRC Staff Draft Assessment (ML040370585).

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *DMS4@nrc.gov*.

SUPPLEMENTARY INFORMATION: Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States. The Agreement States currently regulate approximately 16,850 material licenses, while NRC regulates approximately 4550 licenses. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274. Under the proposed amendment to the Agreement, four NRC licenses will transfer to Utah.

Section 274e requires that the terms of the proposed amendment to the Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This third notice is being published in fulfillment of the requirement.

I. Background

Section 274d of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials [1] and activities that involve use of the materials.

In a letter dated January 2, 2003, Governor Leavitt certified that the State of Utah has a program for the control of radiation hazards that is adequate to protect public health and safety within Utah for the materials and activities specified in the proposed amendment to the Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Utah requests authority over are: the possession and use of byproduct material as defined in section 11e.(2) of the Act and the facilities that generate such material (uranium mill tailings and uranium mills). Included with the letter was the text of the proposed amendment to the Agreement, which has been edited and is shown in Appendix A to this Notice.

The proposed amendment to the Agreement modifies the articles of the Agreement that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority; and
—Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed amendment to the Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the amendment to the Agreement, with the effective date, will be published after the amendment to the Agreement is approved by the Commission and signed by the Chairman of the Commission and the Governor of Utah.

Utah currently regulates all radioactive materials covered under the Act, except for conducting sealed source and device evaluations which will remain under NRC jurisdiction, and the possession and use of 11e.(2) byproduct material, which would be assumed by Utah under the proposed amendment to their Agreement. Section 19–3–113 of the Utah code provides the authority for the Governor to enter into an Agreement with the Commission. Section 19–3–113 also contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Utah licenses until the licenses expire or are replaced by State issued licenses. The regulatory program including 11e.(2) byproduct materials is authorized by law in section 19–3–104.

The NRC staff draft assessment finds that the Utah program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of 11e.(2) byproduct material and the facilities that generate such material.

II. Summary of the NRC Staff Draft Assessment of the Utah Program for the Control of 11e.(2) Byproduct Materials

The NRC staff has examined Utah's request for an amendment to the Agreement with respect to the ability of the Utah radiation control program to regulate 11e.(2) byproduct material. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' referred to herein as the ''NRC criteria'' (46 FR 7540, January 23, 1981, as amended by policy statements published at 46 FR 36969, July 16, 1981, and at 48 FR 33376, July 21, 1983).

Organization and Personnel. The 11e.(2) byproduct material program will be located within the existing Division of Radiation Control (Program) of the Utah Department of Environmental Quality. The Program will be responsible for all regulatory activities related to the proposed amendment to the Agreement.

The Program performed an analysis of the expected Program workload under the proposed amendment to the Agreement and determined that a level of three technical and one administrative staff would be needed to implement the 11e.(2) byproduct material authority. The distribution of the qualifications of the individual technical staff members will be balanced with the technical expertise needed for 11e.(2) byproduct material (*i.e.*, health physics, hydrology, engineering). The Program currently has and intends to initially use existing qualified staff to conduct the 11e.(2) byproduct materials activities. At least two staff are qualified in each of the three technical areas identified in the Criteria: health physics, engineering, and hydrology.

The educational requirements for the 11e.(2) byproduct material program staff members are specified in the Utah State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection.

The Program also plans to hire three new staff into the program to supplement the existing staff (two professional/technical and one administrative). New staff hired into the Program will be qualified in accordance with the Program's training and qualification procedure to function in the areas of responsibility to which the individual is assigned.

[1] The radioactive materials are: (a) Byproduct materials as defined in section 11e.(1) of the Act; (b) byproduct materials as defined in section 11e.(2) of the Act; (c) source materials as defined in section 11z. of the Act; and (d) special nuclear materials as defined in section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

Based on the NRC staff review of the State's need analysis, current staff qualifications, and the current staff assignments for the 11e.(2) byproduct material program, the NRC staff concludes that Utah will have an adequate number of qualified staff assigned to regulate the 11e.(2) byproduct material workload of the Program under the terms of the amendment to the Agreement.

Legislation and Regulations. The Utah Department of Environmental Quality (Department) is designated by law to be the implementing agency. The law establishes a Radiation Control Board (Board) that has the authority to issue regulations and has delegated the authority to the Executive Secretary the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. The Executive Secretary is the director of the Division of Radiation Control in the Department. Licensees are required to provide access to inspectors. The law requires the Board to adopt rules that are compatible with equivalent NRC regulations and that are equally stringent. Utah has adopted R313–24 Utah Administrative Code that incorporates NRC uranium milling regulations by reference, with a few exceptions, and other regulatory changes needed for the 11e.(2) byproduct material program. The NRC staff reviewed and forwarded comments on these regulations to the Utah staff. The final regulations were sent to NRC for review. The NRC staff review verified that, with the one exception of the alternative groundwater standards, the Utah rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The alternative groundwater standards were addressed in a separate Commission action (*see* 68 FR 51516, August 27, 2003, and 68 FR 60885, October 24, 2003) and will be resolved prior to the Commission's final approval of an amendment to the Agreement with Utah. The NRC staff also concludes that Utah will not attempt to enforce regulatory matters reserved to the Commission.

Evaluation of License Applications. Utah has adopted regulations compatible with the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use 11e.(2) byproduct material. Utah will use its general licensing procedures, along with the additional requirements in R313–24 specific to 11e.(2) byproduct material. Utah will use the NRC regulatory guides as guidance in conducting its licensing reviews.

Inspections and Enforcement. The Utah radiation control program has adopted a schedule providing for the inspection of licensees as frequently as the inspection schedule used by NRC. The Program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the reporting of inspection results to the licensees. The Program has also adopted, by rule based on the Utah Revised Statutes, procedures for the enforcement of regulatory requirements.

Regulatory Administration. The Utah Department of Environmental Quality is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The Program has also adopted administrative procedures to assure fair and impartial treatment of license applicants. Utah law prescribes standards of ethical conduct for State employees.

Cooperation with Other Agencies. Utah law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Utah. The law provides that these former NRC licenses will expire either 90 days after receipt from the Department of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is earlier. Utah also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its draft assessment, the NRC staff concludes that the State of Utah meets the requirements of the Act. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed amendment to the Agreement.

NRC will continue the formal processing of the proposed amendment to the Agreement which includes publication of this Notice once a week for four consecutive weeks for public review and comment.

Dated in Rockville, Maryland, this 19th day of February, 2004.

For the Nuclear Regulatory Commission.

Paul H. Lohaus,

Director, Office of State and Tribal Programs.

Appendix A

Amendment to agreement between the United States Nuclear Regulatory Commission and the State of Utah for discontinuance of certain commission regulatory authority and responsibility within the State pursuant to section 274 of the Atomic Energy Act, as amended

Whereas the United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) entered into an Agreement on March 29, 1984 (hereinafter referred to the Agreement of March 29, 1984), with the State of Utah under section 274 of the Atomic Energy Act of 1954, as amended (hereafter referred to the Act) which became effective on April 1, 1984, providing for discontinuance of the regulatory authority of the Commission within the State under chapters 6, 7, and 8 and section 161 of the Act with respect to byproduct materials as defined in section 11e.(1) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and

Whereas, the Commission entered into an amendment to the Agreement of March 29, 1984 (hereinafter referred to as the Agreement of March 29, 1984, as amended), pursuant to the Act providing for discontinuance of regulatory authority of the Commission with respect to the land disposal of source, byproduct, and special nuclear material received from other persons which became effective on May 9, 1990; and

Whereas, the Governor requested, and the Commission agreed, that the Commission reassert Commission authority for the evaluation of radiation safety information for sealed sources or devices containing byproduct, source or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission; and

Whereas, the Governor of the State of Utah is authorized under Utah Code Annotated

19–3–113 to enter into this amendment to the Agreement of March 29, 1984, as amended, between the Commission and the State of Utah; and

Whereas, the Governor of the State of Utah has requested this amendment in accordance with section 274 of the Act by certifying on January 2, 2003, that the State of Utah has a program for the control of radiological and non-radiological hazards adequate to protect the public health and safety and the environment with respect to byproduct material as defined in section 11e.(2) of the Act and facilities that generate this material and that the State desires to assume regulatory responsibility for such material; and

Whereas, the Commission found on [date] that the program of the State for the regulation of materials covered by this amendment is in accordance with the requirements of the Act and in all other respects compatible with the Commission's program for the regulation of byproduct material as defined in section 11e.(2) and is adequate to protect public health and safety; and

Whereas, the State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that the State and the Commission programs for protection against hazards of radiation will be coordinated and compatible; and

Whereas, this amendment to the Agreement of March 29, 1984, as amended, is entered into pursuant to the provisions of the Act.

Now, Therefore, it is hereby agreed between the Commission and the Governor of the State, acting on behalf of the State, as follows:

Section 1. Article I of the Agreement of March 29, 1984, as amended, is amended by adding a new paragraph B and renumbering paragraphs B through D as C through E. Paragraph B will read as follows:

''B. Byproduct materials as defined in Section 11e.(2) of the Act;''

Section 2. Article II of the Agreement of March 29, 1984, as amended, is amended by deleting paragraph E and inserting a new paragraph E to implement the reassertion of Commission authority over sealed sources and devices to read:

''E. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.''

Section 3. Article II of the Agreement of March 29, 1984, as amended, is amended by numbering the current Article as A by placing an A in front of the current Article language. The subsequent paragraphs A through E are renumbered as 1 through 5. After the current amended language, the following new section B is added to read:

''B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in section 11e.(2) of the Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that resulted in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met;

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material. Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State of Utah at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or the State pursuant to 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, as amended, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment.

d. The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.''

Section 4. Article IX of the 1984 Agreement, as amended, is renumbered as Article X and a new Article IX is inserted to read:

Article IX

In the licensing and regulation of byproduct material as defined in section 11e.(2) of the Act, or of any activity which results in the production of such byproduct material, the State shall comply with the provisions of section 2740 of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation and or long-term surveillance and maintenance of such byproduct material:

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such byproduct material and its disposal site is transferred to the United States upon termination of the State license for such byproduct material or any activity that results in the production of such byproduct material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.''

This amendment shall become effective on [date] and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII of the Agreement of March 29, 1984, as amended.

Done in Rockville, Maryland, in triplicate, this [day] day of [month, year].

For the United States Nuclear Regulatory Commission.

Nils J. Diaz,
Chairman.

Done in Salt Lake City, Utah, in triplicate, this [day] day of [month, year].

For the State of Utah.

Olene S. Walker,
Governor.

[FR Doc. E4–375 Filed 2–24–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission (NRC) has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed

by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–7004, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–7004, ''Standard Format and Content of Part 71 Applications for Approval of Packaging for Radioactive Material,'' is the proposed Revision 2 of Regulatory Guide 7.10. This revision is being developed to provide guidance on developing Quality Assurance Programs with respect to the transport of radioactive materials in Type B and fissile material packages.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, Office of Administration, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by April 25, 2004.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your Web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *cag@nrc.gov*. For technical information about Draft Regulatory Guide DG–7004, contact Mr. J. Pearson at 301–415–1985 (e-mail *jjp@nrc.gov*).

Although a deadline is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone 301–415–4737 or (800) 397–4209; fax 301–415–3548; e-mail *pdr@nrc.gov*. Requests for single copies of draft or final regulatory guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section, or by fax to 301–415–2289; e-mail *distribution@nrc.gov*. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated in Rockville, Maryland, this 3rd day of February, 2004.

For the Nuclear Regulatory Commission.

Mabel Lee,

Director, Program Management, Project Development and Support, Office of Nuclear Regulatory Research.

[FR Doc. E4–374 Filed 2–24–04; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of proposal to revise system of records.

SUMMARY: The Postal Service proposes to revise the existing system of records entitled, ''Office of Inspector General—Investigative File System, 300.010'', originally published in the **Federal Register** on October 15, 1998 (63 FR 55416). This system of records, maintained by the Postal Service Office of Inspector General (OIG), is being revised to comply with newly enacted requirements in section 6(e)(7) of the Inspector General Act of 1978. A new routine use will be added to allow disclosure of information, as necessary, to authorized members of the President's Council on Integrity and Efficiency (PCIE) and other Inspector General Offices, which on a periodic basis will conduct a peer review of OIG investigative files and practices to assess and report on the quality of OIG investigations.

DATES: The revision will become effective without further notice 30 days from the date of this publication unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed or delivered to: Marta Erceg, Director, Legal Services, Office of Inspector General, 1735 N. Lynn Street, Arlington, Virginia 22209–2020.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their amended systems of records in the **Federal Register** when there is a revision, change, or addition.

The new section 6(e)(7) of the Inspector General Act (effective in 2003) requires establishment of a peer review process to ensure that ''adequate internal safeguards and management procedures continue to exist within [Offices of Inspector General].'' The OIG has reviewed Postal Service system of records 300.010 and has determined that it must be revised to add a routine use in order to comply with the requirement that each Office of Inspector General subject itself to periodic peer reviews of its exercise of law enforcement powers.

The objectives of the peer review are to assess whether Office of Inspector General investigative programs have adequate internal safeguards and management procedures, foster high-quality investigations and investigative processes, ensure that the highest levels of professionalism are maintained, and promote consistency in investigative standards and practices within the Inspector General investigative community.

Under the review process, the exercise of the law enforcement powers by each Office of Inspector General shall be reviewed periodically by another Office of Inspector General or by a committee of Inspectors General. The added routine use will allow disclosure of information from OIG investigative files to members of the PCIE and to other Federal Offices of Inspector General, as necessary, for the purpose of conducting such qualitative assessment reviews of the OIG's investigative operations.

Accordingly, the Postal Service is adding the following routine use to the existing system of records:

USPS 300.010

SYSTEM NAME:

Office of Inspector General—Investigative File System, 300.010.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

Other routine uses are as follows:

* * * * * *

12. A record may be disclosed to other Federal Offices of Inspector General and/or to the President's Council on Integrity and Efficiency for purposes of conducting qualitative assessment reviews of internal safeguards and management procedures employed in

investigative operations of the Office of Inspector General.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–4203 Filed 2–20–04; 3:31 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

Extension: Rule 83; SEC File No. 270–82; OMB Control No. 3235–0181.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 83, Exemption in the Case of Transactions with Foreign Associates, sauthorizes an exemption from the ''at cost'' standard of section 13(b) of the Public Utility Holding Company act of 1935 (the ''Act'') for services provided to associated foreign utility companies.

Rule 83 requires a registered holding company system that wishes to avail itself of this exemption from section 13(b) of the Act to submit an application, in the form of a declaration, to the Commission. The Commission will grant the application if, by reason of the lack of any major interest of holders of securities offered in the United States in servicing arrangements affecting such serviced subsidiaries, such an application for exemption is necessary or appropriate in the public interest or for the protection of investors.

Rule 83 does not create a record-keeping burden or retention burden on respondents. The rule does, however, contain reporting and filing requirements. The filing requirement of rule 83 is necessary to obtain a benefit. Responses are not kept confidential. Rule 83 does not impose a cost burden. The Commission has not received any applications specifically under rule 83 in the past 3 years. The only rule 83 related filings were made within the context of large filings concerning other matters. Therefore, we estimate the burden of rule 83 as zero.

The estimate of average burden hours is made solely for the purpose of the paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules and forms.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: February 13, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4058 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of CNE Group, Inc. to Withdraw its Common Stock, $.00001 Par Value, from Listing and Registration on the Pacific Exchange, Inc.; File No. 1–09224

February 19, 2004.

CNE Group, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its common stock, $.00001 par value, (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously adopted resolutions on January 20, 2004 to withdraw its Security from listing on the Exchange. In making its decision to delist its Security from the PCX the Issuer states that: (i) Its current and anticipated net tangible assets/net worth, as defined by the Exchange, and the minimum share bid price of its Security do not satisfy the Exchange's requirements and; (ii) the Issuer's Security is currently traded on the American Stock Exchange LLC (''Amex'') and the Issuer expects the Security to continue to trade on the Amex after it is removed from listing and registration on the PCX.

The Issuer stated in its application that it has complied with the PCX rules that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall not affect its continued listing on the Amex nor its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before March 12, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–09224. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4059 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Columbia Laboratories, Inc., To Withdraw its Common Stock, $.01 par value, From Listing and Registration on the American Stock Exchange LLC; File No. 1–10352

February 19, 2004.

Columbia Laboratories, Inc., a Delaware corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value (''Security''), from

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

listing and registration on the American Stock Exchange LLC (''Amex'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer unanimously approved a resolution on September 18, 2003 to withdraw the Issuer's Security from listing on the Amex and to list the Security on Nasdaq National Market System (''NMS''). The Board states that it deems it advisable, and desirable and in the best interest of the Issuer to switch the listing of its Security from the Amex to Nasdaq NMS.

The Issuer stated in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in the State of Delaware, in which it is incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and shall not affect its continued listing on the Nasdaq NMS nor its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before March 12, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–10352. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4061 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Matsushita Electric Industrial Co., Ltd. To Withdraw its American Depositary Shares Evidenced by American Depositary Receipts (Each Share Representing One Share of Common Stock) From Listing and Registration on the Pacific Exchange, Inc.; File No. 1–06784

February 19, 2004.

Matsushita Electric Industrial Co., Ltd., a Japan corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to section 12(d) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its American Depositary Shares evidenced by American Depositary Receipts (each share representing one share of common stock) (''Security''), from listing and registration on the Pacific Exchange, Inc. (''PCX'' or ''Exchange'').

The Board of Directors of the Issuer approved a resolution on November 25, 2003 to withdraw the Issuer's Security from listing on the PCX. The Issuer states that its decision to delist the Security is a part of the Company's strategy to establish an effective global listing structure by concentrating the listing of its shares on a limited number of stock exchanges. The Issuer believes that the original purposes of listing on the PCX, the enhancing of the Issuer's recognition and credibility in the United States, have been achieved. In addition, since the Security is listed on the New York Stock Exchange, Inc. (''NYSE''), where most of the Issuer's Security is traded, the Issuer believes that delisting the Security will not cause any significant inconvenience to its shareholders.

The Issuer stated in its application that it has complied with the PCX rules that govern the removal of securities from listing and registration on the Exchange and will all applicable laws in effect in Japan. The Issuer's application relates solely to the withdrawal of the Security from listing on the PCX and shall not affect its continued listing on the NYSE or its obligation to be registered under section 12(b) of the Act.[3]

Any interested person may, on or before March 12, 2004, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters should refer to File No. 1–06784. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 04–4060 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49268; File No. SR–Amex–2003–97]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval of Proposed Rule Change Relating to the Amendment of Exchange Rule 590

February 18, 2004.

On November 13, 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 add three existing reports (ITS FEA Forms 1 and 2, responses to FRD Deficiency Letters, and annual audited financial statements) to the list of reports submitted to the Financial Regulation Department that may be subject to a fine under Amex's Minor Rule Violation Fine Plan (''Plan''). In addition, the Exchange proposed other amendments to clarify other obligations under the Plan.

The proposed rule change was published for comment in the **Federal Register** on January 15, 2004.[3] The Commission received no comments on the proposal.

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

[1] 15 U.S.C. 78*s*(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49041 (January 8, 2004), 69 FR 2369.

exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. In particular, the Commission believes that the proposed rule change is consistent with Section 6(b)(6)[6] of the Act because it should enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange. In addition, the Commission believes that the proposal is consistent with Rule 19d-1(c)(2) under the Act,[7] which governs minor rule violation plans.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with these rules, and all other rules subject to the imposition of fines under the Exchange's minor rule violation plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the Amex will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR-Amex-2003–97) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4063 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 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).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

[7] 17 CFR 240.19d–1(c)(2).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49274; File No. SR–Amex–2003–112]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Adoption of a Per Contract Licensing Fee for Transactions in Options on Fidelity Nasdaq Composite Index Tracking Stock (ONEQ)

February 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 29, 2003, the American Stock Exchange LLC (''Exchange'' or ''Amex'') 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 Amex. On February 9, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend its Options Fee Schedule by adopting a per contract license fee for specialist and registered options trader (''ROTs'') transactions in options on Fidelity Nasdaq Composite Index Tracking Stock (ONEQ).[4]

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds (''ETFs''). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), the iShares Goldman Sachs Corporate Bond Fund (LQD), the iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), iShares Lehman 20+ Year Treasury Bond Fund (TLT), and iShares Lehman U.S. Aggregate Bond Fund (AGG); (2) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (3) $0.05 per contract side for options on the S&P 100 iShares (OEF).[5]

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of options on the Fidelity Nasdaq Composite Index Tracking Stock. The proposed licensing fee will be collected on every option transaction of the Fidelity Nasdaq Composite Index Tracking Stock in which the specialist or ROT is a party. The Exchange proposes to charge $0.15 per contract

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated February 6, 2004 (''Amendment No. 1''). In Amendment No. 1, Amex revised footnote 1 to the Options Fee Schedule to clarify the reduced fee charges for cabinet trades and certain options spread strategies. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 9, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

[4] Amex is also rewording the text of footnote 1 to the Amex Options Fee Schedule.

[5] *See* Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001); 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003); 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003); 47956 (May 30, 2003), 68 FR 34687 (June 10, 2003); and 48665 (October 20, 2003) 68 FR 62121 (October 31, 2003).

side for options on the Fidelity Nasdaq Composite Index Tracking Stock.

The Exchange believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated to options on the Fidelity Nasdaq Composite Index Tracking Stock and the ROTs trading such product, is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

Amex notes that in recent years it has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[6] Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the Fidelity Nasdaq Composite Index Tracking Stock. In addition, Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the Fidelity Nasdaq Composite Index Tracking Stock, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[7] in general, and with section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of the filing of the proposed rule change,[11] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–Amex–2003–112. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4116 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

[6] *See* Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002) and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] *See* note 3 *supra*.

[12] *See* 15 U.S.C. 78s(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49273; File No. SR–Amex–2003–113]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC Relating to Adoption of a Per Contract Licensing Fee for Transactions in Options on iShares Lehman U.S. Treasury Inflation Protected Securities Fund (TIP)

February 18, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 29, 2003, the American Stock Exchange LLC (''Exchange'' or ''Amex'') 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 Amex. On February 9, 2004, Amex filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to amend its Options Fee Schedule by adopting a per contract license fee for specialist and registered

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Jeffrey P. Burns, Associate General Counsel, Amex, to Kelly Riley, Senior Special Counsel, Division of Market Regulation, Commission, dated February 6, 2004 (''Amendment No. 1''). In Amendment No. 1, Amex amended the proposed rule text to reflect the addition of TIP options and to conform footnote 1 to the Options Fee Schedule to changes made in File No. SR–Amex–2003–112. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on February 9, 2004, the date Amex filed Amendment No. 1 to the proposed rule change. *See* 15 U.S.C. 78s(b)(3)(C).

options trader (''ROTs'') transactions in options on iShares Lehman U.S. Treasury Inflation Protected Securities Fund (TIP).

The text of the proposed rule change is available at Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has entered into numerous agreements with issuers and owners of indexes for the purpose of trading options on certain exchange-traded funds (''ETFs''). Many agreements require the Exchange to pay a significant licensing fee to issuers or index owners as a condition to the listing and trading of these ETF options that may not be reimbursed. In an effort to recoup the costs associated with index licenses, the Exchange has previously established a per contract licensing fee for specialists and ROTs that is collected on every transaction in designated products in which a specialist or a ROT is a party. The licensing fee currently imposed on specialists and ROTs is as follows: (1) $0.15 per contract side for options on the Fidelity Nasdaq Composite Index Tracking Stock (ONEQ);[4] (2) $0.10 per contract side for options on the Nasdaq-100 Index Tracking Stock (QQQ), the Nasdaq-100 Index (NDX), the Mini-NDX (MNX), the iShares Goldman Sachs Corporate Bond Fund (LQD), the iShares Lehman 1–3 Year Treasury Bond Fund (SHY), iShares Lehman 7–10 Year Treasury Bond Fund (IEF), iShares Lehman 20+ Year Treasury Bond Fund (TLT), and iShares Lehman U.S. Aggregate Bond Fund (AGG); (3) $0.09 per contract side for options on the iShares Cohen & Steers Realty Majors Index Fund (ICF); and (4) $0.05 per contract side for options on the S&P 100 iShares (OEF).[5]

The purpose of the proposed fee is for the Exchange to recoup its costs in connection with the index license fee for the trading of options on the iShares Lehman U.S. Treasury Inflation Protected Securities Fund. The proposed licensing fee will be collected on every option transaction of the iShares Lehman U.S. Treasury Inflation Protected Securities Fund in which the specialist or ROT is a party. The Exchange proposes to charge $0.10 per contract side for options on the iShares Lehman U.S. Treasury Inflation Protected Securities Fund.

The Exchange believes that requiring the payment of a per contract licensing fee by those specialists units and ROTs that are the beneficiaries of the Exchange's index license agreements is justified and consistent with the rules of the Exchange and the Act. In addition, the Exchange believes that passing the license fee (on a per contract basis) along to the specialist(s) allocated to options on the iShares Lehman U.S. Treasury Inflation Protected Securities Fund and the ROTs trading such product, is efficient and consistent with the intent of the Exchange to pass on its non-reimbursed costs to those market participants that are the beneficiaries.

Amex notes that in recent years it has increased a number of member fees to better align Exchange fees with the actual cost of delivering services and reduce Exchange subsidies of such services.[6] Amex believes that implementation of this proposal is consistent with the reduction and/or elimination of these subsidies.

The Exchange asserts that the proposed license fee will provide additional revenue for the purpose of recouping Amex's costs associated with the trading of options on the iShares Lehman U.S. Treasury Inflation Protected Securities Fund. In addition, Amex believes that this fee will help to allocate to those specialists and ROTs transacting in options on the iShares Lehman U.S. Treasury Inflation Protected Securities Fund, a fair share of the related costs of offering such options. Accordingly, the Exchange believes that the proposed fee is reasonable.

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[7] in general, and with Section 6(b)(4) of the Act,[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes or changes a due, fee, or other charge.

At any time within 60 days of the filing of the proposed rule change,[11] the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Amex–2003–113. This file number should be included on the subject line

[4] **See** File No. SR–Amex–2003–112.

[5] *See* Securities Exchange Act Release Nos. 45163 (December 18, 2001), 66 FR 66958 (December 27, 2001); 47432 (March 3, 2003), 68 FR 11420 (March 10, 2003); 47431 (March 3, 2003), 68 FR 11882 (March 12, 2003); 47956 (May 30, 2003), 68 FR 34687 (June 10, 2003); and 48665 (October 20, 2003) 68 FR 62121 (October 31, 2003); and File No. SR–Amex–2003–112.

[6] *See* Securities Exchange Act Release Nos. 45360 (January 29, 2002), 67 FR 5626 (February 6, 2002), and 44286 (May 9, 2001), 66 FR 27187 (May 16, 2001).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] *See* note 3 *supra.*

[12] *See* 15 U.S.C. 78s(b)(3)(C).

if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of Amex. All submissions should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4123 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49256; File No. SR–CBOE–2003–54]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Misrepresentations and Omissions in Communications to the Exchange and the Options Clearing Corporation

February 13, 2004.

On November 12, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend CBOE Rule 4.6 (False Statements) and adopt new CBOE Rule 4.22 to distinguish willfully made or material misrepresentations or omissions from other misrepresentations or omissions. In addition, the Exchange proposed to amend CBOE Rule 17.50 to add Rule 4.22 to its Minor Rule Violation Plan and provide a summary fine schedule for violations of Rule 4.22.

The proposed rule change was published for comment in the **Federal Register** on January 13, 2004.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(6)[5] of the Act because it should enable the Exchange to appropriately discipline its members and persons associated with members for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange. In addition, the Commission believes that the proposal is consistent with Rule 19d–1(c)(2) under the Act,[6] which governs minor rule violation plans

In addition, the Commission believes that he proposed rule change is consistent with section 6(b)(5) of the Act, which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and, in general to protect investors and the public interest. The Commission believes that the rule change should increase the Exchange's ability to prevent members from engaging in dishonest conduct with respect to their communications with the Exchange or the Options Clearing Corporation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with the rules that the Exchange is adding to its minor rule violation plan rules and all other rules subject to the imposition of fines under that plan. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the CBOE will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–2003–54) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4062 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49275; File No. SR–CBOE–2003–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Simplify the Manner in Which Contrary Exercise Advices Are Submitted and To Extend by One Hour the Time for Members and Member Organizations To Submit Contrary Exercise Advices

February 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 26, 2004, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the CBOE. The Exchange filed the proposed rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rules 11.1 and 17.50 and to issue

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49028 (January 6, 2004), 69 FR 2028.

[4] 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).

[5] 15 U.S.C. 78f(b)(6).

[6] 17 CFR 240.19d–1(c)(2).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

a Regulatory Circular to simplify the manner in which Contrary Exercise Advices (''CEAs''), and similarly advice cancels, are submitted to the Exchange in light of The Options Clearing Corporation's (''OCC'') procedures. The Exchange also proposes new procedures to allow additional time for members and member organizations to submit CEAs for certain accounts. The text of the proposed rule change is available at the CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its exercise notification requirements. The purpose of the proposed rule change is to amend CBOE Rules 11.1 and 17.50 and to issue a Regulatory Circular to simplify the manner in which CEAs, and similarly advice cancels, are submitted to the Exchange in light of the procedures of OCC. The Exchange also proposes new procedures to allow additional time for members and member organizations to submit CEAs for certain accounts. OCC has an established procedure, under OCC Rule 805, known as ''Exercise-by-Exception'' or ''Ex-by-Ex,'' that provides for the automatic exercise of certain options that are in-the-money by a specified amount. Under the Ex-by-Ex process, option holders holding option contracts that are in-the-money by a requisite amount and who wish to have their contracts automatically exercised need to take no further action.

However, under OCC Rule 805, option holders who do not want their options automatically exercised or who want their options to be exercised under different parameters than that of the Ex-by-Ex procedures must file a CEA with CBOE in accordance with CBOE Rule 11.1 and instruct OCC of their ''contrary intention.'' The rule is designed, in part, to deter individuals from taking improper advantage of late breaking news by requiring evidence of an option holder's intention to exercise or not exercise expiring equity options via the submission of a CEA. Members and member organizations satisfy the filing requirement by manually submitting a CEA form or by electronically submitting the CEA through OCC's electronic communications system.

If OCC has waived the Ex-by-Ex procedure for an options class, members and member organizations must either: (1) Submit to the Exchange an exercise instruction in a manner specified by the Exchange within the applicable time limit if the holder intends to exercise the option, or (2) take no action and allow the option to expire without being exercised. In cases where the Ex-by-Ex procedure has been waived, OCC rules require that an affirmative Exercise Notice be submitted to OCC in order to exercise such options, whether or not an exercise instruction has been submitted to the Exchange.

The Exchange states that one of the primary goals of CBOE Rule 11.1 is to maintain a level playing field between holders of long and short positions in expiring equity options.[4] CBOE believes that after trading has ended on the final trading day before expiration, persons who are short the option have no way to close out their short positions. To put all option holders on equal footing, CBOE Rule 11.1 attempts to keep to a minimum the time period in which a holder can exercise an equity option after the close of trading on the last business day prior to expiration.[5] The current exercise cutoff time for an option holder to decide whether or not to exercise an equity option is fixed at 4:30 p.m. Central Standard Time (''CT'') on the business day immediately prior to the expiration date.[6] In the interests of clarifying the exercise notification procedures and simplifying CBOE Rule 11.1, the Exchange proposes to issue a Regulatory Circular that would contain much of the details of these procedures that previously were contained in CBOE Rule 11.1, but as herein amended.

The proposed Regulatory Circular would describe the Exchange's regular procedures and cutoff times for the submission of exercise notifications to the Exchange for non-cash-settled equity options under CBOE Rule 11.1, as detailed below. This Regulatory Circular shall be deemed a rule of the Exchange subject to the rule change provisions under the Act and the rules thereunder.

The proposed Regulatory Circular would reiterate the Ex-by-Ex procedures under OCC Rule 805 as provided in CBOE Rule 11.1(a) with relation to option holders' preferences for exercising or not exercising options. Specifically, an option holder may decide to do nothing and allow the determination to be made in accordance with OCC Rule 805, or submit a CEA or an advice cancel.

The proposed Regulatory Circular would provide for the cutoff time by which option holders have to decide to exercise or not exercise an expiring option. Current CBOE Rule 11.1 imposes a uniform 4:30 p.m. (CT) cutoff time for both an option holder's decision to exercise or not exercise an option and for a member or member organization to submit the CEA to the Exchange, regardless of whether the CEA is for a customer or a non-customer account.

Although the cutoff time for an option holder to decide whether or not to exercise an expiring option shall remain unchanged at 4:30 p.m. (CT), the Exchange proposes in CBOE Rule 11.1 and in the proposed Regulatory Circular to have an extended cutoff time of 5:30 p.m. (CT) for members and member organizations to submit CEAs to the Exchange for customer accounts. The Exchange also proposes to allow members and member organizations to submit CEAs for non-customer accounts by 5:30 p.m. (CT), but only if such member or member organization employs an electronic procedure with time stamp recording for the submission of exercise instructions by options holders. Members and member organizations would have to establish fixed procedures to insure secure time stamps in connection with the utilization of the aforementioned electronic time stamp provision. If a member organization does not employ an electronic time stamp and appropriate procedures to ensure secure time stamps, the member organization would have to submit CEAs for non-customer accounts by 4:30 p.m. (CT).

CBOE believes that granting members and member organizations additional time to submit CEAs (or advice cancels) to the Exchange is necessary to address a concern that a 4:30 p.m. (CT) cutoff time is problematic for customer accounts due to logistical difficulties in the time required to receive customer exercise instructions, and, subsequently, to process them through retail branch

[4] Another component of CBOE Rule 11.1 governs the exercising of American-style cash-settled index option contracts. See current Interpretation and Policy .03 to CBOE Rule 11.1.

[5] Expiration, commonly known as ''Expiration Friday,'' is generally the last business day prior to the expiration of an option contract.

[6] The ''expiration date'' of an options contract generally is the Saturday immediately following the third Friday of the expiration month of such options. See OCC By-Laws Article I(E)(16).

systems and back offices before submitting them to the Exchange. The Exchange believes that extending the cutoff times for CEAs and advice cancels for non-customer accounts, if electronically time stamped, is fair and provides for consistent regulation. The Exchange does not propose to extend the submission cutoff time for member organizations that manually submit CEAs and advice cancels due to the difficulties involved in monitoring a manual procedure.

Section (d) of the proposed Regulatory Circular would provide for procedures that a member organization that has accepted the responsibility to indicate final exercise decisions on behalf of other members or non-member firms must follow. Section (d) of the proposed Regulatory Circular would also allow a member organization to establish earlier cutoff times for accepting final exercise decisions in expiring options, but not later cutoff times.

Consistent with current CBOE rules,[7] section (e) of the proposed Regulatory Circular would allow members and member organizations to make final exercise decisions after the exercise cutoff time, but before expiration without having submitted a CEA: (1) To remedy mistakes made in good faith; (2) to take appropriate actions due to a failure to reconcile unmatched Exchange options transactions; or (3) where exceptional circumstances have restricted an option holder's ability to inform a member organization of a decision regarding exercise, or a member organization's ability to receive such a decision by the cutoff time. The burden of establishing such exceptions would rest solely on the member or member organization seeking application of such exception. Section (e) of the proposed Regulatory Circular would also provide for reporting and record keeping obligations with relation to these exceptions.

Certain provisions of CBOE Rule 11.1, both current and proposed, shall be maintained within the body of CBOE Rule 11.1 itself, as opposed to the Regulatory Circular. The procedures and cutoff times that would apply in unusual circumstances are specifically described in proposed CBOE Rule 11.1(d).

The proposed rule change also would permit the CBOE to establish different exercise cutoff times as an exception to amended CBOE Rule 11.1(b), and the procedures proposed in the Regulatory Circular, to address situations where the Exchange has advance prior knowledge or warning of a modified trading session at expiration, or in the case of ''unusual circumstances.'' Specifically, proposed CBOE Rule 11.1(c) would apply when a different or modified close of trading is announced. In such cases, the Exchange would have forewarning of the event and would be required to provide notice of a change in the exercise cutoff time by 4:30 p.m. (CT) on the business day prior to the last trading day before expiration. Under such circumstances, the deadline for making a final decision to exercise or not exercise would be 1 hour and 28 minutes following the time announced for the close of trading on that day. With respect to the submission of a CEA by members and member organizations, the cutoff time would be 2 hours and 28 minutes after the close of trading for customer accounts and non-customer accounts where the member firm employs an electronic procedure with time stamp for the submission of exercise instructions. Member firms that do not employ an electronic submission procedure for exercise instructions would be required to submit a CEA within 1 hour and 28 minutes after the close of trading for its non-customer accounts.

Similarly, proposed CBOE Rule 11.1(d)(1) would permit the Exchange to extend the cutoff time period for the decision to exercise or not exercise expiring options, as well as the submission of a CEA due to unusual circumstances, such as systems capacity constraints or market imbalances. Furthermore, proposed CBOE Rule 11.1(d)(2) would permit the Exchange, with one (1) business day prior advance notice by 11 a.m. (CT), to establish a reduced cutoff time for the decision to exercise or not exercise expiring options as well as the submission of the CEA in a specific option class, due to unusual circumstances that involve the underlying security, such as a significant news event that arises after the close. The Exchange believes that this flexibility would further maintain a level playing field between persons holding long and short positions in expiring options. The Exchange states that this proposed rule change corresponds to a rule change by the American Stock Exchange, LLC (''Amex'') that was approved by the Commission.[8]

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with section 6(b) of the Act in general[9] and furthers the objectives of section 6(b)(5) in particular,[10] in that it will improve the option exercise process and thus is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information regarding the exercise of outstanding option contracts, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited with respect to the proposed rule change. However, the Options Operation Sub-Group of the OCC Round Table Committee submitted a letter to the Intermarket Surveillance Group requesting that the options exchanges amend their rules to provide for a 5:30 p.m. (CT) deadline for the submission of customer exercise notifications by clearing firms.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Exchange pursuant to section 19(b)(3)(A) of the Act[11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12] Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for thirty days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6)[14] thereunder.[15]

[1] *See also* Proposed CBOE Rule 11.1(f).

[8] *See infra* note 19.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to thirty days after the date of filing. However, pursuant to Rule 19b–4(f)(6)(iii), the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The CBOE has requested that the Commission waive the thirty-day operative date specified in Rule 19b–4(f)(6)(iii)[17] in order to conform its rules pertaining to the submission of exercise notifications with those of other options exchanges.

The Commission believes that waiving the thirty-day operative date is consistent with the protection of investors and the public interest[18] because it will allow the CBOE to immediately implement rules similar to ones already in place at the other options exchanges,[19] and will simplify the manner in which CEAs, and similarly advice cancels, are submitted to the Exchange. For these reasons, the Commission designates the proposed rule change as effective and operative immediately. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–CBOE–2003–47. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–2003–47 and should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4118 Filed 2–24–04; 8:45 am]

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[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[19] *See* Securities Exchange Act Release Nos. 47885 (May 16, 2003), 68 FR 28309 (May 23, 2003) (SR–Amex–2001–92); 49191 (February 4, 2004), 69 FR 7055 (February 12, 2004) (SR–BSE–2004–04); 48505 (September 17, 2003), 68 FR 55680 (September 26, 2003) (SR–ISE–2003–20); 48640 (October 16, 2003), 68 FR 60757 (October 23, 2003) (SR–PCX–2003–47); and 48639 (October 16, 2003), 68 FR 60764 (October 23, 2003) (SR–Phlx–2003–65).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49278; File No. SR–ISE–2003–34]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc. Relating to Firm Quotations

February 19, 2004.

On November 20, 2003, the International Securities Exchange, Inc. (''ISE'' 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 require ISE market makers to be firm for the stated size of their quotations in all instances. The ISE submitted Amendment No. 1 to the proposed rule change on December 3, 2003.[3] Currently, a market maker's disseminated quotation is required to be firm at its stated size for all incoming orders, except when quotes of two ISE market makers interact. In these cases, a market maker may limit its exposure to one contract, regardless of the size of its disseminated quotation.[4] This proposed rule change will eliminate that exception.

The proposed rule change, as amended, was published for comment in the **Federal Register** on December 16, 2003.[5] The Commission received no comments on the proposed rule change.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act.[6] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of a national securities exchange be designed 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.[8] The Commission believes that requiring market makers' quotes to be firm for the full stated size in all cases will further the development of the national market system by requiring ISE market makers to comply with the Quote Rule—Rule 11Ac1–1 under the Act.[9]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 2, 2003. Amendment No. 1 deleted a reference to ''Order Execution Size''—a term no longer used in the rule—and substituted the term ''a bid or offer.''

[4] *See* Securities Exchange Act Release No. 47220 (January 21, 2003), 68 FR 4260 (January 28, 2003).

[5] *See* Securities Exchange Act Release No. 48892 (December 8, 2003), 68 FR 70058.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] Rule 11Ac1–1 sets forth requirements for the dissemination of quotations and responsibilities of broker-dealers. 17 CFR 240.11Ac1–1. By letter dated January 21, 2003, the Commission granted responsible brokers and dealers on the ISE a limited exemption from the Quote Rule to permit an ISE market maker to be firm for only one contract when its quotations interact with those of other ISE market makers. *See* letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003. Concurrent with approval of this proposed rule change, the Commission is revoking the ISE's limited exemption to the Quote Rule. See letter from Robert L.D. Colby, Deputy Director, Division of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated January 21, 2003. Concurrent with approval of t this proposed rule change, the Commission is revoking the ISE's limited exemption to the Quote Rule. *See* letter from Robert L.D. Colby, Deputy Director, Division

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change, as amended (SR–ISE–2003–34) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4122 Filed 2–24–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49285; File No. SR–NASD–2004–031]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Establishing an Effective Date For NASD Rule 3370, Affirmative Determination Requirements

February 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2004, NASD filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under paragraph (f)(1) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing a proposed rule change to establish April 1, 2004 as the effective date of the amendments to Rule 3370 (the ''Affirmative Determination Rule'') that the SEC approved in November 2003.[4] The amendments expand the scope of the affirmative determination requirements to include orders received from broker/dealers that are not members of NASD (''non-member broker/dealers''). As revised, Rule 3370 applies to orders received by member firms from both customers and non-member broker/dealers, as well as most firm proprietary orders. The revisions also add an exception for ''proprietary'' short sales of non-member broker/dealers provided the member can establish that the order meets certain conditions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its original rule filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD is filing the proposed rule change to establish April 1, 2004 as the effective date for the amendments to NASD Rule 3370 that the SEC approved in November 2003.[5] Now, Rule 3370(b)(2)(A) and the corresponding recordkeeping requirements under Rule 3370(b)(4)(B) require that, prior to accepting a short sale order from a broker/dealer that is not an NASD member (''non-member broker/dealer''), a member must make an affirmative determination that the member will receive delivery of the security from the non-member broker/dealer or that the member can borrow the security on behalf of the non-member broker/dealer for delivery by the settlement date. In addition, Rule 3370(b)(2)(A) provides exemptions for, among others, proprietary orders of member firms that are bona fide market making transactions, or transactions that result in bona fide fully hedged or arbitraged positions. Proprietary orders of a non-member broker/dealer likewise are exempt from the affirmative determination requirements if they meet the same conditions for the exemptions applicable to proprietary orders of member firms, and the following two conditions are satisfied: (1) The non-member broker/dealer must be registered with the SEC; and (2) if using the market maker exemption, the non-member broker/dealer is registered or qualified as a market maker in the securities and is selling such securities in connection with bona fide market making.

Pursuant to the SEC's approval of SR–NASD–2001–85, the amendments to Rule 3370 will go into effect on February 20, 2004. However, NASD seeks to delay implementation of these provisions until April 1, 2004. NASD understands from input received by industry participants that it would be very difficult to comply with the new requirements without making significant technological changes to their systems. For example, according to the NASD, when members receive orders from either another member or a non-member broker/dealer, the broker/dealers placing the orders are identified by a specific market participant identifier (''MPID''). Currently, members'' systems do not distinguish between the MPIDs of members and non-member broker/dealers. To comply with the new affirmative requirements, members will have to be able to distinguish the members' MPIDs from the non-member broker/dealers' MPIDs. NASD understands that to do so, firms will have to make sizeable programming changes that will allow firms to tag each MPID as belonging to either a member or non-member broker/dealer and create a master list of MPIDs that show which MPIDs belong to members and which belong to non-member broker/dealers. NASD believes that extending the effective date of the Rule 3370 amendments until April 1, 2004 will provide members sufficient time to make the necessary changes to their systems.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[6] which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that applying affirmative determination requirements to short sale orders of non-member brokers/dealers will ensure the integrity of the

of Market Regulation, Commission, to Michael J. Simon, Senior Vice President and General Counsel, ISE, dated February 19, 2004.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240 19b–4.

[3] 17 CFR 240 19b–4(f)(1).

[4] *See* Securities Exchange Act Release No. 48788 (Nov. 14, 2003); 68 FR 65978 (Nov. 24, 2003).

[5] *Id.*

[6] 15 U.S.C. 78o–3(b)(6).

marketplace by minimizing possible fails to deliver and eliminate regulatory disparities created when certain short sale orders are not conducted in compliance with the affirmative determination requirements. NASD further believes that extending the effective date will ensure that members have sufficient time to make the necessary programming changes to be able to comply with the new affirmative determination requirements.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule

Written comments were neither solicited nor received.

III. Date Of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by NASD as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule series under Rule 19b–4(f)(1) under the Act.[7] Consequently, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(1) thereunder.[9]

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule changes are 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. Comments may also be submitted electronically at the following email address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–NASD–2004–031. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by email but not by both methods.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes 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 offices of the NASD. All submissions should refer to the file numbers SR–NASD–2004–031 and should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4117 Filed 2–24–04; 8:45 am]

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[7] 17 CFR 240.19b–4(f)(1).

[8] 15 U.S.C. 78s (b)(3)(A).

[9] 17 CFR 240.19b–4(f)(1).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49269; File No. SR–NASD–2004–05]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Accelerated Approval of Proposed Rule Change to Amend NASD Rule 2370 Relating to Certain Lending Arrangements Between Registered Persons and Customers

February 18, 2004.

On January 9, 2004, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') 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 NASD Rule 2370. Specifically, NASD proposed to exempt lending arrangements between family members as well as lending arrangements between registered persons and a financial institution or other entity or person regularly engaged in the business of providing credit, financing, or loans from the rule's notice and approval requirements and to indicate that the scope of the rule is limited to lending arrangements between registered persons and their own customers, rather than any customer of the firm. The proposed rule change was published for comment in the **Federal Register** on January 23, 2004.[3] The Commission received no comment letters on the proposal.

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 association,[4] and, in particular, the requirements of section 15A(b)(6) of the Act,[5] which, among other things, requires that NASD rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. The Commission believes that the proposed rule change should allow NASD members to allocate supervisory and compliance resources to those loans where a potential for substantial abuse exists. The Commission notes that the proposed rule change only removes lending arrangements for which NASD believes the potential for misconduct is minimal from the rule's notice and approval process and that NASD members may continue to prohibit all lending arrangements between registered persons and customers altogether. The Commission also notes that NASD may bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer under NASD Rule 2110.

Furthermore, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after notice of the publication in the **Federal Register**. The Commission believes that acceleration of the approval of this proposal should allow NASD members to immediately focus on lending arrangements covered by amended NASD Rule 2370. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,[6] to approve the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[7], that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49081 (January 14, 2004), 69 FR 3410.

[4] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

[6] 15 U.S.C. 78s(b)(2).

[7] 15 U.S.C. 78s(b)(2).

proposed rule change (File No. SR–NASD–2004–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4121 Filed 2–24–04; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49276; File No. SR–PCX–2003–70]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Amend PCXE Rule 7.40 To Provide for the Dissemination of a Closing Price and Closing Volume

February 19, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 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'' or ''SEC'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On February 12, 2004, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify PCXE Rule 7.40 to provide for the dissemination of a Closing Price. The text of the proposed rule change appears below. Proposed new language is in *italics*. Proposed deletions are in brackets.

* * * * *

Rule 7.40, Trade Execution and Reporting

Rule 7.40. Executions occurring as a result of orders matched against the Arca Book shall be reported by the Corporation to an appropriate consolidated transaction reporting system. Executions occurring as a result of orders routed away from the Archipelago Exchange shall be reported to an appropriate consolidated transaction reporting system by the relevant reporting market center. The Archipelago Exchange shall promptly notify Users of all executions of their orders as soon as such executions take place.

(1.) Reporting Opening and Closing Prices

(a)—Reserved

(b) Dissemination of Closing Price and Volume

At the conclusion of the Closing Auction, the Archipelago Exchange will publish a Closing Price and volume pursuant to the following:

(i) *If a Closing Auction occurs, the Closing Price will be the Closing Auction Price with volume executed at the Closing Auction Price; or*

(ii) *If no Closing Auction occurs, the Closing Price will be the volume weighted average price (''VWAP'') based on transactions reported to a consolidated transaction reporting system during the last two minutes of the Core Trading Session and the associated volume reported to a consolidated transaction reporting system during that time period; or*

(iii) *If there are no transactions reported to a consolidated transaction reporting system during the last two minutes of the Core Trading Session, the Closing Price will be the last trade price as reported to a consolidated transaction reporting system during the trading day and the volume reported to a consolidated transaction reporting system associated with that trade; or*

(iv) *If there are no trades reported to a consolidated transaction reporting system during the trading day, the Closing Price and volume will be that of the most recent trading day's close for that particular security.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCXE Rule 7.40 relating to Trade Execution and Reporting to provide for the dissemination of a Closing Price and closing volume. This proposal would allow the Archipelago Exchange (''ArcaEx'') facility to calculate and report a Closing Price for both over-the-counter (''OTC'') and exchange-listed securities traded on ArcaEx to the Consolidated Tape and provide Equity Trading Permit (''ETP'') Holders and other consumers of market data with additional information about the market close.

The Commission recently approved amendments to PCXE rules regarding Closing Auctions (PCXE Rule 7.35(e))[4] that describe ArcaEx's Closing Auction process. The ArcaEx Closing Auction incorporates a Closing Auction Price and volume based on the Indicative Match Price, Market Imbalance and Total Imbalance relative to the Closing Auction. The Commission noted that publishing this information may provide market participants with an additional source of closing price information for Nasdaq and exchange-listed securities in addition to the information disseminated by markets, which should enhance intermarket competition by enabling market participants to assess and compare pricing among different markets.[5] The proposed change to PCXE Rule 7.40(1)(b)(i) clarifies that in the case where there is a Closing Auction in either OTC or exchange-listed securities,[6] the Closing Price and volume will be the Closing Auction Price and the associated volume executed at that price.

Where there is no Closing Auction pursuant to PCXE Rule 7.35(e), the Exchange proposes to base the Closing Price for OTC and exchange-listed securities on a consolidated volume weighted average price (''VWAP'') based on transactions reported to a

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On February 12, 2004, the Exchange filed a Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 48883 (December 4, 2003), 68 FR 69748 (December 15, 2003) (SR–PCX–2003–24).

[5] *See id.*

[6] The Exchange intends to implement the Closing Auction functionality previously approved by the Commission under SR–PCX–2003–24 in OTC securities initially and will follow with implementation of the Closing Auction functionality in exchange-listed securities at a later date. *Id.*

consolidated transaction reporting system[7] during the last two minutes of the Core Trading Session and the associated volume reported to a consolidated transaction reporting system during that time period. The Exchange believes that this will serve to provide a market wide Closing Price and an accurate indication of the Closing Price to investors. If there are no consolidated trades reported during the last two minutes of the Core Trading Session, the Exchange proposes that the Closing Price and volume will be the last consolidated price reported during the trading day. In the event there are no consolidated trades reported during the trading day, the Exchange proposes to establish the Closing Price and volume as that of the most recent trading day's Closing Price and volume. Consistently, the Exchange will set the closing volume as the volume associated with the trades in each of the stated scenarios above.

To provide investors and users of the Closing Price data with transparency and clarity on the calculation of the Closing Price, the Exchange will provide a thorough description of the Closing Price calculation including the source of data used in determining the Closing Price in a notice to members that will be disseminated via the ArcaEx Web site, *www.archipelago.com*. Furthermore, the Closing Price will be disseminated via the Consolidated Tape utilizing a trade modifier[8] to indicate the Closing Price and volume.

The Exchange believes that providing investors with an accurate representation of the market close is of critical importance. The Nasdaq Stock Market, Inc.[9] received approval to implement an official closing price in Nasdaq-listed securities. Moreover, Standard & Poors (''S&P'') recently announced plans to utilize the American Stock Exchange, LLC closing price for twelve Nasdaq-listed stocks in the S&P 500. The Exchange believes that its proposed Closing Price calculation would provide a competitive alternative to other markets' closing price calculations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)[10] of the Act, in general, and furthers the objectives of Section 6(b)(5),[11] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. In particular, the Commission solicits comment on whether the Exchange should take any further steps to disclose to market participants when the Closing Price is based on transactions that occur on other exchanges or markets. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2003–70. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–70 and should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4119 Filed 2–24–04; 8:45 am]

BILLING CODE 8010–01–P

[7] Consolidated transaction reporting system refers to the UTDF data feed pursuant to the OTC/UTP Plan with respect to OTC securities and the Network A and Network B tickers pursuant to the CTA Plan with respect to exchange-listed securities.

[8] For OTC securities, the Exchange will utilize a ''.M'' modifier to indicate the Closing Price which is currently available for OTC/UTP participants. The Exchange will work with the OTC/UTP Committee to develop an additional modifier that will be used to indicate the Closing Price when it is based on consolidated data rather than the ArcaEx Closing Auction. This modifier will be disseminated in addition to ''.M'' upon receiving approval from the OTC/UTP Committee. In addition, given that there is currently no modifier in use to indicate the Closing Price in exchange-listed securities, the Exchange will work with the CTA Committee and Securities Industry Automation Corporation (''SIAC'') to establish an appropriate modifier to signify the Closing Price in exchange-listed securities and an additional modifier to use when the Closing Price is based on exchange-listed consolidated data rather than the ArcaEx Closing Auction.

[9] *See* Securities Exchange Act Release No. 47517 (March 18, 2003), 68 FR 14446 (March 25, 2003) (SR–NASD–2002–158).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49277; File No. SR–Phlx–2004–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. To Reduce the Minimum Order Size Required To Use One of the Phlx's Procedures for Crossing Transactions

February 19, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on January 12, 2004, 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 Exchange. On February 11, 2004, the Phlx amended the proposed rule change.[3] The Phlx filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6) thereunder,[5] which renders the proposal effective upon filing with the Commission.[6] 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 Phlx proposes to amend Phlx Rule 126, ''Crossing'' Orders, Supplementary Material (h). Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

Rule 126, ''Crossing'' Orders

Rule 126. When a member has an order to buy and an order to sell the same security, he must offer such security at a price which is higher than his bid by the minimum variation permitted in such security before making a transaction with himself.

Supplementary Material:

(a)–(g) No Change.

(h) If prior to presenting a cross transaction involving [10,000] *5,000* shares or more, a member requests that the specialist post the current market for the security (''Updated Quotation''), the member may execute a cross transaction:

(i) at the Updated Quotation, if both sides of the cross transaction are agency orders and the Updated Quotation contains no agency orders; or

(ii) between the Updated Quotation, without interference by another member. In no event shall an agency order on the book having time priority, remain unexecuted after any other order at its price has been effected pursuant to this rule or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On February 29, 2003, the Commission approved an amendment to Phlx Rule 126 which added Supplementary Material (h), instituting an alternative procedure for crossing certain orders of 10,000 shares or greater (the ''Alternative Procedure'').[7] The Alternative Procedure allows a member with an order to buy and an order to sell the identical number of shares of the same security to cross those orders without interference by another member under certain circumstances.[8]

Currently, in order to use the Alternative Procedure, the member attempting to cross without interference by another member must satisfy a number of preconditions. First, the potential cross must involve orders of greater than 10,000 shares. Second, prior to introducing the cross, the member attempting to cross must ask the specialist in the security to post the current market for the security (the ''Updated Quotation''). Upon receiving the Updated Quotation, the member may execute the cross transaction without interference by another member either (1) at the Updated Quotation, if both sides of the cross transaction are agency orders[9] and the Updated Quotation contains no agency orders, or (2) between the Updated Quotation in any other case.[10] If either side of the cross would take place outside the Updated Quotation, or at the Updated Quotation for crosses where one or both sides of the cross transaction are non-agency orders or the Updated Quotation contains an agency order, the member may not cross using the Alternative Procedure.[11]

The Exchange now proposes to reduce the minimum order size required to use

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Carla Behnfeldt, Director, New Product Development Group, Legal Department, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 10, 2004 (''Amendment No. 1''). In Amendment No. 1, the Phlx changed all references to Chicago Stock Exchange (''CHX'') Rule 23 to CHX Article XX, Rule 23, Interpretations and Policies Section .01. *See also, infra* notes 12 and 13. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 11, 2004, the date the Exchange filed Amendment No. 1.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The Phlx provided the Commission with notice of its intent to file the proposed rule change on December 29, 2003. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[7] *See* Securities Exchange Act Release No. 47373 (February 19, 2003), 68 FR 8790 (February 25, 2003) (SR–Phlx–2002–76) (approval order).

[8] ''Crossed orders'' or ''crosses'' are two orders, one to buy and one to sell the identical number of shares of the same security, which a member is brokering for his or her customers. Supplementary Material (h) to Phlx Rule 126 does not preclude Exchange members from choosing to cross such orders under another provision of Phlx Rule 126. If a member wishes to effect a crossing transaction other than pursuant to the Alternative Procedure, another member may participate, or ''break up,'' the transaction, by offering (after the presentation of the proposed crossing transaction) to improve one side of the transaction by the minimum price variation. The member presenting the cross is then effectively prevented from consummating the transaction as a ''clean cross'' which may be to the detriment of the member's customer. The Exchange notes that the minimum price variation is one penny, making it relatively inexpensive for another Exchange member to break up the crossing transaction by simply improving one side or the other by one penny. The Alternative Procedure recognizes that some institutional customers prefer executing large crossing transactions at a single price and are willing to forego the opportunity to achieve the piecemeal price improvement that might result from the break up of the cross transaction by another Exchange member.

[9] As the Exchange noted in SR–Phlx–2002–76, agency orders are orders that are not for the account of brokers or dealers. *See infra* note 7.

[10] The Exchange noted in SR–Phlx–2002–76 that, as with all other trading on the Exchange, members must adhere to the trading restrictions contained in Section 11(a) of the Act, 15 U.S.C. 78k(a), and SEC Rules 11a–1 *et. seq.*, 17 CFR 240.11a–1 *et. seq.*, pertaining to members trading on the Exchange floor for their own account. *See infra* note 7.

[11] The unavailability of the Alternative Procedure does not restrict how a member may then continue to represent the orders that otherwise would have been crossed. For instance, a member may choose to execute part of one of the sides of the cross against the trading interest that caused the unavailability of the Alternative Procedure and then attempt to execute the remaining portion of the cross using the Alternative Procedure. A member could also decide to seek execution for the cross in another market.

the Alternative Procedure from 10,000 shares to 5,000 shares. The Exchange believes that the reduction in the minimum share size will permit added flexibility to Phlx market participants in that it will allow use of the Alternative Procedure in a greater number of circumstances.

In proposing the Alternative Procedure, the Exchange based the proposed rule change on CHX Article XX, Rule 23, Interpretations and Policies Section .01[12] and American Stock Exchange (''Amex'') Rule 126(g) Commentary .02. The Alternative Procedure is similar to CHX Article XX, Rule 23, Interpretations and Policies Section .01 in that it allows members to cross without[13] interference from another member following a request for an Updated Quotation.[14] The Exchange also noted that the Alternative Procedure is similar to Amex Rule 126(g) Commentary .02 in that the Alternative Procedure allows members to cross at the Updated Quotation when both sides of the cross transaction are agency orders and the Updated Quotation contains no agency orders.

Both CHX Article XX, Rule 23 Interpretations and Policies Section .01 and Amex Rule 126(g) Commentary .02 require a minimum share size of only 5,000 shares (as opposed to the 10,000 share minimum currently required under the Phlx Alternative Procedure). The instant proposed rule change will bring the Phlx minimum size in line with the minimum size required under CHX Article XX, Rule 23 Interpretations and Policies Section .01 and Amex Rule 126(g) Commentary .02.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[15] in general, and furthers the objectives of Section 6(b)(5) of the Act[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to 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. Specifically, the proposal will make the choice to use the Alternative Procedure available to market participants in a wider range of circumstances than is currently permitted.

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 solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[17] and Rule 19b–4(f)(6) thereunder.[18] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2004–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2004–04 and should be submitted by March 17, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4120 Filed 2–24–04; 8:45 am]

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[12] When the Exchange originally proposed the Alternative Procedure, the Exchange incorrectly stated that the proposed rule change was based on ''Chicago Stock Exchange (''CHX'') Rule 23 and American Stock Exchange (''Amex'') Rule 126(g) Commentary .02'' when the Exchange should have stated that the proposed rule change was based on CHX Article XX Rule 23 and Amex Rule 126(g) Commentary .02. The incorrect text is in the unpublished portion of the Exchange's Form 19b–4 filing relating to Securities Exchange Act Release No. 47140 (January 8, 2003), 68 FR 2098 (January 15, 2003) (SR–Phlx–2002–76), a copy of which is available at the Commission and the Exchange. *See* telephone conversation among Carla Behnfeldt, Director, New Product Development Group, Legal Department, Phlx; Joseph Morra, Special Counsel, Division, Commission; and David Hsu, Attorney, Division, Commission, on February 17, 2004.

[13] In Amendment No. 1, the Exchange corrected an error in SR–Phlx–2002–76. In SR–Phlx–2002–76, the Exchange stated that ''[t]he Exchange believes that this proposal is similar to CHX Rule 23 in that this proposal allows members to cross with interference from another member following a request for an Updated Quotation'' when the Exchange should have stated that the proposal allows members to cross without interference from another member following a request for an Updated Quotation.

[14] *See* CHX Rule 23 Interpretations and Policies Section .01 and Securities Exchange Act Release No. 46533 (September 23, 2002), 67 FR 61360 (September 30, 2003) (SR–CHX–2002–05) (approval order). *See also,* Securities Exchange Act Release No. 43203 (August 24, 2000), 65 FR 53067 (August 31, 2000) (SR–CHX–2000–13) (approval order).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6).

[19] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P020]

State Of South Carolina

As a result of the President's major disaster declaration for Public Assistance on February 13, 2004, the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Aiken, Bamburg, Barnwell, Calhoun, Clarendon, Edgefield, Florence, Horry, Kershaw, Lexington, Marion,

McCormick, Newberry, Orangeburg, Richland, Sumter, and Williamsburg Counties in the State of South Carolina constitute a disaster area due to damages caused by a severe ice storm occurring on January 26, 2004, and continuing through January 30, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on April 13, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

For Physical Damage:

Non-profit organizations without credit available elsewhere: 2.900%.

Non-profit organizations with credit available elsewhere: 4.875%.

The number assigned to this disaster for physical damage is P02011.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: February 18, 2004.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E4–376 Filed 2–24–04; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Pub. L. 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex Building, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. Request for Earnings and Benefit Estimate Statement—20 CFR 404.810—0960–0466. Form SSA–7004 is used by members of the public to request information about their Social Security earnings records and to get an estimate of their potential benefits. SSA provides information, in response to the request, from the individual's personal Social Security record. The respondents are Social Security numberholders who have covered earnings on record.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 800,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Average Burden: 66,667 hours.

2. Subpoena—Disability Hearing—20 CFR 404.916(b)(1) and 416.1416(b)(1)—0960–0428. The information on Form SSA–1272–U4 is used by SSA to subpoena evidence or testimony needed at disability hearings. The respondents are comprised of officers from Federal and State DDSs.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 36.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Average Burden: 18 hours.

3. Employer Verification of Earnings After Death—20 CFR 404.821 and 404.822—0960–0472. The information collected on Form SSA–L4112 is used by SSA to determine whether wages reported by an employer are correct, when SSA records indicate that the wage earner is deceased. The respondents are employers who report wages for a deceased employee.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 50,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 8,333 hours.

4. Information about Joint Checking/Savings Account—0960–0461—20 CFR 416.1201 and .1208—Form SSA–2574 is used to collect information from the claimant and the other account holder(s) when a Supplemental Security Income (SSI) applicant/recipient objects to the assumption that he/she owns all or part of the funds in a joint account bearing his or her name. These statements of ownership are required to determine whether the account is a resource of the SSI claimant. The respondents are applicants for and recipients of SSI payments and individuals who are joint owners of financial accounts with SSI applicants.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 200,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 23,333 hours.

5. Beneficiary Contact Report—20 CFR 404.703 and 404.705—0960–0502. SSA uses the information collected by form SSA–1588–OCR–SM to ensure that eligibility for benefits continues after entitlement. SSA asks parents information about their marital status and children in-care to detect overpayments and to avoid continuing payment to those who are no longer entitled. The respondents are recipients of survivor mother/father Title II (OASDI) benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 133,400.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 11,117 hours.

6. Earnings Record Information—20 CFR 404.801–.803 and 404.821–.822—0960–0505. The information collected by form SSA–L3231–C1 is used to ensure that the proper person is credited for working when earnings are reported for a minor under age seven years. The respondents are businesses reporting earnings for children under age seven.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 3,333 hours.

7. Internet Direct Deposit Application—31 CFR 210—0960–0634. SSA uses Direct Deposit/Electronic Funds Transfer (DD/EFT) enrollment information received from beneficiaries to facilitate DD/EFT of their Social Security benefits with a financial institution. Respondents are Social Security beneficiaries who use the Internet to enroll in DD/EFT.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 9,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,500 hours.

8. Farm Self-Employment Questionnaire—20 CFR 404.1095—0960–0061. Section 211(a) of the Social Security Act requires the existence of a trade or business as a prerequisite for determining whether an individual or partnership may have ''net earnings from self-employment.'' Form SSA–7156 elicits the information necessary to determine the existence of an agricultural trade or business and subsequent covered earnings for Social Security entitlement purposes. The respondents are applicants for Social Security benefits, whose entitlement depends on whether the worker has covered earnings from self-employment as a farmer.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 7,917 hours.

9. Response to Notice of Revised Determination—20 CFR 404.913–.914 and 992(b), 416.1413–.1414 and 1492—0960–0347. Form SSA–765 is used by claimants to request a disability hearing and/or to submit additional evidence before a revised reconsideration determination is issued. The respondents are claimants who file for a disability hearing in response to a notice of revised determination for disability insurance and/or SSI under titles II (Old-Age, Survivors and Disability Insurance) and XVI (SSI).

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 1,925.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 963 hours.

10. Authorization to Disclose Information to the Social Security Administration—20 CFR Subpart O, 404.1512 and Subpart I, 416.912—0960–0623. SSA must obtain sufficient medical evidence to make eligibility determinations for the Social Security disability benefits and SSI payments. For SSA to obtain medical evidence, an applicant must authorize his or her medical source(s) to release the information to SSA. The applicant may use one of the forms SSA–827, SSA–827 OP1 or SSA–827 OP2 to provide consent for the release of information. Generally, the State DDS completes the form(s) based on information provided by the applicant, and sends the form(s) to the designated medical source(s). The respondents are applicants for Social Security disability benefits and SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Number of Respondents: 3,853,928.

Frequency of Response: 4.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 2,569,285 hours.

II. The information collection listed below has been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the addresses listed above.

1. Site Review Questionnaire for Volume Payees, SSA–637; Site Review Questionnaire for Fee-for-Service Payees; SSA–638; Site Review-Beneficiary Interview Form, SSA–639—20 CFR 404.2035, 404.2065, 416.665, 416.701 and 416.708—0960–0633. In situations where a Social Security beneficiary is incompetent or physically unable to take care of his or her own affairs, SSA may make payment of Social Security and Supplemental Income (SSI) benefits to a relative, another person, or an organization when the best interest of the beneficiary will be served. In certain situations SSA conducts site reviews in order to ensure that payees are carrying out their responsibilities in accordance with representative payment policies and procedures. These reviews enable SSA to identify poor payee performance, uncover misuse and initiate corrective action. Triennial site reviews are conducted for fee-for-service payees and all volume payees (*i.e.*, organizations serving 100 or more beneficiaries and individuals serving 20 or more beneficiaries). The reviews include a face-to-face meeting with the payee (and appropriate staff), examination/verification of a sample of beneficiary records and supporting documentation, and usually include beneficiary (if competent adult) or custodian (if different from payee) interviews. Forms SSA–637, SSA–638, and SSA–639 are used to record the information collected during these interviews. The respondents are certain representative payees and also competent Social Security beneficiaries.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 680 Volume and Fee-for-Service Payees, 2,040 Beneficiaries, Total: 2,720.

Average Burden Per Response: 1 hour—Payees, 10 minutes—Beneficiaries.

Frequency of Response: 1.

Estimated Annual Burden Hours: 680 Payees, 340 Beneficiaries, Total 1,020.

2. Beneficiary Interview and Auditor's Observations Form—0960–0630—The information collected through the Beneficiary Interview and Auditor's Observation Form, SSA–322, will be used by SSA's Office of the Inspector General to interview beneficiaries and/or their payees to determine whether they are complying with their duties and responsibilities. Respondents to this collection will be randomly selected SSI recipients and Social Security beneficiaries that have representative payees.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,550.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 638.

3. Request to Resolve Questionable Quarters of Coverage (QC); Request for QC History Based on Relationship—0960–0575. Form SSA–512 is used by the States to request clarification from SSA on questionable QC information. The Personal Responsibility and Work Opportunity Reconciliation Act states that aliens admitted for lawful residence who have worked and earned 40 qualifying QCs for Social Security purposes can generally receive State benefits. Form SSA–513 is used by States to request QC information for an alien's spouse or child in cases where the alien does not sign a consent form giving permission to access his/her Social Security records. QCs can also be allocated to a spouse and/or to a child under age 18, if needed, to obtain 40 qualifying QCs for the claimant. The respondents are State agencies that

require QC information in order to determine eligibility for benefits.

Type of Request: Extension of an OMB-approved information collection.

	SSA–512	SSA–513
Number of Respondents	200,000	350,000
Frequency of Response	1	1
Average Burden Per Response (minutes)	2	2
Estimated Annual Burden (hours)	6,667	11,667

4. Questionnaire About Employment or Self-Employment Outside the United States—20 CFR 404.401(b) (1), 20 CFR 404.415, 20 CFR 404.417—0960–0050. This information is used by SSA to determine whether work performed by beneficiaries outside the United States (U.S.) is cause for deductions from their monthly benefits; to determine which of two work tests (foreign or regular) is applicable; and to determine the months, if any, for which deductions should be imposed. The respondents are beneficiaries living and working outside the U.S.

Type of Collection: Extension of an OMB-approved information collection.

Number of Respondents: 20,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 4,000 hours.

5. Certification of Prison Records by Prison Officials—20 CFR 422.107—0960–NEW. When a valid agreement is in place, prison officials can use this suggested language format to attest to the identity of certain incarcerated U.S. citizens who need replacement Social Security cards. Information the prison officials provide will be taken from the official prison files and will be transcribed on their letterhead. This information will be used to establish the applicant's identity in the Social Security card process. The respondents are prison officials that certify identity of prisoners applying for Social Security cards.

Type of Request: New information collection.

Number of Respondents: 2,000,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 100,000 hours.

Dated: February 19, 2004.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 04–4030 Filed 2–24–04; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. OST–2003–14694]

Agency Information Collection; Activity Under OMB Review

AGENCY: Office of the Secretary, (OST), DOT.

ACTION: 60-day notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, Public Law 104–13, the Office of the Secretary invites the general public, industry and other governmental parties to comment on the need for and usefulness of the Department's collecting three new quarterly reports from intra-Alaska air carriers required by the Rural Service Improvement Act of 2002 (RSIA) consisting of: Passenger, freight, and charter revenue by market by direction; a more detailed system income statement; and system excise taxes paid on passengers and freight. The reports would be required of all intra-Alaska carriers intending to qualify for the carriage of bush mail from the Postal Service.

DATES: Written comments should be submitted by April 26, 2004.

ADDRESSES: Comments should be directed to: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., PL–401, Washington, DC 20590–0001, fax no. (202) 493–2251 or e-mail: *http://dms.dot.gov.*

Comments: Comments should refer to the ''RSIA Quarterly Financial Reports.'' Persons wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: RSIA Quarterly Financial Reports. The postcard will be date/time stamped and returned.

FOR FURTHER INFORMATION CONTACT: Kevin Adams, Office of Aviation Analysis, X–53, Room 6401, Office of the Secretary, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–1047.

SUPPLEMENTARY INFORMATION:

RSIA Quarterly Financial Reports

Title:

1. Quarterly Revenue Report by Community for Intra-Alaska Bush Carriers (net of excise tax);
2. Quarterly System Income Statement for Intra-Alaska Bush Mail Carriers;
3. Quarterly System Excise Tax.

This information was discussed in Order 2003–10–10, Issue 3.

Type of Review: New Reports required by the Rural Service Improvement Act of 2002, Section 3002 of Pub. L. 107–206.

Respondents: Intra-Alaska bush air carriers.

Number of Respondents: 33.

Number of Responses per year: 33 carriers × 4 quarters × 3 reports = 396.

Estimated Time per Response: 8 hours total per carrier per quarter.

Total Annual Burden: 33 carriers × 4 quarters × 8 hours = 1,056 hrs.

Needs and Uses: The Department will use this form to fulfill its obligation under the Rural Service Improvement Act of 2002 (RSIA). The Act states that to prevent carriers from overstating the amount of passengers and freight they carry in order to qualify for the carriage of Intra-Alaska bush mail, they must submit monthly reports depicting the excise taxes they paid for every market they served. We have fully discussed this issue in Department of Transportation Order 2003–10–10, *http://www.dms.dot.gov,* Docket 14694, Issue 3 of that Order. We have attached that discussion herein as Appendix C. This information collection would allow the Department to monitor and disclose the amount of revenue each carrier generates in each market where it intends to qualify for the tender of mail by the Postal Service. All Intra-Alaska certificated carriers interested in being tendered bush mail are required to submit this information. The data would be submitted beginning with the quarter ended September 30, 2002, the first quarter when the Rural Service Improvement Act was implemented.

In order to encourage carriers to compete with each other as intended under the provisions of RSIA to qualify to carry mail at individual markets, and so that carriers in the market can review the accuracy of their competitors'

reports, we intend to make the first and second reports public, 180 days after the end of the reporting period. Because the system excise taxes are drawn from and duplicative of IRS Form 720, which is not publicly disclosed, we would maintain the confidentiality of that individual report, and not disclose it outside the Department. The information to be collected and the requirement that it be collected were discussed in Department of Transportation Order 2003–10–10, Issue 3.

Issued in Washington, DC, on February 18, 2004.

Randall D. Bennett,

Director, Office of Aviation Analysis, X–50.

Appendix A—Carrier Name

QUARTERLY REVENUE REPORT AT COMMUNTIES IN WHICH CARRIERS ARE INTERESTED IN BEING TENDERED MAIL

Examples	Outbound from the hub [1]			Inbound to the hub [1]		
	Skd. pass.	Skd. frt.	Charter	Skd. pass.	Skd. frt.	Charter
Bethel-Hooper	$$$	$$$	$$$	$$$	$$$	$$$.
Nome-Ruby, etc.	$$$	$$$	$$$	$$$	$$$	$$$.

[1] For example, outbound is Bethel (the hub) to Hooper; Inbound is Hooper to Bethel. Exclude all intervillage traffic. We include the inbound above only to prevent possible gamesmanship, consistent with RSIA.

NOTES: 1. All figures are in dollars, and net of excise tax. 2. Consistent with BTS definitions, revenue reflects funds going to the carrier for service on its system. 3. These revenue figures should correspond to traffic figures for Tables 3 and 4 on the BTS Web site. 4. Outbound refers to traffic originating at the hub/acceptance point, *i.e.*, outbound to the bush community.

Appendix B—Name of Carrier

QUARTERLY SYSTEM INCOME STATEMENT SUBMITTED BY CARRIER, REPLACING SCHEDULE F–1

	Revised schedule F–1	Current schedule F–1
1. Scheduled Passenger	$$$	$$$
2. Scheduled Freight	New	
3. Charter	New [1]	
4. Mail	New	
5. Other	New	
6. Total Operating Revenue	$$$ [2]	$$$
7. Non-Operating	New	
8. Total Revenue	New	
9. Expense per Schedule F–2	$$$	
10. Other Operating Expense	New	
11. Total Operating Expense	$$$	$$$
12. Non-Operating	New	
13. Total Expense	New	
14. Net Income	$$$	$$$
Per IRS Form 720, Quarterly System Excise Tax [3]		
Passenger Excise Tax	$$$	
Freight Excise Tax	$$$	

[1] Charter revenue is the revenue generated when a single entity purchases the entire use of the plane.

[2] Passenger, Freight, Mail, and Charter Revenue is for Air Transportation only. The related revenue from activities such as hotels, guides, camping, etc., are excluded.

[3] Carriers should separately report the first page of IRS Form 720 to BTS, which will keep the information confidential.

Appendix C—Discussion of the New Reporting Requirements, per Order 2003–10–10, Docket 14694, October 8, 2003, Issue 3 [4]

Issue 3: section (k)(5) of the law provides that: ''(5) Not later than 30 days after the last day of each calendar month, carriers qualified or attempting to be qualified to be tendered nonpriority bypass mail shall report to the Secretary the excise taxes paid by city pair to the Department of the Treasury and the weight of and revenue earned by the carriage of nonmail freight. Final compiled data shall be made available to carriers providing service in the hub.''

We have discussed this issue with BTS and the Postal Service. Some carriers have informally stated that quantifying excise taxes by market would prove difficult, if not impossible. It is not clear from the legislative history what the purpose is of carriers reporting excise taxes by route. We thus request comments on the best method to meet the requirements of the law.[5]

Issue 3 Responses: In response to the RFC, many carriers said they were fearful the law would be thwarted by carriers' misreporting data. The law provides that only carriers transporting significant shares of passengers or non-mail freight will be tendered mail. For a few carriers, the bulk of their revenue and traffic is mail. In other words, those most dependent on mail revenue are those most at risk to have it taken away.

The law recognizes this concern by penalizing carriers that significantly overstate their passenger or cargo carriage by taking them out of tender, for increasingly extended periods of time with each violation.[6] To attempt to ensure that carriers' passenger and cargo reports are accurate, the RSIA requires carriers to submit excise taxes by city-pair each month, with the expectation that, given such information, the Department and Postal Service could more readily detect misreporting of traffic. Many carriers state that excise taxes by city pair will be burdensome to report, because excise taxes are paid by the carrier selling the ticket or waybill, not necessarily by the carrier

[4] The other issues discussed in that Order may be viewed on the Department's Docket Management System, *http://www.dms.dot.gov.*

[5] The italicized elements were first listed in the Department's notice posted on April 16, 2003, in the docket to this proceeding (14694) in the Department's docket management system, and are referred to as the RFC, or Request for Comments.

[6] One month for the first offense, six months for the second, one year for the third, and permanently for the fourth.

providing the service. They also argue that since excise taxes are paid when the sale is made, they may not reflect when passengers or freight are actually transported and the revenue earned. Warbelow's Air Ventures (Warbelow's) notes that excise taxes are a straight percentage of revenue,[7] so in lieu of directly reporting excise taxes by each market, carriers could meet the requirements of the law by reporting revenue by market. We note too that for the freight pool, unlike the passenger pool, RSIA permits the Postal Service to use either the weight of the freight transported in the market, as reported on the T–100, or the associated revenue to determine qualification for tender, and this further supports our tentative decision to require the reporting of revenue.

While we recognize that the statute is designed to ensure accurate mail tender by the Postal Service and is not our primary responsibility to interpret, we believe the carriers raise serious problems with implementation of the excise tax report. We will continue to consider those concerns, but tentatively require that carriers report the data described in Appendix A on an interim basis. Since excise tax is a straight percentage of revenue, rather than directly reporting excise taxes by market, the same goal can be accomplished by reporting revenue by market. Because the Postal Service has said it will tender mail based on annual results, perhaps updated every three months, it would serve no purpose to collect this information by month, so we will require only quarterly submissions of the data in Appendix A. The information (consistent with the overall intent of the law) is to be made public and will accordingly be placed on the BTS Web site. As with the T–100 On-Flight O&D reports, which it crosschecks, we will afford carriers a 15-day grace period after the information is published on the BTS Web site to report corrections. We believe this interim reporting, along with that in Appendix B, will fully accomplish the intent of the legislation and considerably lessen the carriers' reporting burden.

The intent of this part of the legislation is to substantiate passenger and freight counts, and to reward carriers that transport significant passenger and freight levels with mail tender. Thus, carriers that do not expect to qualify for bypass mail do not need to submit the data on Appendix A.

We note that the Postal Service has said that it intends to modify its tender of non-priority, non-bypass mail to conform with the RSIA requirements for tender of bypass mail, even though the RSIA does not so require. The Consolidated Carriers[8] object, stating that any special RSIA reporting cannot be extended beyond bypass mail. We agree, but the Postal Service can undertake its own data collection as necessary to administer its tender policy for non-priority, non-bypass mail. Of course, consistent with our rules, all carriers are still required to report the T–100 passenger and freight traffic, even those that do not transport any bypass mail.

Additional Reports, Appendix B

Larry's Flying Service recommends that the Department have carriers report a more detailed income statement, in lieu of excise taxes, stating: ''Scheduled passenger revenue follows the Net Income line on [Schedule F–1 and] should not be flawed by any code-sharing or ticket stock issued by other airlines. If reported accurately, this should give the same or better information as would a creative exercise with excise taxes. We would not be averse to an added line for passenger charter revenue or (taxable) freight revenue as well.''

Again, we think RSIA imposes ultimate responsibility for data use on the Postal Service. While we consider this additional concern, this revised interim Schedule F–1 will serve as a proxy. Moreover, it requires minimal additional detail, will tentatively be submitted quarterly, not monthly, beginning with the QE 9/30/02, and is shown in Appendix B.[9] Under the RSIA, Freight Revenue is an alternate way to rank carriers for inclusion in the freight pool. Also, having Charter Revenue will be useful as a check on carrier reporting, because many carriers are currently claiming that other operators are misclassifying charter passenger and freight operations as scheduled service.[10] We will also tentatively require carriers to report, from the first page of IRS Form 720, system excise taxes for persons by air and property by air, beginning with QE 9/30/02. It is very easily reported, and should enable us to conduct reviews of carriers to pinpoint where on-site reviews might be required or where the Postal Service should be alerted to a potential problem. We will hold confidential the information on Form 720.

Appendix D—Carriers Transporting Intra-Alaska Bush Mail as of February 1, 2004

1. 40-Mile Air.
2. Alaska Central Express (ACE).
3. Alaska Seaplane.
4. Arctic Circle.
5. Arctic Transportation Services (ATS).
6. Baker.
7. Bellair.
8. Bering.
9. Camai (Village).
10. Cape Smythe.
11. ERA Aviation.
12. Frontier Flying Service.
13. Grant.
14. Hageland.
15. Iliamna.
16. Inland.
17. Island (Redemption).
18. LAB.
19. Larry's Flying Service.
20. Olson.
21. Peninsula.
22. Promech.
23. Servant.
24. Skagway.
25. Smokey Bay.
26. Spernak.
27. Tanana.
28. Taquan.
29. Tatonduk (Everts).
30. Warbelows Air Ventures.
31. Wings of Alaska.
32. Wright Air Service.
33. Yute.

[FR Doc. 04–4169 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–62–P

[7] Excise tax is applied at 7.5% of passenger revenue and 6.25% of freight revenue. In addition, at a few non-rural airports in Alaska, carriers collect an excise tax of $3 per segment. Charter revenue is taxed similarly to scheduled revenue, except that aircraft with certificated take-off weight of less than 6,000 pounds are not taxed unless they operate with some degree of regularity between definite points.

[8] The Consolidated Carriers consist of: Alaska Seaplane, Baker, Bellair, Cape Smythe, Grant, Iliamna, Island Air, Katmai, LAB, Larry's Flying Service, Olson, Servant, Skagway, Smokey Bay, Tanana, Taquan, Wings, and Wright.

[9] The only additional data that must be submitted are charter revenue, mail revenue, and freight revenue. The other additional lines are simply subtotals and totals of those data.

[10] We believe Department instructions are clear: charter operations, including part charters, are those where customer(s) contract for the entire plane, without individual tickets or waybills. Comparing flight regularity with scheduled service is often not determinative in Alaska.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular 23.629–1B, Flutter

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed revision to AC 23.629–1B. This proposed revision adds guidance for showing compliance to § 23.629, flutter (including divergence, and control reversal) of part 23 airplanes. This notice is necessary to allow the public the opportunity to comment on the proposed AC.

DATES: Comments must be received on or before April 26, 2004.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Regulations and Policy (ACE–111), 901 Locust Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Mark James, Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4137 fax (816) 329–4090.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. A copy of the proposed AC will also be available on the Internet at *http://www.airweb.faa.gov/AC* within a few days.

Comments Invited: We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23.629–1B and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 and 4 p.m. weekdays, except Federal holidays by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: When issued, AC 23.629–1B, Means of Compliance with section 23.629, Flutter, will replace AC 23.629–1A, Means of Compliance with section 23.629, Flutter, dated October 23, 1985.

Issued in Kansas City, Missouri on February 13, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–4178 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–12]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before March 8, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] 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 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

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: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 13, 2004.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–16343.

Petitioner: Angel Flight South Central.

Section of 14 CFR Affected: 14 CFR 61.113(d).

Description of Relief Sought: To allow members of Angel Flight South Central to operate under § 61.113(d) without having to (1) notify the FAA flight standards district office 7 days prior to a flight, (2) produce assigned letter from every sponsoring corporation, and (3) have a photocopy of each pilot in command's pilot certificate and logbook entries that show the pilot is current in accordance with §§ 61.56 and 61.57.

[FR Doc. 04–4179 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–11]

Petitions for Exemption; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains the dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Tel. (202) 267–5174.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on February 20, 2004.

Gary A. Michel,

Acting Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: FAA–2003–16538.

Petitioner: Structural Integrity Engineering.

Section of 14 CFR Affected: 14 CFR 25.785(j), 25.812(e), 25.813(b), 25.857(e), 25.1447(c)(1), and 25.1449.

Description of Relief Sought/Disposition: To permit carriage of 7 non-crewmembers in a compartment behind the flight deck on Boeing Model 757–200 airplanes which have been converted from a passenger to a freighter configuration.

Partial Grant of Exemption, 02/04/2004, Exemption No. 8248.

[FR Doc. 04–4180 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 200: Modular Avionics (MA)/EUROCAE WG–60

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 200 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 200: Modular Avionics.

DATES: The meeting will be held on March 2–5, 2003, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at Hilton Melbourne Beach Hotel, Melbourne, Florida.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 200 meeting. The agenda will include:

- March 2:
  - Subgroup 1–3 Meetings
- March 3:
  - Opening Session (Welcome, Introductory and Administrative Remarks, Review Agenda, Review Summary of Previous Meeting)
  - Review action items
  - Brief status of Action Items
  - Brief status of work of Subgroups 1–3
  - Review and disposition comments on the current draft of the Final Report
- March 4:
  - Subgroups 1–3 Meetings
- March 5:
  - Report of Subgroup Meetings
  - Review Action Items
  - Plan Editorial Committee Meeting
  - Establish Work Plan
  - Closing Session (Make Assignments, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 11, 2004.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 04–4197 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 196: Night Vision Goggle (NVG) Appliances and Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 196 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 199: Night Vision Goggle (NVG) Appliances and Equipment.

DATES: The meeting will be held March 11–12, 2004, starting at 9 a.m.

ADDRESSES: The meeting will be held at Las Vegas Hilton, 3000 Paradise Road, Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 196 meeting. The agenda will include:

March 11–12:

- Opening Session (Welcome and Introductory Remarks, Agenda Overview, Approve Minutes of Previous Meeting)
- Overview of SC–196 Working Group Activities
  - Introductions of Working Group 5 (Training Guidelines/ Considerations) Chairpersons
  - FAA desired use for guidelines document/document layout and contents
  - HBAT 8400.10 Special Training Chapter 2
  - RTCA SC–196 Training Guidelines Document Version 6
  - Timeline for Completion—September 2004
- Review of current Training Guidelines Template
- Sub-group development for Training Document
- Closing Session (Other Business, Establish Agenda for Next Meeting, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 10, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–4193 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 135/ EUROCAE Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 135/EUROCAE Working Group 14 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 135/ EUROCAE Working Group 14: Environmental Conditions and Test Procedures for Airborne Equipment.

DATES: The meeting will be held March 9–12, 2004, starting at 9 a.m.

ADDRESS: The meeting will be held at Honeywell Business, Regional & General Avionics Facility, 5353 West Bell Road, Glendale, AZ.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org,* (2) Michael Kroeger at Honeywell; telephone (602) 436–4554; e-mail at *mike.kroeger@honeywell.com.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 135 meeting. The agenda will include:

- March 9–12:
  - Opening Plenary Session (Welcome and Introductory Remarks, Recognize Federal Representative, Approve Minutes of Previous Meeting)
  - Review Results of EUROCAE–14

Meeting.
- Review List of Change Proposals.
- Review All Change Proposals by Section.
- Review Change Proposals and Drafts for all other sections.
- Review Schedule for DO–160E, Environmental Conditions and Test Procedures for Airborne Equipment.
- Closing Plenary Session (Debrief of Subgroup Meetings, New/Unfinished Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 10, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–4194 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 195: Flight Information Services Communications (FISC)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 195 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 195: Flight Information Services Communications (FISC).

DATES: The meeting will be held March 9–11, 2004, starting at 8:30 a.m.

ADDRESSES: The meeting will be held at Department of Transportation (DOT), 400 7th St., SW., Room 4236, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 195 meeting. The agenda will include:

- March 9:
  - Opening Plenary Session (Welcome and Introductory Remarks, Approval of Agenda, Approval of Minutes, Review of Action Items)
  - Resolve final review and comments (FRAC) of draft DO–267A, *Minimum Aviation System Performance Standards (MASPS) for Flight Information Services—Broadcast (FIS–D) Data Link*
- March 10:
  - Continue resolution of FRAC comments on draft DO–267A
- March 11:
  - Continue resolution of FRAC comments on draft DO–267A
  - Approve Final draft DO–267A to forward to the RTCA Program Management Committee
  - Discuss SC–195 Future Work Plan, including DO–252 and status of Working Group-1
  - Closing Plenary Session (Review Action Items, Discussion of Future Workplan, Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURHTER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 10, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–4195 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on March 8–11, 2004, from 9 a.m. to 4:30 p.m.

ADDRESS: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 202 meeting. The agenda will include:

- March 8–9:
  - Working Groups 1 through 4 meet all day
- March 10:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review Agenda, Review/Approve previous Common Plenary Summary, Review Open Action Items)
  - Report from Eurocae Working Group WG–58, meeting March 2–4, 2004, in Hamburg
  - Report from Consumer Electronic Association (CEA) Discovery Group
  - Update from Regulatory Affairs
  - Overview of comments received on Draft 2 Phase 1 document and Working Group Allocations
  - Working Groups report out/each working group will cover the following topics:
  - Overview and disposition of comments received on draft document
  - Conclusions and Recommendations for the overall document
  - Coverage of TOR
  - What else remains to be done to complete Phase 1 document
  - Working Group 1 (PEDs characterization, test, and evaluation)
  - Working Group 2 (Aircraft test and analysis)
  - Working Group 3 (Aircraft systems susceptibility)
  - Working Group 4 (Risk assessment, practical application, and final documentation)
  - Human Factors sub-group
  - Process Checklist sub-group
- March 11:
  - Continue Plenary Session
  - Committee consensus on content of draft document
  - Consensus on Conclusions and Recommendations
  - Forward to RTCA with SC–202 recommendation to release for Final Review and Comment
  - Closing Session (Other Business, Date and Place of Next Meeting, Closing Remarks, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral

statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 12, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–4198 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–10–C–00–MKE To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at General Mitchell International Airport, Milwaukee, Wisconsin

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before March 26, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to C. Barry Bateman, Airport Director of the General Mitchell International Airport, Milwaukee, Wisconsin at the following address: 5300 S. Howell Avenue, Milwaukee, Wisconsin 53207–6189.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Milwaukee under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager Airports District Office, 6020 28th Avenue South Room 102, Minneapolis, Minnesota 55450, (612) 713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at General Mitchell International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On February 3, 2004 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Milwaukee was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than April 27, 2004.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 2017.

Proposed charge expiration date: April 1, 2018.

Total estimated PFC revenue: $11,000,601.

Brief description of proposed projects: Impose only: Phase 2 Noise Mitigation Program, E Concourse Aircraft Ramp, Impose and use: Baggage Claim Area Expansion—Design, D Concourse Security Improvements, Inline Baggage Security—Design.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Milwaukee.

Issued in Des Plaines, Illinois, on February 18, 2004.

Barbara Jordan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 04–4191 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Uniform Relocation Assistance and Real Property Acquisition Policies Act; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Highway Administration (FHWA), as the lead Federal agency for the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act), will hold a series of listening sessions in Washington, DC; Chicago, IL; Atlanta, GA; San Francisco, CA; and Denver, CO. The purpose of the listening sessions is to determine if there is a need to update provisions of the Uniform Act.

DATES: The Uniform Act listening sessions are scheduled from 10 a.m. to 2 p.m. as follows:

March 25, 2004—Washington, DC;
April 1, 2004—Chicago, IL;
April 8, 2004—Atlanta, GA;
April 15, 2004—San Francisco, CA;
April 22, 2004—Denver, CO.

ADDRESSES:

For the March 25, 2004 session:
U.S. Department of Transportation, 400 Seventh Street, SW., Room 6200, Washington, DC 20590.

For the April 1, 2004 session:
Holiday Inn—Chicago City Center, 300 E. Ohio Street, Chicago, IL 60611.

For the April 8, 2004 session:
Atlanta Federal Center, Conference Room B, 61 Forsyth Street, SW., Atlanta, GA 30303.

For the April 15, 2004 session:
Holiday Inn—Downtown, 750 Kearny Street, San Francisco, CA 94108.

For the April 22, 2004 session:
Zang Building, Conference Room 360, 555 Zang Street, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Fannin, (202) 366–2042, Federal Highway Administration, Office of Real Estate Services; 400 Seventh Street SW., HEPR, Room 3221, Washington, DC 20590, or *ronald.fannin@fhwa.dot.gov;* or Mr. Reginald Bessmer, (202) 366–2037; Federal Highway Administration, Office of Real Estate Services, 400 Seventh Street, SW., HEPR, Room 3221, Washington, DC 20590; or *reginald.bessmer@fhwa.dot.gov*, or by FAX at (202) 366–3713. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The Uniform Act (42 U.S.C. 4601, *et seq.*) provides for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and establishes uniform and equitable land acquisition policies for Federal and federally assisted programs. On December 17, 2003, the FHWA issued a notice of proposed rulemaking (NPRM) concerning several sections of the regulations that set forth government-wide requirements for implementing the Uniform Act (68 FR 70342). During the public comment period for the NPRM, several areas of concern were raised regarding the Uniform Act that could not be dealt with through the regulatory process.

Therefore, the FHWA has decided to hold five public listening sessions in order to provide the public with an additional opportunity to discuss their concerns directly with agency officials. The FHWA is interested in obtaining additional information from the public to determine whether any changes to the Uniform Act are necessary, and if so, what portions of the statute need to be updated or otherwise revised.

Authority: 23 U.S.C. 315; 42 U.S.C. 4601, *et seq.*; 49 CFR 1.48; 49 CFR 24.

Issued on: February 19, 2004.

Cynthia J. Burbank,

Associate Administrator for Planning, Environment and Realty.

[FR Doc. 04–4199 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17155]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ABYSSINIA.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17155 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17155. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel ABYSSINIA is:

Intended Use: ''Tendering to yachts with incidental carrying of passengers.''

Geographic Region: ''The West coast of the U.S. including Alaska.''

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4065 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2004–17162]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DESTINY'S DESIRE.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17162 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17162. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DESTINY'S DESIRE is:

Intended Use: ''Instructional vessel offering various sailing and cruising courses which will also include an occasional charter.''

Geographic Region: ''US Coastal Waters primarily on the East Coast from Maine to Florida.''

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4069 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004–17161]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel DOUBLEOVERHEAD.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17161 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17161. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel DOUBLEOVERHEAD is:

Intended Use: ''Adventure trips.''

Geographic Region: California.

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4070 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD–2004–17158]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GENTLE WIND.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17158 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17158. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GENTLE WIND is:

Intended Use: ''Seamanship Training Vessel, private yacht charter.''

Geographic Region: ''San Francisco Bay and U.S. West Coast.''

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary. Maritime Administration.

[FR Doc. 04–4068 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2004–17157]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GRAND TIMES.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17157 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004–17157. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GRAND TIMES is:

Intended Use: ''Recreational Private Charters, from Santa Barbara harbor.''

Geographic Region: ''Coastal waters of California including the Channel Islands.''

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4067 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17156]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel GYPSY SOUL.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17156 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17156. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel GYPSY SOUL is:

Intended Use: ''Pleasure and scenic cruises and sailing adventures.''

Geographic Region: The States of Maine and Florida.

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4066 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2004 17154]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel MYSTIC KNIGHTS.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief

description of the proposed service, is listed below. The complete application is given in DOT docket 2004–17154 at *http://dms.dot.gov.* Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

DATES: Submit comments on or before March 26, 2004.

ADDRESSES: Comments should refer to docket number MARAD–2004 17154. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel MYSTIC KNIGHTS is:

Intended Use: ''Day and term charters; instruction and introduction to trawler cruising to be the main focus.''

Geographic Region: Gulf of Mexico.

Dated: February 19, 2004.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–4064 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17142]

Notice of Receipt of Petition for Decision That Nonconforming 2000 Volvo C70 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2000 Volvo C70 passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2000 Volvo C70 passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 26, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Barry W. Taylor Enterprises, Inc. of Richmond, California (''BTE'') (Registered Importer 01–280) has petitioned NHTSA to decide whether 2000 Volvo C70 passenger cars are eligible for importation into the United States. The vehicles which BTE believes are substantially similar are 2000 Volvo C70 passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2000 Volvo C70 passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

BTE submitted information with its petition intended to demonstrate that non-U.S. certified 2000 Volvo C70 passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2000 Volvo C70 passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 110 *Tire Selection and Rims*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 116 *Brake Fluid*, 124

Accelerator Control Systems, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 302 *Flammability of Interior Materials*, and 401 *Interior Trunk Release*.

Petitioner states that the vehicles also comply with the Bumper Standard found at 49 CFR part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: replacement or conversion of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) installation of U.S.-model headlight assemblies; (b) installation of amber sidemarker lights.

Standard No. 111 *Rearview Mirror*: inscription of the required warning statement on the passenger side rearview mirror.

Standard No. 118 *Power-Operated Window Systems:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle does in fact comply with the standard.

Standard No. 135 *Passenger Car Brake Systems:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle does in fact comply with the standard.

Standard No. 201 *Occupant Protection in Interior Impact:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that all the components on the vehicle that could affect compliance with the standard are identical to those found on the vehicle's U.S.-certified counterpart.

Standard No. 208 *Occupant Crash Protection:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle's crash protection system is identical to that found on the vehicle's U.S.-certified counterpart.

Standard No. 209 *Seat Belt Assemblies:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle is equipped with compliant seat belt assemblies.

Standard No. 213 *Child Restraint Systems:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle does in fact comply with the standard.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle is equipped with door beams identical to those found on the vehicle's U.S.-certified counterpart.

Standard No. 225 *Child Restraint Anchorage Systems:* inspection of all vehicles and modification, as necessary, to ensure compliance with the standard. The petitioner expressed the belief that the vehicle does in fact comply with the standard.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve to achieve compliance with the standard.

The petitioner states that all vehicles must be inspected to ensure compliance with the Theft Prevention Standard at 49 CFR part 541, and that anti-theft marking must be added to vehicles that are not already so marked.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles to meet the requirements of 49 CFR part 565, and that a certification label must be affixed to the driver's door pillar to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–4056 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–17141]

Notice of Receipt of Petition for Decision That Nonconforming 1999 Chevrolet Camaro Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1999 Chevrolet Camaro passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1999 Chevrolet Camaro passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is March 26, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.] Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Eurosport Motorcars, Inc. of Cape Coral, Florida (''EMI'') (Registered Importer 01–291) has petitioned NHTSA to decide whether 1999 Chevrolet Camaro passenger cars originally manufactured for sale in foreign markets are eligible for importation into the United States. The vehicles which EMI believes are substantially similar are 1999 Chevrolet Camaro passenger cars that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1999 Chevrolet Camaro passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

EMI submitted information with its petition intended to demonstrate that non-U.S. certified 1999 Chevrolet Camaro passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1999 Chevrolet Camaro passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 108 *Lamps, Reflective Devices and Associated Equipment*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 114 *Theft Protection*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver from the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component or inscription of the required warning statement on the mirror's face.

Standard No. 116 *Brake Fluid:* replacement of the vehicle's brake fluid with brake fluid that is certified to meet the standard.

Standard No. 118 *Power Window Systems:* inspection of all vehicles and rewiring of the power window system, if needed, so that the window transport will not operate with the ignition switched off.

Standard No. 214 *Side Impact Protection:* inspection of all vehicles to ensure that they are equipped with door beams identical to those in the U.S. certified model and installation of those components on vehicles that are not already so equipped.

The petitioner states that all vehicles must be inspected for compliance with the Bumper Standard found in 49 CFR part 581, and that reinforcement must be added to the bumpers of all vehicles that are not in compliance with the standard. The petitioner states that engineering specifications will be furnished at the conformity stage to establish the compliance of the vehicle with those components installed.

The petitioner also states that all vehicles must be inspected for compliance with the parts marking requirements of the Theft Prevention Standard found in 49 CFR 541, and that required markings must be added to the engine and transmission of vehicles that are not so marked. The petitioner states that the vehicle is equipped with an anti-theft system that locks the steering wheel when the ignition is switched off.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR part 565. The petitioner further states that a certification label must be affixed to the driver's doorjamb to meet the requirements of 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 19, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–4057 Filed 2–24–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 407X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Seattle, King County, WA

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—*Exempt Abandonments* to abandon a line of

railroad between Engineering Station 87 + 62 and Engineering Station 84 + 26 in Seattle, King County, WA, a distance of 336 feet. The line traverses United States Postal Service Zip Code 98104.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on March 26, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 8, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by March 16, 2004, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by March 1, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by February 25, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: February 17, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–3828 Filed 2–24–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 19, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 2004 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0089.

Form Number: None.

Type of Review: Extension.

Title: Implementing Regulations: Government Securities Act of 1986, as amended.

Description: The regulations require certain government securities brokers/dealers to make and keep certain records concerning government securities activities, to submit financial reports and make certain disclosures to investors-part of customer protection and financial responsibilities.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 4.039.

Estimated Burden Hours Per Respondent/Recordkeeper: Varies.

Frequency of Response: On occasion, Monthly, Quarterly, Annually.

Estimated Total Reporting/Recordkeeping Burden Hours: 363,957 hours.

Clearance Officer: Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328, (304) 480–6553.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–4113 Filed 2–24–04; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

February 18, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before March 26, 2004 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1868.

Regulation Project Number: REG–116664–01 NPRM and Temporary.

Type of Review: Extension.

Title: Guidance to Facilitate Business Electronic Filing.

Description: These regulations remove certain impediments to the electronic filing of business tax returns and other forms. The regulations reduce the number of instances in which taxpayers must attach supporting documents to their tax returns. The regulations also expand slightly the required content of a statement certain taxpayers must submit with their returns to justify deductions for charitable contributions.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,000,000.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 250,000 hours.

Clearance Officer: Glenn P. Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–4114 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4466

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4466, Corporation Application for Quick Refund of Overpayment of Estimated Tax.

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Corporation Application for Quick Refund of Overpayment of Estimated Tax.

OMB Number: 1545–0170.

Form Number: Form 4466.

Abstract: Section 6425(a)(1) of the Internal Revenue Code provides that a corporation may file an application for an adjustment of an overpayment of estimated income tax. Form 4466 is used for this purpose. The IRS uses the information on Form 4466 to process the claim, so the refund can be issued.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organzations.

Estimated Number of Respondents: 16,125.

Estimated Time Per Respondent: 4 hours, 44 minutes.

Estimated Total Annual Burden Hours: 76,433.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4152 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–260–82]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–260–82 (TD 8449), Election, Revocation, Termination, and Tax Effect of Subchapter S Status (§§ 1.1362–1 through 1.1362–7).

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service,

room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Election, Revocation, Termination, and Tax Effect of Subchapter S Status.

OMB Number: 1545–1308.

Regulation Project Number: PS–260–82.

Abstract: Section 1362 of the Internal Revenue Code provides for the election, termination, and tax effect of subchapter S status. Sections 1.1362–1 through 1.1362–7 of this regulation provides the specific procedures and requirements necessary to implement Code section 1362, including the filing of various elections and statements with the Internal Revenue Service.

Current Actions: There are no changes being made to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 133.

Estimated Time Per Respondent: 2 hours, 25 minutes.

Estimated Total Annual Burden Hours: 322.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4153 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208299–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–208299–90, Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation (§§ 1.475(g)–2, 1.482–8, and 1.863–3).

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation.

OMB Number: 1545–1599.

Regulation Project Number: REG–208299–90.

Abstract: This regulation provides rules for the allocation among controlled taxpayers and sourcing of income, deductions, gains and losses from a global dealing operation. The information requested in §§ 1.475(g)–2(b), 1.482–8(b)(3), (c)(3), (e)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for the Service to determine whether the taxpayer has entered into controlled transactions at an arm's length price.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 40 hrs.

Estimated Total Annual Burden Hours: 20,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4154 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5578

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5578, Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Annual Certification of Racial Nondiscrimination for a Private School Exempt From Federal Income Tax.

OMB Number: 1545–0213.

Form Number: Form 5578.

Abstract: Every organization that claims exemption from Federal income tax under Internal Revenue Code section 501(c)(3) and that operates, supervises, or controls a private school must file a certification of racial nondiscrimination. Such organizations, if they are not required to file Form 990, must provide the certification on Form 5578. The Internal Revenue Service uses the information to help ensure that the school is maintaining nondiscriminatory policy in keeping with its exempt status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hours, 44 minutes.

Estimated Total Annual Burden Hours: 3,730.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4155 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–12

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–12, Health Insurance Costs of Eligible Individuals.

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Health Insurance Costs of Eligible Individuals.

OMB Number: 1545–1875.

Revenue Procedure Number: Revenue Procedure 2004–12.

Abstract: Revenue Procedure 2004–12 informs states how to elect a health program to be qualified health insurance for purposes of the heath coverage tax credit (HCTC) under section 35 of the Internal Revenue Code. The collection of information is voluntary. However, if a state does not make an election, eligible residents of the state may be impeded in their efforts to claim the HCTC.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: States.

Estimated Number of respondents: 51.

Estimated Average Time Per respondent: 30 minutes.

Estimated Total Annual Burden Hours: 26.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–4156 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[INTL–24–94]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, INTL–24–94 (TD 8671), Taxpayer Identifying Numbers (TINs) (§ 301.6109–1).

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Allan Hopkins, at (202) 622–6665, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Taxpayer Identifying Numbers (TINs).

OMB Number: 1545–1461.

Regulation Project Number: INTL–24–94.

Abstract: This regulation relates to requirements for furnishing a taxpayer identifying number on returns, statements, or other documents. Procedures are provided for requesting a taxpayer identifying number for certain alien individuals for whom a social security number is not available. The regulation also requires foreign persons to furnish a taxpayer identifying number on their tax returns.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals.

The burden for the collection of information is reflected in the burden for Form W–7, Application for IRS Individual Tax Identification Number (For Non-U.S. Citizens or Nationals).

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 17, 2004.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 04–4157 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2004–18

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–18, Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

DATES: Written comments should be received on or before April 26, 2004 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Average Area Purchase Price Safe Harbors and Nationwide Purchase Prices under section 143.

OMB Number: 1545–1877.

Revenue Procedure Number: Revenue Procedure 2004–18.

Abstract: Revenue Procedure 2004–18 provides issuers of qualified mortgage bonds, as defined in section 143(a) of the Internal Revenue Code, and issuers

of mortgage credit certificates, as defined in section 25(c), with (1) nationwide average purchase prices for residences located in the United States, and (2) average area purchase price safe harbors for residences located in statistical areas in each state, the District of Columbia, Puerto Rico, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Guam.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local and tribal governments.

Estimated Number of recordkeepers: 60.

Estimated Time Per recordkeeper: 15 minutes.

Estimated Total Annual Burden Hours: 15.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: February 19, 2004.

Carol Savage,

Management and Program Analyst.

[FR Doc. 04–4158 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, March 23, 2004.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

SUPPLEMENTARY INFORMATION: An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, March 23, 2004, from 11 a.m. to 12 p.m. e.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel.

The agenda will include: various IRS issues.

Dated: February 19, 2004.

Bernard E. Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–4159 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, March 17, 2004, at 8 a.m., central standard time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Wednesday, March 17, 2004, at 8 a.m., central standard time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: various IRS issues.

Dated: February 19, 2004.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. 04–4160 Filed 2–24–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Mutual to Stock Conversion Application

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before April 26, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Mutual to Stock Conversion Application.

OMB Number: 1550–0014.

Form Number: OTS Forms 1680, 1681, 1682, and 1683.

Regulation requirement: 12 CFR part 563b.

Description: These information collections are contained in 12 CFR part 563b, which states that a mutual association must obtain written approval by OTS prior to converting to a stock association, and sets forth the guidelines for obtaining such approval.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 7.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 510 hours.

Estimated Total Burden: 3,570 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: February 17, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–4026 Filed 2–24–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before April 26, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

OMB Number: 1550–0025.

Form Number: OTS Forms 1584, 1585, and 1589.

Regulation requirement: 12 CFR 552.13 and 563.22.

Description: Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws,

regulations, and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 77.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 24 hours.

Estimated Total Burden: 1,848 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: February 17, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–4027 Filed 2–24–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request—Mutual Holding Company

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before April 26, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Nadine Washington, Information Systems, Administration & Finance, (202) 906–6706, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Mutual Holding Company.

OMB Number: 1550–0072.

Form Number: OTS Forms 1522 (MHC–1) and 1523 (MHC–2).

Regulation requirement: 12 CFR part 575.

Description: These information collections are necessary to fulfill statutory and regulatory requirements and to facilitate review of transactions to prevent insider abuse and unsafe and unsound practices by mutual holding companies and their subsidiaries.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 35.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 350 hours.

Estimated Total Burden: 12,250 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: February 17, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–4028 Filed 2–24–04; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0616]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veteran Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0616.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, 0616'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Titles:

a. Application for Furnishing Nursing Home Care to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 10–2407.

OMB Control Number: 2900–0616.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–1170 is an application used by nursing homes wishing to provide nursing home care to veterans who receive VA benefits.

b. VA Form 10–2407 is an application used by a residential care facility or home that wishes to provide residential home care to veterans. It serves as the agreement between VA and the residential care home that the home will submit to an initial inspection and comply with VA requirements for residential care.

Affected Public: Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden:

a. VA Form 10–1170–167 hours.

b. VA Form 10–2407–83 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–1170–20 minutes.

b. VA Form 10–2407–5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 10–1170–500.

b. VA Form 10–2407–1,000.

Dated: February 17, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4102 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0162]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to ensure that the amount of benefits payable to a student pursuing flight training is correct.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 26, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0162'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Monthly Certification of Flight Training, VA Form 22–6553c.

OMB Control Number: 2900–0162.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans, individuals on active duty training and reservist training, may receive benefits for enrolling in or pursuing approved vocational flight training. VA Form 22–6553c serves as a report of flight training pursued and the termination of training. Payments are based on the number of hours of flight training completed during each month.

Affected Public: Individuals or households, Business or other for-profit, and Not-for-profit Institutions.

Estimated Annual Burden: 7,315 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,660.

Estimated Total Annual Responses: 14,630.

Dated: February 17, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4103 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0012]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to apply for cash surrender or policy loan on his/her insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 26, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0012'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Application for Cash Surrender or Policy Loan, Government Life Insurance, VA Forms 29–1546 and 29–1546–1.

OMB Control Number: 2900–0012.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Forms 29–1546 and 29–1546–1 is used to determine the insured's eligibility for cash surrender or loan.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,939 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 29,636.

Dated: February 17, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4104 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0117]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Human Resources and Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Human Resources and Administration (OHR&A), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine an applicant's suitability and qualifications for employment.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 26, 2004.

ADDRESSES: Submit written comments on the collection of information to Ginny B. Daniels, Office of Human Resources Management (054), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail comments to: *ginny.daniels@mail.va.gov.* Please refer to ''OMB Control No. 2900–0117'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ginny B. Daniels at (202) 273–5001.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OHR&A invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of OHR&A's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Inquiry Concerning Applicant for Employment, VA Form Letter 5–127.

OMB Control Number: 2900–0117.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 5–127 is used to obtain information from individuals who have knowledge of the applicants' past work record, performance, and character. The information is used by VA personnel officials to verify qualifications and determine suitability of the applicant for VA employment.

Affected Public: Business or other for-profit, Individuals or households, State, Local or Tribal Government.

Estimated Annual Burden: 3,125 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 12,500.

Dated: February 17, 2004.

By direction of the Secretary.

Louise Russell,

Director, Records Management Service.

[FR Doc. 04–4105 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0300]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assistance disabled veterans in acquiring special housing and adaptations dwellings.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before April 26, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or mailto:irmnkess@vba.va.gov. Please refer to ''OMB Control No. 2900–0300'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (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 or the use of other forms of information technology.

Title: Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

OMB Control Number: 2900–0300.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–4555d is completed by disabled veterans to apply for special housing and adaptations to dwellings. Grants are available to assist disabled veterans in making adaptations to their current residences or one which they intend to live in as long as the veteran or a member of the veteran's family owns the home.

Affected Public: Individuals or households.

Estimated Annual Burden: 25 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: February 17, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4106 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0518]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0518.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0518'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Income Verification, VA Form 21–0161a.

OMB Control Number: 2900–0518.

Type of Review: Extension of a currently approved collection.

Abstract: VA's compensation and pension programs require the accurate reporting of income by those who are in receipt of income-dependent benefits. VA Form 21–0161a solicits information from employers of beneficiaries who have been identified as having inaccurately reported their income to VA.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 10, 2003, at page 68971.

Affected Public: Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, and State, Local, or Tribal Government.

Estimated Annual Burden: 15,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: February 18, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4107 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0377]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the

nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2004.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., or e-mail *denise.mclamb@mail.va.gov*. Please refer to ''OMB Control No. 2900–0377.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0377'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Claim for Repurchase of Loan (Chapter 37, Title 38 U.S.C., CFR 36.4600), VA Form 26–8084.

OMB Control Number: 2900–0377.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 26–8084 is completed by holders of a delinquent vendee account to repurchase a loan that was guaranteed by VA. The holder of a delinquent vendee account may request repurchase of the loan when it has been continuously in default for three months and the amount of the delinquency equals or exceeds the sum of two monthly installments. VA notifies the obligor(s) in writing of the loan repurchased, and that the vendee account will be serviced and maintained by VA thereafter.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 5, 2003, at page 62665.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 480.

Dated: February 12, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4108 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0262]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0262.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0262'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Designation of Certifying Official(s), VA Form 22–8794.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8794 is completed by education institution or job training establishment to notify VA of the designated person(s) who may certify reports of the enrollment and pursuit or training on behalf of an educational institution or job training establishment. The information collected is used to ensure that educational benefits are not made improperly based on a report from someone other than a designated certifying official.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 18, 2003, at page 65117.

Affected Public: Business or other for-profit, Not for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 333 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,000.

Dated: February 12, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4109 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0219]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before March 26, 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0219.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0219'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for CHAMPVA Benefits, VA Form 10–10d.

b. CHAMPVA Claim Form, VA Form 10–7959a.

c. CHAMPVA—Other Health Insurance (OHI) Certification, VA Form 10–7959c.

d. CHAMPVA Potential Liability Claim, VA Form 10–7959d.

OMB Control Number: 2900–0219.

Type of Review: Extension of a currently approved collection.

Abstract:

a. VA Form 10–10d is used to determine eligibility of persons applying for healthcare benefits under the CHAMPVA program.

b. VA Form 10–7959a is used to accurately adjudicate and process beneficiaries claims for payment/reimbursement of related healthcare expenses.

c. VA Form 10–7959c is used to systematically obtain other health insurance information and to correctly coordinate benefits among all liable parties.

d. VA Form 10–7959d is used to solicit additional information relative to injury/illness as well as third party claim information.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 13, 2003, at page 64429.

Affected Public: Individuals or households, Business or Other for-Profit.

Estimated Annual Burden: 394,667 hours.

a. VA Form 10–10d—3,417 hours.

b. VA Form 10–7959a—383,333 hours.

c. VA Form 10–7959c—5,000 hours.

d. VA Form 10–7959d—2,917 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–10d—10 minutes.

b. VA Form 10–7959a—10 minutes.

c. VA Form 10–7959c—10 minutes.

d. VA Form 10–7959d—7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 2,375,500.

a. VA Form 10–10d—20,500.

b. VA Form 10–7959a—2,300,000.

c. VA Form 10–7959c—30,000.

d. VA Form 10–7959d—25,000.

Dated: February 12, 2004.

By direction of the Secretary.

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–4110 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0091]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before March 26 2004.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov.* Please refer to ''OMB Control No. 2900–0091.''

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0091'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Health Benefits, VA Form 10–10EZ.

b. Health Benefits Renewal Form, VA Form 10–10EZR.

OMB Control Number: 2900–0091.

Type of Review: Revision of a currently approved collection.

Abstract:

a. VA Form 10–10EZ is used by veterans to enroll for health care benefits.

b. VA Form 10–10EZR is used by veterans to update their application data.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 5, 2003, at pages 62663–62664.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–10EZ—525,000 hours.

b. VA Form 10–10EZR—400,000.

Estimated Average Burden Per Respondent:

a. VA Form 10–10EZ—45 minutes.

b. VA Form 10–10EZR—20 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents:

a. VA Form 10–10EZ—700,000.

b. VA Form 10–10EZR—1,200,000.

Dated: February 12, 2004.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 04–4111 Filed 2–24–04; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
February 25, 2004

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 30, 37, 39, 42, 44, and 47
Implementation of the No Child Left Behind Act of 2001; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 30, 37, 39, 42, 44, 47

RIN 1076–AE49

Implementation of the No Child Left Behind Act of 2001

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: As required by the No Child Left Behind Act of 2001, the Secretary of the Interior has developed proposed regulations using negotiated rulemaking that address the following issues: Defining adequate yearly progress, which is the measurement for determining that schools are providing quality education; establishing separate geographic attendance areas for Bureau-funded schools; establishing a formula for determining the minimum amount necessary to fund Bureau-funded schools; establishing a system of direct funding and support of all Bureau-funded schools under the formula established in the Act; establishing guidelines to ensure the Constitutional and civil rights of Indian students; and establishing a method for administering grants to tribally controlled schools.

DATES: Comments on the proposed rule must be received on or before June 24, 2004. Comments on the information collections in the proposed rule should be submitted to the Office of Management and Budget by March 26, 2004.

ADDRESSES: Submit comments to one of the following addresses. Mail: Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076–AE49. Personal or messenger delivery: 1620 L Street, NW., Room 401, Washington, DC 20036. Direct Internet response: *www.blm.gov/nhp/news/regulatory/index.html,* or at *http://www.blm.gov,* or at *regulations.gov* under Indian Affairs Bureau. Send comments on the information collections in the proposal to: Interior Desk Officer (1076–AE49), Office of Information and Regulatory Affairs, 202/395–6566 (facsimile); e-mail: *oira_docket@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Catherine Freels, Designated Federal Official, PO Box 1430, Albuquerque, NM 87103–1430; Phone: 505–248–7240; e-mail: *cfreels@bia.edu.*

SUPPLEMENTARY INFORMATION:

I. Overview of Process
II. Part 30—Adequate Yearly Progress
III. Part 37—Geographic Boundaries
IV. Part 39—The Indian School Equalization Program
V. Part 42—Student Rights
VI. Part 44—Grants under the Tribally Controlled Schools Act
VII. Part 47—Uniform Direct Funding and Support
VIII. Procedural Matters

I. Overview of Process

Pursuant to a directive in the No Child Left Behind Act of 2001 (Pub. L. 107–110; enacted January 8, 2002, referred to in this preamble as ''NCLB'' or ''the Act''), the Department of the Interior established a Negotiated Rulemaking Committee to develop proposed rules to implement several sections of the Act relating to the Bureau of Indian Affairs-funded school system. Negotiated Rulemaking is a process sanctioned by Subchapter III, or Chapter 5, Title 5, United States Code and the Federal Advisory Committee Act, 5 U.S.C. Appendix (FACA), that employs federal representatives and members of the public who will be affected by rules to jointly develop proposed rules. In this case, the Act required the Secretary of the Interior to select representatives of Indian tribes and Bureau-funded schools as well as federal government representatives to serve on the Committee.

The Committee's task was to draft proposed rules to recommend to the Secretary. Upon the Secretary's approval, draft rules are published in the **Federal Register** for written public comments within a 120-day public comment period. After the close of the public comment period, the Committee will reconvene to review these comments and to recommend promulgation of final rules to the Secretary.

The Secretary chartered the Committee under the Federal Advisory Committee Act on May 1, 2003. It is comprised of 19 members nominated by Indian tribes and tribally operated schools. The law required that, to the maximum extent possible, the tribal representative membership should reflect the proportionate share of students from tribes served by the bureau-funded school system. The Secretary also appointed to the Committee six members from within the Department of the Interior. The Committee selected three tribal representatives and two federal representatives as co-chairs. Six individuals were hired to facilitate all Committee meetings.

The Committee met in five week-long sessions in the months of June through October 2003. Each session was preceded by a **Federal Register** notice stating the location and dates of the meetings and inviting members of the public to attend. The Committee divided the areas subject to regulation among four work groups. These workgroups prepared written products for review, revision and approval by the full Committee. Committee decisions were made by consensus. All Committee and workgroup meetings were open to the public, and members of the public were afforded the opportunity to make oral comments at each session and to submit written comments.

The Act provisions for which the Committee prepared proposed rules are:

1. *Section 1116(g) of NCLB:* Develops a definition of ''Adequate Yearly Progress'' for the bureau-funded school system.
2. *Section 1124 of the Education Amendments of 1978, as amended by NCLB:* Attendance boundaries for bureau-funded schools.
3. *Section 1127 of the Education Amendments of 1978, as amended by NCLB:* A determination of the funds needed to sustain bureau-funded schools and a formula to allocate the current funds.
4. *Section 1130 of the Education Amendments of 1978, as amended by NCLB:* The direct funding and support of bureau-funded schools.
5. *Section 1136 of the Education Amendments of 1978, as amended by NCLB:* The rights of students in the bureau-funded school system.
6. *Section 1043 the Tribally Controlled Schools Act (TCSA) of 1988, as amended by NCLB:* Discharge of the Secretary's responsibilities under this law through which tribes and tribal school boards can operate bureau-funded schools under the grant mechanism established in the Tribally Controlled Schools Act.

Sections II through VII are of this preamble detailed discussions of each of the individual rules listed above.

II. Part 30—Adequate Yearly Progress

NCLB requires each State to submit a plan to the Secretary of Education which demonstrates that the State, through its State Educational Agency (SEA), has adopted challenging academic content standards and challenging student academic achievement standards applicable to all schools in the State, and to develop assessment devices through which student achievement will be measured. For purposes of adequate yearly progress (AYP), the Bureau of Indian Affairs is considered the SEA for the bureau-funded school system.

The Act requires each SEA to define Adequate Yearly Progress (AYP). The

definition of AYP will establish intermediate (annual) student achievement goals in math and reading/language arts. If a school meets the intermediate goal, it has made AYP for that year. Failure of a school to meet AYP for two or more consecutive years triggers remedial actions described in the Act. The Act requires that, by 2014, all students must be achieving at the ''proficient'' level, as measured by the State's accountability system.

NCLB requires a State and the Bureau of Indian Affairs to define AYP in a manner that achieves the following requirements:

—Applies the same high standards of academic achievement to all schools;
—Is statistically valid and reliable;
—Results in continuous and substantial academic improvement for all students;
—Measures progress of the SEA (BIA) and schools based primarily on the academic assessments; and
—Includes separate measurable annual goals for continuous and substantial improvement in the academic achievement of (1) all students in the school; (2) economically disadvantaged students; (3) students from major racial and ethnic groups; (4) students with disabilities; and (5) students with limited English proficiency.

The AYP definition must also include ''additional indicators.'' For high schools, the additional indicator must be graduation rates. The SEA must select one additional indicator applicable to schools without a graduating class. An SEA may also identify additional optional indicators of student progress to include in its definition of AYP.

To define Adequate Yearly Progress (AYP) for Bureau-funded schools, the Committee first had to master an understanding of all of the components of Adequate Yearly Progress under the Act and how they interrelate with a final definition of AYP. While the workgroup had to look at the curriculum, standards, and assessments that Bureau-funded schools were using, the Committee did not negotiate these items. The negotiation was limited to the definition of AYP.

The AYP workgroup initially considered a definition that would require all Bureau-funded schools to show that a set percentage of students (*e.g.*, 11 percent) progressed annually from the ''basic'' achievement level to the ''proficient'' or ''advanced'' achievement levels. This idea was abandoned, however, because the Department of Education, which supplied resource consultants to the Committee, advised that this methodology would not be statistically reliable. The Department of Education notes that it is not statistically reliable to aggregate the Bureau-funded school assessment data to make AYP determinations because each school uses a different assessment system and also because, collectively, the assessments in use did not meet the requirements of NCLB set forth in section 1111(b)(3)(C)(ii). Therefore, the committee needed to develop a definition of AYP that was based on a uniform assessment system. As the Committee discovered, BIA had abandoned requiring uniform curriculum and assessments and had instead allowed schools to align their curriculum with the State in which the school was located. Thus, the Committee appeared to be left with two options:

—Selecting a single State's system with one set of curriculum, standards, and assessments; or
—Allowing each Bureau-funded school to follow the definition of the State in which it is located.

After Congress passed Goals 2000, States had to set standards for student achievement. The Bureau chose to adopt national standards, but most schools chose to align with the standards of the State where they were located. The committee found that the Bureau of Indian Affairs has traditionally allowed tribes to follow State's curricula, standards, and assessments. Originally, the Bureau had attempted to create a system in which all of the tribes would follow one set of curriculum, standards, and assessments. Some tribes expressed concern over this approach. Tribes suggested that the students of Bureau-funded schools would be better served by allowing the schools to follow the State's curriculum, standards, and assessments because the Bureau-funded school students are traditionally more transient and sometimes move between Bureau-funded schools and public schools. Therefore, Bureau-funded schools began aligning their curriculum, standards, and assessments with the State in which they were located.

The Committee revised its initial plan and decided to adopt as the Bureau definition of AYP the definition of the State in which a school is located (§ 30.104). However, a tribal governing body or school board can develop an alternative AYP definition and submit it to the Secretary for approval (§ 30.105). This decision implements section 1116(g) of the Act, which expressly permits a tribe or school board to waive the Bureau's AYP definition and develop its own. The Secretary is required to approve an alternative definition as long as it is consistent with section 1111(b) of NCLB, taking into account the unique circumstances and needs of the schools and the students served (§ 30.106).

Tribal representatives on the Committee expressed serious objection to adopting State AYP definitions as the Bureau's definition instead of establishing a Bureau-specific definition, which some tribes and school boards might prefer. There was concern that requiring use of a State's definition would imply that Bureau-funded schools were subject to State jurisdiction, would signal abandonment of the Federal Government's trust responsibility for Indian education, and could diminish tribal sovereignty. In recognition of these concerns, the Committee developed language for the proposed rules that expressly states that nothing in the rules diminishes the Secretary's trust responsibility for Indian education or any statutory rights; affects in any way the sovereign rights of an Indian tribe, or subjects Bureau-funded schools to State jurisdiction (§ 30.100).

A detailed procedure for submission of an alternative AYP definition by a tribe or school board, and for review/approval of that definition by the Secretary of the Interior is included in §§ 30.106 through 30.108. The Department is required by § 30.109 to provide technical assistance for development of an alternative definition upon the request of a tribe or school board.

The Department of Education has expressed concern that § 30.107(a) does not include any mention of rewards and sanctions. While the Department of the Interior feels that the Act leaves responsibility for determining rewards and sanctions with the State (which, in this case, is the Bureau of Indian Affairs), we invite comments on this issue. The Department of Education also expressed concern over the inclusion of science in the subjects that an alternate definition of AYP must measure. The committee included science based on the requirements of section 1111(b)(3)(A) of the Act, but invites comments on the appropriateness of including science in the list of subjects to be measured.

The Department of Education feels that, in § 30.115, it is inaccurate to say that schools must include performance data for grades 10 through 12 in AYP. We disagree, based upon the language in section 1111(b)(3)(C)(v)(I)(cc), which states:

Except as otherwise provided for grades 3 through 8 under clause vii, measure the proficiency of students in, at a minimum, mathematics and reading or language arts, and be administered not less than once during grades 10 through 12.

We invite comments on this issue.

The consequences of failing to make AYP are described in § 30.117. While the remedial status of ''school improvement,'' ''corrective action,'' and ''restructuring'' applicable to public schools also apply to Bureau-funded schools, the latter are exempt from two requirements—school choice and supplemental educational services—that apply to public schools (see § 30.120). These exemptions are expressly stated in the regulation. The regulation also reiterates in § 30.119 the tribally operated school board's responsibility to implement remedial actions, while the Bureau is responsible for implementing these remedial actions at Bureau-operated schools.

The rule specifies in § 30.121 the Bureau's responsibilities under the Act to provide funding and technical assistance to schools who fail to make AYP, and in § 30.122 the Bureau's responsibility to provide ongoing support to all schools to assist them in making AYP. The proposed regulation also details the Bureau's reporting responsibilities in § 30.126.

III. Part 37—Geographic Boundaries

The No Child Left Behind Act requires that all Bureau-funded schools have designated separate geographic boundaries. The statute permits tribes to have input in that process. It was the committee's opinion that the statute extensively prescribed the input tribes may have in establishing school boundaries. The statute left very few gaps for the committee to fill with regulations. The workgroup did, however, feel that the statute was somewhat confusing with regards to what roles Tribes could fill and when. The following section-by-section analysis explains the committee's recommendations on geographic boundaries.

Section 37.100. This part provides guidance for the process of creating attendance boundaries. The intent of this part is to clarify the role Tribes may have in establishing and revising geographic attendance boundaries. Overall, the group wanted to reserve for Tribes the opportunity to participate in all decisions regarding attendance boundaries and related policies where not statutorily prohibited.

Section 37.101. This section defines key terms unique to this section of the proposed rule. If a term is not defined in this section or this part, the definition of the local school board should be applied.

Section 37.102. Much of this section is a restatement of the statute, put in clearer organizational structure. This section is intended to clarify the structure. The workgroup discussed ways to assist readers find the pertinent portions of the regulation applicable to their particular type of school. Specifically, the group recognized that day on-reservation schools would be subject to some different boundary determinations than off-reservation boarding schools (ORBS). Subsequently the group started by dividing the rule into two parts. In doing this, the group discovered that some areas of potential interest applied equally to all schools, whether on-or off-reservation. Ultimately the group decided, and the committee approved, a structure that answered questions applicable to all schools first. If a school does not find answers in the section applicable to all schools, they should turn to the section applicable to their particular type of school. For this reason, this part is organized as follows:

Subpart A—All Schools: This paragraph answers questions for any Bureau-funded school, including ORBS.

Subpart B—Day schools, On-Reservation Boarding Schools, and Peripheral Dorms: This section answers only questions for the schools listed. Nothing in this paragraph addresses ORBS unique situation.

Subpart C—Off Reservation Boarding Schools: This section addresses questions uniquely applicable to ORBS. Nothing in this paragraph applies to on-reservation schools of any type.

Subpart A—All Schools

Section 37.110. This section highlights for tribes their authority to participate in the process of establishing school boundaries. Additionally, this section serves as a reminder that, if a Tribe chooses not to establish their own school boundaries, the Secretary must draw the boundaries for them. The Secretary is charged with ensuring all schools have boundaries.

Section 37.111. This section clarifies that Tribes may have a role in establishing geographic boundaries. Specifically, the proposed rule highlights the Tribe's ability to authorize transportation funding for their member-students attending schools outside of their designated geographic boundary. A student's designated geographic boundary is the geographic attendance area of the school that covers the student's primary residence. The Bureau will not automatically provide transportation for students who choose to attend a school outside of their designated geographic attendance area. The Bureau may only provide transportation funding for students attending outside of their designated geographic attendance area when the student's Tribe authorizes such expenditure.

This section is of particular importance to tribes that seek to control where their students enroll in school. The committee was aware of some Tribes seeking to prevent their member-students from attending other Tribes' schools. Initially, the group had proposed rule that more thoroughly emphasized the Tribe's authority to authorize or withhold transportation funding. The group discussed an interpretation of the statute that permitted Tribes to pass resolutions restricting parental choice. However, a key component of the No Child Left Behind Act is parental choice. Though the group tried, they were unable to draft a regulation that observed Tribal restrictions on attendance, yet still permitted parental choice, as required by statute. Ultimately, the committee agreed to a more succinct explanation that emphasized Tribal authority to open school boundaries.

Absent from this section is a prescription on how a tribe authorizes transportation funding. Originally the group suggested manners in which a Tribe would provide this authorization. In the committee-at-large discussion, the group's description of authorization was deemed unclear and unnecessary. Additionally, the sentiment was expressed that the tribe should determine how to authorize funding.

Section 37.112. All schools must have boundaries. This section was included to serve to further notify tribes that, if they fail to act and set their own school boundaries, the Secretary must and will do it for them.

Subpart B—Day schools, On-Reservation Boarding Schools, and Peripheral Dorms

Section 37.120. This section was provided to put Tribes on notice of the opportunity to establish and revise current school boundaries. This section clarifies that the established boundaries currently in use will remain in place unless revised by the appropriate Tribal governing body. This section is intended to encourage Tribes to review existing boundaries and use the processes defined in this Part to make changes to meet current needs.

Section 37.121. Who establishes geographic attendance boundaries under this part? This section reiterates the

statutory prescription for when a Tribe may establish geographic attendance boundaries for its schools. The work group felt that the statutory language was unclear and may inadvertently preclude Tribes from acting to change school boundaries.

Section 37.122. Tribes have ongoing authority to suggest changes to and participate in the revision of geographic attendance boundaries. This section explains the process Tribes must use to change geographic attendance boundaries, regardless of when the Tribe suggests such changes.

This section is also a restatement of the statutory language. Again, the work group felt that the statutory language alone may not sufficiently inform Tribes of the process for changing school boundaries. Specifically, the group sought to clarify some of the limitations on the Secretary's ability to change school boundaries and highlight the weight and importance the Tribe's views have in the boundary setting process.

(a) The group restated the limitations placed on the Secretary's ability to change existing school geographic attendance boundaries. After notice of the Secretary's intention to modify school boundaries, Tribes must be given 6 months notice before changes become effective. In that time the Tribes have an opportunity to suggest different modifications to the Secretary's proposed changes. The restatement of this limitation is intended to inform Tribes of their role in boundary determinations.

(b) This paragraph signifies the impact of Tribal views in the boundary setting and revision process. If a Tribe determines that the geographic attendance boundaries of a school is not meeting the needs of the Tribe or the students, the Tribe may request that the Secretary modify the boundaries. The group determined that the letter requesting the modification should go to the Director of the Office of Education Programs. The Office of Indian Education Programs must respond to the Tribal requests for a boundary modification after consulting with the Secretary of the Interior and the Assistant Secretary-Indian Affairs. If the Tribe's suggestion is rejected, a written explanation must be provided detailing why the proposed changes do not meet the needs of the Indian students to be served and how the proposed changes would affect the affected programs. Such requirements will ensure that Tribes will have an opportunity to give meaningful input into setting school boundaries and the process is transparent.

Section 37.123. This section highlights the authority of the Tribe to create their own processes to develop and revise geographic attendance boundaries. The committee wanted to place as few prescriptions on Tribes as possible. The group was careful to craft a regulation which respected Tribal autonomy and sovereignty concerning education. Consequently, the group did not want to tell Tribes who to consult when revising school boundaries. It was the intention of this section to emphasize coordination among entities involved in the education of the student when setting boundaries. The referenced ''entities'' with which consultation should be made were not specifically listed as it was thought the individual Tribes could best determining who should be included in the consultation process.

Section 37.124. At the time of drafting this rule (2003), a moratorium existed on construction of new Bureau-funded schools. Despite the moratorium, provisions of the No Child Left Behind Act could be interpreted to specifically include and apply to new Bureau-funded schools. In consideration for such an interpretation, this section of this Part was included in the regulations. Nothing in this rule, however, provides authorization for additional Bureau-funded schools to be constructed absent Congressional authorization. Should such schools be established in the future, this section would apply.

Section 37.125. This section explains the authority of Tribes to determine whether student tribal members may receive transportation funding when such students desire to attend a Bureau-funded school outside of the student's designated geographical attendance boundary. This section also explains the process by which transportation funding may be authorized for students living off the reservation of the Tribe in which the student is enrolled. The drafters desired to preserve the maximum degree of discretion, within the bounds of tribal jurisdiction, for Tribes to exercise in addressing determinations of transportation funding.

Where possible schools should provide services to eligible students living near the reservation though such students are not included in the schools' geographic attendance boundary. This section recognizes prior practices that permitted eligible students who resided near the reservation to enroll in Bureau-funded schools.

Subpart C—Off-Reservation Boarding Schools

Section 37.130. The Secretary of the Interior determines the boundaries for ORBS. While the Secretary should consult with all tribes that fall within the boundaries of a particular off-reservation boarding school, it is the Secretary and not the ORBS or Tribe who establish the boundary. The group discussed stating in the regulation that the Secretary could not establish overlapping boundaries for ORBS. Examination of the map of boundaries currently in use revealed that, currently, no ORBS boundaries overlap. Though the group desired to mitigate some of the cross-country student recruitment by ORBS, the committee felt that the restriction placed on transportation funding was a sufficient hindrance. Initially, the group had included a specific subsection clarifying that students were only entitled transportation funding to attend the student's designated ORBS. That section was taken out in the committee-at-large discussion. Transportation funding pertains to all students, whether attending school on-or off-reservation. The language addressing proper authorization of transportation funding was initially discussed in the context of all schools. The committee could not reach consensus on who was the appropriate entity to authorize transportation funding. The work group then suggested only referencing transportation authorization in the section on ORBS. The same concerns arose and further discussion of transportation was thought to be redundant. The committee resolved that a succinct statement addressing transportation funding in the section applicable to all schools was sufficient.

Section 37.131. This section clarifies that any ISEP eligible student may elect to attend an ORBS. The group intended that all ORBS will have separate, non-overlapping geographic attendance boundaries that will cover the entire United States. Students may attend the ORBS designated for the student's primary residence with or without Tribal permission.

IV. Part 39—The Indian School Equalization Program

Under the No Child Left Behind Act, Congress required the Committee to establish, through negotiated rulemaking, rules regarding a formula for the ''minimum annual amount of funds necessary to sustain each Bureau-funded school'' and a formula to distribute funding to BIA schools. 20 U.S.C. 2007. As with the other rules the

Committee developed, the Committee established a Funding Workgroup to develop draft rules for review by the full Committee.

The Bureau currently funds its schools through published procedures known as the Indian School Equalization Program (ISEP) and a mechanism defined in the ISEP known as the Indian School Equalization Formula (ISEF). The current equalization formula assigns weighted units to each student enrolled in grade levels K–12 and when applicable to homeliving programs. Each weight has a different value, and the weight of 1.15 is the base weight for all students. In addition to the base weight, increased values are assigned to certain grade levels to compensate for additional cost. Moreover, supplemental programs providing bilingual education, gifted and talented education, and intense residential guidance are funded by increased weighted values. The total weights for each school are determined by multiplying the student enrollment for each program area by the weights. This total of weighted student units for each school is then multiplied by the base unit value to determine the funding amount for each school. The base unit value is determined by dividing the total of all weighted student units generated by each school into the total amount appropriated for distribution.

The Committee reviewed the current BIA funding mechanism and distribution practices. The Committee understands that the current funding formula at 25 CFR part 39 was developed to provide equity in funding across the BIA school system. The Committee identified areas where the current formula does not provide equity and uniformity in the BIA school system. For example, all funding is currently based on a ''count week'' in September. This one-week period does not provide a complete school year count of all students served by a school or residential program. Therefore, any population increase or decrease after the September count week is not accounted for under the current system. Some Committee members suggested that the concept of a one-week count week encourages abuse for the following reasons: (1) There is no incentive to retain students after the count week is over, (2) there are many opportunities for schools to inflate student enrollment by busing children in or sponsoring events to attract students for that week, and (3) there are incentives to inflate the number of students identified for supplemental services, such as bilingual and gifted and talented, because these supplemental programs provide for increased funding. The Committee attempted to minimize the opportunities for abuse in the proposed rule.

One of the Committee's primary concerns was accountability, which is a critical element of the Act. The Committee tried to build into these proposed rules accountability for both BIA-operated and tribally operated schools, as well as accountability for those BIA officials overseeing the Indian education program. Because accountability is critical to implementing ISEP and ISEF, the Committee developed provisions in the new rules to hold both BIA and all Bureau-funded schools accountable to standards promoting equality and fairness.

For example, in , the Committee proposed a section to provide for increased accountability through reviews of both the school's certified count and the education line officer's count verification. The Committee recommended that the Director annually conduct random audits, and that an outside auditor also conduct annual, random audits to ensure the accuracy of ISEP requirements and the ISEF process.

The Committee believes that all schools funded by BIA must accept the responsibility to be accountable in all aspects of their operations. Each tribal organization, school board, and administrator in the system must accept the challenge to make ISEP work in the best interests of all students served by the Bureau-funded school system. The proposed rules require each school to maintain individual files and certify the accuracy of their contents relating to necessary documentation of student eligibility to receive base and supplemental services. In addition, the education line officer is held accountable to verify that students meet the necessary standards for base and supplemental services through the verification process. Each verification will be reviewed by either the Director or an outside auditing firm.

The intent of the rules needs to be considered and all parties involved should be committed to making ISEP work, rather than trying to find ways to give their school an advantage over the other schools in the Bureau-funded school system. It is a matter of personal and professional integrity and fairness for those organizations and individuals charged with administering the rules to find ways to make ISEP and ISEF work properly.

The Committee also feels that accountability must be present at all levels of BIA and the Office of Indian Education Programs (OIEP). BIA must fulfill its obligation to the students served by the Bureau-funded school system so that each child is given equal opportunity to be successfully educated. Schools should not be penalized for BIA's failure to administer the law and rules fairly. These proposed rules were drafted to comply with the section 1120 of the NCLB that states:

> It is the policy of the United States to fulfill the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children * * * ensuring that the programs of the Bureau of Indian Affairs-funded school system are of the highest quality and provide for the basic elementary and secondary educational; needs of Indian children, including meeting the unique educational and cultural needs of those children.

Section 1127 Funding Formula

Under NCLB Congress required the Secretary, through this Committee, to undertake three specific tasks: (1) To establish a formula for determining the minimum annual amount of funds necessary to sustain each Bureau-funded school; (2) to consider the cost of providing academic services which are at least equivalent to those provided by public schools in the State in which the school is located; and (3) the development of a pro rata formula to distribute funding under the ISEF.

Minimum Amount of Funding to Sustain Each Bureau-Funded School. The Committee discussed various options for determining the minimum amount of funding needed to sustain each bureau-funded school. Most options required BIA to have data regarding the actual costs associated with Bureau-funded schools. Consequently, the Committee is proposing a formula based on the dollar value of a student unit nationally as reported by the National Center for Education Statistics (NCES). By looking at the NCES and comparing Bureau-funded schools with Department of Defense schools and District of Columbia public schools, the Committee is proposing a formula that would be based on an accurate cost estimate of operating Bureau-funded academic schools. A similar formula would also more accurately determine the cost of housing a residential student. Moreover, the Committee recognizes that on average, the actual cost for a residential student is two times or more than that of an academic student. However, this formula cannot be fully implemented until the Bureau can collect the data necessary to develop an accurate summary of the amount of funding needed to provide the minimum amount of funding necessary to sustain each Bureau-funded school.

Upon receipt of adequate education cost data, the Committee would hope that the Department could present this data to Congress so that it could review whether it provides sufficient funding to all Bureau-funded schools and residential programs.

The formula establishing the minimum amount of funding to sustain each Bureau-funded school is located in subpart H of the proposed rule. The Department seeks comments on whether the material explaining the derivation of the formula should be included as an appendix, rather than in the body of the rule.

The Cost of Providing Equivalent Academic Services. One of the responsibilities imposed upon BIA by the NCLB is to determine the level of funding necessary to finance Bureau-funded schools and residential programs at a level at least equal to that provided by the public schools in the states in which the schools are located. One recent report from the General Accounting Office indicates that the data available is not adequate to allow for a comprehensive and accurate comparison between similarly situated state public schools and Bureau-funded schools. Due to time constraints the Committee did not develop a proposal for a data reporting system that would capture specific data for a comparison between state and BIA-funded schools. However, the Committee did develop a formula to develop the minimum amount of funding to sustain each Bureau-funded school which looks at other similarly situated school and residential programs.

Pro Rata Formula. The Committee was also required to develop a formula to distribute funding appropriated by Congress. To develop a distribution formula, the Committee reviewed the existing distribution formula and developed a recommended formula that would better meet the needs of Bureau-funded schools and provide a more equitable distribution of ISEP funding. The Committee took its responsibility very seriously and made a conscientious effort to consider all issues relevant to the rules being developed. The following issues were matters that the Committee discussed at great lengths as they developed the ISEF in order to distribute appropriated funds:

Student Count. In Subpart C, the Committee is proposing new rules for undertaking a count of the student population served by BIA school system. These rules provide for the use of an average daily membership for academic purposes and the use of a three-week count period for residential programs.

The Committee decided against the continuation of a count week for academic programs. The Committee determined that the concept of using one week in the entire school year to determine student attendance in academic programs did not provide an accurate reflection of the program's population for the entire school year. A concern that the Committee considered when deciding not to continue an academic count week was the issue of Spring enrollment. Because the current ''count week'' is the last week in September, school funding is not reflective of a school's enrollment and attendance for an entire academic year. Academic and residential programs may experience sharp increases or decreases in enrollment during the spring semesters, and a one-week count period does not take these fluctuations into account. The Committee also considered using a count period with varying lengths of time for academic funding, however this was also rejected.

The Committee did decide to retain a count period for residential programs. The Committee recommends that the count period for residential programs be the first full week in October. Moreover, the Committee recommends that a student must also be in attendance in a residence program the week preceding and the week following the October count week. Thus, the residential period is a three week period.

The Committee also decided to fund the residential program on the number of nights of service provided. The current funding mechanism funds all residential programs seven-night programs. There seem to be an inequity as some residential programs only offer three or four nights of service, while others operate for seven full nights of service. Therefore, the Committee recommends that a residential program that offers five nights or more of service shall receive full residential funding, the equivalent of 7/7 weighted student unit. Any residential program offering less than five nights of service shall be apportioned a prorated share of funding at 4/7 weighted student unit.

In addition, the Committee recommends that at least 50 percent of the residency levels established during the count period be maintained and residency attendance also be reported to OIEP monthly. If a residential program does not maintain at least 50 percent of its count period enrollment, then the residential program will lose one-tenth of its current year funding allocation. The justification for this recommendation was to encourage residential programs to retain students throughout the entire school year.

Average Daily Attendance (ADA) versus Average Daily Membership (ADM). The Committee recommends the use of Average Daily Membership (ADM) to count students for purposes of ISEP academic funding. Before deciding to base the student count on ADM, the Committee considered the merits of both Average Daily Attendance (ADA) and ADM. The Committee adopted ADM for purposes of a student count because it was decided that ADM was a more reasonable and fair mechanism for counting student enrollment and attendance. Unlike ADA, ADM takes into consideration a grace period when students are sick or absent from school. The Committee feels that ADM is more accurate and equitable than a ''count week'' because it provides a comprehensive look at student enrollment and attendance throughout the entire academic year. In addition, the Committee believes that ADM would help prevent some of the abuses that are inherent in the current funding mechanism and also encourage greater accountability in the academic program. Because ADM is based on the entire school year, there is now a financial incentive for student retention and maintaining student attendance throughout the school year, which the Committee believes will result in higher graduation rates.

Three-Year Rolling Average. The proposed rules in § 39.205 provide for funding to be based on a 3-year rolling average. A 3-year rolling average is the mechanism used to determine the amount of money allocated for a school year based on the average of the three previous years' allocations. The Committee felt that the rolling 3-year average would provide a more stable funding base. Thus, enabling a school to better plan and budget for the upcoming school year.

For example, if a school experiences a drastic enrollment decrease beginning in the 2006 school year, the 3-year rolling average would allow the school a 2-year window to adjust its staff and other related costs. The Committee believes that schools and the OIEP should provide timely information related to ADM, in order to promote accuracy of the 3-year rolling average.

Payment Dates. The Committee is recommending that BIA distribute 80 percent of a school's funding for the upcoming school year by July 1. This 80 percent would be based on the 3-year rolling average of ADM (base and supplemental programs). The Committee also recommends that BIA distribute the remaining twenty percent of funding by December 1. This 20 percent would reflect any adjustments

made by the verification, audit or appeals processes.

In reviewing the Committee's proposed rule, the Federal team has serious concerns regarding the provisions that states that, ''No school will receive less than 80 percent of the amount received the previous year.'' The concern is that the purpose of the 3-year rolling average is to protect a school against any sharp increases or decreases in student enrollment. Therefore, this mandated 80 percent seems duplicative. The Federal team is also concern that if a school with decreasing enrollment were automatically given 80 percent of their funding in July, the school would then be responsible to refund BIA for any overpayment in funding.

Contingency Fund. BIA has existing rules regarding the use of the contingency fund. The current rules at 25 CFR 39.70–39.78 authorize the awarding of contingency funds to replace items in the event of their destruction by earthquake, fire, flood storm, or other ''Acts of God.'' The Committee reviewed these rules and is proposing revisions.

The Committee determined that the Director's Contingency Fund should only be used to provide for unforeseen, unpredictable, and emergency circumstances. In order to promote transparency in the allocation of contingency funds, the Committee required that the Director annually notify all Bureau-funded schools and appropriate tribal governing bodies of contingency fund allocations.

Ten percent enrollment increases. The Committee also discussed whether to include an adjustment for schools whose student population increased by more than 10 percent over the previous 3-year average. However, due to time constraints, the workgroup did not present this issue to the Committee. The Committee would like to seek comments as to the necessity of a provision providing adjustment funding for schools that experience a 10 percent increase in student population from the previous school year's ISEP count. Once again, the purpose of the 3-year rolling average would be to protect against these types of significant enrollment increases. The Committee also discussed that this provision would favor small schools, as a 10 percent increase would be more readily available to a school with a small population.

Special cost factors. NCLB required the Committee to consider the following special cost factors:

''The isolation of the school; the need for special staffing, transportation, or education programs; food and housing costs, maintenance and repair costs associated with the physical condition of the educational facilities; special transportation and other costs of isolated and small schools; the costs of home-living (dormitory) arrangements, where determined necessary by a tribal governing body or designated school board; costs associated with greater lengths of service by education personnel; the costs of therapeutic programs for students requiring such programs; and special costs for gifted and talented students.''

As a rule, the Committee considered ''special cost'' factors to be those factors that only affected a discreet number of schools and were not prevalent in the Bureau-funded school system. The Committee identified the following special cost factors: Language development, isolation factors, gifted and talented, school board training, and small school adjustment. Other special cost factors were considered, but did not receive an additional weighted student unit.

The Committee evaluated the impact that special cost factors have on the ISEF, as special cost factors re-allocate the available funding and provide more funding for these ''special costs'' at the expense of a more general distribution. The Committee was also concerned about how special cost factors impact residential programs, dorm programs, and schools that do not place an emphasis on these types of programs. By allocating more funding to ''special programs,'' the Committee was choosing to make less money available in the general pool. The Committee is seeking comments on the priority of these choices.

Language Development. In § 39.130, the Committee recommends a special cost factor of .13 for language programs. The Committee believes that the need to restore and maintain Native Languages is important. Historically, the government made a concerted effort to eliminate the Native Languages in an attempt to force the assimilation of Indian people. Now there is a desire to maintain and restore those Native Languages and the culture tied to them. Research has indicated that students who are proficient in their Native Language will also achieve better academically. The Committee believes a Native Language Development Program is an important pathway to appropriate cultural knowledge and expression.

The Committee also recognizes BIA's obligation to provide English language development services to students who are limited English proficient. Therefore, any student who is identified as limited English proficient is required to receive limited English proficiency services.

Isolation factors. Isolation factors were discussed at length and the Committee did not have sufficient data to rate the isolation factor of each school in the bureau-funded school system. Historically, most Bureau-funded schools are isolated by the placement of Indians on reservation lands. In general, the Committee felt that special weights for isolation factors were better addressed as a transportation issue.

However, the Committee did determine that there are some exceptional circumstances that did warrant additional funding due to the severe isolation and remoteness of a particular school. The Committee agreed that Havasupai Elementary School, which is located in the Grand Canyon, had isolation factors beyond those experienced by most schools. Havasupai Elementary School has food and other important items delivered by mule and/or helicopter. The Committee seeks comments as to whether Black Mesa Community School is also a school that has an extreme isolation factor that is unique and is not generally experienced by a majority of the Bureau-funded schools.

The Committee seeks comments on the following chart and the definition of ''established community.'' This chart was not adopted by the Committee and did not receive consensus from the Committee. The Committee could not reach agreement on whether there is sufficient documentation to clearly identify that certain isolation factors were not experienced by a majority of Bureau-funded schools. The Committee encourages tribes and schools to submit public comment on the following chart so those comments may be given consideration by the Committee before final recommendations for rules are made. The purpose of these comment will be to determine whether other less extreme isolation factors should be given an additional weight under the ISEF.

A school which demonstrates that it meets one or more of the following criteria will be awarded. An isolations cost factor will equal the value of the total number of WSU identified for the applicable criteria, provided, however, that no school will be awarded an isolation factor of more than 12.5 WSU.

1. The school is located at least 60 road miles (one way) from the nearest established community.	1.5 WSU
2. The school is dependent upon animal or light aircraft for transportation of persons, services, and supplies for the operation of the school.	12.5 WSU

3. The school's primary access route is an unpaved road of 10 miles or more.	2.0	WSU
4. The school's primary access route is dependent upon a bridge or road that is routinely subject to unavailability during periods of severe weather or floods.	2.0	WSU

For the purposes of this section, the term ''established community'' means a population center (Metropolitan Statistical Area or an incorporated city or town) having a year-round population of 1,500 or more, provided that it has minimal essential medical facilities (at least one physician and one dentist) available to all students and employees of the school on a non-emergency basis, 24 hour law enforcement services, a post office, retail grocery store and retail motor fuel station.

Gifted and Talented. The Community discussed Gifted and Talented considerations at length. Some members of the Committee are concerned that schools that claim a disproportionate number of students for gifted and talented services ultimately reduce the amount of money available to all students in the ISEF base. The reduction in this base could adversely affect residential programs (which are not eligible for the gifted and talented weighted unit) and other schools who either do not have a gifted and talented program or who have very few students who meet the gifted and talented requirements. The Committee would like to seek specific comments on the potential impact on base funding of residential programs if the number of students identified as gifted and talented increase significantly.

The Committee considered, but did not adopt the establishment of a ceiling on the number of students each school could claim for a gifted and talented weighted unit. This ceiling or cap was considered in order to ensure that ISEP funding was evenly distributed throughout the Bureau-funded school system. Some members of the Committee, and members of the public who commented, did not support a cap on gifted and talented. One of the concerns regarding the imposition of a cap is that a cap not only limits the percentage of students who can be counted as gifted and talented, but may also establish a minimum threshold to which every school may feel obligated to meet. Ultimately, the Committee decided not to impose a cap on Gifted and Talented. However, the Committee did place emphasis of the importance of a process for identification of gifted and talented students as well as documentation that gifted and talented services were provided to identified students.

The proposed rules at § 39.106 provide for the eligibility standards and oversight of gifted and talented funding. These rules require that a student can be identified as gifted and talented in five specific categories: intellectual ability, creative/divergent thinking, academic aptitude, leadership and visual and performing arts. However, a school cannot identify more than 15 percent of its student population as gifted and talented in either the leadership or visual and performing arts categories. The proposed rules outline how students are to be identified, nominated, and assessed as gifted and talented. In addition, the rules provide that a student who is identified as gifted and talented must receive services not ordinarily provided by the school which meet the goals and objectives specified in the student's education plan.

School Board Expenses and Training. The current rules at § 39.90 govern how funding is set aside for school board training, eligible training activities, and the approval process for training expenditures. NCLB requires a minimum of 40 hours of school board training for new school board members. School board training issues will vary from year to year and with each school. There will be some schools where there is no need for training since all board members are returning and have already been trained. In other cases, there will be a need for training as required by law. Thus, the Committee included a provision at § 39.600 to address this issue.

The Committee also recommends an amount equal to a total of a 1.2 weight to assist Bureau-operated schools in paying for school board training. Unlike contract or grant schools, Bureau-operated schools are unable to pay for school board training through Administrative Cost Grants. Instead, Bureau-operated schools must pay for school board training from ISEP funding.

Small School and Small High School Adjustment. The Committee determined that a factor for a Small School Adjustments was important because these schools do not have economies of scale to provide adequate educational opportunities for their students. The proposed rules at § 39.140 provide for this adjustment. By offering an adjustment (additional weighted units) for schools characterized by smaller populations, these schools should have increased opportunity to offer more or better academic services to their students. This is especially true for small high schools that are required to offer departmentalized programs.

Residential Programs. Current BIA rules at § 36.71 provide for a cost factor for a program entitled ''Intensive Residential Guidance (IRG).'' This factor is available after the establishment of specific activity programs, individual student diagnostic procedures, and the development of individual student treatment plans and measurements of student progress. The Committee recommended that the current additional weight for the IRG program be eliminated and be added to the residential base. The result of removing IRG to the base is an overall increase in the residential base of about .35.

The Committee heard many comments that the IRG program was cumbersome and did not guarantee that supplemental services were provided to students with extra ordinary needs. However, the Committee did decide that when the Committee undertakes negotiated rulemaking for home living standards that certain standards be included to aid students with special needs, such as, mental health, substance abuse and other needs. The Committee discussed that there is a high probability that the actual cost for a residential student is two times that of an academic student, however, time restraints did not allow for further Committee discussion. The therapeutic dorms program was also discussed and the Committee decided not to include this program in the ISEF because this program is not funded under ISEP.

Off-Reservation Boarding Schools. The Committee determined that the Off-Reservation Boarding Schools (ORBS) population represents a unique population of students. Specifically, the Committee was concerned about those ORBS schools that receive a large number of students as a result of a tribal court mandate or extreme disciplinary problems. The Committee is seeking comments as to whether ORBS schools should receive an additional weighted unit to fund special costs that are not equally shared throughout the system.

Accreditation. The Committee recognized that accreditation may produce some special cost factors, but decided that an additional weighted unit was not necessary for those schools seeking accreditation.

Distance and Other Alternative Learning. The Committee discussed the impacts of Distance Education, Vocational Education, Pre-school early childhood-education, and the education of non-ISEP eligible students. The Committee decided that these issues should be covered by the base program

or other related programs. For example, pre-school early childhood-education might be funded by a program such as Head Start. The Committee also seeks public comment to determine if ISEP or another funding mechanism might be necessary to fund the education of non-ISEP eligible students who attend Bureau-funded schools.

Costs Associated with Greater Lengths of Service. The Committee discussed the costs associated with greater lengths of service by educational personnel. It was recognized that there is a difference between bureau-operated schools required to use the DOD salary schedules and grant/contract schools which use their own salary scale. The Committee decided not to include this factor in the formula since many tribes made the decision to become grant or contract schools in order to have more flexibility and discretion.

Facility Maintenance Costs. The Committee discussed maintenance and repair costs related to Bureau-funded facilities. However, the Committee decided that these costs were funded separately from the ISEP and not relevant to ISEF.

Special Education. The Committee discussed whether students identified as in need of special education services should be allocated an additional weighted unit. Some members of the Committee believed that having an additional weighted unit for special education would be desirable. After considering the issue in depth, the Committee decided to keep special education funding in accordance with the current rules which mandate that each school set aside 15 percent of their basic instruction allotment to meet the needs of students with disabilities. If the 15 percent is inadequate to fund services necessary for eligible students with disabilities, schools may still apply for Part B funding. The Committee did agree that the OIEP's administration of Part B special education funding needs to be improved. Many expressed concerns that access to Part B funding was cumbersome and difficult. Therefore, the Committee recommends that OIEP provide training and technical assistance to better serve the Bureau-funded schools in applying for Part B funding.

Transition/Phase-In Provisions. At § 39.220, the Committee recommended a phase-in provision to implement the proposed rules. For the first year after the effective date of publication of a final rule, OIEP will calculate ADM based on the prior 3 years' count period to create an average membership for funding purposes. For the second year and third years, the school will use a combination of ADM count(s) and applicable ISEP count(s) under the existing rules. Within three years of implementation of the final rules, OIEP will calculate funding on a 3-year rolling average of each school's ADM.

Transportation. Although the Committee would like to establish a formula that reflects the actual transportation costs of Bureau-funded schools, the Committee determined that there was insufficient information to develop this actual cost formula at this time. To address this issue, the Committee is proposing new rules for data collection and is proposing an advance notice of proposed rulemaking so that the public can comment on the formula the committee would consider once the data is available. In the meantime, the Committee is proposing that the current OIEP transportation policy be the proposed transportation rule.

In addition to the current transportation policy, the proposed rules would require Bureau-funded academic and residential programs to report their actual transportation expenditures. This information is critical to develop an actual cost transportation formula. One reason the Committee wanted to develop an actual cost formula was to better reflect a school's transportation costs to avoid situations where these costs take away from the instructional funding of the schools.

Conclusion

The Committee recognizes that adoption of new formula for distribution will impact each school differently. It is possible that some boarding schools may be heavily impacted by the new formula. The Committee feels strongly that the ISEF should distribute funds in a fair and equitable manner that gives *all* students equal opportunities to receive a quality education. The Committee believes that certain administrative changes are necessary at the local school and Bureau of Indian Affairs level to provide more educational opportunity to the students served by the Bureau-funded school system.

The Committee cannot emphasize strongly enough the importance of careful consideration of these proposed rules by Bureau-funded schools, tribes with members who attend Bureau-funded schools, and parents and students served by Bureau-funded schools. The Committee strongly encourages anyone who has an interest in these proposed rules to submit public comments that the Committee may consider when finalizing the rules.

V. Part 42—Student Rights

Section 1136 of Title IX of the Act required the Secretary to prescribe rules to ensure the constitutional and civil rights of Indian students attending Bureau-funded schools, including rights to privacy, freedom of religion and expression, and due process in connection with disciplinary actions, suspension, and expulsion.

Section 42.1. This section provides objectives and guidance for school boards when determining how to apply student rights and due process. It lists only the minimal considerations a school should make to fulfill the due process and student rights obligation owed to students. The following objectives may also be considered: Providing students with a safe learning environment, the opportunity to observe Native customs and practices (consistent with health, safety, and welfare), and an education provided by educators trained in Native pedagogies. The absence of these objectives from the regulation was due to an understanding that in some circumstances consideration of the objective could not be made or would be inappropriate. Wherever possible to the extent practicable school boards should aspire to give consideration to the aforementioned objectives omitted from the regulation.

Section 42.2. This section prescribes the minimum rights to which all students at Bureau-funded schools are entitled. Where possible or applicable, a school may provide more rights than required by this rule. Nothing in this section limits existing student rights provided in the Constitution, school board policies, or elsewhere. This section should be read in conjunction with the stated purpose for the rule and the preamble explaining that purpose.

Section 42.3. This section prescribes how schools are to apply the due process obligations. It was the group's desire that the rule be interpreted so that a school board would apply Alternative Dispute Resolution (ADR) first whenever possible. It was realized that some situations would arise where use of ADR processes would not be permitted under school board policies (*i.e.*, offenses that merit immediate suspension under school board policy or law). It was understood that in some situations ADR would yield a ''consequence'' other than traditional forms of formal punitive actions (*i.e.*, detention, suspension, expulsion).

It was the committee's desire that the school board work with the student to ensure reintegration of the student into the school community after using ADR

processes. The group understood reintegration to mean returning the student to regular student status after the student allegedly or actually committed a violation. Where ADR and subsequent reintegration of a student are not possible, the school could then apply traditional formal disciplinary procedures.

The committee wants schools to be permitted to craft their own processes for dealing with violations of school policies. It was also recognized that some of the processes schools used to address student violations were not formal disciplinary actions. Often schools wish to apply ADR processes first or instead of more formal proceedings.

In circumstances where ADR cannot be used, a school may immediately apply formal disciplinary proceedings. The goal of any process used to address violations of school policies should be returning the student to active student status as quickly as possible.

Section 42.4. In this section the group attempted to provide guidance on what was meant by ADR processes. The objective of this section was to present examples of alternatives to traditional forms of formal punitive actions typically applied to violations of school policies. Specifically, tribal forms of dispute resolution could be used in place of formal disciplinary processes. It was realized that ADR processes would not always result in traditional forms of formal punitive actions (*i.e.*, detention, suspension, expulsion). Outcomes of ADR processes were not to be discredited merely due to a resolution that applied alternative ''consequences.''

Section 42.5. In this section the group provided guidance on when it was appropriate to apply ADR techniques in place of more formal disciplinary proceedings. Ultimately, the school board has the discretion to determine what process to apply and when. This section provides points schools should consider in making their determinations.

(a) A school may decide whether use of ADR is appropriate under the circumstances. Where possible, ADR should be used before formal disciplinary proceedings.

(b) Where articulated policy or law clearly defines immediate consequences, a school may not discretionarily apply ADR processes.

(c) Although the committee prefers that school boards apply ADR processes first, use of ADR procedures in every circumstance is not required.

Section 42.6. This section prescribes the rights to which all students are entitled in disciplinary proceedings. School boards should strive to provide students as much information and time as is necessary to defend themselves against allegations of disciplinary violations. School boards may not limit the amount of due process provided to a student in disciplinary actions. The group felt it essential that the accused student be provided the maximum due process available. Due process demands that all students be provided a fair and impartial hearing for all alleged violations of school policies. In certain situations immediate punishment may be applied, but due process must not be diminished merely because punishment has already begun.

(a) Schools must give students written notice of charges within a reasonable time. Reasonable time is notice provided promptly after the charges have been made.

(1) The copy of the regulation that the student is charged with violating must be the same language provided in the most recent copy of student policies and guidelines issued to students by the school.

(2) The school must inform the student of sufficient facts that constitute the alleged violation so the student may defend the allegation.

(3) Any information the school obtains leading to or arising from any charge must be made available to the accused student.

(4) A student must be informed if the school intends to consider any portion of the student's record in disciplinary decisions.

(b) Generally, the school must provide a student a full due process hearing before the student is punished.

(1) There exist certain offenses for which school policy or law requires immediate punishment. In these circumstances, this rule is not intended to prevent those school policies or laws from applying. Rather, the punishment may be effective immediately in a temporary manner pending full hearing.

(2) In rare cases of emergency situations not addressed by school policy or law, immediate removal of the student may be necessary for the protection of the accused student, student body, or school faculty. In such rare instances the school should not be prevented from removing the student posing the emergency risk.

(3) A student may always elect to waive all or a part of the due process hearing rights to which the student is entitled.

(c) It was recognized that emergency situations will arise that merit immediate action by the school board.

(1) Any emergency removal of the student from the active student body will be deemed temporary until provision of a hearing affording a student all due process rights.

(2) All actions taken by a school against a student accused of violating school policy must be documented in writing for the student's record immediately after the action is taken.

(3) A school must provide a student a hearing proving the student full due process rights within 10 days of any disciplinary action. The time may be delayed only upon motion of the student and upon showing of good cause.

Section 42.7. This section outlines the minimum due process procedures a school must provide to a student accused of school policy violations. Nothing in this section should be read as precluding a school board from providing additional protections to those enumerated in the proposed rule. If possible, the rules should be interpreted in a manner favoring the accused student.

(a) All students have the right to have a parent or guardian present during hearings for disciplinary violations. If the student is the age of majority, the student may waive the right to have a parent present. ''Parent or guardian'' should be read broadly to include any adult, other than boarding school personnel, who is the equivalent to a parental authority over the student, or any adult who is head of the household where the accused student primarily resides.

(b) Students have the right to be represented by an adult in addition to their parent at disciplinary proceedings. It was not intended that a student should be entitled to receive funding from the school board or the Federal government to pay for this representation. ''Counsel'' as used in the rule is not limited to legal counsel. Generally the person selected as ''counsel'' must act as a representative of the student in the disciplinary proceeding and should generally be familiar with the disciplinary process of the school board.

(c) Accused students have the right to produce and have produced witnesses and confront and examine all witnesses.

(d) A student must be provided all information concerning hearings addressing violations of school policies. While this rule does not specifically require additional school record development, the student is entitled to any records or documents that the school board makes in conjunction with the disciplinary proceeding. The right to certain records does not require

disclosure of documents otherwise privileged under attorney client privilege.

(e) A student must be given the opportunity to appeal any decision concerning violations of school possible. The group hearing the appeal must not be the group that issued the original decision.

(f) A school may not require that the student testify against himself for the purpose of finding him guilty. If, however, the student elects to so testify, then the student's statements may be used to affirm allegations of school policy violations.

(g) When a student is not found guilty of alleged violations of school policy, the student's record must not reflect the allegation. Prior allegations of school policies for which a student is not found guilty should not be used against the student in future proceedings.

Section 42.8. This section provides objectives for consideration of victims' rights. Where possible and appropriate, the rights of the victim should be afforded consideration in hearings addressing violations of school policies. While consideration of victims' rights is an aspiration and creates no enforceable right for the victim, it was desired that schools make every effort possible to afford victims rights in disciplinary proceedings.

Section 42.9. A school must develop a handbook and make that handbook available to students annually. Changes in school policy do not become effective for the purpose of disciplining a student under the changed policy until the student body is notified of the change in writing.

(a) The handbook must clearly explain all school policies to place all students on notice of expected conduct and actions which constitute violations of school policy.

(b) All staff must be informed of school policies to ensure that violations are properly reported and proper conduct does not subject students to unnecessary charges.

(c) Students and parents, guardians, or other persons providing primary care for students shall be given copies of the student handbook for their reference. In the case of students attending boarding schools, it is not sufficient to provide only dorm staff with the handbook; parents or other caregivers must also be provided copies.

(d) To the extent possible, students, school staff, and parents or guardians should confirm in writing receipt of the student handbook. Such practices will ensure both that schools strive to keep students, staff and others informed of school policies as well as assist the school in establishing that the student was aware of the policy allegedly violated.

VI. Part 44—Grants Under the Tribally Controlled Schools Act

In section 1127 of the Act, Congress authorized the Secretary to promulgate only rules that: (1) Are necessary to ensure compliance with the Act and (2) Comply with section 5211 of the Tribally Controlled Schools Act of 1988. The Act amended the Tribally Controlled Schools Act of 1988 by striking sections 5202 through 5212 and inserting new sections. New section 5210 specifically provides that:

> The Secretary is authorized to issue rules relating to the discharge of duties specifically assigned to the Secretary in this part. For all other matters relating to the details of planning, developing, implementing, and evaluating grants under this part, the Secretary shall not issue rules.

In developing proposed rules, the Committee reviewed each section of the Tribally Controlled Schools Act to determine whether the section pertained to the discharge of the Secretary's duties. If it did, then the Committee considered whether the statutory provision was clear without the need for rules. If so, then the Committee chose not to draft rules.

At the outset, the Committee was especially mindful of Congress' Declaration of Policy found in section 5202 of The Act. The Committee used the declaration, including the recognition of the importance of self-determination, the commitment to Indian education, and the national goal and education needs.

Specifically, the Committee considered the declaration at section 5202(a), where Congress:

> Recognizes that the Indian Self-Determination and Education Assistance Act was the product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial step positive step toward tribal and community control and that the United States has an obligation to assure maximum participation in the direction of education services so as to render the persons administering such services and the services themselves more responsive to the needs and the desires of Indian communities.

The Committee also specifically considered that Congress made the following commitment in section 5202(b) of The Act:

> Congress declares its commitment to the maintenance of the Federal Government's unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

The Committee also used Congress' declaration of a national goal of the United States in section 5202(c):

> Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children (1) to compete and excel in the areas of their choices; and (2) to achieve the measure of self-determination essential to their social and economic well-being.

The Committee considered that Congress also affirmed the educational needs of Indian students in section 5202(d) of The Act when it stated:

> Congress affirms (1) true self-determination in any society of people is dependent upon an education process that will ensure the development of qualified people to fulfill meaningful leadership roles; and (2) that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and (3) that those needs may be best met through a grant process.

Fully considering the directives of Congress, the Committee turned to each section of the Tribally Controlled Schools Act, to determine which sections needed rules.

In section 101, the Committee re-affirmed that the statute and rules principally applied to the grantee and that guidelines, manuals, and policy directives of the Bureau only applied if agreed to by the grantee. Section 102, re-affirmed that the rules do not affect existing tribal rights. Section 103 provides the eligibility requirements found in section 5203 and 5205 of the The Act.

Section 104 provides for the three methods by which a grant can be terminated. These methods are found in section 5203(f) B retrocession; 5206(c) B revocation of eligibility; and 5208(12) reassumption. Section 105 implements section 5203(f), section 106 implements section 5206(c), and section 107 implements section 5208(12).

Section 108 implements section 5207, which requires that payments be made to the grantee in two annual payments. However, the Committee is recommending that annual payments be made to all Bureau-funded schools. This section will be amended in the final rule to reflect the final rule for payments. This section also reiterates the statutory requirement that the Prompt Payment Act applies to grant payments. Section 109 implements section 5207(a)(2) regarding excess funding.

In section 5208 of the The Act, Congress specifically incorporated into the Tribally Controlled Schools Act certain sections of the Indian Self-Determination and Education Assistance Act (ISDEAA), as amended. Section 110 incorporates those sections of the 25 CFR part 900 that implement the incorporate sections of the ISDEAA. In addition, the Committee considered whether the ''common-rule,'' 43 CFR part 12, applied to grantees except in the construction context. The Committee examined 25 U.S.C. 2503(b)(4)(B), section 5204 of The Act, and believed that the 43 CFR part 12 does not apply to grantees. However, some members of the Committee raised concerns that without the common rule, there were no standards for financial, property, or procurement management. To address these concerns, the Committee incorporated subpart E of part 900, ''Standards for Tribal or Tribal Organization Management Systems.''

Finally, section 111 reiterates that the Federal Torts Claims Act applies to grant schools.

Overall, the Committee felt that the Tribally Controlled Schools Act of 1988, as amended by the The Act, needed very few rules. The Committee was true to Congress' directive that the rules only pertain to the discharge of the Secretary's duties. Moreover, the Committee believed that if the statute was clear, no implementing rules were necessary.

VII. Part 47—Uniform Direct Funding and Support

Section 1130 of the Act specifically requires the Secretary to establish by regulation a system for the direct funding and support of all Bureau-funded schools. This system must allot funds in accordance with section 1127 of the Act. A subgroup of the committee reviewed the current rules in 25 CFR 39.50 and determined that the rules did not need any substantive changes. The subgroup put the current regulation in plain language and presented it to the committee as a whole. The committee as a whole accepted the plain language version of the uniform direct funding rules with little discussion.

VIII. Procedural Matters

Regulatory Planning and Review (E.O. 12866)

This document is a significant rule and the Office of Management and Budget (OMB) has reviewed the rule under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule deals exclusively with student rights, does not pertain to funding, and is not expected to have an effect on budgets.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This rule has been prepared in consultation with the U.S. Department of Education.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule spells out student rights, the procedures for their dissemination, and the procedures for implementing them. The rule does not pertain to funding and is not expected to have an effect on budgets.

(4) This rule raises novel legal or policy issues. The rule proposes entirely new procedures related to determining adequate yearly progress, school boundaries, funding, and other issues. It also updates existing procedures addressing student rights and adapts the existing rules to comply with current law and policy.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Funding for Indian education programs has averaged about $350 million in grants annually over the last ten years. The ''No Child Left Behind'' legislation, which these proposed rules are designed to implement, will provide no additional funding, but merely reallocates current funding. Since grants redistribute wealth, they have no impact on aggregate employment and prices unless the allocation of the grant money produces incentives that result in an employment, income, or price effect in excess of $100 million annually. Although the purpose of this rule is to change the formula for distributing grant money, BIA does not have sufficient information to evaluate the extent to which the proposed regulation may change the incentives associated with new proposed formula. However, based on the new proposed formula, school districts may face incentives to report or count students differently than under the existing formula. Regardless of the extent to which incentives may shift, the Secretary believes that the changes would not result in changes in employment, income, or prices in the economy.

Costs and Benefits

The proposed formula for distributing the grant money was determined in negotiation with the grant recipients to ensure that maximum benefits are obtained at the local level. The approximate distribution of grants by instructional programs under the current distribution formula and under the proposed new formula is shown in Table 1. Although the distribution of grants under the new formula is not precisely known, the expected distribution is also shown in Table 1. Table 2 shows the effect on grants allocated by State under the current and proposed formula.

TABLE 1.—EFFECT ON GRANT ALLOCATION BY PROGRAM

[Percent]

Program	Approximate current allocation	Proposed formula allocation
Instructional Programs:		
Basic	68.2	59.0
Exceptional Child	2.5	10.4
Bilingual	6.2	6.8
Gifted & Talented	5.6	5.5
Total Instructional	82.6	81.6
Residential Programs Basic	11.6	18.4

TABLE 1.—EFFECT ON GRANT ALLOCATION BY PROGRAM—Continued

[Percent]

Program	Approximate current allocation	Proposed formula allocation
Intensive Residential Guidance	2.9	0.0
Exceptional Child	.1	0.0
Total Residential	17.6	18.4
Total	100.0	100.0

TABLE 2.—EFFECT ON GRANT ALLOCATION BY STATE

[Percent]

State	Approximate current allocation	Proposed formula allocation
Arizona	27.4	27.8
California	2.6	2.6
Florida	.4	.4
Iowa	.3	.2
Idaho	.2	.4
Kansas	.2	.2
Louisiana	.1	.1
Maine	.5	.5
Michigan	.5	.5
Minnesota	1.5	1.5
Mississippi	3.6	3.4
Montana	.8	.8
North Carolina	2.2	2.1
North Dakota	8.0	7.8
New Mexico	24.2	24.3
Nevada	.2	.3
Oklahoma	3.8	3.8
Oregon	1.6	1.6
South Dakota	16.7	16.5
Utah	.9	.9
Washington	2.4	2.5
Wisconsin	1.5	1.5
Wyoming	.4	.4
Total	100.0	100.0

These provisions will allow school districts to use Federal funds in a manner more consistent with their own reform strategies and priorities. While most of the benefits of the new law are conveyed by the statute, the regulations proposed through this notice could also result in cost savings, by allowing flexibility in adopting assessment systems composed entirely of locally developed and administered tests. Data limitations make it difficult to estimate the magnitude and timing of any potential cost savings. However, given the new flexibilities associated with the proposed regulation, the Secretary has concluded that these regulations are likely to have positive net benefits.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

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

(1) Does not have an annual effect on the economy of $100 million or more on budgets.

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions. The rule proposes new procedures related to determining adequate yearly progress, school boundaries, funding, and other issues. It also updates existing procedures addressing student rights and adapts the existing rules to comply with current law and policy. The rule does not pertain to funding and is not expected to have an effect on budgets. The rule is not expected to have a perceptible effect on costs or prices.

(3) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The rule proposes new procedures related to determining adequate yearly progress, school boundaries, funding, and other issues. It also updates existing procedures addressing student rights and adapts the existing rules to comply with current law and policy. The rule does not pertain to funding and is not expected to have an effect on budgets.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule proposes new procedures related to determining adequate yearly progress, school boundaries, funding, and other issues. It also updates existing procedures addressing student rights

and adapts the existing rules to comply with current law and policy. The procedures for dissemination of student rights through student handbooks are consistent with current practices. The procedures for implementing student rights through hearings and alternative dispute resolution processes are consistent with current practices. The rule is not expected to mandate additional costs on tribal governments.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. Nothing in the rule proposes rules of private property rights, constitutional or otherwise, or invokes the Federal condemnation power or alters any use of Federal land held in trust. The focus of this rule is civil rights and due process rights. A takings implication assessment is not required.

Federalism (E.O. 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Nothing in this rule has 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. This rule does not implicate State government. Similar to federalist concepts, this rule leaves to local school board discretion those issues of student civil rights and due process that can be left for local school boards to address. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

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

Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, we have identified potential effects on federally recognized Indian tribes that will result from this rule. This rule will require Tribally operated schools to observe student rights and procedures spelled out in the rule. Accordingly:

(1) We have consulted with the affected tribe(s) on a government-to-government basis. The consultations have been open and candid to allow the affected tribe(s) to fully evaluate the potential effect of the rule on trust resources.

(2) We will fully consider tribal views in the final rule.

(3) We have consulted with the appropriate bureaus and offices of the Department about the political effects of this rule on Indian tribes. The Office of Indian Education Programs and the Office of the Assistant Secretary—Indian Affairs have been consulted.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Department is requesting comments on the information collection incorporated in this proposed rule. Comments on this information must be received by March 26, 2004, via facsimile or e-mail transmittal to: Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs, 202/395–6566 (facsimile) or *OIRA_DOCKET@omb.eop.gov.*

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The information collection will be used to enable BIA to better administer the No Child Left Behind program subject to this rulemaking. In all instances, the Department has strived to lessen the burden on the public and ask for only information that is absolutely essential to the administration of the programs affected and in keeping with the Department's fiduciary responsibility to federally recognized tribes.

Under 25 CFR part 39, OMB clearance has already been given under OMB Control Number 1076–0122 for the information required of Indian schools to document student attendance and classification for participation in certain special programs. In addition, OMB has approved certain transportation information in reporting off-reservation school mileage estimates, also in 25 CFR part 39, under Control Number 1076–0134.

A synopsis of the new information collection burdens for parts 30, 37, 39, 42, 44 and 47 is provided below. Burden is defined as the total time, effort, or financial resources expended (including any filing fees) by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.

ESTIMATED BURDEN HOURS

CFR section	Number Respondents	Responses per respondent	Burden per response (in hours)	Total annual burden/cost
30.104(a)(1), Submit Notification	6	1	1	6 hours/$72.00
30.104(b), Submit Waiver	7	1	11	77 hours/$924.00
30.106, Submit proposal for alternative AYP	20	1	1	20 hours/$240.00
30.107, Form Requirements	20	1	480	9,600 hours/$115,200.00
30.110, Submit Request for technical assistance	20	1	2	40 hours/$480.00
30.118, Submit Evidence	85	1	40	3,400 hours/$40,800.00
Totals				13,143/$157,716.00

[**Note:** For purposes of this part, we recognize 184 bureau- and tribally-operated schools and peripheral dormitories. From this number we have extrapolated the number of likely respondents per information collection requirement. The cost of reporting and recordkeeping by the public is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or form requirements) completed, the cost of taking an hour's time off work, the cost of using one's vehicle, time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements.]

Summary

Section 30.104(a)(1) What Is the Secretary's Definition of Adequate Yearly Progress?

Where the tribal school is in more than one State, because of reservation geographic boundaries, the tribal governing body or school board may choose the State definition it desires for ''Adequate Yearly Progress.'' This is realized through a written communication to the Secretary. It is estimated that there are only 6 schools within 2 tribes that would have this option to choose between or among State definitions for AYP. It is estimated that it would take the tribal governing body or school board 1 hour to complete this notification through a letter to the Secretary.

Burden hours = number of schools with this option (6) × 1 hour to send letter to the Secretary = 6 total annual burden hours at a cost of $72.00 to the public.

Section 30.104(b) What is the Secretary's Definition of Adequate Yearly Progress?

The tribal governing body or school board may seek a waiver that may include developing their own definition of AYP, or adopting or modifying an existing definition of AYP that has been accepted by the U.S. Department of Education. The average number of schools that would ask for this waiver is estimated to be not more than 7 schools. To submit this waiver request for an alternative definition of AYP, the school would take approximately 11 hours to complete.

Burden hours = 7 schools × 11 burden hours = 77 total annual burden hours at a cost of $924.00 to the public.

Section 30.106 How Does a Tribal Governing Body or School Board Propose an Alternative Definition of AYP?

The tribal governing body or the school board may decide that the Secretary's definition of AYP is otherwise inappropriate. It may then propose an alternative definition of AYP by submitting a proposal to the Secretary. The physical act of submitting the proposal would only entail a hour's time. It is estimated that only 20 schools, on average, would propose an alternative definition of AYP.

Burden hours = 20 schools × 1 burden hour = 20 total annual burden hours at a cost of $240.00 to the public.

Section 30.107 What Must a Tribal Governing Body or School Board Include in Its Alternative Definition of AYP?

This section illustrates the form requirements that a tribal governing body or school board must fulfill in completing its proposal for an alternative definition of AYP. It is estimated that it would take an average of 20 schools making such a proposal approximately 480 hours or 3 months to complete the requirements of this section.

Burden hours = 20 schools × 480 burden hours = 9,600 total annual hours at a cost of $115,200 to the public.

Section 30.110 What Is the Process for Requesting Technical Assistance To Develop an Alternative Definition of AYP?

The tribal governing body or the school board must submit a written request to the Director of OIEP if it desires to have technical assistance in developing an alternative definition of AYP. It is estimated that an average of 20 schools would be making this request, the same average of schools requesting an alternative definition of AYP, since this assistance is available. In submitting this written request, it is estimated that, at a minimum, a meeting of the tribal governing body or the school board would have to take place to discuss the request and then qualify the parameters of this assistance in a letter then sent to the Director of OIEP. It would take up to 2 hours to complete this administrative task.

Burden hours = 20 schools × 2 burden hours = 40 total annual burden hours at a cost of $480 to the public.

Section 30.118 Can a Bureau-Funded School Present Evidence Before It Is Identified for School Improvement, Corrective Action, or Restructuring?

The tribal governing body or school board may present evidence that it should not be identified for school improvement, corrective action, or restructuring. There are 184 bureau-funded schools and peripheral dormitories. Only 170 have academic programs subject to school improvement, corrective action, or restructuring. Out of the 170 bureau-operated schools, it is estimated that approximately half (85) would seek to present such evidence. To compile the evidence necessary to make its case, it is further estimated that it would take approximately 40 hours (a good work week) to fulfill this requirement.

Burden hours = 85 schools × 40 hours = 3,400 total annual burden hours for a cost of $40,800 to the public.

ESTIMATED BURDEN HOURS

CFR section	# Respondents	Responses per respondent	Burden per response (in hours)	Total annual burden/cost
37.122(b), Propose Change in geographic boundaries	2	1	1	2 hours/$24.00
37.123(c), Submit tribal approval to change geographic boundaries.	2	1	1	2 hours/$24.00
Totals				4/$48.00

[Note: For purposes of this part, we recognize 184 bureau- and tribally-operated schools and peripheral dormitories. From this number we have extrapolated the number of likely respondents per information collection requirement. The cost of reporting and recordkeeping by the public is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or form requirements) completed, the cost of taking an hour's time off work, the cost of using one's vehicle, time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements.]

Summary

Section 37.122(b) Once Geographic Attendance Boundaries Are Established, How Can They Be Changed?

Tribal governing bodies and school boards may change their attendance boundaries now. This rulemaking does not otherwise impact on this ability. We

have estimated, for purposes of information collection authority, that there can be approximately two such requests per year. Submitting a letter to the Secretary for this consideration would entail only 1 hour's time to effectively transmit such a letter.

Burden hours = 2 schools × 1 burden hours = 2 total annual burden hours at a cost of $24.00 to the public.

Section 37.123 How Does a Tribe Develop Proposed Geographic Attendance Boundaries or Boundary Changes?

A tribal governing body establishes its own process for developing proposed geographic attendance boundary or boundary changes. Once this has been accomplished, it must submit a document which represents that body's approval to the Secretary for consideration of such change. No tribe has ever attempted to change its attendance boundary and, consequently, no tribe has developed these in-house processes. However, for purposes of information collection authority, we have estimated that approximately two tribes could make such a request each year. This administrative activity would not entail more than 1 hour's time.

Burden hours = 2 tribes × 1 burden hour = 2 total annual burden hours at a cost of $24.00 to the public.

ESTIMATED BURDEN HOURS

CFR section	Number respondents	Responses per respondent	Burden per Response (in hours)	Total annual burden/cost
39.410, Submit Certification of conflict of interests review	10	1	1.5	15 hours/$180.00
39.502, Submit request for contingency funds to ELO	30	1	1	30 hours/$360.00
Totals				45/$540.00

[**Note:** For purposes of this part, we recognize 184 bureau- and tribally-operated schools and peripheral dormitories. From this number we have extrapolated the number of likely respondents per information collection requirement. The cost of reporting and recordkeeping by the public is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or form requirements) completed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements.]

Summary

Section 39.410 What Qualifications Must an Audit Firm Meet To Be Considered for Auditing ISEP Administration?

It is estimated that only 10 firms would be required to submit a conflict of interest certification during any given school year for purposes of general audit. It is further estimated that this administrative task would take approximately 1.5 hours to complete.

Burden hours = 10 certified public accountant firms × 1.5 hours = 15 hours at a cost of $180.00 to the public.

Section 39.502 How Does a School Apply for Contingency Funds?

A school must submit a request to the ELO for contingency funds. From past experience, it is estimated that approximately 30 schools would make such a request. Since there is nothing more involved than submitting a written request to the ELO, it is further estimated that it would take only 1 hour to complete this administrative task.

Burden hours = 30 schools × 1 burden hour = 30 total annual burden hours at a cost of $360 to the public.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response (in hours)	Total anual burden/cost
42.6, Form Requirement. Provide written notice of charges.	120	3	.5	180 hours/$2,160.00.
42.7, Provide copy of hearing of record	120	3	3	1,080 hours/$12,960.00.
42.9, Provide student handbook	120	1	.25	30 hours/$360.00.
Totals				1,290/$15,480.00.

[**Note:** For purposes of this part, we recognize 184 bureau- and tribally-operated schools and peripheral dormitories. From this number we have extrapolated the number of likely respondents per information collection requirement. The cost of reporting and recordkeeping by the public is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or form requirements) completed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements.]

Summary

Section 42.6 What Does Due Process in a Formal Disciplinary Proceeding Include?

The student charged with any infraction of the school code which would lead to a disciplinary proceeding must receive a formal statement of such charges. This a burden accruing to tribally-operated schools. Since every school may have one infraction (some have no reported disciplinary events and some may have several events), we have used the number of tribally-operated Indian schools (120) as the number of respondents. Providing the student with charges is an administrative task that should not take longer than one-half hour to successfully complete.

Burden hours = 120 schools × 3 responses × ½ burden hour = 180 total annual burden hours for a cost

to the government and/or tribal governing body or school board of $2,160.

Section 42.7 What Are a Student's Due Process Rights in a Formal Disciplinary Proceeding?

The student is entitled to a copy of the hearing of record. For transcription, photo-copying, and delivery, it is estimated that this administrative task could take as long as 3 hours to successfully complete.

Burden hours = 120 schools × 3 responses × 3 burden hours = 1,080 total annual burden hours for a cost to the government and/or tribal government body or school board of $12,960.

Section 42.9 How Must the School Communicate Individual Student Rights to Students, Parents or Guardians, and Staff?

The school must provide a handbook to the affected entities setting out the school's code of conduct. All of the existing bureau- and tribal-operated schools have such handbooks, so this information distribution concerns making the handbook available to all concerned, a relatively simple task of ¼ hour to make copies available at a site-specific location.

Burden hours = 120 schools × .25 burden hours = 30 total annual burden hours for a cost to the government and/or tribal governing body or school board of $360.

ESTIMATED BURDEN HOURS

CFR section	Number of respondents	Responses per respondent	Burden per response (in hours)	Total annual burden/cost
44.105, Provide written notice of retrocession	1	1	1	1 hour/$12.00

[**Note:** For purposes of this part, we recognize 184 bureau- and tribally-operated schools and peripheral dormitories. From this number we have extrapolated the number of likely respondents per information collection requirement. The cost of reporting and recordkeeping by the public is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or form requirements) completed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements.]

Summary

Section 44.105 How Does a Tribal Governing Body Retrocede a Program to the Secretary?

The tribal governing body must provide written notice to BIA that it wishes to retrocede a program. This happens rarely, so we have used one respondent tribe per year as an example for information collection authority. A simple written notice, in letter or memorandum form, would only take approximately 1 hour to transmit to BIA.

Burden hours = 1 governing body × 1 burden hour = 1 total annual burden or a cost of $12.00 to the public.

ESTIMATED BURDEN HOURS

CFR Section	Number of respondents	Responses per respondent	Burden per response (in hours)	Total annual burden/cost
47.5, Submit quarterly report to school board	120	4	3	1,440 hours/$17,280
47.7, Notice of appeal	120	1	1	120 hours/$1,440
47.9, Form Requirements, Financial Plan	120	1	2	240 hours/$2,880
47.10, Notice of Action on Financial Plan	120	1	1	120 hours/$1,440
Totals				1920/$23,040

[**Note:** For purposes of this part, we recognize 120 bureau- and tribal-operated Indian schools. From this number we have extrapolated the number of likely respondents per information collection requirement. The cost of reporting and recordkeeping by the public is estimated to be approximately $12/hour. We have used this figure as a medium figure that would indicate the cost of having a form (or form requirements) completed, the cost of taking an hour's time off work, the cost of using one's vehicle, plus time spent on the activity, and other miscellaneous costs that may be associated with obtaining the information needed to fulfill this part's information collection requirements. For purposes of this part only, we have used the number of tribally operated schools (120) as the number of respondents.]

Summary

Section 47.5 What Is the School Supervisor Responsible For?

The school supervisor must report at least quarterly (4 responses per year) to the local school board on the amounts spent, obligated, and currently remaining in funds budgeted for each program in the local financial plan. In addition, he must maintain expenditure records in accordance with financial planning system procedures. It is estimated that this would take approximately 3 hours to complete successfully.

Burden hours = 120 schools × 1 supervisor × 4 responses × 3 burden hours = 1,440 total annual burden hours or a cost to the public of $17,280.00.

Section 47.7 What Are the Expenditures Limitations for Bureau-Operated Schools?

If a Bureau-operated school and OIEP region or Agency support services staff disagree over expenditures, the Bureau-operated school must appeal to the Director for a decision. This appeal would take the form of a memorandum and would take approximately 1 hour to complete successfully.

Burden hours = 120 schools × 1 burden hour = 120 total annual burden or a cost of $1,440.00 to the public.

Section 47.9 What Are the Minimum Requirements for the Local Educational Financial Plan?

This is a form requirement for meeting the minimum standards of a educational financial plan. All schools would have to comply with this standard and it is estimated that it would take approximately 2 hours to complete this planning document.

Burden hours = 120 schools × 2 burden hours = 240 total annual burden hours at a cost of $2,880.00 to the public.

Section 47.10 How Is the Local Educational Financial Plan Developed?

The supervisor of each school must supervise the disposition of the tentative allotment and express acceptance or otherwise to the ELO in a timely fashion. This administrative task would take approximately 1 hour to convey such disposition.

Burden hours = 120 schools × 2 burden hours = 240 total annual burden hours or a cost of $1,440.00 to the public.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write rules that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce its clarity?

(4) Would the rule be easier to understand if it 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: § 42.2 What rights do individual students have?)

(5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule?

(6) What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Public Comment Solicitation

Although this rule is published by the Bureau of Indian Affairs, the Bureau of Land Management is processing comments under agreement with BIA. If you wish to comment on this proposed rule, you may submit your comments by any one of several methods.

(1) You may mail comments to Director (630), Bureau of Land Management, Eastern States Office, 7450 Boston Boulevard, Springfield, Virginia 22153, Attention: RIN 1076–AE49.

(2) You may submit comments electronically by direct Internet response to either *www.blm.gov/nhp/news/regulatory/index.html,* or *http://www.blm.gov.*

(3) You may hand-deliver comments to 1620 L Street, NW., Room 401, Washington, DC 20036.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record. We will honor the request to the extent allowable by law. There may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. 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. You should submit comments on the information collections in the proposed rule to: Interior Desk Officer (1076–AE49), Office of Information and Regulatory Affairs, 202/395–6566 (facsimile); e-mail: *oira_docket@omb.eop.gov.* You may submit comments until April 26, 2004, but should submit them by March 26, 2004, in order to be assured of consideration, because OMB may approve the information collections after 30 days.

List of Subjects

25 CFR Parts 30, 37, 39, 44, and 47

Indians—Education, Schools, Elementary and Secondary education programs, grant programs—Indians, Government programs—education.

25 CFR Part 42

Indians—Education, Schools, Students, Elementary and Secondary education programs.

Dated: February 4, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

For the reasons given in the preamble, the Bureau of Indian Affairs proposes to amend parts 30, 37, 39, 42, 44, 47 of title 25 of the Code of Federal Regulations as follows:

1. New part 30 is added to read as follows:

PART 30—ADEQUATE YEARLY PROGRESS

Sec.
30.100 What is the purpose of this part?
30.101 What definitions apply to terms in this part?

Subpart A—Defining Adequate Yearly Progress

30.102 Does the law require the Secretary of Interior to develop a definition of AYP for bureau-funded schools?
30.103 Did the Committee consider a separate Bureau definition of AYP?
30.104 What is the Secretary's definition of Adequate Yearly Progress?

Alternative Definition of AYP

30.105 Can a tribal governing body or school board use another definition of AYP?
30.106 How does a tribal governing body or school board propose an alternative definition of AYP?
30.107 What must a tribal governing body or school board include in its alternative definition of AYP?
30.108 May an alternative definition of AYP use parts of a State's definition?

Technical Assistance

30.109 Will the Secretary provide assistance in developing an alternative AYP definition?
30.110 What is the process for requesting technical assistance to develop an alternative definition of AYP?
30.111 When should the tribal governing body or school board request technical assistance?

Approval of Alternative Definition

30.112 How long does the Secretary have to review an alternative definition?
30.113 What is the process the Secretary uses to review and approve an alternative definition of AYP?

Subpart B—Assessing Adequate Yearly Progress

30.114 Which students must be assessed?
30.115 Which students' performance data must be included for purposes of AYP?
30.116 If a school fails to achieve its objectives, what other methods may it use to determine whether it made AYP?

Subpart C—Failure To Make Adequate Yearly Progress

30.117 What happens if a bureau-funded school fails to make AYP?
30.118 Can a bureau-funded school present evidence before it is identified for school improvement, corrective action or restructuring?
30.119 Who is responsible for implementing required remedial actions at a bureau-funded school identified for school improvement, corrective action or restructuring?
30.120 Are schools exempt from school choice and supplemental services when identified for school improvement, corrective action, and restructuring?
30.121 What funds are available to assist schools identified for school improvement, corrective action, or restructuring?
30.122 Must the Bureau assist a school identified for school improvement, corrective action, or restructuring?
30.123 What is the Bureau's role in assisting bureau-funded schools to make AYP?
30.124 Will the Department of Education provide funds for schools that fail to meet AYP?
30.125 What happens if a State refuses to allow a school access to the State assessment?

Subpart D—Responsibilities and Accountability

30.126 What are the Bureau's reporting responsibilities?
30.127 How is the Bureau accountable to the Department of Education for education funds and performance?
30.150 Information collection.

Authority: Pub. L. 107–11.

§ 30.100 What is the purpose of this part?

This part establishes for schools receiving Bureau funding a definition of ''Adequate Yearly Progress'' (AYP). Nothing in this part:

(a) Diminishes the Secretary's trust responsibility for Indian education or any statutory rights in law;

(b) Affects in any way the sovereign rights of tribes; or

(c) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.

§ 30.101 What definitions apply to terms in this part?

OIEP means the Office of Indian Education Programs in the Bureau of Indian Affairs.

School means a school funded by the Bureau of Indian Affairs.

Secretary means the Secretary of the Interior or a designated representative.

Subpart A—Defining Adequate Yearly Progress

§ 30.102 Does the law require the Secretary of the Interior to develop a definition of AYP for bureau-funded schools?

Yes, through negotiated rulemaking. In developing the Secretary's definition of adequate yearly progress (AYP), the No Child Left Behind Negotiated Rulemaking Committee (Committee) considered a variety of options. In choosing the definition in § 30.103, the Committee in no way intended to diminish the Secretary's trust responsibility for Indian education or any statutory rights in law. Nothing in this part:

(a) Affects in any way the sovereign rights of tribes; or

(b) Terminates or changes the trust responsibility of the United States to Indian tribes or individual Indians.

§ 30.103 Did the Committee consider a separate Bureau definition of AYP?

Yes, the Committee considered having the Bureau of Indian Affairs develop a separate Bureau definition of AYP. For a variety of reasons, the Committee reached consensus on the definition in § 30.104. This is in no way intended to diminish the United States' trust responsibility for Indian education nor is it intended to give states authority over Bureau-Funded schools.

§ 30.104 What is the Secretary's definition of Adequate Yearly Progress?

The Secretary defines Adequate Yearly Progress as follows. The definition meets the requirements in section 1111(b) of the Act.

(a) Until an alternative definition of AYP is proposed by the tribal governing body or school board and approved by the Secretary, the definition of AYP is that of the State where the school is located.

(1) If the geographic boundaries of the school include more than one State, the tribal governing body or school board may choose the State definition it desires. Such decision shall be communicated to the Secretary in writing.

(2) This section does not mean that the school is under the jurisdiction of the State for any purpose, rather a reference to the State is solely for the purpose of using the State's assessment, curriculum, academic standards, and definition of AYP.

(3) The use of the State's definition of AYP does not diminish or alter the Federal Government's responsibility for Indian education.

(b) School boards or tribal governing bodies may seek a waiver that may include developing their own definition of AYP, or adopting or modifying an existing definition of AYP that has been accepted by the Department of Education. The Secretary is committed to providing technical assistance to a school, or a group of schools, to develop an alternative definition of AYP.

Alternative Definition of AYP

§ 30.105 Can a tribal governing body or school board use another definition of AYP?

Yes. A tribal governing body or school board may waive all or part of the Secretary's definition of AYP and propose an alternative definition under § 30.106.

§ 30.106 How does a tribal governing body or school board propose an alternative definition of AYP?

If a tribal governing body or school board decides that the definition of AYP in § 30.104 is inappropriate, it may decide to waive all or part of the definition. Within 60 days of the decision to waive, the tribal governing body or school board must submit to the Secretary a proposal for an alternative definition of AYP. The proposal must be consistent with section 1111(b) of the Act.

§ 30.107 What must a tribal governing body or school board include in its alternative definition of AYP?

(a) The alternative definition of AYP must comply with the requirements of section 1111(b) of the Act, which include the following:

(1) Demonstrate that the school has adopted challenging academic standards;

(2) Demonstrate that the school has an effective accountability system that ensures that the school or schools will make adequate yearly progress.

(b) The alternative definition of AYP must:

(1) Apply the same high standards of academic achievement to all students;

(2) Be statistically valid and reliable;

(3) Result in continuous and substantial academic improvement for all students;

(4) Measure the progress of all students based on a high-quality assessment system that includes, at a minimum, academic assessments in mathematics, reading or language arts and science and that meets the requirements of paragraph (c) of this section;

(5) Establish a starting point;

(6) Create timelines for adequate yearly progress;

(7) Establish measurable objectives;

(8) Include intermediate goals for annual measurable progress; and

(9) Ensure annual improvement for the school.

(c) The measurement required by paragraph (b)(4) of this section must meet both of the following criteria.

(1) The measurement must include separate measurable annual objectives for continuous and substantial improvement for (unless disaggregation of data cannot yield statistically reliable information):

(i) The achievement of all students; and

(ii) The achievement of economically disadvantaged students; students from major racial or ethnic groups, students with disabilities, and students with limited English proficiency.

(2) The measurement must include graduation rates and at least one other academic indicator for schools that do not have a 12th grade (but may include more than one other academic indicator).

§ 30.108 May an alternative definition of AYP use parts of a State's definition?

Yes, a tribal governing body or school board may take part of the State's definition and propose to waive the remainder. The proposed alternative definition of AYP must, however, include both the parts of the State's AYP adopted and those parts the tribal governing body or school board is proposing to change.

Technical Assistance

§ 30.109 Will the Secretary provide assistance in developing an alternative AYP definition?

Yes, the Secretary through the Bureau, shall provide technical assistance either directly or through contract to the tribal governing body or the school board in developing an alternative AYP definition. A tribal governing body or school board needing assistance must submit a request to the Director of OIEP under § 30.110. In providing assistance, the Secretary may consult with the Secretary of Education and may use funds supplied by the Secretary of Education in accordance with section 6111 of the Act.

§ 30.110 What is the process for requesting technical assistance to develop an alternative definition of AYP?

(a) The tribal governing body or school board requesting technical assistance to develop an alternative definition of AYP must submit a written request to the Director of OIEP, specifying the form of assistance it requires.

(b) The Director of OIEP must acknowledge receipt of the request for technical assistance within 10 days of receiving the request.

(c) No later than 30 days after receiving the original request, the Director of OIEP will identify a point of contact. This contact will immediately begin working with the tribal governing body or school board to jointly develop the specifics of the technical assistance, including identifying the form, substance, and timeline for the assistance.

§ 30.111 When should the tribal governing body or school board request technical assistance?

In order to maximize the time the tribal governing body or school board has to develop an alternative definition of AYP and to provide full opportunity for technical assistance, it is recommended that the tribal governing body or school board request technical assistance before formally notifying the Secretary of its intention to waive the Secretary's definition of AYP.

Approval of Alternative Definition

§ 30.112 How long does the Secretary have to review an alternative definition?

After receiving a completed proposed alternative definition of AYP, the Secretary has 90 days to review and approve or disapprove the definition.

§ 30.113 How does the Secretary review and approve an alternative definition of AYP?

(a) The tribal governing body or school board submits a proposed alternative definition of AYP to the Director, OIEP within 60 days of its decision to waive the Secretary's definition.

(b) Within 30 days of receiving a proposed alternative definition of AYP, OIEP notifies the tribal governing body or the school board whether the proposed alternative definition is complete.

(c) If the proposed alternative definition is incomplete, OIEP provides the tribal governing body or school board with technical assistance to complete the proposed alternative definition of AYP, including identifying what additional items are necessary.

(d) If the proposed alternative definition of AYP is determined to be complete, the Department of Interior may notify the Department of Education that it has received a proposed alternative definition of AYP.

(e) The Secretary has 90 days from the date OIEP receives a completed proposed alternative definition of AYP to determine whether the alternative definition meets the requirements of section 1111(b) of the Act.

(f) The Secretary reviews the proposed alternative definition of AYP to determine whether it is consistent with the requirements of section 1111(b) of the Act. This review must take into account the unique circumstances and needs of the schools and students.

(g) The Secretary shall approve the alternative definition of AYP if it is consistent with the requirements of section 1111(b) of the Act, taking into consideration the unique circumstances and needs of schools and students.

(h) If the Secretary approves the alternative definition of AYP:

(1) The Department shall promptly notify the tribal governing body or school board; and

(2) The alternate definition of AYP will become effective at the start of the following school year.

(i) The Department will disapprove the alternative definition of AYP if it is not consistent with the requirements of section 1111(b) of the Act. If the Department disapproves the definition, it shall, within 90 days of receiving the completed proposed alternative definition, notify the tribal governing body or school board of the following:

(1) That the definition is disapproved; and

(2) The reasons why the proposed alternative definition does not meet the requirements of section 1111(b) of the Act.

(j) If the Department denies a proposed definition under paragraph (i) of this section, it shall provide technical assistance to overcome the basis for the denial.

Subpart B—Assessing Adequate Yearly Progress

§ 30.114 Which students must be assessed?

All students in grades three through eight and one grade in high school who are enrolled in a bureau-funded school must be assessed.

§ 30.115 Which students' performance data must be included for purposes of AYP?

The performance data of all students in grades three through eight and one grade in grades ten through twelve who are enrolled in a bureau-funded school for a full academic year must be included for purposes of AYP. ''Full academic year'' must be defined by the Secretary or by an approved alternative definition of AYP.

§ 30.116 If a school fails to achieve its academic performance objectives, what other methods may it use to determine whether it made AYP?

If a school fails to achieve its academic performance objectives, there are two other methods it may use to determine whether it made AYP

(a) *Method A—''Safe Harbor.''* Under ''safe harbor,'' the following requirements must be met:

(1) In each group that does not achieve the school's academic performance objectives, the percentage of students who were below the ''proficient'' level of academic achievement decreased by 10 percent from the proceeding school year; and

(2) The students in that group made progress on one or more of the academic indicators; and

(3) The 95 percent assessment participation rate requirement is met.

(b) *Method B—Uniform Averaging Procedure.* A school may use uniform averaging. Under this procedure, the school may average data from the school year with data from one or two school years immediately preceding that school year and determine if the resulting average makes AYP.

Subpart C—Failure To Make Adequate Yearly Progress

§ 30.117 What happens if a bureau-funded school fails to make AYP?

Consecutive yrs of failing to make AYP in same academic subject	Status	Action required by entity operating school
1st year of failing AYP	No status change	Analyze AYP Data and consider consultation with outside experts.
2nd consecutive year of failing AYP	School improvement	For the next academic year, develop a plan or revise an existing plan for school improvement in consultation with parents, school staff and outside experts.
3rd consecutive year of failing AYP	School Improvement, year two	Continue revising or modifying the plan for school improvement in consultation with parents, school staff and outside experts.
4th consecutive year of failing AYP	Corrective Action, year one	Implement at least one of the six corrective actions steps found in section 1116(b)(7)(c)(iv) of the Act.
5th consecutive year of failing AYP	Planning to Restructure	Prepare a restructuring plan and make arrangements to implement the plan.
6th consecutive year of failing AYP	Restructuring	Implement the restructuring plan no later than the beginning of the school year following the year in which it developed the plan.
7th consecutive year (and beyond) of failing AYP.	Restructuring	Continue restructuring until AYP is met for two consecutive years.

§ 30.118 Can a bureau-funded school present evidence before it is identified for school improvement, corrective action, or restructuring?

Yes. The Bureau must give such a school the opportunity to review the data and present evidence as set out in section 1116(b)(2) of the Act.

§ 30.119 Who is responsible for implementing required remedial actions at a bureau-funded school identified for school improvement, corrective action or restructuring?

(a) For a Bureau-operated school, implementation of remedial actions is the responsibility of the Bureau of Indian Affairs.

(b) For a tribally-operated contract school or grant school, implementation of remedial actions is the responsibility of the school board of the school.

§ 30.120 Are Bureau-funded schools exempt from school choice and supplemental services when identified for school improvement, corrective action, and restructuring?

Yes, bureau-funded schools are exempt from public school choice and supplemental services when identified for school improvement, corrective action, and restructuring

§ 30.121 What funds are available to assist schools identified for school improvement, corrective action, or restructuring?

From fiscal year 2004 to fiscal year 2007, the bureau will reserve 4 percent of its Title I allocation to assist Bureau-funded schools identified for school improvement, corrective action, and restructuring.

(a) The bureau will allocate at least 95 percent of funds under this section to bureau-funded schools identified for school improvement, corrective action, and restructuring to carry out those schools' responsibility under section 1116(b) of the Act. With the approval of the school board the bureau may directly provide for the remedial activities or arrange for their provision through other entities such as school support teams or educational service agencies.

(b) In allocating funds under this section, the Bureau will give priority to schools that:

(1) Are the lowest-achieving schools;

(2) Demonstrate the greatest need for funds; and

(3) Demonstrate the strongest commitment to ensuring that the funds enable the lowest-achieving schools to meet progress goals in the school improvement plans.

(c) Funds reserved under this section must not decrease total funding for all schools below the level for the preceding fiscal year.

(d) The Bureau will publish in the **Federal Register** a list of schools receiving funds under this section.

§ 30.122 Must the Bureau assist a school it identified for school improvement, corrective action, or restructuring?

Yes, if a bureau-funded school is identified for school improvement, corrective action, or restructuring, the Bureau must provide technical or other assistance described in sections 1116(b)(4) and 1116(g)(3) of the No Child Left Behind Act.

§ 30.123 What is the Bureau's role in assisting bureau-funded schools to make AYP?

The Bureau must provide support to all bureau-funded schools to assist them in achieving AYP. This includes technical assistance and other forms of support.

§ 30.124 Will the Department of Education provide funds for schools that fail to meet AYP?

To the extent that Congress appropriates other funds to assist schools not meeting AYP, the Bureau will apply to the Department of Education for these funds.

§ 30.125 What happens if a State refuses to allow a school access to the State assessment?

(a) The Department will work directly with State officials to assist schools in obtaining access to the State's assessment. This can include direct communication with the Governor of the State. A bureau-funded school may,

if necessary, pay a State for access to its assessment tools and scoring services.

(b) If a State does not provide access to the State's assessment, the bureau-funded school must submit a waiver for an alternative definition of AYP.

Subpart D—Responsibilities and Accountability

§ 30.126 What are the Bureau's reporting responsibilities?

The Bureau has the following reporting responsibilities to the Department of Education, appropriate committees of Congress, and the public.

(a) In order to provide information about annual progress, the Bureau must obtain from all bureau-funded schools the results of assessments administered for all tested students, special education students, students with limited English proficiency, and disseminate such results in an annual report.

(b) The Bureau must identify each school that did not meet AYP in accordance with the school's AYP definition.

(c) Within its annual report to Congress, the Secretary shall include all of the reporting requirements of section 1116 (g)(5) of the Act.

§ 30.127 How is the Bureau accountable to the Department of Education for education funds and performance?

The Bureau is accountable for the funds it receives from the Department of Education under Title I, Part A of the Act and its performance through an agreement with the Department of Education developed in consultation with Indian tribes.

§ 30.150 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 30.104(a)(1), 30.104(b), 30.106, 30.107, 30.110, and 30.118. These collections have been approved by OMB under control number [to be determined].

2. New part 37 is added to read as follows:

PART 37—GEOGRAPHIC BOUNDARIES

Sec.

37.100 What is the purpose of this part?
37.101 What do the terms used in this part mean?
37.102 How is this part organized?
37.103 Information collection.

Subpart A—All Schools

37.110 Who determines geographic attendance areas?
37.111 What role does a tribe have in issues relating to school boundaries?
37.112 Must each school have a geographic attendance boundary?

Subpart B—Day Schools, On-Reservation Boarding Schools, and Peripheral Dorms

37.120 How does this part affect current geographic attendance boundaries?
37.121 Who establishes geographic attendance boundaries under this part?
37.122 Once geographic attendance boundaries are established, how can they be changed?
37.123 How does a tribe develop proposed geographic attendance boundaries or boundary changes?
37.124 How are boundaries established for a new school or dorm?
37.125 Can an eligible student living off a reservation attend a school or dorm?

Subpart C—Off-Reservation Boarding Schools

37.130 Who establishes boundaries for Off-Reservation Boarding Schools?
37.131 Who may attend an ORBS?

Authority: Pub. L. 107–110.

§ 37.100 What is the purpose of this part?

(a) This part:

(1) Establishes procedures for confirming, establishing, or revising attendance areas for each Bureau-funded school;

(2) Encourages consultation with and coordination between and among all agencies (school boards, tribes, and others) involved with a student's education; and

(3) Defines how tribes may develop policies regarding setting or revising geographic attendance boundaries, attendance, and transportation funding for their area of jurisdiction.

(b) The goals of the procedures in this part are to:

(1) Provide stability for schools;

(2) Assist schools to project and to track current and future student enrollment figures for planning their budget, transportation, and facilities construction needs;

(3) Adjust for geographic changes in enrollment, changes in school capacities, and improvement of day school opportunities; and

(4) Avoid overcrowding or stress on limited resources.

§ 37.101 What do the terms used in this part mean?

Geographic attendance area means a physical land area that is served by a Bureau-funded school.

Geographic attendance boundary means a line of demarcation that clearly delineates and describes the limits of the physical land area that is served by a Bureau-funded school.

Secretary means the Secretary of the Interior or a designated representative.

§ 37.102 How is this part organized?

This part is divided into three subparts. Subpart A applies to all bureau-funded schools. Subpart B applies only to day schools, on-reservation boarding schools, and peripheral dorms—in other words, to all bureau-funded schools except off-reservation boarding schools. Subpart C applies only to off-reservation boarding schools (ORBS).

§ 37.103 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 37.122(b), and 37.123(c). These collections have been approved by OMB under control number [to be determined].

Subpart A—All Schools

§ 37.110 Who determines geographic attendance areas?

The Tribal governing body or the Secretary determines geographic attendance areas.

§ 37.111 What role does a tribe have in issues relating to school boundaries?

A tribal governing body may:

(a) Establish and revise geographical attendance boundaries for all but ORB schools,

(b) Authorize a school to provide transportation for students who are members of the tribe attending schools outside the geographic attendance area in which they live.

§ 37.112 Must each school have a geographic attendance boundary?

Yes. The Secretary must ensure that each school has a geographic area boundary.

Subpart B—Day Schools, On-Reservation Boarding Schools, and Peripheral Dorms

§ 37.120 How does this part affect current geographic attendance boundaries?

The currently established geographic attendance boundaries of day schools, on-reservation boarding schools, and peripheral dorms remain in place unless the tribal governing body revises them.

§ 37.121 Who establishes geographic attendance boundaries under this part?

(a) If there is only one day school, on-reservation boarding school, or peripheral dorm within a reservation's boundaries, the Secretary will establish the reservation boundary as the geographic attendance boundary;

(b) When there is more than one day school, on-reservation boarding school, or peripheral dorm within a reservation boundary, the Tribe may choose to establish boundaries for each;

(c) If a Tribe does not establish boundaries under paragraph (b) of this section, the Secretary will do so.

§ 37.122 Once geographic attendance boundaries are established, how can they be changed?

(a) The Secretary can change the geographic attendance boundaries of a day school, on-reservation boarding school, or peripheral dorm only after:

(1) Notifying the Tribe at least 6 months in advance; and

(2) Giving the Tribe an opportunity to suggest different geographical attendance boundaries.

(b) A tribe may ask the Secretary to change geographical attendance boundaries by writing a letter to the Director of the Office of Indian Education Programs, explaining the tribe's suggested changes. The Secretary must consult with the affected tribes before deciding whether to accept or reject a suggested geographic attendance boundary change.

(1) If the Secretary accepts the Tribe's suggested change, the Secretary must publish the change in the **Federal Register**.

(2) If the Secretary rejects the Tribe's suggestion, the Secretary will explain in writing to the Tribe why the suggestion either:

(i) Does not meet the needs of Indian students to be served; or

(ii) Does not provide adequate stability to all affected programs.

§ 37.123 How does a tribe develop proposed geographic attendance boundaries or boundary changes?

(a) The Tribal governing body establishes a process for developing proposed boundaries or boundary changes. This process may include consultation and coordination with all entities involved in student education.

(b) The Tribal governing body may delegate the development of proposed boundaries to the relevant school boards. The boundaries set by the school boards must be approved by the Tribal governing body.

(c) The Tribal governing body must send the proposed boundaries and a copy of its approval to the Secretary.

§ 37.124 How are boundaries established for a new school or dorm?

Geographic attendance boundaries for a new day school, on-reservation boarding school, or peripheral dorm must be established by either:

(a) The tribe; or

(b) If the tribe chooses not to establish boundaries, the Secretary.

§ 37.125 Can an eligible student living off a reservation attend a school or dorm?

Yes. An eligible student living off a reservation can attend a day school, on-reservation boarding school, or peripheral dorm.

Subpart C—Off-Reservation Boarding Schools

§ 37.130 Who establishes boundaries for Off-Reservation Boarding Schools?

The Secretary or the Secretary's designee, in consultation with the affected Tribes, establishes the boundaries for off-reservation boarding schools (ORBS).

§ 37.131 Who may attend an ORBS?

Any student is eligible to attend an ORBS.

3. Part 39 is revised to read as follows:

PART 39—THE INDIAN SCHOOL EQUALIZATION PROGRAM

Subpart A—General

Sec.
39.1 What is the purpose of this part?
39.2 What are the definitions of terms used in this part?
39.3 Information collection.

Subpart B—Indian School Equalization Formula

39.100 What is the Indian School Equalization Formula?
39.101 Does ISEF assess the actual cost of school operations?

Base and Supplemental Funding

39.102 What is included in base funding?
39.103 What are the factors used to determine base funding?
39.104 How must a school's base funding provide for students with special needs?
39.105 Are additional funds available for special education?
39.106 Who is eligible for special education funding?
39.107 Are schools allotted supplemental funds for special costs?

Gifted and Talented Programs

39.110 Can ISEF funds be distributed for the use of gifted and talented students?
39.111 What does the term gifted and talented mean?
39.112 What is the limit on the number of students who are gifted and talented?
39.113 What are the special accountability requirements for the gifted and talented program?
39.114 How does a school receive funding for gifted and talented students?
39.115 How are eligible students identified and nominated?
39.116 How does a school determine who receives gifted and talented services?
39.117 How does a school provide gifted and talented services for a student?
39.118 How does a student receive talented and gifted services in subsequent years?
39.119 When must a student leave a gifted and talented program?
39.120 How are gifted and talented services provided?
39.121 What is the WSU for gifted and talented students?

Language Development Programs

39.130 Can ISEF funds be used for Language Development Programs?
39.131 What is a Language Development Program?
39.132 Can a school integrate Language Development Programs into its regular instructional program?
39.133 Who decides how Language Development funds can be used?
39.134 How does a school identify a Limited English Proficient student?
39.135 What services must be provided to an LEP student?
39.136 What is the WSU for Language Development programs?
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Authority: 25 U.S.C. 13; 25 U.S.C. 2008; Pub. L. 107–110.

§ 39.1 What is the purpose of this part?

This part provides for the uniform direct funding of BIA-operated and tribally operated day schools, boarding schools, and dormitories. This part applies to all schools, dormitories, and administrative units that are funded through the Indian School Equalization Program of the Bureau of Indian Affairs.

§ 39.2 What are the definitions of terms used in this part?

Agency means an organizational unit of the Bureau which provides direct services to the governing body or bodies and members of one or more specified Indian Tribes. The term includes Bureau Area Offices only with respect to off-reservation boarding schools administered directly by such Offices.

Agency school board means a body, the members of which are appointed by the school boards of the schools located within such agency, and the number of such members shall be determined by the Director in consultation with the affected tribes, except that, in Agencies serving a single school, the school board of such school shall fulfill these duties.

Assistant Secretary means the Assistant Secretary of Indian Affairs, Department of the Interior, or his or her designee.

Average Daily Membership (ADM) means the aggregated ISEP-eligible membership of a school for a school year, divided by the number of school days in the school's submitted calendar.

Base or base unit means both the weight or ratio of 1.0 and the dollar value annually established for that weight or ratio which represents students in grades 4 through 8 in a typical instructional program.

Basic program means the instructional program provided all students at any age level exclusive of any supplemental programs which are not provided to all students in day or boarding schools.

Basic transportation miles means the daily average of all bus miles logged for round trip home-to-school transportation of day students.

Director means the Director of the Office of Indian Education Programs in the Bureau of Indian Affairs or a designee.

Education Line Officer means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

Eligible Indian student means a student who:

(1) Is a member of, or is at least one-fourth degree Indian blood descendant of a member of, a tribe that is eligible for the special programs and services provided by the United States through the Bureau of Indian Affairs to Indians because of their status as Indians;

(2) Resides on or near a reservation or meets the criteria for attendance at a Bureau off-reservation home-living school; and

(3) Is enrolled in a Bureau-funded school.

Home schooled means a student who is not enrolled in a school and is receiving educational services at home at the parent's or guardian's initiative.

Homebound means a student who is educated outside the classroom.

Individual supplemental services means non-base academic services provided to eligible students. Individual supplemental services that are funded by additional WSUs are gifted and talented or language development services.

ISEP means the Indian School Equalization Program.

ISEP student count week means the last full week in September during which schools count their student enrollment for ISEP purposes.

Limited English Proficient (LEP) means a child from a language background other than English who needs language assistance in their own language or in English in the schools. This child has sufficient difficulty speaking, writing, or understanding English to deny him/her the opportunity to learn successfully in English-only classrooms and meets one or more of the following conditions:

(1) The child was born outside of the United States or the child's native language is not English;

(2) The child comes from an environment where a language other than English is not dominant; or

(3) The child is an American Indian or Alaska native and comes from an environment where a language other than English has had a significant impact on the child's level of English language proficiency.

Local School Board means a body chosen in accordance with the laws of the tribe to be served or, in the absence of such laws, elected by the parents of the Indian children attending the school. For a school serving a substantial number of students from different tribes:

(1) The members of the local school board shall be appointed by the tribal governing bodies affected; and

(2) The Secretary shall determine number of members in consultation with the affected tribes.

OIEP means the Office of Indian Education Programs in the Bureau of Indian Affairs.

Resident means a student who is residing at a boarding school or dormitory during the weeks when student membership counts are conducted and is either:

(1) A member of the instructional program in the same boarding school in which the student is counted as a resident; or

(2) Enrolled in and a current member of a public school in the community in which the student resides.

Residential program means a program that provides room and board in a boarding school or dormitory to residents who are either:

(1) Enrolled in and are current members of a public school in the community in which they reside; or

(2) Members of the instructional program in the same boarding school in which they are counted as residents and:

(i) Are officially enrolled in the residential program of a Bureau-operated or -funded school; and

(ii) Are actually receiving supplemental services provided to all students who are provided room and board in a boarding school or a dormitory.

School means a school funded by the Bureau of Indian Affairs. The term ''school'' does not include public, charter, or private schools.

School day means a day as defined by the submitted school calendar, as long as annual instructional hours are as they are reflected in § 39.213, excluding passing time, lunch, recess, and breaks.

School bus means a passenger vehicle, operated by an operator in the employ of, or under contract to, a Bureau operated or funded school, who is qualified to operate such a vehicle under State or Federal regulations governing the transportation of students; which vehicle is used to transport day students to and/or from home and the school.

School-wide supplemental funds means non-base academic funding for schools with unique characteristics. The school-wide supplemental funds are funded by additional WSUs and are as follows:

(1) Geographic isolation;

(2) Small school adjustment;

(3) Small high school adjustment;

(5) School board training for Bureau-operated schools.

Special education means specially designed instruction or speech-language therapy to meet the unique needs of a child with a disability. Therapies covered by this definition include:

(1) Instruction in the home, classroom, institution, hospital, and other settings;

(2) Instruction in physical education and speech therapy;

(3) Transition services;

(4) Travel training;

(5) Assistive technology services; and

(6) Vocational education.

Supervisor means the individual in the position of ultimate authority at a Bureau-funded school.

Tribally operated contract school means an elementary school, secondary school, or dormitory that receives financial assistant for its operation under a contract, grant, or agreement with the Bureau under section 102, 103(a), or 208 of the Indian Self-Determination and Education Assistance Act, or under the Tribally Controlled Schools Act of 1988.

Three-year average means:

(1) For academic programs, the average daily membership of the 3 years before the year of operation; and

(2) For the residential programs, the count period membership of the 3 years before the year of operations.

Transported student means the average number of students transported to school on a daily basis.

Unimproved roads means unengineered earth roads that do not have adequate gravel or other aggregate surface materials applied and do not have drainage ditches or shoulders.

Weighted Student Unit means:

(1) The measure of student membership adjusted by the weights or ratios used as factors in the Indian School Equalization Formula; and

(2) The factor used to adjust the weighted student count at any school as the result of other adjustments made under this part.

§ 39.3 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501

et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA. These collections have been approved by OMB under control number [to be determined].

Subpart B—Indian School Equalization Formula

§ 39.100 What is the Indian School Equalization Formula?

The Indian School Equalization Formula (ISEF) was established to allocate Indian School Equalization Program (ISEP) funds. OIEP applies ISEF to determine funding allocation for Bureau-funded schools as described in §§ 39.204 through 39.206.

§ 39.101 Does ISEF assess the actual cost of school operations?

No. ISEF does not attempt to assess the actual cost of school operations either at the local level or in the aggregate at the national level. ISEF provides a method of distribution of funds appropriated by Congress for all schools.

Base and Supplemental Funding

§ 39.102 What is included in base funding?

(a) Academic base funding includes all available funding for educational services to students enrolled in a Bureau-funded school.

(b) Residential base funding includes all available funding for residential services to students enrolled in a Bureau-funded school or an eligible public school who live in a Bureau-funded residential setting.

§ 39.103 What are the factors used to determine base funding?

To determine base funding, schools use must the factors shown in the following table. The school must apply the appropriate factor (called the base academic weight) to each student for funding purposes.

Grade level	Base funding factor for day student	Base funding factor for residential student
Kindergarten	1.15	NA
Grades 1–3 ...	1.38	1.75
Grades 4–6 ...	1.15	1.6
Grades 7–8 ...	1.38	1.6
Grades 9–12	1.5	1.6

§ 39.104 How must a school's base funding provide for students with special needs?

(a) Each school must provide for students with special needs by:

(1) Reserving 15 percent of academic base funding to support special education programs; and

(2) Providing resources through residential base funding to meet the special needs of students under the National Criteria for Home-Living Situations.

(b) A school may spend ISEP funds on school-wide programs to benefit all students (including those without disabilities) only if all of the following conditions are met:

(1) The school sets aside 15 percent of the basic instructional allotment to meet the needs of students with disabilities;

(2) The school can document that it has met all needs of students with disabilities and addressed all components of the Individuals with Disabilities Education Act (IDEA); and

(3) There are unspent funds after the conditions in paragraphs (b)(1) and (b)(2) of this section are met.

§ 39.105 Are additional funds available for special education?

(a) Schools may supplement base funding for special education with funds available under Part B of the Individuals with Disabilities Education Act (IDEA). To obtain Part B funds, the school must submit an application to OIEP. IDEA funds are available only if the school demonstrates that funds reserved under § 39.103(a) are inadequate to pay for services needed by all eligible ISEP students with disabilities.

(b) The Bureau will facilitate the delivery of IDEA Part B funding by:

(1) Providing technical assistance to schools in completing the application for the funds; and

(2) Providing training to Bureau to improve the delivery of Part B funds.

§ 39.106 Who is eligible for special education funding?

To receive ISEP special education funding, a student must be under 22 years old and must not have received a high school diploma or its equivalent on the first day of eligible attendance. The following minimum age requirements also apply:

(a) To be counted as a kindergarten student, a child must be at least 5 years old by December 31; and

(b) To be counted as a first grade student; a child must be at least 6 years old by December 31.

§ 39.107 Are schools allotted supplemental funds for special costs?

Yes, schools are allotted supplemental funds for special costs. ISEF provides additional funds to schools through add-on weights (called special cost factors) that add value to the base weighted student unit. ISEF adds special cost factors as shown in the following table.

Cost factor	Weight	For more information see
Gifted and talented students	2.0	§§ 39.110 through 39.121.
Students with language development needs	0.13	§§ 39.130 through 39.137.
Small school size	(1)	§§ 39.140 through 39.156.
Geographic isolation of the school	12.5	§ 39.160.

[1] Varies.

Gifted and Talented Programs

§ 39.110 Can ISEF funds be distributed for the use of gifted and talented students?

Yes, ISEF funds can be distributed for the provision of services for gifted and talented students.

§ 39.111 What does the term gifted and talented mean?

The term gifted and talented means students, children, or youth who:

(a) Give evidence of high achievement capability in areas such as intellectual, creative, artistic, or leadership capacity, or in specific academic fields; and

(b) Need services or activities not ordinarily provided by the school in order to fully develop those capabilities.

§ 39.112 What is the limit on the number of students who are gifted and talented?

There is no limit on the number of students that a school can classify as gifted and talented.

§ 39.113 What are the special accountability requirements for the gifted and talented program?

If a school identifies more than 13 percent of its student population as

gifted and talented the Bureau will immediately audit the school's gifted and talented program to ensure that all identified students:

(a) Meet the gifted and talented requirement in the regulations; and

(b) Are receiving gifted and talented services.

§ 39.114 How does a school receive funding for gifted and talented students?

To be funded as gifted and talented under this part, a student must be identified as talented and gifted in at least one of the following areas.

(a) *Intellectual Ability* means scoring in the top 5 percent on a statistically valid and reliable measurement tool of intellectual ability.

(b) *Creativity/Divergent Thinking* means scoring in the top 5 percent of performance on a statistically valid and reliable measurement tool of creativity/divergent thinking.

(c) *Academic Aptitude/Achievement* means scoring in the top 15 percent of academic performance in a total subject area score on a statistically valid and reliable measurement tool of academic achievement/aptitude, or a standardized assessment, such as an NRT or CRT.

(d) *Leadership* means the student is recognized as possessing the ability to lead, guide, or influence the actions of others as measured by objective standards that a reasonable person of the community would believe demonstrates that the student possess leadership skills. These standards include evidence from surveys, supportive documentation portfolios, elected or appointed positions in school, community, clubs and organization, awards documenting leadership capabilities. No school can identify more than 15 percent of its student population as gifted and talented through the leadership category.

(e) *Visual and Performing Arts* means outstanding ability to excel in any imaginative art form; including, but not limited to, drawing, printing, sculpture, jewelry making, music, dance, speech, debate, or drama determined by as documented from surveys, supportive documentation portfolios, awards from judged or juried competitions. No school can identify more than 15 percent of its student population as gifted and talented through the visual and performing arts category.

§ 39.115 How are eligible students identified and nominated?

(a) Screening can be completed annually to identify potentially eligible students. Students meeting the criteria in § 39.114 for gifted and talented services can be nominated by any of the following:

(1) A teacher or other school staff;

(2) Another student;

(3) A community member;

(4) A parent or legal guardian; or

(5) A student can nominate himself or herself.

(b) Students can be nominated based on information regarding the student's abilities from any of the following sources:

(1) Collections of work;

(2) Audio/visual tapes;

(3) School grades;

(4) Judgment of work by qualified individuals knowledgeable about the child's performances (*e.g.*, artists, musicians, poets, historians, *etc.*);

(5) Interviews, or observations; or

(6) Information from other sources.

(c) The school must have written parental consent to collect documentation of gifts and talents under paragraph (b) of this section.

§ 39.116 How does a school determine who receives gifted and talented services?

(a) To determine who receives gifted and talented funding, the school must use qualified professionals to perform a multi-disciplinary assessment. The assessment may include the examination of work samples or performance appropriate to the area under consideration. The school must have the parent or guardian's written permission to conduct individual assessments or evaluations. Assessments under this section must meet the following standards:

(1) The assessment must use assessment instruments specified in § 39.114 for each of the five criteria for which the student is nominated;

(2) If the assessment uses a multi-criteria evaluation, that evaluation must be an unbiased evaluation based on student needs and abilities;

(3) Indicators for visual and performing arts and leadership may be determined based on national, regional, or local criteria; and

(4) The assessment may use student portfolios.

(b) A multi-disciplinary team will review the assessment results to determine eligibility for gifted and talented services. The purpose of the team is to determine eligibility and placement to receive gifted and talented services.

(1) Team members may include nominator, classroom teacher, qualified professional who conducted the assessment, local experts as needed, and other appropriate personnel such as the principal and or a counselor.

(2) A minimum of three team members is required to determine eligibility.

(3) The team will design a specific education plan to provide gifted and talented services related in the areas identified.

§ 39.117 How does a school provide gifted and talented services for a student?

Gifted and talented services are provided through or under the supervision of highly qualified professional teachers. To provide gifted and talented services for a student, a school must take the steps in this section.

(a) The multi-disciplinary team formed under § 39.116 (b) will sign a statement of agreement for placement of services based on documentation reviewed.

(b) The student's parent or guardian must give written permission for the student to participate.

(c) The school must develop a specific education plan that contains:

(1) The date of placement;

(2) The date services will begin;

(3) The criterion from § 39.114 for which the student is receiving services and the student's performance level;

(4) Measurable goals and objectives; and

(5) A list of staff responsible for each service that the school is providing.

§ 39.118 How does a student receive gifted and talented services in subsequent years?

For each student receiving gifted and talented services, the school must conduct a yearly evaluation of progress, file timely progress reports, and update the specific education plan.

(a) If a school identifies a student as gifted and talented based on § 39.114 (a), (b), or (c), then the student does not need to reapply for the gifted and talented program. However, the student must be retested at in the least every 3 years through the 10th grade to verify eligibility.

(b) If a school identifies a student as gifted and talented based on § 39.114 (e) or (f), the student must be reevaluated annually for the gifted and talented program.

§ 39.119 When must a student leave a gifted and talented program?

A student must leave the gifted and talented program when either:

(a) The student has received all of the available services that can meet the student's needs;

(b) The student no longer meets the criteria that have qualified him or her for the program; or

(c) The parent or guardian removes the student from the program.

§ 39.120 How are gifted and talented services provided?

In providing services under this section, the school must:

(a) Provide a variety of programming services to meet the needs of the students;

(b) Provide the type and duration of services identified in the Individual Education Plan established for each student; and

(c) Maintain individual student files to provide documentation of process and services; and

(d) Maintain confidentiality of student records under the Family Educational Rights and Privacy Act (FERPA).

§ 39.121 What is the WSU for gifted and talented students?

The WSU for a gifted and talented student is the base academic weight (see § 39.103) subtracted from 2.0. The following table shows the gifted and talented weights obtained using this procedure.

Grade level	Gifted and talented WSU
Kindergarten	0.85
Grades 1 to 3	0.62
Grades 4 to 6	0.85
Grades 7 to 8	0.62
Grades 9 to 12	0.50

Language Development Programs

§ 39.130 Can ISEF funds be used for Language Development Programs?

Yes, schools can use ISEF funds to implement Language Development programs that demonstrate the positive effects of native language programs on students' academic success and English proficiency. Funds can be distributed to a total aggregate instructional weight of 0.13 for each eligible student.

§ 39.131 What is a Language Development Program?

A Language Development program is one that serves students who either:

(a) Are not proficient in spoken or written English;

(b) Are not proficient in any language;

(c) Are learning their native language for the purpose of maintenance or language restoration and enhancement;

(d) Are being instructed in their native language; or

(e) Are learning non-language subjects in their native language.

§ 39.132 Can a school integrate Language Development Programs into its regular instructional program?

A school may offer Language Development programs to students as part of its regular academic program. Language Development does not have to be offered as a stand-alone program.

§ 39.133 Who decides how Language Development funds can be used?

Tribal governing bodies or local school boards decide how their funds for Language Development programs will be used in the instructional program to meet the needs of their students.

§ 39.134 How does a school identify a Limited English Proficient student?

A student is identified as Limited English Proficient (LEP) by using a nationally recognized scientifically research-based test.

§ 39.135 What services must be provided to an LEP student?

A school must provide services that assist each LEP student to:

(a) Become proficient in English, and to the extent possible proficient in their native language; and

(b) Meet the same challenging academic content and student academic achievement standards that all students are expected to meet under section 1111(b)(1) of the Act.

§ 39.136 What is the WSU for Language Development programs?

Language Development programs are funded at 0.13 WSUs per student.

§ 39.137 May schools operate a language development program without a specific appropriation from Congress?

Yes, a school may operate a language development program without a specific appropriation from Congress, but any funds used for such a program must come from existing ISEP funds. When Congress specifically appropriates funds for the *Indian or native languages,* the factor to support the language development program will be no more than 0.25 WSU. [25 U.S.C. 2007 (c)(i)(e)].

Small School Adjustment

§ 39.140 How does a school qualify for a Small School Adjustment?

A school will receive a small school adjustment if either:

(a) Its average daily membership (ADM) is less than 100 students; or

(b) It serves lower grades and has a diploma-awarding high school component with an average instructional daily membership of less than 100 students.

§ 39.141 What is the amount of the Small School Adjustment?

(a) A school with a 3-year ADM of 50 or fewer students will receive an adjustment equivalent to an additional 12.5 base WSU; or

(b) A school with a 3-year ADM of 51 to 99 students will use the following formula to determine the number of WSU for its adjustment. With X being the ADM, the formula is as follows:

WSU adjustment = ((100-X)/200)*X

§ 39.143 What is a small high school?

For purposes of this part, a small high school:

(a) Is accredited under 25 U.S.C. 2001(b);

(b) Is staffed with highly qualified teachers;

(c) Operates any combination of grades 9 through 12;

(d) Offers high school diplomas; and

(e) Has an ADM of fewer than100 students.

§ 39.144 What is the small high school adjustment?

(a) The small high school adjustment is a WSU adjustment given to a small high school that meets both of the following criteria:

(1) It has a 3-year average daily membership (ADM) of less than 100 students; and

(2) It operates as part of a school that during the 2003–04 school year also included lower grades.

(b) The following table shows the WSU adjustment given to small high schools. In the table, ''X'' stands for the ADM.

School receives a small school adjustment under § 39.141	ADM of high school component	Amount of small high school adjustment
Yes	50 or fewer students	6.25 base WSU
Yes	51 to 99	Determined using the following formula: WSU = ((100-X)/200)*X/2
No	50 or fewer students	12.5 base WSU
No	51 to 99 students	Determined using the following formula: ((100-X)/200)*X

§ 39.155 Can a school receive both a small school adjustment and a small high school adjustment?

A school that meets the criteria in § 39.140 can receive both a small school adjustment and a small high school adjustment. The following table shows the total amount of adjustments for eligible schools by average daily membership (ADM) category.

ADM—entire school	ADM—high school component	Small school adjustment	Small high school adjustment	Total adjustment
0–50	NA	12.5	NA	12.5
0–50	0–50	12.5	6.25	18.75
51–99	0–50	*12.5–0.5	6.25	18.75–6.75
51–99	51–99	*12.5–0.5	**6.25–0.25	18.75–0.7
99	0–50	0	12.5	12.5
99	51–98	0	**12.5–0.5	12.5–0.5

* The amount of the adjustment is within this range. The exact figure depends upon the results obtained using the formula in § 39.141.
** The amount of the adjustment is within this range. The exact figure depends upon the results obtained using the formula in § 39.144.

§ 39.156 Is there an adjustment for small residential programs?

In order to compensate for the additional costs of operating a small residential program, OIEP will add to the total WSUs of each qualifying school as shown in the following table:

Type of residential program	Number of WSUs added
Residential student count of 50 or fewer ISEP-eligible students.	12.5
Residential student count of between 51 and 99 ISEP-eligible students.	Determined by the formula ((100 − X)/200))X, where X equals the residential student count.

Geographic Isolation Adjustment

§ 39.160 Does ISEF provide supplemental funding for extraordinary costs related to a school's geographic isolation?

Yes. Havasupai Elementary School, for as long as it remains in its present location, will be awarded an additional cost factor of 12.5 WSU.

Subpart C—Administrative Procedures, Student Counts, and Verifications

§ 39.200 What is the purpose of the Indian School Equalization Formula?

OIEP uses the Indian School Equalization Formula (ISEF) to distribute Indian School Equalization Program (ISEP) appropriations equitably to Bureau-funded schools.

§ 39.201 Does ISEF reflect the actual cost of school operations?

ISEF does not attempt to assess the actual cost of school operations either at the local school level or in the aggregate nationally. ISEF is a relative distribution of available funds at the local school level by comparison with all other Bureau-funded schools.

§ 39.202 What are the definitions of terms used in this subpart?

Homebound means a student who is educated outside the classroom.

Home schooled means a student who is not enrolled in a school and is receiving educational services at home at the parent's or guardian's initiative.

School day means a day as defined by the submitted school calendar, as long as annual instructional hours are as they are reflected in § 39.213, excluding passing time, lunch, recess, and breaks.

Three-year average means:

(1) For academic programs, the average daily membership of the 3 years before the year of operation; and

(2) For the residential programs, the count period membership of the 3 years before the year of operations.

§ 39.203 How does OIEP calculate ADM?

OIEP calculates ADM by:

(a) Adding the total enrollment figures from periodic reports received from each Bureau-funded school; and

(b) Dividing the total enrollment for each school by the number of days in the school's reporting period.

§ 39.204 How does OIEP calculate ISEF?

To calculate ISEF for a school, OIEP will add the weights from paragraphs (a), (b), and (c) of this section to come up with a total of weighted student units (WSUs).

(a) The 3-year average of ADM multiplied by the weighted student unit that is applicable to eligible students;

(b) Any supplemental units generated by the students; and

(c) Any supplemental weights generated by the schools.

§ 39.205 How does OIEP calculate the value of one WSU?

To calculate the appropriated dollar value of one WSU, OIEP divides the systemwide average number of WSUs for the previous 3 years into the current year's appropriation.

§ 39.206 How does OIEP determine a school's funding for the upcoming school year?

To determine a school's funding for the upcoming school year, OIEP uses the following six-step process:

(a) *Step one.* Multiply the appropriate base academic weight from § 39.121 by the number of students in each grade level category.

(b) *Step two.* Multiply the number of students eligible for supplemental program funding under § 39.107 by the WSU for the program.

(c) *Step three.* Calculate all school enrollment weights and residential weights to which the school is entitled.

(d) *Step four.* Add together the sums obtained in steps one through three to obtain each school's total WSU

(e) *Step five.* Add together the total WSUs for all Bureau-funded schools.

(f) *Step six.* Calculate the value of a WSU by dividing this year's funds by the average total WSUs (calculated under step five) for the previous 3 years.

(g) *Step seven.* Multiply each school's WSU total by the base value of one WSU to determine funding for that school.

§ 39.207 How are ISEP funds distributed?

(a) On July 1, schools will receive funding based on 80 percent of the WSU value as determined by dividing available funds by the total average WSU for the previous three years.

(b) On December 1, the balance will be distributed to all schools after verification of the school count and any adjustments made through the appeals process for the third year.

§ 39.208 When may a school count a student for membership purposes?

If a student is enrolled, is in attendance during any of the first 10 days of school, and receives at least 5 days' instruction, the student is deemed to be enrolled all 10 days. The first 10 days of school, for purposes of this section, are determined by the calendar that the school submits to OIEP.

(a) For ISEP purposes, a school can add a student to the membership when he or she has been enrolled and has received a full day of instruction from the school.

(b) Except as provided in § 39.210, to be counted for ADM, a student dropped under § 39.209 must:

(1) Be re-enrolled; and

(2) Receive a full day of instruction from the school.

§ 39.209 When must a school drop a student from its membership?

If a student is absent for 10 consecutive school days, the school must drop that student from the membership for ISEP purposes of that school on the 11th day.

§ 39.210 What other categories of students can a school count for membership purposes?

A school can count other categories of students for membership purposes as shown in the following table.

Type of student	Circumstances under which student can be included in the school's membership
(a) Homebound	(1) The student is temporarily confined to the home for some or all of the school day for medical, family emergency, or other reasons required by law or regulation; (2) The student is being provided by the school with at least 5 documented contact hours each week of academic services by certified educational personnel; and (3) Appropriate documentation is on file at the school.
(b) Located in an institutional setting outside of the school.	The school is either: (1) Paying for the student to receive educational services from the facility; or (2) Providing educational services by certified school staff for at least 5 documented contact hours each week.
(c) Taking college courses during the school day.	(1) The student is concurrently enrolled in, and receiving credits for both the school's courses and college courses; and (2) The student is in physical attendance at the school at least 3 documented contact hours per day.
(d) Taking distance learning courses.	The student is both: (1) Receiving high school credit for grades; and (2) In physical attendance at the school at least 3 documented contact hours per day.
(e) Taking internet courses	The student is both: (1) Receiving high school credit for grades; and (2) Is taking the courses at the school site under a teacher's supervision.

§ 39.211 Can a student be counted as enrolled in more than one school?

Yes, if a student attends more than one school during an academic year, each school may count the student as enrolled once the student meets the criteria in § 39.208.

§ 39.212 Will the Bureau fund children being home schooled?

No, the Bureau will not fund any child that is being home schooled.

§ 39.213 What are the minimum number of instructional hours required in order to be considered a full-time educational program?

A full time program provides the following number of instructional/student hours to the corresponding grade level:

Grade	Hours
K	720
1–3	810
4–8	900
9–12	970

§ 39.214 Can a school receive funding for any part-time students?

(a) A school can receive funding for the following part-time students:

(1) Kindergarten students enrolled in a 2-hour program; and

(2) Grade 7–12 students enrolled in at least half but less than a full instructional day.

(b) The school must count students classified as part-time at 50 percent of their basic instructional WSU value.

Residential Programs

§ 39.215 How does ISEF fund residential programs?

Residential programs are funded on a WSU basis using a formula that takes into account the number of nights of service per week. Funding for residential programs is based on the average of the 3 previous years' WSUs.

§ 39.216 How are students counted for the purpose of funding residential services?

For a student to be considered in residence for purposes of this subpart, the school must be able to document that the student:

(a) Was in residence at least one night during the first full week of October;

(b) Was in residence at least one night during the week preceding the first week in October;

(c) Was in residence at least one night during the week following the first week in October; and

(d) Was present for both the after school count and the midnight count at least one night during each week specified in this section.

§ 39.217 Are there different formulas for different levels of residential services?

(a) Residential services are funded as shown in the following table:

If a residential program operates * * *	Each student is funded at the level of * * *
(1) 4 nights per week or less.	Total WSU × 4/7
(2) 5, 6 or 7 nights per week.	Total WSU × 7/7

(b) In order to qualify for residential services funding under paragraph (a)(2) of this section, a school must document that at least 10 percent of residents are present on 3 of the 4 weekends during the count period.

(c) At least 50 percent of the residency levels established during the count period must be maintained every month for the remainder of the school year.

(d) A school may obtain waivers from the requirements of this section if there are health or safety justifications.

§ 39.218 What happens if a residential program does not maintain residency levels required by this part?

Each school must maintain its declared nights of service per week as certified in its submitted school calendar. For each month that a school does not maintain 25 percent of the residency shown in its submitted calendar, the school will lose one-tenth of its current year allocation.

§ 39.219 What reports must residential programs submit to comply with this rule?

Residential programs must report their monthly counts to the Director on the last school day of the month. To be

counted, a student must have been in residence at least 10 nights during each full school month.

Phase-In Period

§ 39.220 How will the provisions of this subpart be phased in?

In calculating ADM for purposes of this subpart, a school must phase in the provisions of this subpart as shown in the following table.

Time period	How OIEP must calculate ADM
(a) First year after the effective date of this part.	Use the prior 3 years' count period to create an average membership for funding purposes.
(b) Second year after the effective date of this part.	(1) The academic program will use the previous year's ADM and the 2 prior years' count periods; (2) The residential program will use the previous year's count period and the 2 prior years' count weeks.
(c) Each succeeding year after the effective date of this part.	Add one year of ADM or count period and drop one year of prior count weeks until both systems or operating on a 3-year rolling average using the previous 3 years' count period or ADM, respectively.

Subpart D—Accountability

§ 39.400 What is the purpose of this subpart?

The purpose of this subpart is to ensure that this subpart establishes systematic verification and random independent outside auditing procedures to hold administrative the school, school board, or tribal officials having responsibility for student count and student transportation expenditure reporting are held accountable for the accurate and reliable performance of these duties. The subpart establishes systematic verification and random independent outside auditing procedures to accomplish this goal.

§ 39.401 What definitions apply to terms used in this subpart?

Administrative officials means any persons responsible for managing and operating a school, including the school supervisor, the chief school administrator, tribal officials, Education Line Officers, and the Director, OIEP.

Director means the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs.

Education Line Officer means the Bureau official in charge of Bureau education programs and functions in an Agency who reports to the Director.

§ 39.402 What are the accountability measures under ISEP?

There are strict accountability measures under ISEP for misapplying or evading the processes in this part for classifying, counting, and serving students and for accurately reporting student transportation expenditures. These measure will ensure the equitable distribution of funds among schools. The accountability measures in the subpart apply to officials who are responsible under this part for:

(a) Classifying and counting students for funding under ISEF;

(b) Overseeing, certifying, and verifying the student count process; and

(c) Overseeing, certifying, and verifying transportation expenditure accounting and reporting.

§ 39.403 What certification is required?

(a) Each school must maintain an individual file on each student receiving basic educational and supplemental services. The file must contain written documentation of the following:

(1) Each student's eligibility and attendance records;

(2) A complete listing of all supplemental services provided, including all necessary documentation required by statute and regulations (*e.g.,* a current and complete Individual Education Plan for each student receiving supplemental services); and

(3) Documentation of expenditures and program delivery for student transportation to and from school provided by commercial carriers.

(b) The School must maintain the following files in a central location:

(1) The school's ADM and supplemental program counts and residential count;

(2) Transportation related documentation, such as school bus mileage, bus routes;

(3) A list of students transported to and from school;

(4) An electronic student count program or database;

(5) Class record books;

(6) Supplemental program class record books;

(7) For residential programs, residential student attendance documentation;

(8) Evidence of teacher certification; and

(9) The school's accreditation certificate.

(c) The Director must maintain a record of required certifications for ELOs, specialists, and school superintendents in a central location.

§ 39.404 What is the certification and verification process?

(a) Each school must:

(1) Certify that the files required by § 39.403 are complete and accurate; and

(2) Compile a student roster that includes a complete list of all students by grade, days of attendance, and supplemental services.

(b) The chief school administrator and the president of the school board are responsible for certifying the school's ADM and residential count is true and accurate to the best of their knowledge or belief and is supported by appropriate documentation.

(c) OIEP's education line officer (ELO) will annually review the following to verify that the information is true and accurate and is supported by program documentation:

(1) The eligibility of every student;

(2) The school's ADM and supplemental program counts and residential count;

(3) Evidence of accreditation;

(4) Documentation for all provided basic and supplemental services, including all necessary documentation required by statute and regulations (*e.g.,* a current and complete Individual Education Plan for each student receiving supplemental services); and

(5) Documentation of required by subpart G for student transportation to and from school provided by commercial carriers.

§ 39.405 How will verifications be conducted?

The eligibility of every student shall be verified. The ELO will take a random sampling of five days with a minimum of one day per grading period to verify the information in § 39.404(c) The ELO will verify the count for the count period and verify residency during the remainder of the year.

§ 39.406 What documentation must the school maintain for additional services it provides?

Every school must maintain a file on each student receiving additional services. (Additional services include for homebound services, institutional

services, distance courses, internet courses or college services.) The school must certify, and its records must show, that:

(a) Each homebound or institutionalized student is receiving 5 contact hours each week by certified educational personnel;

(b) Each student taking college, distance or internet courses is in physical attendance at the school for at least 3 certified contact hours per day.

§ 39.407 How long must a school maintain records?

The responsible administrative official for each school must maintain records relating to ISEP, supplemental services, and transportation-related expenditures. The official must maintain these records in appropriate retrievable storage for at least the four years prior to the current school year, unless Federal records retention schedules require a longer period.

§ 39.408 What are the responsibilities of administrative officials?

Administrative officials have the following responsibilities:

(a) Applying the appropriate standards in this part for classifying and counting ISEP eligible Indian students at the school for formula funding purposes;

(b) Accounting for and reporting student transportation expenditures;

(c) Providing training and supervision to ensure that appropriate standards are adhered to in counting students and accounting for student transportation expenditures;

(d) Submitting all reports and data on a timely basis; and

(e) Taking appropriate disciplinary action for failure to comply with requirements of this part.

§ 39.409 How does the OIEP Director ensure accountability?

(a) The Director of OIEP must ensure accountability in student counts and student transportation by doing all of the following:

(1) Conducting annual independent and random field audits of the processes and reports of at least one school per OIEP line office to ascertain the accuracy of Bureau line officers' reviews;

(2) Hearing and making decisions on appeals from school officials;

(3) Reviewing reports to ensure that standards and policies are applied consistently, education line officers treat schools fairly and equitably, and the bureau takes appropriate administrative action for failure to follow this part; and

(4) Reporting the results of the findings and determinations under this section to the appropriate tribal governing body.

(b) The purpose of the audit required by paragraph (a)(1) of this section is to ensure that the procedures outlined in these regulations are implemented by responsible administrative officials. To conduct the audit required by paragraph (a)(1) of this section, OIEP will select an independent audit firm that will:

(1) Select a statistically valid audit sample of recent student counts and student transportation reports; and

(2) Analyze these reports to determine adherence to the requirements of this part and accuracy in reporting.

§ 39.410 What qualifications must an audit firm meet to be considered for auditing ISEP administration?

To be considered for auditing ISEP administration under this subpart, an independent audit firm must:

(a) Be a licensed Certified Public Accountant Firm that meets all requirements for conducting audits under the federal Single Audit Act;

(b) Not be under investigation or sanction for violation of professional audit standards or ethics;

(c) Certify that it has conducted a conflict of interests check and that no conflict exists; and

(d) Be selected through a competitive bidding process.

§ 39.411 How will the auditor report its findings?

(a) The auditor selected under § 39.410 must:

(1) Provide an initial draft report of its findings to the governing board or responsible Federal official for the school(s) involved; and

(2) Solicit, consider, and incorporate a response to the findings, where submitted, in the final audit report.

(b) The auditor must submit a final report to the Assistant Secretary—Indian Affairs and all tribes served by each school involved. The report must include all documented exceptions to the requirements of this part, including those exceptions that:

(1) The auditor regards as negligible;

(2) The auditor regards as significant, or as evidence of incompetence on the part of responsible officials, and that must be resolved in a manner similar to significant audit exceptions in a fiscal audit; or

(3) Involve fraud and abuse.

(c) The auditor must immediately report exceptions involving fraud and abuse directly to the Department of the Interior Inspector General's office.

§ 39.412 What sanctions apply for failure to comply with this part?

(a) The employer of a responsible administrative official must take appropriate personnel action if the official:

(1) Submits false or fraudulent ISEP-related counts;

(2) Submits willfully inaccurate counts of student participation in weighted program areas; or

(3) Certifies or verifies submissions described in paragraphs (a)(1) or (a)(2) of this section.

(b) Unless prohibited by law, the employer must report:

(1) Notice of final Federal personnel action to the tribal governing body and tribal school board; and

(2) Notice of final tribal or school board personnel action to the Director of OIEP.

§ 39.413 Can a school appeal the verification of the count?

Yes, a school may appeal to the Director any administrative action disallowing any academic, transportation, supplemental program or residential count. In this appeal, the school may provide evidence to indicate the student's eligibility, membership or residency or adequacy of a program for all or a portion of school year. The school must follow the appeals process in 25 CFR part 2.

Subpart E—Contingency Fund

§ 39.500 What emergency and contingency funds are available?

(a) The Secretary must reserve 1 percent of funds from the allotment formula to meet emergencies and unforeseen contingencies affecting educational programs.

(b) At the end of each fiscal year the Secretary:

(1) Can carry over to the next fiscal year a maximum of 1 percent the current year funds; and

(2) Must distribute all funds in excess of 1 percent equally to all schools.

§ 39.501 What is an emergency or unforeseen contingency?

An emergency or unforeseen contingency is an event that meets all of the following criteria:

(a) It could not be planned for;

(b) It is not the result of mismanagement, malfeasance, or willful neglect;

(c) It could not have been covered by an insurance policy in force at the time of the event;

(d) The Assistant Secretary determines that BIA cannot reimburse the emergency from the facilities emergency repair fund; and

(e) It could not have been prevented by prudent action by officials responsible for the educational program.

§ 39.502 How does a school apply for contingency funds?

To apply for contingency funds, a school must send a request to the ELO. The ELO must send the request to the Director for consideration within 48 hours of receipt. The Director will consider the severity of the event and will attempt to respond to the request as soon as possible, but in any event within 30 days.

§ 39.503 How can a school use contingency funds?

Contingency funds can be used only for education services and programs, including repair of educational facilities.

§ 39.504 May Contingency Funds be carried over to a subsequent fiscal year?

Bureau-operated schools may carry over funds to the next fiscal year.

§ 39.505 What are the reporting requirements for the use of the contingency fund?

(a) At the end of each fiscal year, BIA/OIEP shall send an annual report to Congress detailing how the Contingency Funds were used during the previous fiscal year.

(b) In conjunction with the distribution of unused contingency funds, by October 1 of each year, the Bureau must send a letter to each school and each tribe operating a school listing the allotments from the Contingency Fund.

Subpart F—School Board Training Expenses

§ 39.600 Are Bureau-operated school board expenses funded by ISEP limited?

Yes. Bureau-operated schools are limited to $8,000 or one percent (1%) of ISEP allotted funds (not to exceed $15,000).

§ 39.601 Is school board training for Bureau-operated schools considered a school board expense subject to the limitation?

No. School board training for Bureau-operated schools is not considered a school board expense subject to the limitation.

§ 39.602 Can Grant and Contract schools spend ISEP funds for school board expenses, including training?

No. Grant and Contract school board expenses and training are funded with their administrative cost grant funds.

§ 39.603 Is school board training required for all Bureau-funded schools?

Yes. Any new member of a local school board or an agency school board must complete 40 hours of training within one year of appointment.

§ 39.604 Is there a separate weight for school board training at Bureau-operated schools?

Yes. There is an ISEP weight not to exceed 1.2 WSUs to cover school board training and expenses at Bureau-operated schools.

Subpart G—Transportation

§ 39.700 What is the purpose of this part?

(a) This part covers how transportation mileage and funds for schools are calculated under the ISEP transportation program. The program funds transportation of students from home to school and return.

(b) To use this part effectively, a school should:

(1) Determine its eligibility for funds using the provisions of §§ 39.702 through 39.708;

(2) Calculate its transportation miles using the provisions of §§ 39.710 and 39.711; and

(3) Submit the required reports as required by §§ 39.721 and 39.722.

§ 39.701 What definitions apply to terms used in this subpart?

ISEP means the Indian School Equalization Program.

ISEP student count week means the last full week in September during which schools count their student enrollment for ISEP purposes.

Unimproved roads means unengineered earth roads that do not have adequate gravel or other aggregate surface materials applied and do not have drainage ditches or shoulders.

Eligibility for Funds

§ 39.702 Can a school receive funds to transport residential students using commercial transportation?

A school transporting students by commercial bus, train, airplane, or other commercial modes of transportation will be funded at the cost of the commercial ticket for:

(a) The trip from home to school in the Fall;

(b) The round-trip return home at Christmas; and

(c) The return trip home at the end of the school year.

§ 39.703 What ground transportation costs are covered for students traveling by commercial transportation?

This section applies only if a school transports residential students by commercial bus, train or airplane from home to school. The school may receive funds for the ground miles that the school has to drive to deliver the students or their luggage from the bus, train, or plane terminal to the school.

§ 39.704 Are schools eligible for other funds to transport residential students?

Schools may receive funds for actual chaperone expenses, excluding salaries, during the transportation of students to and from home at the beginning and end of the school year and at Christmas.

§ 39.705 Are schools eligible for other funds to transport special education students?

A school that transports a special education student from home to a treatment center and back to home on a daily basis as required by the student's Individual Education Plan may count those miles for day student funding.

§ 39.706 Are peripheral dormitories eligible for day transportation funds?

Yes. If the peripheral dormitory is required to transport dormitory students to the public school, the dormitory may count those miles driven transporting students to the public school for day transportation funding.

§ 39.707 Which student transportation miles are not eligible for ISEP transportation funding?

(a) The following transportation uses are part of the instructional program and are not eligible for transportation funding:

(1) Fuel and maintenance runs;

(2) Transportation home for medical or other emergencies;

(3) Transportation to treatment or special services programs;

(4) Transportation to after-school programs; and

(5) Transportation for day and boarding school students to attend instructional programs less than full-time at locations other than the school reporting the mileage.

(b) Examples of after-school programs covered by paragraph (a)(4) of this section include:

(1) Athletics;

(2) Band;

(3) Detention;

(4) Tutoring, study hall and special classes; and

(5) Extra-curricular activities such as arts and crafts.

§ 39.708 Are non-ISEP eligible children eligible for transportation funding?

Only ISEP-eligible children enrolled in and attending a school are eligible for ISEP transportation funding. Public, charter, and alternative school students

and children participating in preschool programs such as Head Start and FACE are not eligible for ISEP transportation funding and should not be transported on buses.

Calculating Transportation Miles

§ 39.710 How does a school calculate annual bus transportation miles for day students?

To calculate the total annual bus transportation miles for day students, a school must use the appropriate formula from this section. In the formulas, Tu = Miles driven on Tuesday of the ISEP student count week, W= Miles driven on Wednesday of the ISEP student count week, and Th = Miles driven on Thursday of the ISEP student count week.

(a) For ISEP-eligible day students whose route is entirely over improved roads, calculate miles using the following formula:

$$\frac{Tu + W + Th}{3} * 180$$

(b) For ISEP-eligible day students whose route is partly over unimproved roads, calculate miles using the following three steps.

(1) *Step 1.* Apply the following formula to miles driven over improved roads only:

$$\frac{Tu + W + Th}{3} * 180$$

(2) *Step 2.* Apply the following formula to miles driven over unimproved roads only:

$$\frac{Tu + W + Th}{3} * 1.2 * 180$$

(3) *Step 3.* Add together the sums from steps 1 and 2 to obtain the total annual transportation miles.

§ 39.711 How does a school calculate annual bus transportation miles for residential students?

To calculate the total annual transportation miles for residential students, a school must use the procedures in paragraph (b) of this section.

(a) The school can receive funds for the following trips:

(1) Transportation to the school at the start of the school year;

(2) Round trip home at Christmas; and

(3) Return trip to home at the end of the school year.

(b) To calculate the actual miles driven to transport students from home to school at the start of the school year add together the miles driven for all buses in the fall. If a school transports students over unimproved roads, the school must separate the number of miles driven for each bus into improved miles and unimproved miles. The number of miles driven is the sum of:

(1) The number of miles driven on improved roads; and

(2) The number of miles driven on unimproved roads multiplied by 1.2.

(c) The annual miles driven for each school is the sums of the mileage from paragraph (b)(1) and (b)(2) of this section multiplied by 4.

Reporting Requirements

§ 39.720 Why are there different reporting requirements for transportation data?

In order to construct an actual cost data base, residential and day schools must report data required by §§ 39.721 and .722.

§ 39.721 What transportation information must off-reservation boarding schools report?

(a) Each off-reservation boarding school that provides transportation must report annually the information required by this section. The report must:

(1) Be submitted to OIEP by August 1 and cover the preceding school year;

(2) Include a Charter/Commercial and Air Transportation Form signed and certified as complete and accurate by the School Principal and the appropriate ELO; and

(3) Include the information required by paragraph (b) of this section.

(b) Each annual transportation report must include the information required by the following table.

Type of transport	Information required for annual report
(1) Bus	Actual number of miles traveled by all buses or other vehicles to transport students to school at the beginning of the year multiplied by the number of trips that students take during the year, up to a maximum of four.
(2) Aircraft	The following information for each student traveling by air: (i) A maximum of four one-way fares; (ii) Roundtrip fare paid for transportation home due to an immediate family emergency; (iii) Ground mileage from airport arrival to school; and (iv) If applicable, chaperone travel costs (excluding salary) for school-to-home travel.

§ 39.722 What transportation information must day schools or on-reservation boarding schools report?

(a) Each day school or on-reservation boarding school that provides transportation must report annually the information required by this section. The report must:

(1) Be submitted to OIEP by August 1 and cover the preceding school year;

(2) Include a Day Student Transportation Form signed and certified as complete and accurate by the School Principal and the appropriate ELO; and

(3) Include the information required by paragraph (b) of this section.

(b) Each annual transportation report must include the following information:

(1) Fixed vehicle costs, including: the number and type of buses, passenger size, and local GSA rental rate and duration of GSA contract;

(2) Variable vehicle costs;

(3) Mileage traveled to transport students to and from school on school days, to cites of special services, and to extra-curricular activities;

(4) Medical trips;

(5) Maintenance and Service costs; and

(6) Driver costs.

Miscellaneous Provisions

§ 39.730 Which standards must student transportation vehicles meet?

All vehicles used by schools to transport students must meet or exceed all appropriate Federal Motor Vehicle Safety Standards (FMVSS) and State motor vehicle safety standards. The Bureau will not fund transportation mileage and costs incurred transporting students in vehicles that do not meet these standards.

§ 39.731 Can transportation time be used as instruction time for day school students?

No. Transportation time cannot be used as instruction time for day school students in meeting the minimum required hours for academic funding.

§ 39.732 How does OIEP allocate transportation funds to schools?

OIEP allocates transportation miles based on the types of transportation

programs that the school provides. To allocate transportation funds OIEP:

(a) Multiplies the one-way commercial costs for all schools by four to identify the total commercial costs for all schools;

(b) Subtracts the commercial cost total from the appropriated transportation funds and allocates the balance of the transportation funds to each school with a per-mile rate;

(c) Divides the balance of funds by the sum of the annual day miles and the annual residential miles to identify a per-mile rate;

(d) For day transportation, multiplies the per-mile rate times the annual day miles for each school; and

(e) For residential transportation, multiplies the per mile rate times the annual transportation miles for each school.

Subpart H—Determining the Amount Necessary To Sustain an Academic or Residential Program

§ 39.801 What is the formula to determine the amount necessary to sustain a school's academic or residential program?

(a) The Secretary's formula to determine the minimal annual amount necessary to sustain a bureau-funded school's academic or residential program is as follows:

Student Unit Value × Weighted Student Unit = Annual Minimum Amount

(b) Sections 39.802 through 39.807 explain the derivation of the formula in paragraph (a) of this section.

(c) If the annual minimum amount calculated under this section and §§ 39.802 through 39.807 is not fully funded, OIEP will use the Indian School Equalization Formula to distribute funds to schools.

§ 39.802 What is the Student Unit value in the formula?

The student unit value is the value applied to each student in an academic or residential program. There are two types of student unit values: the student unit instructional value (SUIV) and the student unit residential value (SURV).

(a) The student unit instructional value (SUIV) applies to a day student. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical non-residential program.

(b) The student unit residential value (SURV) applies to a residential student. It is an annually established ratio of 1.0 that represents a student in grades 4 through 6 of a typical residential program.

§ 39.803 What is a Weighted Student Unit in the formula?

A weighted student unit is an adjusted ratio using factors in the Indian School Equalization Formula to establish educational priorities and to provide for the unique needs of specific students, such as:

(a) Students in grades kindergarten through 3 or 7 through 12;

(b) Special education students;

(c) Gifted and talented students;

(d) Distance education students;

(e) Vocational and industrial education students;

(f) Native Language Instruction students;

(g) Small schools;

(h) Personnel costs;

(i) Alternative schooling; and

(j) Early Childhood Education programs.

§ 39.804 How is the SUIV calculated?

The SUIV is calculated by the following 5-step process:

(a) *Step 1.* Use the adjusted national average current expenditures (ANACE) of public and private schools determined by data from the U.S. Dept. of Education-National Center of Education Statistics (NCES), the Department of Defense Schools, the District of Columbia Schools, and the Association of Boarding Schools for the last two school years for which data is available.

(b) *Step 2.* Subtract the average specific Federal share (title I and IDEA Part B) of the total revenue for bureau-funded elementary and secondary schools for the last school year for which data is available as reported by NCES (15%).

(c) *Step 3.* Subtract the administrative cost grant/agency area technical services revenue as a percentage of the total revenue (current expenditures) of BIA-funded schools for school year 1999–2000.

(d) *Step 4.* Subtract the transportation revenue as a percentage of the total revenue (current revenue) BIA-funded schools for the last school year for which data is available.

(e) *Step 5.* Add Johnson O'Malley funding.

§ 39.805 What was the student unit for Instruction value (SUIV) for the school year 1999–2000?

The process in § 39.804 looks like this, using figures for the 1999–2000 school year:

$8,030	ANACE
−1205	Average specific Federal share of total revenue for bureau-funded schools.
−993	Cost grant/technical services revenue as a percentage total revenue.
−658	Transportation revenue as a percentage of the total revenue.
+85	Johnson O'Malley funding.
$5,259	SUIV.

§ 39.806 How is the SURV calculated?

(a) The SURV is the adjusted national average current expenditures for residential schools (ANACER) of public and private residential schools. This average is determined using data from:

(1) The U.S. Department of Education-National Center of Education Statistics (NCES);

(2) The U.S. Department of Defense schools;

(3) Elementary and secondary schools at Gallaudet University; and

(4) The Association of Boarding Schools' residential cost range for the school year.

(b) Following the procedure in paragraph (a) of this section, the SURV for school year 1999–2000 was $ 11,000.

§ 39.807 How will the Student Unit Value be adjusted annually?

(a) The Student Unit Value (SUV) will be adjusted annually by dividing the previous year's Student Value into two parts and adjusting each one as shown in this section.

(1) The first part consists of 85 percent of the previous year's SUV. OIEP will adjust this portion using the personnel cost of living increase of the Department of Defense.

(2) The second part consists of 15 percent the previous year's SUV. OIEP will adjust this portion using the Consumer Price Index-Urban of the Department of Labor.

(b) If the student unit value amount is not fully funded, the schools will receive their pro rata share using the Indian School Equalization Formula.

§ 39.808 What definitions apply?

The definitions in this section apply to the provisions in this subpart.

Adjusted National Average Current Expenditure [ANACE] means the actual current expenditures for pupils in fall

enrollment in public elementary and secondary schools for the last school year for which data is available. These expenditures are adjusted to reflect current expenditures of federally financed schools' cost of day and residential programs financed by:

(1) The Department of Defense;

(2) The Department of Education; and

(3) The District of Columbia.

Current expenditures means expenses related to classroom instruction, classroom supplies, administration, support services-students and other support services and operations. Current expenditures do not include facility operations and maintenance, buildings and improvements, furniture, equipment, vehicles, student activities and debt retirement.

4. Part 42 is revised to read as follows:

PART 42—STUDENT RIGHTS

Sec.
42.1 What general principles apply to this part?
42.2 What rights do individual students have?
42.3 How should a school address alleged violations of school policies?
42.4 What are alternative dispute resolution processes?
42.5 When can a school use ADR processes to address an alleged violation?
42.6 What does due process in a formal disciplinary proceeding include?
42.7 What are a student's due process rights in a formal disciplinary proceeding?
42.8 What are victims' rights in due process?
42.9 How must the school communicate individual student rights to students, parents or guardians, and staff?
42.99 Information collection.

Authority: 5 U.S.C. 301, Pub. L. 107–110.

§ 42.1 What general principles apply to this part?

(a) This part applies to every Bureau-funded school. The regulations in this part govern student rights and due process procedures in disciplinary proceedings in all Bureau-funded schools. To comply with this part, each school must:

(1) Respect the constitutional, statutory, civil and human rights of individual students; and

(2) Respect the role of Tribal judicial systems where appropriate.

(b) All student rights, due process procedures, and educational practices should, where appropriate or possible, afford students consideration of and rights equal to the student's traditional Native customs and practices.

§ 42.2 What rights do individual students have?

Individual students at Bureau-funded schools have, and must be accorded, at least the following rights:

(a) The right to an education that may take into consideration Native American or Alaska Native values;

(b) The right to an education that incorporates applicable Federal and Tribal constitutional and statutory protections for individuals; and

(c) The right to due process in instances of disciplinary actions for alleged violation of school regulations for which the student may be subjected to penalties.

§ 42.3 How should a school address alleged violations of school policies?

(a) In addressing alleged violations of school policies, each school must consider, to the extent appropriate, the reintegration of the student into the school community.

(b) The school may address a student violation using alternative dispute resolution (ADR) processes or the formal disciplinary process.

(1) When appropriate, the school should first attempt to use the ADR processes described in § 42.5 that may allow resolution of the alleged violation without recourse to punitive action.

(2) Where ADR processes do not resolve matters or cannot be used, the school must address the alleged violation through a formal disciplinary proceeding under § 42.6 consistent with the due process rights described in § 42.6.

§ 42.4 What are alternative dispute resolution processes?

Alternative dispute resolution (ADR) processes are formal or informal processes that may allow resolution of the violation without recourse to punitive action.

(a) ADR processes may:

(1) Include peer adjudication, mediation, and conciliation; and

(2) Involve appropriate customs and practices of the Indian Tribes or Alaska Native Villages to the extent that these practices are readily identifiable.

(b) For further information on ADR processes and how to use them, contact the Office of Collaborative Action and Dispute Resolution by:

(1) Sending an e-mail to: *cadr@ios.doi.gov;* or

(2) Writing to: Office of Collaborative Action and Dispute Resolution, Department of the Interior, 1849 C Street, NW., MS 5258, Washington, DC 20240.

§ 42.5 When can a school use ADR processes to address an alleged violation?

(a) The school may address an alleged violation through the ADR processes described in § 42.4, unless one of the conditions in paragraph (b) of this section applies.

(b) The school must not use ADR processes in any of the following circumstances:

(1) Where the law requires immediate expulsion (''zero tolerance'' laws);

(2) For a special education disciplinary proceeding where use of ADR would not be compatible with the Individuals with Disabilities Education Act (Pub. L. 105–17); or

(3) When all parties do not agree to using alternative dispute resolution processes.

(c) If ADR processes do not resolve matters or cannot be used, the school must address alleged violations through the formal disciplinary proceeding described in § 42.7.

§ 42.6 What does due process in a formal disciplinary proceeding include?

Due process must include written notice of the charges and a fair and impartial hearing as required by this section.

(a) The school must give the student written notice of charges within a reasonable time before the hearing required by paragraph (b) of this section. Notice of the charges includes:

(1) A copy of the school policy allegedly violated;

(2) The facts that allegedly constitute the violation;

(3) Information about any statements that the school has received relating to the charge and instructions on how to obtain copies of those statements; and

(4) Information regarding those parts of the student's record that the school will consider in rendering a disciplinary decision.

(b) The school must hold a fair and impartial hearing before imposing disciplinary action, except under the following circumstances:

(1) If the law requires immediate removal (such as, if the student brought a firearm to school) or if there is some other statutory basis for removal;

(2) In an emergency situation that seriously and immediately endangers the health or safety of the student or others; or

(3) If the student (or the student's parent or guardian if the student is less than 18 years old) chooses to waive entitlement to a hearing.

(c) In an emergency situation under paragraph (b)(2) of this section, the school:

(1) May temporarily remove the student;

(2) Must immediately document for the record the facts giving rise to the emergency; and

(3) Must afford the student a hearing that follows due process, as set forth in this part, within ten days.

§ 42.7 What are a student's due process rights in a formal disciplinary proceeding?

A student has the following due process rights in a formal disciplinary proceeding:

(a) The right to have present at the hearing the student's parents or guardians (or their designee);

(b) The right to be represented by counsel (Legal counsel will not be paid for by the Bureau-funded school or the Secretary);

(c) The right to produce, and have produced, witnesses on the student's behalf and to confront and examine all witnesses;

(d) The right to a record of hearings of disciplinary actions, including written findings of fact and conclusions in cases of disciplinary action;

(e) The right to administrative review and appeal under school policy;

(f) The right not to be compelled to testify against himself or herself; and

(g) The right to have an allegation of misconduct and related information expunged from the student's school record if the student is found not guilty of the charges.

§ 42.8 What are victims' rights in due process?

In due process, each school must consider victims' rights when appropriate.

(a) The victim's rights may include a right to:

(1) Participate in due process either in writing or in person;

(2) Provide a statement concerning the impact of the incident on the victim; and

(3) Have the outcome explained to the victim and to his or her parents or guardian by a school official, consistent with confidentiality.

(b) For the purposes of this part, the victim is the actual victim, and not his or her parents.

§ 42.9 How must the school communicate individual student rights to students, parents or guardians, and staff?

Each school must:

(a) Develop a student handbook that includes local school policies, definitions of suspension, expulsion, zero tolerance, and other appropriate terms, and a copy of the regulations in this part;

(b) Provide all school staff a current and updated copy of student rights and responsibilities before the first day of each school year;

(c) Provide all students and their parents or guardians a current and updated copy of student rights and responsibilities every school year upon enrollment; and

(d) Require students, school staff, and to the extent possible, parents and guardians, to confirm in writing that they have received a copy and understand the student rights and responsibilities.

§ 42.99 Information Collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA. These collections have been approved by OMB under control number [to be determined].

5. New part 44 is added to read as follows:

PART 44—GRANTS UNDER THE TRIBALLY CONTROLLED SCHOOLS ACT

Sec.

44.101 What directives apply to a grantee under this part?
44.102 Does this part affect existing tribal rights?
44.103 Who is eligible for a grant?
44.104 How a grant can be terminated?
44.105 How does a tribe or tribal organization retrocede a program to the Secretary?
44.106 How can the Secretary revoke an eligibility determination?
44.107 How does the Secretary reassume a program?
44.108 How must the Secretary make grant payments?
44.109 What happens if the grant recipient is overpaid?
44.110 What Indian Self-Determination Act provisions apply to grants under the Tribally Controlled Schools Act?
44.111 Does the federal tort claims act apply to grantees?
44.200 Information collection.

Authority: Pub. L. 107–110, title 10, part D, the Native American Education Improvement Act, part B, section 1138, Regional Meetings and Negotiated Rulemaking.

§ 44.101 What directives apply to a grantee under this part?

In making a grant under this part the Secretary will use only:

(a) The regulations in this part; and

(b) Guidelines, manuals, and policy directives agreed to by the grantee.

§ 44.102 Does this part affect existing tribal rights?

This part does not:

(a) Affect in any way the sovereign immunity from suit enjoyed by Indian tribes;

(b) Terminate or change the trust responsibility of the United States to any Indian tribe or individual Indian;

(c) Require an Indian tribe to apply for a grant; or

(d) Impede awards by any other Federal agency to any Indian tribe or tribal organization to administer any Indian program under any other law.

§ 44.103 Who is eligible for a grant?

The Secretary can make grants to Indian tribes and tribal organizations that operate:

(a) A school under the provisions of Pub. L. 93–638;

(b) A tribally-controlled school (including a charter school, community-generated school or other type of school) approved by tribal governing body; or

(c) A bureau-funded school approved by tribal governing body.

§ 44.104 How can a grant be terminated?

A grant can be terminated only by one of the following methods:

(a) Retrocession by the tribe;

(b) Revocation of eligibility by the Secretary; or

(c) Reassumption by BIA.

§ 44.105 How does a tribal governing body retrocede a program to the Secretary?

(a) To retrocede a program, the tribal governing body must:

(1) Notify the Bureau in writing, by formal action of the tribal governing body; and

(2) Consult with the Bureau to establish a mutually agreeable effective date. If no date is agreed upon, the retrocession is effective 120 days after the tribal governing body notified the Bureau.

(b) The Bureau must accept any request for retrocession that meets the criteria in paragraph (a) of this section.

(c) After the tribal governing body retrocedes a program:

(1) The tribal governing body decides whether the school becomes Bureau-operated or contracted under the Indian Self-Determination Act; and

(2) If the governing body decides that the school is to be Bureau-operated, the Bureau must provide education-related services in at least the same quantity and quality as those that were previously provided.

§ 44.106 How can the Secretary revoke an eligibility determination?

(a) In order to revoke eligibility, the Secretary must:

(1) Provide the tribe or tribal organization with a written notice;

(2) Furnish the tribe or tribal organization with technical assistance to take remedial action; and

(3) Provide an appeal process.

(b) The Secretary cannot revoke an eligibility determination if the tribe or tribal organization is in compliance with 25 U.S.C. 2505(C).

(c) The Secretary can take corrective action if the school fails to be accredited by January 8, 2005.

(d) In order to revoke eligibility for a grant, the Secretary must send the tribe or tribal organization a written notice that:

(1) States the specific deficiencies that are the basis of the revocation or reassumption;

(2) Explains what actions the tribe or tribal organization must take to remedy the deficiencies.

(e) The tribe or tribal organization may appeal a notice of revocation or reassumption by requesting a hearing under 25 CFR part 900, subpart L or P.

(f) After revoking eligibility, the Secretary will either contract the program under 638 or operate the program directly.

§ 44.107 How does the Secretary reassume a program?

To reassume a program, the Secretary must comply with 25 U.S.C. 450m and 25 CFR part 900, subpart P.

§ 44.108 How must the Secretary make grant payments?

(a) The Secretary makes two annual grant payments.

(1) The first payment, consisting of 80 per cent of the amount that the grantee was entitled to receive during the previous academic year, must be made no later than July 1 of each year; and

(2) The second payment, consisting of the remainder to which the grantee is entitled for the academic year, must be made no later than December 1 of each year.

(b) For funds that become available for obligation on October 1, the Secretary must make payments no later than December 1.

(c) If the Secretary does not make grant payments by the deadlines stated in this section, the Secretary must pay interest under the Prompt Payment Act. If the Secretary does not pay this interest, the grantee may pursue the remedies provided under the Prompt Payment Act.

§ 44.109 What happens if the grant recipient is overpaid?

(a) If the Secretary has mistakenly overpaid the grant recipient, then the Secretary will notify the grant recipient of the overpayment. The grant recipient must return the overpayment within 30 days after it receives the notification.

(b) When the grant recipient returns the money to the Secretary, the Secretary will distribute the money equally to all schools in the system.

§ 44.110 What Indian Self-Determination Act provisions apply to grants under the Tribally Controlled Schools Act?

(a) The following provisions of part 900 apply to any grant to a school administered under an ISDEAA contract or agreement.

(1) Subpart F; Standards for Tribal or Tribal Organization Management Systems, Section 900.45.

(2) Subpart H; Lease of Tribally-owned Buildings by the Secretary.

(3) Subpart I; Property Donation Procedures.

(4) Subpart N; Post-award Contract Disputes.

(5) Subpart P; Retrocession and Reassumption Procedures.

(b) To resolve any disputes arising from the Secretary's administration of the requirements of this part, the procedures in subpart N of part 900 apply if the dispute involves any of the following:

(1) Any exception or problem cited in an audit;

(2) Any dispute regarding the grant authorized;

(3) Any dispute involving an administrative cost grant;

(4) Any dispute regarding new construction or facility improvement or repair, or

(5) Any dispute regarding our denial or failure to act on a request for facilities funds.

§ 44.111 Does the Federal Tort Claims Act apply to grantees?

Yes, the Federal Tort Claims Act applies to grantees.

§ 44.200 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA. These collections have been approved by OMB under control number [to be determined].

6. New Part 47 is added to read as follows:

PART 47—UNIFORM DIRECT FUNDING AND SUPPORT

Sec.
47.1 What is the purpose of this part?
47.2 What definitions apply to terms in this part?
47.3 How does a school find out how much funding it will receive?
47.4 When does OIEP provide funding?
47.5 What is the school supervisor responsible for?
47.6 Who has access to local education financial records?
47.7 What are the expenditure limitations for Bureau-operated schools?
47.8 Who develops the local educational financial plans?
47.9 What are the minimum requirements for the local educational financial plan?
47.10 How is the local educational financial plan developed?
47.11 Can these funds be used as matching funds for other Federal programs?
47.12 How are funds obligated?
47.99 Information collection.

Authority: Pub. L. 107–110.

§ 47.1 What is the purpose of this part?

This part contains the requirements for developing local financial plans that schools need in order to receive direct funding from the Bureau of Indian Affairs.

§ 47.2 What definitions apply to terms in this part?

Budget means that element in the local educational financial plan which shows all costs of the plan by discrete programs and sub-cost categories.

Consultation means soliciting and recording the opinions of school boards regarding each element of the local educational financial plan and incorporating these opinions to the greatest degree feasible in the development of the local educational financial plan at each stage.

Director means the Director, Office of Indian Education Programs.

Local educational financial plan means the plan that:

(1) Programs dollars for educational services for a particular Bureau-operated school; and

(2) Has been ratified in an action of record by the local school board or determined by the superintendent under the appeals process in 25 CFR part 2.

OIEP means the Office of Indian Education Programs in the Bureau of Indian Affairs of the Department of the Interior.

School means a Bureau-funded school.

§ 47.3 How does a school find out how much funding it will receive?

The Office of Indian Education Programs (OIEP) will notify each school

in writing of the annual funding amount it will receive as follows:

(a) No later than July 1st OIEP will let the school know the amount that is 80 percent of its funding; and

(b) No later than September 30 OIEP will let the school know the amount of the remaining 20 percent.

§ 47.4 When does OIEP provide funding?

By July 1st of each year OIEP will make available for obligation all funds for that fiscal year that begins on the following October 1st.

§ 47.5 What is the school supervisor responsible for?

Each Bureau-operated school's school supervisor has the responsibilities in this section. The school supervisor must do all of the following:

(a) Ensure that the school spend funds in accordance with the local financial plan, as ratified or amended by the school board;

(b) Sign all documents required to obligate or pay funds or to record receipt of goods and services;

(c) Report at least quarterly to the local school board on the amounts spent, obligated, and currently remaining in funds budgeted for each program in the local financial plan;

(d) Recommend changes in budget amounts to carry out the local financial plan, and incorporate these changes in the budget as ratified by the local school board, subject to provisions for appeal and overturn; and

(e) Maintain expenditure records in accordance with financial planning system procedures.

§ 47.6 Who has access to local education financial records?

The Comptroller General, the Assistant Secretary, the Director, or any of their duly authorized representatives have access for audit and explanation purposes to any of the local school's accounts, documents, papers, and records which are related to the schools' operation.

§ 47.7 What are the expenditure limitations for Bureau-operated schools?

Each Bureau-operated school must spend all allotted funds in accordance with applicable Federal regulations and local education financial plans. If a Bureau-operated school and OIEP region or Agency support services staff disagree over expenditures, the Bureau-operated school must appeal to the Director for a decision.

§ 47.8 Who develops the local educational financial plans?

The local Bureau-operated school supervisor develops the local educational financial plan in active consultation with the local school board, based on the tentative allotment received.

§ 47.9 What are the minimum requirements for the local educational financial plan?

(a) The local educational financial plan must include:

(1) Separate funds for each group receiving a discrete program of services is to be provided, including each program funded through the Indian School Equalization Program;

(2) A budget showing the costs projected for each program; and

(3) A certification provision meeting the requirements of paragraph (b) of this section.

(b) The certification required by paragraph (a)(3) of this section must provide for either:

(1) Certification by the chairman of the school board that the plan has been ratified in an action of record by the board; or

(2) Except in the case of contract schools, certification by the Agency Superintendent of Education that he or she has approved the plan as shown in an action overturning the school board's rejection or amendment of the plan.

§ 47.10 How is the local educational financial plan developed?

(a) The following deadlines apply to development of the local financial plan:

(1) Within 15 days after receiving the tentative allotment, the school supervisor must consult with the local school board on the local financial plan.

(2) Within 30 days of receiving the tentative allotment, the school board must review the local financial plan and, by a quorum vote, ratify, reject, or amend, the plan.

(3) Within one week of the school board action under paragraph (a)(2) of this section, the supervisor must either:

(i) Send the plan to the education line officer (ELO), along with the official documentation of the school board action; or

(ii) Appeal the school board's decision to the ELO.

(4) The ELO will review the local financial plan for compliance with laws and regulations and may refer the plan to the Solicitor's Office for legal review. If the ELO notes any problem with the plan, he or she must:

(i) Notify the local board and local supervisor of the problem within two weeks of receiving the plan;

(ii) Make arrangements to assist the local school supervisor and board to correct the problem; and

(iii) Refer the problem to the Director of the Office of Indian Education if it cannot be solved locally.

(b) When consulting with the school board under paragraph (a)(1) of this section, the school supervisor must:

(1) Discuss the present program of the school and any proposed changes he or she wishes to recommend;

(2) Give the school board members every opportunity to express their own ideas and views on the supervisor recommendations; and

(3) After the discussions required by paragraphs (b)(1) and (b)(2) of this section, present a draft plan to the school board with recommendations concerning each of the elements.

(c) If the school board does not act within the deadline in paragraph (a)(2) of this section, the supervisor must send the plan to the ELO for ratification. The school board may later amend the plan by a quorum vote; the supervisor must transmit this amendment in accordance with paragraph (a)(3) of this section.

§ 47.11 Can these funds be used as matching funds for other Federal programs?

A school may use funds that it receives under this part as matching funds for other Federal programs.

§ 47.12 How are funds obligated?

(a) Authority to obligate funds in the Bureau operated schools is governed by provisions of the Bureau Manual (42 BIAM).

(b) Authority to obligate funds in tribally operated contract schools is governed by contracting procedures of 25 CFR part 900.

(c) Authority to obligate funds in all Bureau funded and operated schools is based upon the tentative allotment (§§ 47.3 and 47.4) for the period beginning October 1 of any fiscal year. The tentative allotment as restricted by a continuing resolution, if applicable, would govern until computation and notification of initial allotments as described in this subpart, as adjusted by the Director in accordance with §§ 39.501 through 39.503.

§ 47.99 Information collection.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)(PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This part involves collections of information subject to the PRA in §§ 47.5, 47.7, 47.9, and 47.10. These collections have been

approved by OMB under control number [to be determined].

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February 25, 2004

Part III

Tennessee Valley Authority

Environmental Impact Statement—Watts Bar Reservoir Integrated Land Plan, Loudon, Meigs, Rhea, and Roane Counties, Tennessee; Notice of Intent

TENNESSEE VALLEY AUTHORITY

Environmental Impact Statement—Watts Bar Reservoir Integrated Land Plan, Loudon, Meigs, Rhea, and Roane Counties, TN

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of intent.

SUMMARY: This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508), TVA's procedures implementing the National Environmental Policy Act, and Section 106 of the National Historic Preservation Act and its implementing regulations (36 CFR § 800). TVA will prepare an Environmental Impact Statement (EIS) to assess the impact of various alternatives for management of Watts Bar Reservoir project lands in Loudon, Meigs, Rhea, and Roane Counties in Tennessee through the development of a Reservoir Land Plan.

TVA is considering updating a Reservoir Land Management Plan completed for Watts Bar Reservoir in 1988. The new Land Plan will allocate lands to various categories of uses, which will then be used to guide the types of activities that will be considered on TVA land. This will enable TVA to allocate additional lands that were not previously considered, and to reassess past land use designations taking into account public needs, the presence of sensitive environmental resources, and TVA policies.

Lead Agency: The Tennessee Valley Authority (TVA) is the lead agency in the development of this EIS.

DATES: Comments on the scope of the EIS should be received on or before April 15, 2004.

ADDRESSES: Written comments should be sent to Jon M. Loney, Manager, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499.

FOR FURTHER INFORMATION CONTACT: Richard L. Toennisson, NEPA Specialist, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–8517 or e-mail *rltoennisson@tva.gov.*

SUPPLEMENTARY INFORMATION: Watts Bar Reservoir was completed in 1942 and is one of 23 multipurpose reservoirs operated by TVA for navigation, flood control, power production, recreation, and other uses. The Watts Bar Reservoir flows from northeast to southwest through Loudon, Meigs, Rhea, and Roane counties in east Tennessee. The reservoir extends from Watts Bar Dam 72.4 miles to Fort Loudoun Dam on the Tennessee River and 23.1 miles on the Clinch River to Melton Hill Dam. It also includes portions of the Emory and Little Emory Rivers. TVA originally acquired 49,686 acres of land in fee simple ownership for reservoir construction. Of that, 38,600 acres are covered by water during normal summer pool. Subsequent transfers of land by TVA for economic, industrial, residential, or public recreation development have resulted in a current balance of approximately 14,200 acres of TVA land on Watts Bar Reservoir.

TVA is considering reassessing and updating a Reservoir Land Management Plan completed for Watts Bar Reservoir in 1988. This will enable TVA to allocate additional lands that were not previously considered, and to reassess land use designations taking into account public needs, the presence of sensitive environmental resources, and TVA policies. TVA develops reservoir land management plans to facilitate the management of reservoir properties in its custody. In general, TVA manages public land to protect and enhance natural resources, generate prosperity, and improve the quality of life in the Tennessee Valley. These plans allocate lands to various categories of uses, which are then used to guide the types of activities that will be considered on each tract of land. By providing a clear statement of how TVA intends to manage land and by identifying land for specific uses, TVA hopes to balance conflicting uses and facilitate decision-making for use of its land. Plans are submitted to the TVA Board of Directors for approval and adopted as policy to provide for long-term land stewardship and accomplishment of TVA responsibilities under the 1933 TVA Act.

In developing the new Watts Bar Reservoir Land Plan, it is anticipated that lands currently committed to a specific use would be allocated to that current use; however, changes that support TVA goals and objectives can be considered. Committed land parcels include those with existing long term easements, leases, licenses, and contracts, parcels with outstanding land rights, or parcels that are necessary for TVA project operations. All lands under TVA control would be allocated in the planning process. Alternative approaches to land allocation would be analyzed in the EIS. The No Action alternative would continue to rely on the existing 1988 Watts Bar Reservoir Land Management Plan. The 1988 plan allocates land into 19 categories, including natural areas, forest and wildlife management, recreation, and industrial sites. The action alternative(s) would propose options for allocating reservoir lands into land use zones such as: Project Operations, Sensitive Resource Management, Natural Resource Conservation, Economic Development, Developed Recreation, and Residential Access. The action alternatives are expected to include scenarios with allocations reflecting varying emphasis on conservation, development, or balanced growth.

In addition to allocating TVA lands into land use zones, TVA proposes to provide detailed prescriptions for conserving, enhancing, and integrating natural, cultural, visual, and recreation resources management on a reservoir-wide basis. This detailed planning is proposed within the planning zones for Project Operations, Sensitive Resource Management, Natural Resource Conservation, and Developed Recreation. This portion of planning will encompass the management or protection of public use and access, natural areas, forest health, exotic invasive species, nuisance wildlife, ecological diversity, water quality, scenic quality and uniqueness, archeological sites, historic structures and sites, and public outdoor recreation opportunities.

This EIS will tier from TVA's Final EIS, *Shoreline Management Initiative: An Assessment of Residential Shoreline Development Impacts in the Tennessee Valley* (November 1998). That EIS evaluated alternative policies for managing residential uses along TVA's reservoir system, including Watts Bar Reservoir.

TVA anticipates that the EIS will include discussion of the potential effects of alternatives on the following resources and issue areas: Aquatic ecology, water quality, wetlands, terrestrial ecology, cultural resources, recreation, visual resources, threatened and endangered species, and navigation. Other issues which may be discussed, depending on the potential impacts of the alternatives, include floodplains, prime farmland, and air quality.

Public Participation: This notice constitutes TVA's intent to prepare an EIS for the development of the Watts Bar Reservoir Land Plan. TVA is interested in receiving comments on the scope of issues to be addressed in the EIS. The participation of affected federal, state, and local agencies and Indian tribes, as well as other interested persons is invited. Further, pursuant to the regulations of the Advisory Council

on Historic Preservation implementing Section 106 of the National Historic Preservation Act, TVA also solicits comments on the potential of the proposed land allocation plan to affect historic properties. Additionally, this notice also provides an opportunity under Executive Orders 11990 and 11988 for early public review as to the potential of TVA's management plan to affect wetlands and floodplains respectively. Written comments on the scope of the EIS, including the range of alternatives that should be considered and the impacts to be assessed, should be received on or before April 15, 2004.

Comments may also be provided in an oral or written format at a public scoping meeting, which will take place during the comment period (*i.e.*, prior to April 15, 2004) in the Watts Bar area. The date, time, location, and place will be announced in local newspapers, on the TVA Web page at *http://www.tva.gov,* and may also be obtained by contacting the persons listed above. In addition, a questionnaire for gathering specific information will be distributed at the public meeting and will be available on TVA's Web site.

Upon consideration of the scoping comments, TVA will develop alternatives and identify environmental issues to be addressed in the EIS. Following analysis of the environmental consequences of each alternative, TVA will prepare a draft EIS for public review and comment, and distribute it to commenting agencies and the public. Notice of availability of the draft EIS will be published in the **Federal Register**. Any meetings that are scheduled to receive comments on the draft EIS will be announced by TVA.

Dated: February 11, 2004.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment.

[FR Doc. 04–3427 Filed 2–24–04; 10:39 am]

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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.archives.gov/federal_register/public_laws/public_laws.html*.

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H.R. 2264/P.L. 108–200

Congo Basin Forest Partnership Act of 2004 (Feb. 13, 2004; 118 Stat. 458)

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